



MEETING DATE: 12/19/05

ITEM NO. 18

COUNCIL AGENDA REPORT

DATE: December 8, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER [Signature]

SUBJECT: CONSIDER A REQUEST FOR APPROVAL OF A ZONE CHANGE FROM HR-2 1/2 TO HR-2 1/2:PD TO SUBDIVIDE 66.2 ACRES INTO 19 LOTS. THIS PROJECT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT AND AN ENVIRONMENTAL IMPACT REPORT (EIR) HAS BEEN PREPARED. PROPERTY LOCATION: TERMINUS OF SHADY LANE. FILE# PD-04-3; EIR-04-1 PROPERTY OWNER: HIGHLANDS OF LOS GATOS LLC. APPLICANT: SANDY HARRIS.

RECOMMENDATION:

- 1. Hold the public hearing and receive public testimony;
2. Close the public hearing;
3. Certify the EIR (motion required);
4. Adopt the Mitigation Monitoring Plan (motion required);
5. Make the required findings (Attachment 1) and approve subject to the conditions included in the Planned Development Ordinance (Attachment 2) (motion required);
6. Direct the Clerk Administrator to read the title of the ordinance (no motion required);
7. Move to waive the reading of the ordinance (motion required);
8. Introduce the ordinance to effectuate Planned Development PD-04-3 (motion required).

PROJECT SUMMARY

The subject property is located at the easterly terminus of Shady Lane. Three parcels totaling 66.2 acres are proposed to be subdivided into 19 residential lots under a Planned Development (PD) application. Note that while the number of proposed lots has been reduced from 23 to 19, for consistency and ease of discussion, the lot numbers have not been changed (lots 3, 4 and 6 no longer exist). The property would be rezoned from HR-2 1/2 to HR-2 1/2:PD through approval of the PD Ordinance. An Environmental Impact Report (EIR) has been prepared for the project.

PREPARED BY: [Signature] Bud N. Lertz, Director of Community Development

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Reviewed by: [Signature] Assistant Town Manager [Signature] Town Attorney [Signature] Clerk [Signature] Finance
[Signature] Community Development Revised: 12/8/05 10:58 am

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The project site is undeveloped, although there is a system of existing graded roads throughout the property that were constructed by a previous property owner. A seasonal creek runs east-west along Shady Lane and into the project site alongside the entry road (Shady Lane extension). Runoff ultimately reaches the creek channel through several drainage swales on the property. Additional details and background information is included in the reports to Planning Commission (Attachments 5, 7 and 8).

DISCUSSION

Density

The slope density calculations for the three lots comprising the project site and the Hamilton property, the abutting parcel to the south, indicate a potential of 20 lots (the number calculated out at 20.3, but the Town Code dictates that numbers are to be rounded down to the next whole number). The Hamilton property is currently a single lot, but has the potential to be subdivided into two lots. This parcel was included in the slope density calculations because it was originally part of the applicant's property. When a property is subdivided under the rules of the HR zone any further subdivision requires calculation of the slope density using the entire parcel originally subdivided (Section 29.40.250(a)(6) of the Zoning Ordinance). The Hamilton parcel was created by a previous property owner (Angell) in 1995. With two lots assigned to the Hamilton property, the remaining density based on slope density is 18. However, it is possible for the proposed density of 19 lots to be approved through the PD Ordinance. The applicant is requesting 19 lots based on the community benefits being proposed, including provision of better water service for a number of surrounding property owners and preservation of a significant portion of the property as scenic easement.

Proposed Home Sites

The conceptual grading plans were prepared to demonstrate that the proposed lots are viable from a development perspective and can be developed within the regulations of the Hillside Development Standards & Guidelines (HDS&G). For example, retaining wall heights will not exceed five feet and cut and fill depths conform to grading criteria. The conceptual plans were designed to show that the HDS&G compliance can be achieved under worst case scenarios. When individual lots are developed, detailed plans will be prepared and building footprints and driveways may vary from the conceptual plans provided they remain in compliance with the HDS&G. In reviewing the specific home designs, the goal is to develop plans that work best with each lot, stepping the house to fit the site and to minimize grading and retaining walls. Lots 9 and 11 would make use of a shared driveway due to grading and tree impacts that would occur if a separate driveway were constructed to serve lot 11. Emergency vehicle turnarounds would be required on lots 2 and 10, and are shown on the conceptual plans (Exhibit G to Attachment 5).

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Road System

The roadways within the proposed subdivision are all designed to follow existing graded roads. The existing roads have been on the property for approximately 40 years. While some widening will be needed, most of the roadways can be installed without substantial grading or tree impacts. Retaining walls will be needed in some locations, but will not exceed five feet in height as recommended by the HDS&G. The Hillside Specific Plan recommends that roadways be 24 feet for local streets and 20 feet for cul-de-sacs serving six or fewer homes. The proposed roads will have a paved width of 22 feet plus a two foot rolled curb, for an effective width of 24 feet. The roadway widths have been kept at the minimum needed to meet Town standards for public streets. The proposed roadway system provides access with the least impact to the site. This has been the practice of the Town on other hillside subdivisions such as the McCarthy PD on Foster Road.

Emergency Access Roads

Emergency access connections will be provided from the project site to Gum Tree Lane and Shannon Road. The Shannon Road access is shown on the Hillside Specific Plan and is required by the Fire Department. The Gum Tree Lane connection is not required, but will provide an additional access point for residents and emergency services. An all weather surface will be provided but no additional grading will be done since the road has already been graded.

The applicant initially included an emergency access road on the plans connecting the end of Francis Oaks Way to the Shady Lane extension, but later removed it due to staff concerns about grading volumes, cut and fill depths, the need for extensive and tall retaining walls and tree impacts. Francis Oaks residents are very concerned about this, and prefer having an alternate access at the end of Francis Oaks Way. In the interest of providing a needed emergency access to Francis Oaks and to accommodate the request from these neighbors, the applicant has developed another alignment for an emergency access road from the end of Francis Oaks Way to Shady Lane (see Exhibit L to Attachment 5). The approximate grading needed to install the roadway with an 18½% slope is 1,138 cubic yards of cut and 198 cubic yards of fill (Profile A, Exhibit L to Attachment 5). Retaining walls ranging from five to 10 feet would be needed, and 27 trees would need to be removed. Two alternate proposals have been provided (Profiles B and C), but these would both result in steeper slopes and are less desirable. The Fire Department would be unable to use the roadway regardless of which of the three options is used due to the slope of the roadway and tight turning radius. Attachment 15 is a letter submitted by Francis Oaks resident Lee McLaughlin in support of an alignment off the end of the road.

The Hillside Specific Plan (HSP) shows an emergency access connection to Francis Oaks Way from the adjacent parcel to the east (Greiner property) which has access to Francis Oaks. This location is flatter and more feasible for an emergency access road, would not require substantial grading or retaining walls, and could be constructed without removing any trees. It appears that the connection

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between the existed graded road on the Greiner property and Francis Oaks Way has been rough graded although it is overgrown with coyote brush. The HSP location is not proposed as part of the project, however, fire suppression capability will be improved due to water system improvements.

The Council should decide whether to include the proposed emergency access connection at the end of Francis Oaks Way as part of the project approval, or if it should be deferred until the adjacent Greiner property is developed and the connection can be made through that property as indicated by the HSP. Attachment 16 is a map showing the two possible locations for an emergency access connection to Francis Oaks.

Water System

A new water tank will be located between lots 19 and 21. The applicant will install a new public water system and it will then be owned and maintained by San Jose Water Company (SJWC). An access road for SJWC monitoring and maintenance of the water tank will be provided as shown on the site plan (see sheet 1 of the development plans; included with Exhibit D to Attachment 5). The water tank will meet the domestic needs of the new homes and provide emergency fire flow for the Santa Clara County Fire Department. The tank location is at the highest elevation on the site and cannot change substantially without impacting the hydraulic engineering of the water system.

In addition to providing water for the project, a number of surrounding properties will have the opportunity to connect to the new water service. The 16 homes within the Shady Lane Mutual Water Company (SLM) will all have new connections and increased water pressure as a result. The applicant will install new water lines within Gum Tree Lane and Drysdale Drive, and new water meters will be installed by San Jose Water Company. The SLM property owners can then connect to the new water system and abandon the existing substandard system. The existing water tank located off Drysdale Drive can also be removed. Some of the homes on the upper portion of Francis Oaks Way and Shannon Road will also have the opportunity to connect into the new water system. The applicant will install a water line in a portion of Francis Oaks Way, connecting to the new tank through the adjacent Greiner property (an easement has been obtained for this purpose).

Staff held meetings with representatives from SJWC and the three neighborhoods that will receive water via the new system to ensure that all remaining questions and concerns were addressed. All parties are satisfied with the plans for the new water system.

Geotechnical Considerations

Extensive geotechnical and geologic evaluations have been completed and the geotechnical peer review by the Town's consultant, Geomatrix, resulted in a conclusion that the project is geotechnically feasible. Two slides on the property will be repaired, and several others will be left

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undisturbed as they are in locations that will not impact the proposed home sites. These areas of historic debris flow or old landslides are located on the northern slope above the Shady Lane Extension, between the Hailey property and lot 22, and at the southeast corner of the property (see sheet 4 of the development plans). These old slide areas were determined to be shallow with little material. The applicant does not plan to repair the slides as they are within areas to be designated as open space or scenic easement. It is preferable to leave the slope in a natural state as there are some large trees growing there and any movement will not impact downstream development or facilities. The old slides have not moved for hundreds of years and the drainage system for the project will not direct any water to these areas, so it is highly unlikely that these areas will experience movement in the future.

Scenic Easements

The applicant is proposing scenic easements over a majority of the proposed lots. These easements do not correspond with the Least Restrictive Development Area (LRDA). The LRDA includes areas with slopes that do not exceed 30%. The scenic easements are being offered as a community benefit and are not required element by Town Code. The open space delineation over the northerly portion of the site is also being proposed by the applicant and is not required by the Town. The open space would be private, and would be maintained by the Homeowner's Association. The trail connection to Francis Oaks Way will meander through the open space area. The applicant has also suggested that a par course could be constructed within the open space if desired by the Town. Such improvements would be maintained by the Homeowner's Association and would be available for use by residents of the project as well as people who live outside it. Public easements would be placed over the trails so that they can be used by the general public.

Tree Impacts

An arborist report was prepared for the project by the Town's Consulting Arborist, Arbor Resources. The applicant worked extensively with staff and the Consulting Arborist to minimize tree impacts. Proposed tree removals and trees that may be impacted by road and infrastructure construction as well as individual lot development are discussed in the arborist report. There are 39 trees on the site that the arborist recommends removal of for health and safety reasons. Two of these trees have fallen since the initial tree survey was done, and one inventoried tree is dead. Road construction will require removal of six trees and one additional tree will be impacted by grading and may not survive. It is estimated that up to 41 trees will be removed due to conflicts with building envelopes. Seventeen trees will potentially be impacted by driveways or development within building envelopes. Impacted trees will not unnecessarily be removed, and some may be able to be saved based on specific site plan design. Eight trees that are in good condition and small enough to be successfully moved are proposed to be relocated on the site.

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Optional Plan Elements

The applicant has submitted a conceptual landscape plan for consideration (see sheet LD1 of the development plans). The conceptual plan proposes to plant more heavily along the roads, with a transitional zone leading into the natural hillside zone. Landscape zones will be established for each lot and the scenic easement areas will be left in a natural state. This plan has been proposed as an optional element of the PD. Staff supports the plan in concept but refinements are needed. The scenic easements shown on the conceptual landscape plan do not match those shown on the conceptual site plan (sheet 2 of the development plans). The landscape plan was prepared only to demonstrate the proposed planting concept, and is not an intentional deviation from the proposed scenic easements shown on the site plan. The final landscape plan will be approved by staff.

A second optional element is remedial grading along lot 10 and the roadway below (see sheet L2 of the development plans). This grading is being proposed to address some minor slumping and erosion that has occurred along this slope. Two terraced retaining walls would be installed and planted to provide better erosion control. Staff supports this optional remedial grading. The Planning Commission was supportive of both the remedial grading and the conceptual landscape plan with the understanding that the landscape plan will be consistent with the scenic easements.

Landscape Guidelines

The applicant provided draft landscape rules and guidelines that will be included with the CC&R's for the project (see Exhibit K to Exhibit 5). The landscape guidelines include criteria including planting, drainage, retaining walls, irrigation, hardscape and other landscape improvements, fencing and lighting. Commissioner Burke made some suggestions for changes to the landscape guidelines (see Attachment 1). The Commission discussed these suggestions but did not make any specific recommendations on them since the landscape guidelines are intended to be reviewed in more detail and finalized when the tentative map application is submitted. The landscape guidelines will be reviewed for compliance with the HDS&G, safe fire protocol and scenic easements.

Architectural Restrictions

The applicant indicated at several of the public meetings that greater architectural restrictions than required by the HDS&G would be put in place. A condition has been included that requires the applicant to return to the Planning Commission for review and approval of the draft architectural restrictions through an Architecture & Site application. This must occur before the final subdivision map is recorded.

Trails

The applicant is proposing a trail through the property from the Shady Lane entrance to the easterly edge of the property, and a secondary trail that will extend up to an overview near the terminus of

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Francis Oaks Way. This trail will also connect to the end of Francis Oaks Way (see sheet 2 of the development plans). The Hillside Specific Plan shows a trail connection through the property, all the way to Blossom Hill Road. The trail will not be installed beyond the overview area because the steep slope down to Blossom Hill Road makes construction of a trail difficult. In addition, a trail in this location would be too steep to be safely navigated, would not allow for access by rescue personnel in the event of an accident, and there is no area for parking or access to a trail on Blossom Hill Road. A condition has been included requiring an easement over the open space area between the overlook and Blossom Hill Road to allow a trail to be constructed if the Town decides to implement this trail connection in the future.

Traffic

A traffic analysis has been completed and will be included in the draft EIR. The project is anticipated to generate approximately 211 average daily trips, 17 during the AM peak and 22 during the PM peak. Project related traffic increases on Shady Lane, Gum Tree Lane and Drysdale Drive would not significantly increase safety hazards. A stop sign is recommended at the driveways to 15720, 15730 and 15740 Shady Lane. The traffic report also recommends trimming vegetation to create a safe sight distance at Drysdale Drive & Shady Lane. Because there would be more than five peak hour trips generated by the project, the applicant must demonstrate that the benefits of the project outweigh the project's associated traffic impacts. The applicant has offered a number of community benefits as discussed below.

Community Benefits

The applicant has reiterated the community benefit package that is being offered as part of the project (see pages 5 and 6 of Exhibit E, Attachment 5). The proposed community benefits include the following:

- Open space dedication and scenic easements to provide continuous open space through the project (the open space will also connect to the open space easement on the adjacent Hailey property to the west).
- Water system that will serve the project and allow domestic water hookup for nearby properties accessed from Shannon Road, Shady Lane (including Drysdale Drive and Gum Tree Lane) and Francis Oaks Way.
- Extension of public utilities including sanitary sewer.
- Provision of additional fire protection (hydrants and water source) for the hillside.
- Emergency access road connections to Gum Tree Lane, Shannon Road and Francis Oaks Way
- Tree restoration program
- Improvements to Gum Tree Road to improve sight lines

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SUMMARY OF PROJECT REVIEW

On February 23 and August 24, 2005, the Planning Commission held study sessions for the proposed project. The Commission accepted public testimony and provided input to the applicant on various issues and concerns including density, tree impacts, geologic hazards and visibility of homes. Minutes from the August 24 study session are Exhibit E to Attachment 5.

On September 28, 2005, a public hearing was held to allow public comments on the Draft EIR. Verbal comments were received from a member of the public. No comments on the Draft EIR were received from neighbors. Written comments were previously received from Cal-Trans, the Santa Clara Valley Water District (SCVWD), and the Native Plant Society. All comments have been addressed in the Final EIR (see Exhibit C to Attachment 5). The opportunity for the public to comment on the draft EIR ended with completion of the public hearing. The public hearing was not required, but was held to allow the maximum opportunity for public comment on the environmental document.

On November 9, 2005, the Planning Commission held a public hearing and accepted public testimony. Due to the lateness of the meeting, the item was continued to a special meeting on November 15, 2005. On November 15, 2005, the Commission allowed further public testimony and discussed the project. The Commission voted unanimously to forward a recommendation to the Town Council as follows:

- a. Certify the EIR;
- b. Adopt the Mitigation Monitoring Plan (Attachment 11); and
- c. Approve the Planned Development, subject to the conditions included in the PD Ordinance (Attachment 12)

The Planning Commission asked that the Council note that the Town would be using a PD to allow the density to be greater than what is designated by the slope density formula, added the following conditions:

- The entry monument shall be modified to be consistent with the Hillside Development Standards & Guidelines.
- The homes on lots 2 and 12 shall be reviewed by the Planning Commission due to concerns about visibility.

Verbatim minutes of the two public hearings are included as Attachments 13 and 14.

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ENVIRONMENTAL ASSESSMENT:

It was been determined that this project could have a significant impact on the environment and a Environmental Impact Report (EIR) has been prepared. The recommended mitigation measures have all been incorporated into the conditions of approval included in the Planned Development Ordinance (Attachment 1). Attachment 2 is the Mitigation Monitoring Plan. The Planning Commission recommended that the Council certify the EIR. The Town's environmental consultant and the traffic consultant will be present at the Council meeting to answer questions.

Notification of the availability of the Draft EIR was sent to the State Clearinghouse, County Clerk, all other appropriate public agencies, and property owners and residents surrounding the project site (a total of 70 neighbors were included on the notice list). Copies of the Draft EIR were also placed at the Town Library, Town Clerk's office, and Community Development Department.

FISCAL IMPACT: None

CONCLUSION:

The Council should determine if the proposed 19 lots should be approved through the Planned Development, or if the number of lots should be reduced. Council should also decide whether to include the requested emergency access connection at the end of Francis Oaks Way under the project approval, or if it should be deferred until the Grenier property is developed and the connection can be made in the HSP location.

Attachments:

The following were previously distributed under separate cover:

1. Draft Landscape Rules & Guidelines with changes suggested by Commissioner Burke (11 pages)
2. November 15, 2005 Planning Commission desk item (one page) with Exhibit M (29 pages)
3. November 11, 2005 Director's Memorandum (one page with one page attachment)
4. November 9, 2005 desk item (two pages)
5. November 9, 2005 Report to Planning Commission (nine pages) with Exhibits A-L
6. August 24, 2005 desk item (two pages) with Exhibits G & H
7. August 24, 2005 Report to Planning Commission (Study Session #2) with Exhibits C-F
8. February 23, 2005 Report to Planning Commission (Study Session #1) with Exhibits A & B
9. Draft EIR

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Additional Attachments:

10. Required Findings
11. Mitigation Monitoring Plan
12. Planned Development Ordinance
13. Verbatim Planning Commission Minutes of November 9, 2005
14. Verbatim Planning Commission Minutes of November 15, 2005
15. Letter from Lee McLaughlin (one page), received December 12, 2005
16. Emergency Access Road Locations (one page)

Distribution:

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TOWN COUNCIL - DECEMBER 14, 2005
REQUIRED FINDINGS FOR:

Shady Lane

Planned Development Application PD-04-3
Environmental Impact Report EIR-04-001

Requesting approval of a zone change from HR-2½ to HR-2½:PD to subdivide 66.2 acres into 19 lots. It has been determined that the project may cause significant impacts to the environment and an Environmental Impact Report has been prepared in compliance with the California Environmental Quality Act. APNS 527-12-001, 527-09-001, 004

PROPERTY OWNER: Highlands of Los Gatos LLC

APPLICANT: Sandy Harris

Required consistency with the Town's General Plan:

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

Consistency with the Hillside Specific Plan:

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

Traffic Policy:

- That the project has community benefits as noted, which outweigh the project's associated traffic impacts.

In-fill Policy:

1. That the project contributes to the further development of the surrounding neighborhood (i.e. improve circulation, contribute to or provide neighborhood unity, eliminate a blighted area, not detract from the existing quality of life).
2. Project is designed in context with the neighborhood and surrounding zoning with respect to existing scale and character of surrounding structures, open space, setbacks, density, provides adequate circulation and on-street parking. That the development blends in rather than competes with the established character of the area.
3. That the Planned Development demonstrates excellence in design.
4. That the project demonstrates strong community benefit and that the findings are made part of the public record.

MITIGATION MONITORING PLAN

DATE: October 17, 2005

PROJECT: Highlands of Los Gatos, 15700 Shady Lane, State Clearinghouse # 2004062010

| Impact | Mitigation | Monitoring Action | Responsibility | Timing |
|---|---|---|---|---|
| <p>LAND USE</p> <p>Impact 4.1-1: The project would not be consistent with Zoning allowable densities (per slope density formula) as well as policies relating to preserving biological resources and natural topography.</p> | <p>Mitigation Measure 4.1-1: To be consistent with allowable densities on the site as defined by the Town's Zoning Ordinance, either the "PD" zoning designation should be approved (added to the property's HR-2½ zone as proposed) or one project lot should be eliminated. Implementation of Mitigation Measures 4.3-4, 4.3-5 and 4.4-3c through e would reduce identified policy conflicts.</p> | <p>Adoption of Planned Development Ordinance for the project</p> | <p>Director of Community Development</p> | <p>Prior to issuance of the building permit</p> |
| <p>AESTHETICS</p> <p>Impact 4.2-2: The project would alter the visual character of the project site and its vicinity.</p> <p>Impact 4.2-3: The project would introduce a new source of nighttime light.</p> | <p>Mitigation Measure 4.2-2: Proposed lots on the westerly and easterly ridgelines (Lots 2, 5, 9, 11, 12, 13, 14, 15, 17 and 19) and the proposed water tank shall be subject to a view analysis in accordance with the Town's Hillside Development Standards and Guidelines.</p> <p>As part of Architecture and Site review, the Town will require home designs to be consistent with the Hillside Development Standards and Guidelines for site planning, development intensity, architectural design, site elements, and landscape design.</p> <p>Mitigation Measure 4.2-3: Road lighting should be limited to intersections, dangerous curves, dead ends, and multi-use parking areas, and shall be installed to "cut-off" standards.</p> | <p>Required as a condition of approval</p> <p>Required as a condition of approval</p> | <p>Director of Community Development</p> <p>Director of Community Development</p> | <p>Prior to issuance of the building permit</p> <p>Prior to issuance of the building permit</p> |

| Impact | Mitigation | Monitoring Action | Responsibility | Timing |
|---|--|--|---|---|
| <p>Impact 4.3-5: Project implementation could result in the removal or significant damage of approximately 98 ordinance-size trees on the project site. In addition, 8 trees would be relocated, up to 20 trees could be removed as part of landslide repair, and 39 trees are recommended for removal due to safety concerns.</p> | <p>Mitigation Measure 4.3-5: The applicant and future lot owners will be required to replace trees removed in accordance with the Los Gatos Tree Protection Ordinance 2114 which would be as follows:</p> <ul style="list-style-type: none"> ▪ Two replacement trees (24-inch box size) for each impacted tree assigned a high suitability rating. ▪ One replacement tree (24-inch box size) for each impacted tree assigned a moderate suitability rating. <p>A total of approximately 105 replacement trees shall be required for road, lot, and driveway development.</p> | <p>Required as a condition of approval</p> | <p>Building Department</p> | <p>During construction</p> |
| <p>Impact 4.3-8: Project construction activities could disturb active raptor nests if they are present prior to construction.</p> | <p>Mitigation Measure 4.3-8: A protocol-level, pre-construction survey for nesting raptors shall be conducted by a qualified ornithologist.</p> <p>The preconstruction surveys will be conducted no more than 14 days prior to the initiation of demolition and/or construction activities during the early part of the breeding season and no more than 30 days prior to the initiation of these activities during the late part of the breeding season. During this survey, the ornithologist will inspect all trees and electrical towers in and immediately adjacent to the impact areas for raptor nests. If an active raptor nest were found close enough to the construction/demolition area to be disturbed by these activities, the ornithologist, in consultation with the DFG, will determine the extent of a construction-free buffer zone (typically 75 meters [250 feet]) to be established around the nest to remain until the young have fledged.</p> | <p>Required as a condition of approval</p> | <p>Director of Parks and Public Works</p> | <p>Prior to issuance of the building permit</p> |

| Impact | Mitigation | Monitoring Action | Responsibility | Timing |
|--|---|--|---|--|
| <p>HYDROLOGY AND WATER QUALITY Impact 4.6-1: Project implementation would incrementally increase surface runoff due to development of impervious surfaces on the site, and increased peak discharges from the site could increase downstream flood hazards.</p> | <p>Mitigation Measure 4.6-1: To mitigate the project's impact on downstream flood hazards, the proposed detention basin should be adequately sized to accommodate surface runoff generated on project streets and lots during the 100-year design storm. Specifically, the final system shall be designed to satisfy both the HMP (continuous modeling) and 100-year storm criteria, that it shall provide two feet of freeboard for the 10-year storm and zero feet for the 100-year, and that the road shall be designed to act as a spillway in the event of "overflowing" from an event larger than the 100-year.</p> | <p>Required as a condition of approval</p> | <p>Director of Parks and Public Works</p> | <p>Prior to issuance of the building permit</p> |
| <p>TRANSPORATION AND TRAFFIC Impact 4.7-1: During project construction, there would be a temporary increase in project-related construction traffic on local roadways. Impact 4.7-3: Project-related traffic increases on Shady Lane, Gum Tree Lane, and Drysdale Drive would increase safety concerns on these roadways. Impact 4.7-5: No on-street parking would be allowed along the proposed Shady Lane Extension and off-street parking would not be provided until each lot is developed.</p> | <p>Mitigation Measure 4.7-1: Construction truck traffic shall be minimized on Drysdale Drive and Gum Tree Lane and the project applicant will be required to work with the Town to develop a traffic control plan that reduces traffic safety hazards. Mitigation Measure 4.7-3: Access roads are recommended to be widened to 22 feet of paved width, where practical. Curve warning signs, delineators, and advisory speeds, should be installed to enhance the traffic safety. A guard rail shall be installed along the north side of Gum Tree Lane (just west of the project's western boundary) where the road extends directly above existing homes to the north. Repaving of the access roads should also be considered. At the intersection of Shady Lane, two driveways and the project entrance, a stop sign should be installed for traffic exiting the project if the angle and elevation constraints cannot be improved. Mitigation Measure 4.7-5: The Town will require provision of some parking bays along project roadways (wherever topography allows).</p> | <p>Required as a condition of approval Required as a condition of approval Required as a condition of approval</p> | <p>Director of Parks and Public Works Building Department Director of Community Development</p> | <p>Prior to issuance of the building permit During construction Prior to issuance of the building permit</p> |

**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 AT THE TERMINUS OF
SHADY LANE (APNs 527-12-001, 527-09-001 & 004)**

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 te terminus of Shady Lane (Santa Clara County Assessor Parcel Numbers 527-12-001, 527-09-001 & 004) as shown on the map attached hereto as Exhibit A, and is part of this Ordinance, from HR-2½ (Hillside Residential, 2½ Acres per Dwelling Unit) to HR-2½:PD (Hillside Residential, 2½ 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 19 new single-family dwelling units.
2. Landscaping, streets, trails, and other improvements shown and required on the Official Development Plan.
3. Dedication of 42.87 acres of scenic easements as shown on the Official Development Plans.
4. Dedication of trail easements to the Town of Los Gatos as shown on the Official Development Plans.
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 subdivision map and Architecture and Site Approval and Subdivision 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 each of the new single family homes and for the infrastructure improvements. The Development Review Committee may be the deciding body of the infrastructure improvements and for Architecture and Site applications where the proposed home is in compliance with the Hillside Development Standards & Guidelines, **except for lots 2 and 12 which shall be reviewed by the Planning Commission due to concerns about visibility.**
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. SUBDIVISION REQUIRED. A tentative map application shall be approved for the project prior to the issuance of building permits. The Development Review Committee may be the deciding body of the tentative map.
4. ARCHITECTURAL RESTRICTIONS. The applicant shall submit the proposed architectural restrictions for the project through an Architecture and Site application for review and approval by the Planning Commission, prior to recordation of the Final Map.
5. **ENTRY MONUMENT. The entry monument shall be modified to be consistent with the Hillside Development Standards & Guidelines as part of the Architecture & Site approval for the infrastructure improvements.**
6. HOUSE SITING. New homes shall be sited within the grading envelopes shown on the Official Development Plans unless it can be demonstrated that another location is more appropriate for the lot. The burden of proof is on the applicant to justify any deviation from the approved grading envelope.
7. BUILDABLE LOT AND LANDSCAPE AREAS. Any improvement or planting within the buildable lot and landscape areas shown on the Official Development Plans must comply with the Hillside Development Standards & Guidelines.
8. FENCING. Fence locations shall be reviewed and approved during the Architecture & Site review(s). The developer will include in the CC&R's for the project a restriction limiting the home owners from replacing the fence type approved during the Architecture & Site review(s). Fencing shall be restricted to open design, such as wood with wire mesh and wood or concrete split-rail fencing. CC&R's shall prohibit fencing within scenic easements.
9. CONCEPTUAL LANDSCAPE PLAN. The conceptual landscape plan shall be revised to be consistent with the scenic easements shown on the conceptual site plan, sheet 2 of the Official Development Plans.
10. SETBACKS. The minimum setbacks are those specified by the HR zoning district.
11. HEIGHT. The maximum height for homes shall be 25 feet unless it is determined that a home will be visible from a Town viewing platform, in which case the height shall be restricted to 18 feet.

12. ****AESTHETICS MITIGATION MEASURE 4.2-2a.** Proposed lots on the westerly and easterly ridge lines (lots 2, 9, 11, 12, 14, 15, 17 and 19) shall be subject to a view analysis in accordance with the Town's Hillside Development Standards & Guidelines.
13. ****AESTHETICS MITIGATION MEASURE 4.2-2b.** As part of the Architecture and Site review, the Town will require home designs to be consistent with the Hillside Development Standards & Guidelines (HDS&G) for site planning, development intensity, architectural design site elements and landscape design.
14. **EXTERIOR LIGHTING.** All exterior lighting shall be reviewed and approved as part of the Architecture & Site review(s) and shall comply with the HDS&G. Lighting shall be down directed and shall not reflect or encroach onto neighboring properties. Flood lights shall not be installed unless it can be demonstrated that they are clearly needed for safety.
15. **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.
16. **BELOW MARKET PRICE (BMP) IN-LIEU FEE:** A Below Market Price (BMP) in-lieu fee shall be paid by the property owner/developer pursuant to Town Code Section 29.10.3025 and any applicable Town Resolutions. The fee amount shall be based upon the Town Council fee resolution in effect at the time a final or vesting tentative map is approved.
17. **COMMUNITY BENEFIT.** The applicant shall enter into an agreement with the Town for provision of the community benefits being offered with the project. The agreement shall include details on the timing and implementation of each item and shall be approved by the Town Attorney and the Director of Community Development prior to issuance of any building permits for the project.

18. PROJECT CC&R's. CC&R's shall be provided with the Tentative Map application and shall address the following:
 - a. maintenance of landscaping in the public right-of-way
 - b. maintenance of storm drain system
 - c. landscape guidelines (shall be compliant with the Hillside Development Standards & Guidelines, EIR and safe fire protocol).
19. FINAL CC&R's. Final CC&R's shall be approved by the Town Attorney prior to the recording of the Final Map. The CC&R's shall include provisions for traffic circulation, vehicle parking enforcement procedures, and landscaping, exterior lighting and fencing restrictions. The approved CC&R's shall become conditions of this Ordinance.
20. TREE REMOVAL PERMIT. A Tree Removal Permit shall be obtained for the removal of any ordinance sized tree prior to the issuance of a Building, Grading or Encroachment Permit. The only trees to be removed are those identified in the September 17, 2004 arborist report prepared by Arbor Resources. If it becomes necessary to remove any additional trees, a separate Tree Removal Permit shall be submitted for review by the Town. Review by the Town's Consulting Arborist may be required at the discretion of the Director of Community Development.
21. ****BIOLOGICAL RESOURCES MITIGATION MEASURE 4.3-1a.** Focused surveys shall be conducted for the three special status plant species having the potential to occur in the oak woodland habitat. If mitigation plantings occur in grassland or chaparral, surveys for three special status plant species having the potential to occur in these habitats shall also be done.
22. ****BIOLOGICAL RESOURCES MITIGATION MEASURE 4.3-1b.** If any special status species would be affected by the project, a Special Status Plant Species Mitigation and Monitoring Plan should be required to either avoid, minimize or compensate for the impact.
23. ****BIOLOGICAL RESOURCES MITIGATION MEASURE 4.3-3a.** Prior to recordation of the Final Map a formal wetland delineation shall be completed and submitted to the USACE for verification. If the USACE, CDFG and/or RWQCB claim jurisdiction over the seasonal wetlands and seasonal drainages on the site, the project applicant shall submit appropriate permit applications to those agencies claiming jurisdiction prior to project construction and comply with the terms of the permits.

24. ****BIOLOGICAL RESOURCES MITIGATION MEASURE 4.3-3b.** The section of the proposed Shady Lane Extension located west of the site boundary (where the seasonal drainage channel extends along the north side) shall be widened to the south to the extent feasible to avoid impacts on the riparian corridor and avoid identified tree removal along this corridor.
25. ****BIOLOGICAL RESOURCES MITIGATION MEASURE 4.3-4.** Due to the temporal loss associated with proposed tree removal, replacement trees shall be planted at a 3:1 replacement/loss ratio. Based on a maximum potential removal of approximately 122 to 142 trees, mitigation planting of 366 to 426 oak trees in specified areas will be required. A Tree Protection and Preservation Plan shall be developed by the applicant and individual lot owners to ensure survival of trees to be retained and appropriate compensation for impacts on mixed oak woodlands.
26. ****BIOLOGICAL RESOURCES MITIGATION MEASURE 4.3-5.** The applicant and future lot owners shall replace trees removed in accordance with the Los Gatos Tree Protection Ordinance 2114 which is as follows:
- a. Two replacement trees (24-inch box size) for each impacted tree assigned a high suitability rating.
 - b. One replacement tree (24-inch box size) for each impacted tree assigned a moderate suitability rating.
- A total of approximately 105 replacement trees shall be required for road, lot, and driveway development.
27. ****BIOLOGICAL RESOURCES MITIGATION MEASURE 4.3-8.** A protocol-level, pre-construction survey for nesting raptors shall be conducted by a qualified ornithologist. The preconstruction surveys shall be conducted no more than 14 days prior to the initiation of demolition and/or construction activities during the early part of the breeding season and no more than 30 days prior to the initiation of these activities during the late part of the breeding season. During this survey, the ornithologist will inspect all trees and electrical towers in and immediately adjacent to the impact areas for raptor nests. If an active raptor nest is found close enough to the construction/demolition area to be disturbed by these

activities, the ornithologist, in consultation with the DFG, will determine the extent of a construction-free buffer zone (typically 75 meters [250 feet]) to be established around the nest to remain until the young have fledged.

28. **HAZARDS AND HAZARDOUS MATERIALS MITIGATION MEASURE 4.5-2b. Prior to recordation of the Final Map a wildlife management plan shall be prepared to provide guidelines for establishment of defensible space and fuel breaks, use of appropriate building materials, selection of appropriate landscape species, and implementation of appropriate vegetation management practices to minimize fuel loads.

Building Division

29. *GEOLOGY AND SOILS MITIGATION MEASURE 4.4-1a. Project plans shall demonstrate compliance with 1997 Uniform Building Code requirements for structural and seismic loads and recommendations made by Terrasearch.
30. **AIR QUALITY MITIGATION MEASURE 4.9-1. The project shall comply with BAAQMD basic, enhanced, and applicable optional control measures to minimize short-term emissions.
31. **NOISE MITIGATION MEASURE 4.9-1 Truck noise shall be minimized by limiting truck operations to the less noise-sensitive daytime working hours, as well as limiting travel speeds and avoiding compression braking as trucks travel downhill along Shady Lane.
32. **PUBLIC SERVICES AND UTILITIES MITIGATION MEASURE 4.11-1. Affected school districts will charge the project applicant impact fees based on the size of new homes (per square foot basis) and by supplemental parcel taxes on the new residential parcels.
33. PERMITS REQUIRED: A building permit shall be required for the construction of site retaining walls and the proposed water tank pad.
34. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans.
35. SIZE OF PLANS. The maximum size of construction plans submitted for building permits shall be 24 inches by 36 inches.

36. STREET NAMES & HOUSE NUMBERS: Submit requests for new street names and/or house numbers from the Office of the Town clerk prior to the building permit application process.
37. 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).
38. 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
39. 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 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.
 - c. Door buzzer, bell or chime shall be hard wired.
40. 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.

41. SOLAR HOT WATER HEATING. The residences shall be pre-plumbed for solar hot water heating. The plans shall show the location of a stub and valve located in the attics for solar heating use.
42. TITLE 24 ENERGY COMPLIANCE. California Title 24 Energy Compliance forms CR-IR and MF-IR shall be printed on the construction plans.
43. HAZARDOUS FIRE ZONE. This project requires Class A roofing assembly.
44. 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.
45. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538).
46. 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.
47. 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. Parks & Public Works Department: (408) 399-5777
 - d. Santa Clara County Fire Department: (408) 378-4010

Note: Obtain the school district forms from the Town Building Department, after the Building Department has approved the building plans.

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

Engineering Division

48. **AESTHETICS MITIGATION MEASURE 4.2-3 (STREET LIGHTING). Lighting shall be kept to a minimum and shall be installed only at intersections, dangerous curves, end of

cul-de-sacs and multi-use parking areas if needed for safety as determined by the Town Engineer. Developer shall submit detailed plans of proposed street lighting, including photometrics, for lighting to be installed prior to approval of Final Map.

49. ****GEOLOGY AND SOILS MITIGATION MEASURE 4.4-1b.** A screening level slope stability analysis shall be completed for Cross-section H-H.
50. ****GEOLOGY AND SOILS MITIGATION MEASURE 4.4-3a.** The applicant shall repair the debris flows/landslides located on Lots 1 and 10.
51. ****GEOLOGY AND SOILS MITIGATION MEASURE 4.4-3b.** Prior to development of each home site, a lot-specific geologic and geotechnical investigation shall be conducted to identify and address potential geotechnical hazards. Each individual report shall be peer reviewed by the Town's Geotechnical Consultant.
52. ****GEOLOGY AND SOILS MITIGATION MEASURE 4.4-3c.** To the extent feasible, proposed development should avoid slopes over 30% unless designed in accordance with the Town's Hillside Standards and Guidelines.
53. ****GEOLOGY AND SOILS MITIGATION MEASURE 4.4-3d.** Grading associated with development of homes and driveways shall be minimized.
54. ****GEOLOGY AND SOILS MITIGATION MEASURE 4.4-3e.** All utilities located on slopes over 30% shall be directional drilled.
55. ****HYDROLOGY AND WATER QUALITY MITIGATION MEASURE 4.6-1.** To mitigate the project's impact on downstream flood hazards, the proposed detention basin shall be adequately sized to accommodate surface runoff generated on project streets and lots during the 100-year design storm, prior to recordation of the Final Map. Specifically, the final system shall be designed to satisfy both the HMP (continuous modeling) and 100-year storm criteria, that it shall provide two feet of freeboard for the 10-year storm and zero feet for the 100-year, and that the road shall be designed to act as a spillway in the event of "overflowing" from an event larger than the 100-year.
56. ****OPEN SPACE AND RECREATION MITIGATION MEASURE 4.12-1a.** New trails shall meet Town requirements regarding ownership, maintenance, materials, alignments, width, grade, parking, and signage.

57. **OPEN SPACE AND RECREATION MITIGATION MEASURE 4.12-3a.. If a tennis court and/or par course is to be installed, the Town will require a detailed soils investigation; grading, drainage, and utilities extension to be shown on plans; proof of maintenance and construction access rights from Francis Oaks Way; and preparation of a traffic control plan for Francis Oaks Way.
58. **OPEN SPACE AND RECREATION MITIGATION MEASURE 4.12-3b. Project CC&R's shall prohibit project residents from using Francis Oaks Way for access or parking while using the par course, if installed.
59. CERTIFICATE OF LOT LINE ADJUSTMENT. A Certificate of Lot Line Adjustment shall be recorded for the off-site parcels as shown on the Official Development Plans. Two copies of the legal description for each new lot configuration, a plat map (8-½ in. X 11 in.) and two copies of the legal description of the land to be exchanged shall be submitted to the Engineering Division of the Parks & Public Works Department for review and approval. The submittal shall include closure calculations, title reports less than 90 days old and the appropriate fee. The certificate shall be recorded before any permits may be issued.
60. 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. Unless specifically allowed by the Director of Parks and Public Works, the grading permit will be issued concurrently with the building permit. 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.
61. SOILS REPORT. One copy of the soils and geologic 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 report shall be signed and "wet stamped" by the engineer or geologist, in conformance with Section 6735 of the California Business and Professions Code.

62. 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.
63. SOILS ENGINEER CONSTRUCTION OBSERVATION. 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 applicants soils engineer and submitted to the Town before final release of any occupancy permit is granted.
64. DEVELOPMENT AGREEMENT. The Applicant shall enter an agreement to construct public improvements in accordance with Town Code §24.40.020.
65. FINAL MAP. A final map shall be recorded. Two copies of the final map shall be submitted to the Engineering Division of the Parks & Public Works Department for review and approval. The submittal shall include closure calculations, title report and appropriate fees. The map shall be recorded prior to issuance of any building permits for the project.
66. DEDICATIONS. The following shall be dedicated prior to issuance of any permits:
 - a. Shady Lane extension (west of project site boundary): 40 foot street right-of-way with a 10 foot wide Public Service Easement (PSE) on each side.
 - b. New interior streets. A 40-foot street right-of-way with the chord of a 20-foot radius at all intersections and a standard 42-foot radius cul-de-sac.
 - c. Public Service Easement (PSE). Ten (10) feet wide, next to the new street rights-of-way.
 - d. Ingress-egress, storm drainage and sanitary sewer easements, as required.
 - e. Trail Easement. Ten (10) feet wide, as shown on the Official Development Plan.
 - f. Trail easement. Over the area between the overlook and Blossom Hill Road for installation of a trail should the Town decide to implement this trail connection.

67. PUBLIC IMPROVEMENTS. The following improvements shall be installed by the developer. Plans for those improvements shall be prepared by a California registered civil engineer, reviewed and approved by the Town, and guaranteed by contract, Faithful Performance Security and Labor & Materials Security before the issuance of a building permit or the recordation of a map. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.
- a. New Streets. Curb, gutter, new street paving, signing, striping, lighting, storm drainage and sanitary sewers, as required. Curbs shall be rolled concrete to the satisfaction of the Director of Parks and Public Works.
 - b. Shady Lane. Curb as required in the vicinity of Drysdale Drive to reduce overbank erosion in the roadside ditch.
68. PUBLIC IMPROVEMENT SECURITY. The applicant shall supply suitable securities for all public improvements that are a part of the development in a form acceptable to the Town in the amount of 100% (performance) and 100% (labor and material) prior to issuance of any permit. Applicant shall provide two (2) copies of documents verifying the cost of the public improvements to the satisfaction of the Engineering Division of the Parks and Public Works Department.
69. INSURANCE. One million dollars (\$1,000,000) of liability insurance holding the Town harmless shall be provided in a format acceptable to the Town Attorney before recordation of the map.
70. 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.
71. 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).

72. 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 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.
73. 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 be conducted across the full extent of Francis Oaks Way, Drysdale Drive, Gum Tree Lane and Shady Lane. The results shall be documented in a report and submitted to the Town for review.
74. POST-CONSTRUCTION PAVEMENT SURVEY. The project Applicant will complete a 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. 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.
75. TRAFFIC IMPACT MITIGATION FEE (RESIDENTIAL). The developer 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 request of Certificate of Occupancy is made. The fee shall be paid before issuance of the Certificate of Occupancy. The traffic impact mitigation fee for each new house in 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 of the request for building permit.

76. **TRANSPORTATION AND TRAFFIC MITIGATION MEASURE 4.7-1 Construction truck traffic shall be minimized on Drysdale Drive and Gum Tree Lane. Prior to issuance of any permits the applicant shall work with the Town to develop a traffic control plan that reduces traffic safety hazards.
77. **TRANSPORTATION AND TRAFFIC MITIGATION MEASURE 4.7-3. Access roads are recommended to be widened to 22 feet of paved width, where practical. Curve warning signs, delineators, and advisory speeds, should be installed to enhance the traffic safety. A guard rail shall be installed along the north side of Gum Tree Lane (just west of the project's western boundary) where the road extends directly above existing homes to the north. Repaving of the access roads should also be considered. At the intersection of Shady Lane, two driveways and the project entrance, a stop sign should be installed for traffic exiting the project if the angle and elevation constraints cannot be improved.
78. **TRANSPORTATION AND TRAFFIC MITIGATION MEASURE 4.7-5. The Town may require provision of parking bays along project roadways (wherever topography allows). Parking bay analysis shall be done as part of the Architecture & Site review for the infrastructure improvements.
79. **TRANSPORTATION AND TRAFFIC MITIGATION MEASURE 4.7-6. During Architecture and Site review for each proposed lot, proposed driveways shall be reviewed for adequate sight distance at the driveway intersections. On lots with long driveways, driveways should be designed to allow vehicles to turnaround near the garage so that drivers could exit long driveways going forward.
80. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications or as otherwise approved by the Director of Parks and Public Works. 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.

81. 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.
82. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting an 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 ow work that went on without inspection.
83. GRADING. No grading or earth-disturbing activities shall be initiated in hillside areas between October 1 and April 15 of each year unless approved by the Town Engineer.
84. 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.
85. 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.
 - c. Top of future curb along one side of the new street.
86. 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 01-024 of the amended Santa Clara County NPDES Permit.

87. 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.
88. 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.
89. 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 or creeks.
90. 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). Cable television capability shall be provided to all new lots.
91. UTILITY COMPANY REVIEW. Letters from the electric, telephone, cable, and trash companies indicating that the proposed improvements and easements are acceptable shall be provided prior to recordation of the final map.
92. ABOVE GROUND UTILITIES. The applicant shall submit a 75-percent progress printing to the Town for review of above ground utilities including backflow prevention devices, fire department connections, gas and water meters, off-street valve boxes, hydrants, site lighting, electrical/communication/cable boxes, transformers, and mail boxes. Above ground utilities shall be reviewed and approved by Community Development prior to issuance of any permit.
93. WATER SYSTEM DESIGN. Water plans prepared by SJWC must be reviewed and approved prior to issuance of any permit.
94. DESIGN CHANGES. The Applicant's registered Engineer shall notify the Town Engineer, in writing, at least 72 hours in advance of all differences between the proposed work and the design indicated on the plans. Any proposed changes shall be subject to the approval of the Town before altered work is started. Any approved changes shall be incorporated into the final "as-built" drawings.
95. JOINT TRENCH PLANS. Joint trench plans shall be reviewed and approved by the Town prior to issuance of any permit.

96. 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.
97. DRIVEWAY APPROACH. The developer shall install a minimum of one (1) Town standard residential driveway approach for each lot. The new driveway approaches shall be constructed per Town Standard Detail.
98. AS-BUILT PLANS. After completion of the construction of all work, the original plans shall have all changes (change orders and field changes) clearly marked. The "as-built" plans shall again be signed and "wet-stamped" by the civil engineer who prepared the plans, attesting to the changes. The original "as-built" plans shall be review and approved the Engineering Inspector. A Mylar and AutoCAD disk of the approved "as-built" plans shall be provided to the Town before the Faithful Performance Security or Occupancy Permit is released. 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.
99. 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 of each new lot.

100. 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.
101. CURB AND GUTTER. The developer shall repair and replace to existing Town standards any curb and gutter damaged now or during construction of this project. New curb and gutter shall be constructed per Town Standard Detail. The limits of curb and gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project.
102. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
103. NPDES. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
104. 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 of Order 01-024 of the amended Santa Clara County NPDES Permit. 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.

105. FENCING. Any fencing proposed within 200-feet of an intersection shall comply with Town Code Section §23.10.080.
106. 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.
107. 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 sidewalk and/or the street will not be allowed unless a special permit is issued by the Engineering Division.
108. 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.
109. EXISTING WATER WELLS. Prior to issuance of any permit, all existing wells affected by this project shall be identified and properly registered with the District, and either be maintained or destroyed in accordance with District standards. Destruction of any well and the construction of any new wells proposed, including monitoring wells, require a permit from the District prior to construction. Property owners or their representative should contact the District Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information.

110. OFFSITE EASEMENTS. Formal easements and/or agreements shall be recorded concurrently with the Final Map documenting the following:
- a. Emergency Access rights to Shannon Road via private driveways.
 - b. Emergency Access rights to Blossom Hill Road via Francis Oaks Way if an emergency access road is approved.
 - c. Public Access rights through 15777 and 15769 Shady Lane for a off-street trail. Additional rights through 15980 Short Road and 104 Angel Court are also required if not already in-place.
 - d. Waterline easement rights as required including, but not limited to, Francis Oaks Way and the Ganal, Greiner, and Moffat properties.
111. SHADY LANE TRAIL. An off-site trail shall be provided between existing trail facilities near the intersection of Shady Lane & Short Road and the project site. The specific trail alignment shall be determined during Architecture and Site review of the infrastructure and shall be reflected on the Tentative Map.
112. ONSITE TRAILS. On-site trails shall be provided generally as specified in Figure 3 of the Los Gatos Hillside Specific Plan and as shown on the Official Development Plans. The specific trail alignments shall be determined during Architecture and Site review of the infrastructure and shall be reflected on the Tentative Map. The trail connection shown in Figure 3, connecting the project site and Blossom Hill Road, shall terminate at the ridge line and not extend fully to Blossom Hill Road.
113. TRAIL SPECIFICATIONS. On-Site trails shall be as wide as 6-feet where practical. Trail width may be reduced to 4-feet in locations where a 6-foot width would require retaining wall, grading beyond the edge of trail, or would result in a maximum combined cut and fill depth of 2-feet. Vertical earth slopes of up to 1-foot high may be utilized to maximize trail width. Trailhead signage and gates shall be provided per Midpeninsula Regional Openspace standard details.
114. UTILITY COMPANY REVIEW. Prior to recordation of the Final Map, the applicant shall submit letters from SJWC, WVSD, and PG&E stating that they have reviewed the map and have no objection to recording the map.

115. SANITARY SEWER EJECTOR PUMPS. Sanitary sewer ejector pumps shall be provided at Lots 9, 12, 14, 17, and 21. A rear lot sewer gravity sewer will not be allowed.
116. ACCESS TO PARCEL 527-12-002. A 40-foot right of way shall be dedicated across Lots 19 and 21 to create future access to parcel 527-12-002 (Greiner parcel). A No Access easement in favor of the Town shall be recorded across the full right of way width at the project site boundary. Town Council must approve the removal of the No Access easement. The right of way and No Access easement shall be reflected on the Tentative Map.
117. NO ACCESS EASEMENT. Prior to recordation of the Final Map, the applicant shall enter an agreement with The Town of Los Gatos specifying the conditions for removal of the No Access Easement across Lots 19 and 21.
118. OFFSITE WATER ALIGNMENT. Detailed off-site water alignment alternatives shall be studied for conformance with the Town's Hillside Development Standards & Guidelines (HDS&G) during the Architecture and Site review of project infrastructure. The applicant shall implement the alternative that best conforms to the HDS&G as determined by the Town.
119. NEW WATER SYSTEM. The properties shown on the map attached as Exhibit C shall be connected to the new water system.
120. ELIMINATION OF SHADY LANE MUTUAL WATER COMPANY. The applicant shall provide public water and public fire hydrants to all members of the Shady Lane Mutual Water Company. The applicant shall provide all necessary water infrastructure up through the water meter at no cost to the residents. The residents shall be responsible for any improvements between the meter and the house (such as storage facilities, pressure pumps, piping, etc.). The residents will also be responsible for dissolution of the existing water company including any applications to the State or Local agencies, and demolition of existing facilities, if any. The water system shall be installed prior to issuance of the first occupancy permit for the project.
121. MAINTENANCE OF PUBLIC FACILITIES. Prior to recordation of the Final Map, the applicant shall enter into a maintenance agreement with the Town. The Homeowner's Association shall maintain all landscaping within the public right of way for the new on-site

roadways, as well as landscaping within the Shady Lane extension west of the project site boundary, and shall perform routine maintenance on the public storm drain system within the project boundaries. The Town shall be responsible for storm drain infrastructure repairs. The agreement shall include provisions to address paragraph C.3 of the Town's Regional Board permit.

122. FUTURE STUDIES. Any post project traffic or parking counts, or other studies imposed by Planning Commission or Town Council shall be funded by the applicant.
123. PLAN CHECK FEES. Plan check fees shall be deposited with the Town prior to submittal of plans to the Engineering Division of the Parks and Public Works Department.
124. INSPECTION FEES. Inspection fees shall be deposited with the Town prior to issuance of any Permit or recordation of the Final Map.

Parks Division

125. AERATION TUBES. All impervious surface encroaching under the dripline of existing trees shall have aeration tubes installed and these tube locations shown on the plans.
126. IRRIGATION. All newly planted landscaping shall be irrigated by an in-ground irrigation system. Special care shall be taken to avoid irrigation which will endanger existing native trees and vegetation.
127. BUILDING FOUNDATIONS: Any buildings under the dripline of existing trees shall have a foundation built from pier and grade beam to minimize impact on existing trees.
128. TREE STAKING: All newly planted trees are required to be double staked to Town standards.
129. GENERAL. All existing and newly planted trees shown on the plan are specific subjects of approval of this plan and must remain on site.
130. IRRIGATION SYSTEM. Water efficient irrigation systems shall be utilized to conserve water in all project irrigation of publicly landscaped areas.
131. WATER EFFICIENT ORDINANCE. This project is subject to the Town's Water Efficient Ordinance. A deposit of \$5,000 is required when the landscape, irrigation plans, and water calculations are submitted for review. The review fee will be based on actual cost.

132. 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.
133. ORNAMENTAL LANDSCAPING. All formal landscaping shall be within 30 feet of the perimeter of the houses. Any planting beyond the 30-foot perimeter shall be native vegetation that is drought and fire resistant, and planted in natural clusters.
134. LANDSCAPE GUIDELINES. The adopted landscape guidelines and plant lists shall be incorporated into the CC&Rs for the project.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

135. **HAZARDS AND HAZARDOUS MATERIALS MITIGATION MEASURE 4.5-2a. Trees should be pruned to ensure that branches do not overhang roofs of proposed homes, and understory vegetation (brush or shrubs) under existing trees should be cleared.
136. **PUBLIC SERVICES AND UTILITIES MITIGATION MEASURE 4.11-2. The project shall meet all Department requirements in order to mitigate the project's increased demand on fire protection services.
137. AUTOMATIC FIRE SPRINKLER SYSTEM REQUIRED. New homes shall be protected throughout by an approved automatic fire sprinkler system, hydraulically designed per National Fire Protection Association (NFPA) Standard #13d.
138. FIRE HYDRANTS REQUIRED. Provide fire hydrants at locations to be determined jointly by the Fire Department and San Jose Water Company. Hydrants shall have a minimum single flow of 1,000 GPM at 20 psi residual, with spacing not to exceed 500 feet. Prior to applying for building permits, the applicant shall provide civil drawings reflecting all fire hydrants serving the site. The final determination of placement and number of hydrants shall be to the satisfaction of the Fire Department.

139. FIRE HYDRANT LOCATION IDENTIFIER. Prior to project 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.
140. 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.
141. 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.
142. 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.
143. 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.
144. EMERGENCY GATES/ACCESS GATES. Gate installations shall conform with Fire Department Standard Details and Specifications G-1 and when open, shall not obstruct any portion of the required width for emergency access roadways or driveways. Locks, if provided, shall be Fire Department approved prior to installation. This condition applies to single family home sites as well as gated emergency access roadways.
145. PARKING ALONG ROADWAYS. The required width of fire access roadways shall not be obstructed in any manner and parking shall not be allowed along roadways less than 28

feet in width. Roadway widths shall be measured curb face to curb face, with parking spaces based on an eight foot width.

146. FIRE LANE MARKING REQUIRED. Roadways deemed necessary to facilitate emergency vehicle access shall be identified in accordance with Fire Department Standard Details and Specification A-6 and Local Government Standards. This condition shall apply through the length of access roads as well as at emergency access roadway gates.
147. REQUIRED ACCESS TO BUILDINGS. Provide access to all portions of all residences within 150 feet travel distance from fire apparatus access points.
148. PREMISE IDENTIFICATION. Approved numbers or addresses shall be placed on all new and buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background.
149. EMERGENCY ACCESS ROADWAYS. Emergency access roadways shall conform to Standard Detail and Specification A-4 regarding circulation radius, gradient and pavement widths.
150. WATER SYSTEM. San Jose Water Company shall provide plans for the new water system to the Fire Department upon completion of engineering and system design. The applicant shall help facilitate this.

TO THE SATISFACTION OF THE POLICE CHIEF:

151. **PUBLIC SERVICES AND UTILITIES MITIGATION MEASURE 4.11-3. The project shall comply with Police Department's specified basic requirements.

SECTION VI

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on December 19, 2005, 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 _____, 2006 and becomes effective 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

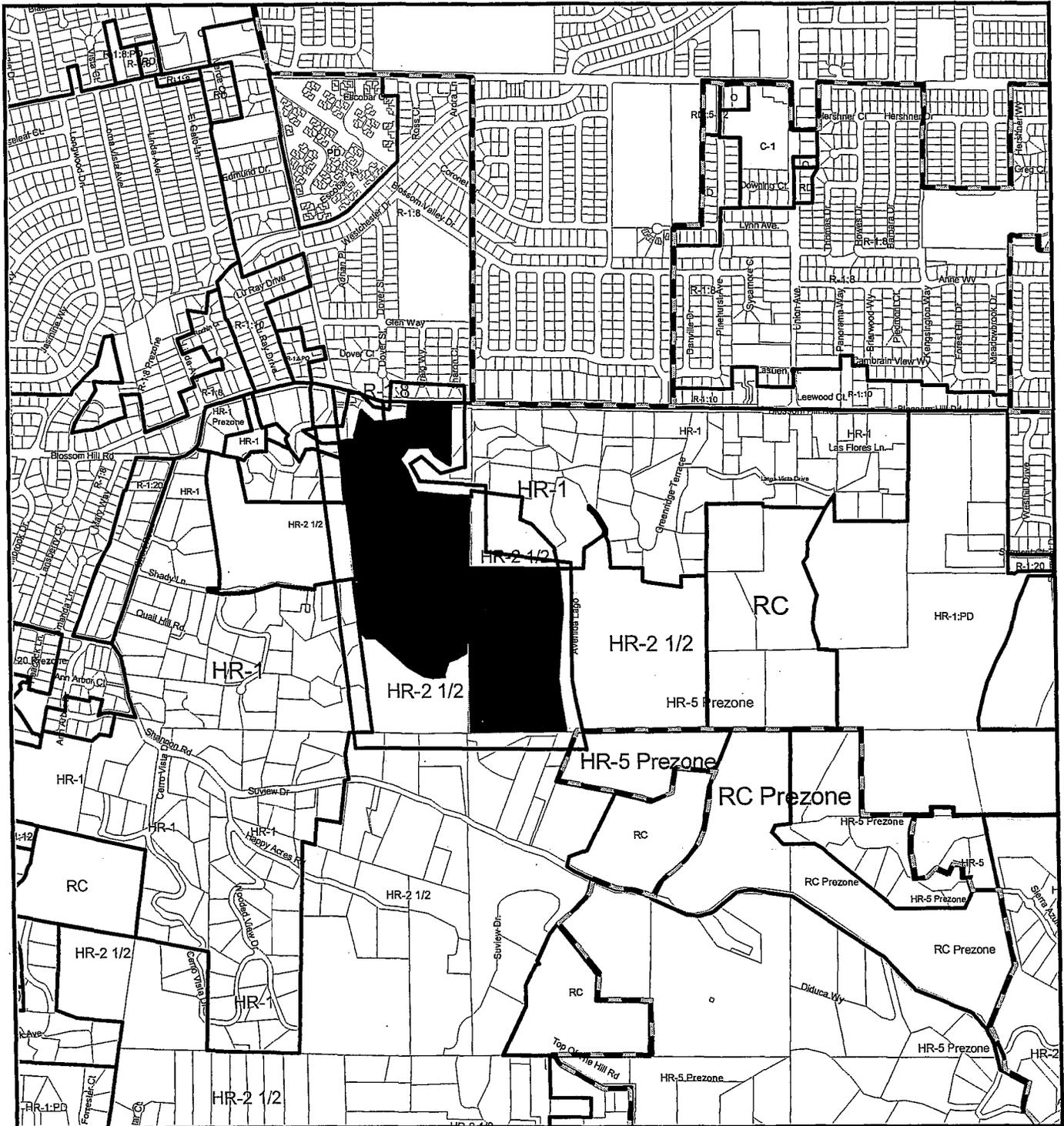
SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

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

N:\DEV\ORDS\ShadyLane-Highlands-TC.wpd



TOWN OF LOS GATOS

Application No. PD-04-03
 Change of zoning map amending Town Zoning Ordinance
 Zone Change from HR-2 1/2 to HR-2 1/2: PD

Approved by Planning Commission

Date NOV. 15, 2005

Approved by Town Council

Date _____ Ord. _____

Town Clerk _____ Mayor _____

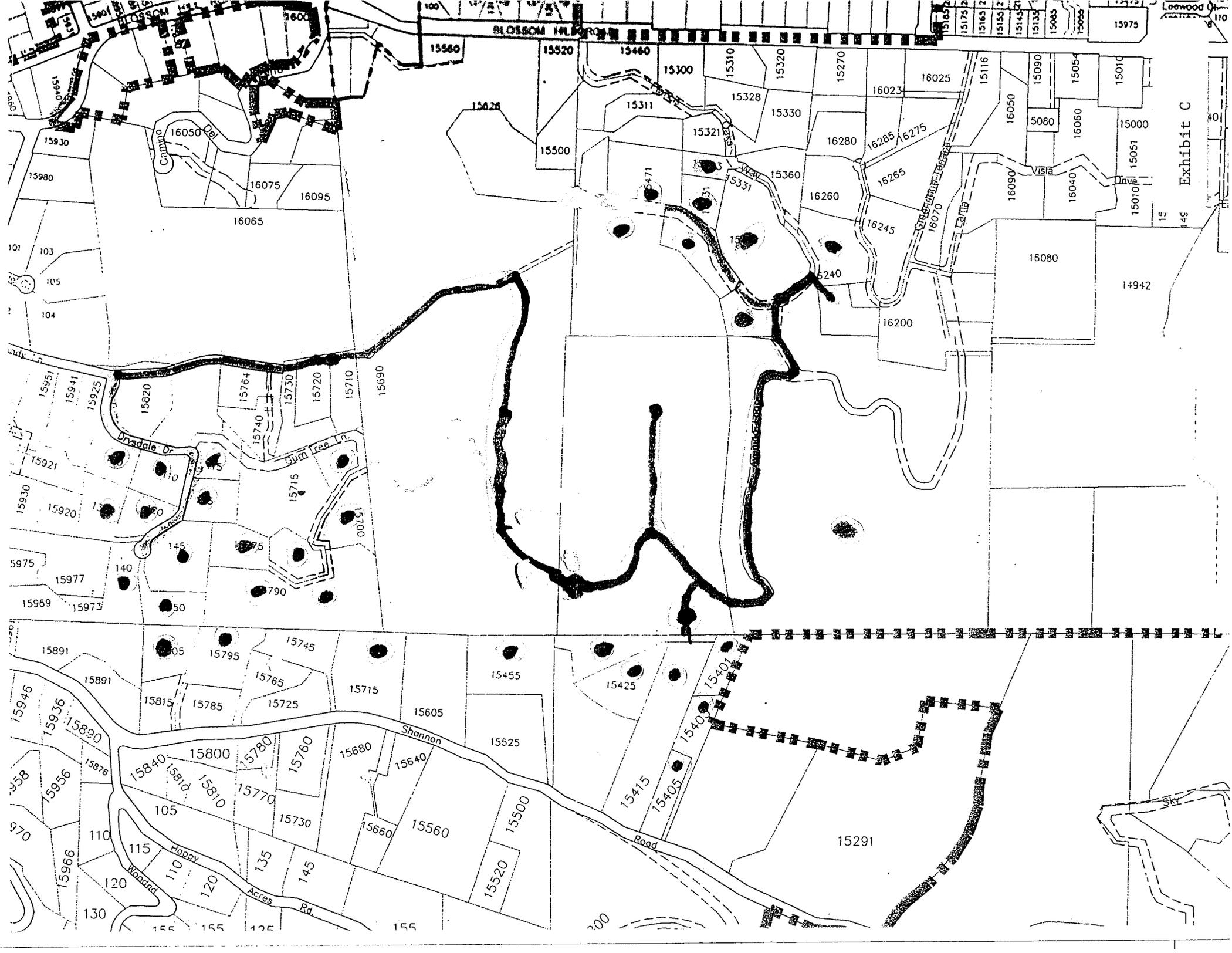


Exhibit C

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A P P E A R A N C E S:

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|--|--|
| Los Gatos Planning Commissioners: | Michael Burke, Chair John Bourgeois Michael Kane Phil Micciche Tom O'Donnell Lee Quintana Joanne Talesfore |
| Director of Community Development: | Bud Lortz |
| Assistant Director of Community Development: | Randy Tsuda |
| Town Attorney: | Orry Korb |
| Transcribed by: | Vicki L. Blandin 5500 Van Fleet Avenue Richmond CA 94804 (510) 526-6049 |

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P R O C E E D I N G S:

CHAIR BURKE: I'd like the record to show that Commissioner Micciche is leaving, and Commissioner Bourgeois is recusing himself. I'm also going to recommend that being that this is going to be a long hearing that we take a five-minute recess before we begin. Or do we want to just dive in?

COMMISSIONER KANE: Let me ask you a question. Do you think we can finish it tonight? Because if we can't, I'd rather do it with a larger body.

CHAIR BURKE: I think we've noticed this. I think we need to take testimony. I think we need to try to get through it. I question whether or not, based on the size of the packet and the amount of information, whether we're going to do it, because I know this Commission doesn't make good decisions after 11:00, but I think we have to try.

DIRECTOR LORTZ: And if you're unable to make a decision this evening, then you could continue it to—and I'm suggesting the week of the 14th, perhaps the 16th, which is next Wednesday—to give you additional time. That's a decision of this Commission. Let it be clear that the applicant is asking for a decision to be rendered in short

1 order, whether that be tonight or whether that be next
2 week, or soon.

3 COMMISSIONER KANE: Your staff called today
4 asking for alternative dates and I volunteered tomorrow,
5 Friday, Monday, Tuesday, let's just do it. But if we can do
6 it in one sitting, why do it in two?

7 DIRECTOR LORTZ: It's your prerogative. The town
8 Attorney and I have been to a couple of meetings this week,
9 and I know we'd be reluctant to go to another one, but it's
10 your prerogative.

11 COMMISSIONER QUINTANA: And Mr. Lortz, on the
12 dates, I thought I was given the date of November 15th. Is
13 that not correct?

14 DIRECTOR LORTZ: The 16th was next Wednesday, but
15 any time next week would be okay.

16 COMMISSIONER QUINTANA: Okay. I would prefer not
17 the 16th.

18 CHAIR BURKE: Can we pick a contingency date? I'm
19 looking at this crowd here and I don't want to disappoint
20 them, but I also realize people are probably here because
21 they want to speak and I know that's going to take time. So
22 can we pick a contingency date before Mr. Micciche leaves?
23

24 DIRECTOR LORTZ: It's up to the Commission.
25

1 COMMISSIONER QUINTANA: Next Tuesday.

2 CHAIR BURKE: Next Tuesday is all right with me.

3 COMMISSIONER QUINTANA: It makes no difference to
4 me. I'm leaving tomorrow morning on a vacation.

5 CHAIR BURKE: Commissioner O'Donnell.

6 COMMISSIONER O'DONNELL: That's fine.

7 CHAIR BURKE: So let's make it for next Tuesday.

8 DIRECTOR LORTZ: We wish Commissioner Quintana a
9 great vacation if this item is continued, and next Tuesday
10 it is.

11 COMMISSIONER QUINTANA: However I do have a
12 comment to make. If this is going to be continued, then I
13 have an early morning flight to take and I don't...you
14 know.

15 DIRECTOR LORTZ: Don't know. There will be a
16 public hearing though and we'll hear from these folks, as
17 many as we can tonight.

18 CHAIR BURKE: Let's hear from the applicant. You
19 can ask any questions of the applicant you wish, and we'll
20 hear from the public, and I think we can get through that.
21 Whether or not we can get through our deliberations, our
22 questions, our concerns, based on the size of the packet
23

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25

1 and the amount of new information we had this weekend.

2 Commissioner O'Donnell.

3 COMMISSIONER O'DONNELL: On the headcount again.
4 We're going to lose one commissioner tomorrow. We're going
5 to lose one commissioner tonight.

6 DIRECTOR LORTZ: But Commissioner Micciche would
7 be able to bring himself back up to speed by listening to
8 the FTR.

9 COMMISSIONER O'DONNELL: Fine.

10 CHAIR BURKE: And just for the people in the
11 audience now, I'm going to state this and Mr. Korb or Mr.
12 Lortz can correct. If we do continue this to Tuesday, there
13 will not be a new notification and there shouldn't be a new
14 Staff Report unless we have any new desk items to go with
15 it.
16

17 DIRECTOR LORTZ: Correct.

18 CHAIR BURKE: So do we want to take a five-minute
19 recess? Yeah. Let's make it an eight-minute recess and
20 reconvene at quarter to ten.

21 (Meeting resumes eight minutes later.)

22 CHAIR BURKE: I would like to welcome everybody
23 back to our resumed meeting here. It brings us to Item #3,
24 which is the Terminus of Shady Lane, Planned Development
25

LOS GATOS PLANNING COMMISSION 11/9/2005
Item #3, Terminus of Shady Lane

5

1 Application PD-04-3 and Environmental Impact Report EIR-04-
2 001.

3 Before the applicant comes up, is Staff going to
4 make a brief presentation? It was my understanding that
5 they might say a few things on what the Commission's role
6 is here tonight as far as the Environmental Impact Report,
7 mitigation monitoring, and the recommendation to Council.
8 And then we'll ask the applicant to come up and give a
9 presentation.
10

11 DIRECTOR LORTZ: Just briefly that this
12 application involves a number of applications, all of which
13 are going to be a recommendation by this Body to the
14 Council. The Council will then hold a complete new public
15 hearing on the matter.

16 The only comment that I'd like to add, and the
17 applicant will reiterate this, is the applicant has
18 requested that a decision be rendered soon. I respect the
19 Planning Commission's eagerness to accommodate that, but
20 wanting to do the right thing in terms of due diligence and
21 effort. So if this item needed to be continued, it would be
22 continued to next Tuesday without a public hearing notice.

23 Also the applicant was aware that there were a
24 number of people that were going to be here tonight and has
25

LOS GATOS PLANNING COMMISSION 11/9/2005
Item #3, Terminus of Shady Lane

6

1 tried to work in such a way that would accommodate more
2 time for the Planning Commission by asking people that are
3 supportive of the project just to raise their hands rather
4 than to have each individual speak. That concludes our
5 comments.

6 CHAIR BURKE: Okay, I am going to disclose that I
7 visited the property I believe it's three times now. The
8 most recent was today with the applicant, and this time he
9 didn't scare me while driving around. Oh, is Commissioner
10 Quintana back? Okay, I thought that we'd lost you. Any
11 other disclosures any of the other commissioners wish to
12 make? Commissioner Talesfore.

14 COMMISSIONER TALESFORE: I've also visited the
15 property four times I think.

16 CHAIR BURKE: Commissioner Kane.

17 COMMISSIONER KANE: I visited the property twice.

18 CHAIR BURKE: Commissioner O'Donnell.

19 COMMISSIONER O'DONNELL: I have not.

20 CHAIR BURKE: You have not. Commissioner
21 Quintana.

22 COMMISSIONER QUINTANA: I visited the property
23 twice and viewed it from outside the property line once.
24
25

1 CHAIR BURKE: Okay. Having seen those
2 disclosures, is the applicant and/or his representative
3 available? And also is the environmental consultant
4 available in case we have questions for them?

5 DIRECTOR LORTZ: The entire team is here.

6 CHAIR BURKE: Excellent. Thank you. So Mr. Harris
7 and Mr. Fox, do wish to make a presentation? And being that
8 this is a big project, I guess it's under my purview to let
9 him have ten minutes instead of five? My prerogative, so
10 you guys have ten minutes. Live it up if you want.

11 SANDY HARRIS: I'd like to address the Commission
12 tonight. At this juncture we've met all our obligations,
13 we've complied with the Hillside Standards, we've met with
14 our neighbors and met with the community and have done our
15 due diligence with the neighbors and the community. We have
16 the community's support. We have the Staff's support, and
17 we have the support of the community.
18

19 At this point, rather than making it a big, long
20 speech that I had written out, we are hopeful that we're
21 going to get some sort of a recommendation or hoping it's a
22 positive one from the Commission.
23

24 I think we've got the best project we could have
25 possibly come up with for this location. It is a location

1 that is ripe for development. You've all been up there and
2 seen it. It has the roads and whatnot already in place.

3 And we've been very sensitive as to where we've
4 placed each of the building envelopes for the houses so
5 that they minimize the impact on the trees and minimize the
6 impact on grading.

7 At this point, with the accomplishments we've had
8 over the past three years, we have a project that now has
9 an Environmental Impact Report that has less than
10 significant impacts in it, which is quite a feat for a
11 project of this size. But what I'm hoping is that the
12 Commission recognizes this accomplishment and allows this
13 project to become a reality so these folks can stay home
14 and enjoy the benefits of that and we can get our community
15 built. Thank you.

16
17 CHAIR BURKE: Questions at this time of the
18 applicant? I only have one speaker card. Commissioner
19 Quintana.

20 COMMISSIONER QUINTANA: Could you please explain
21 to me the difference on the plans between the building
22 envelope and the buildable area?
23
24
25

1 DAVID FOX: I have that very thing right in front
2 of me. Oh, by the way, that was Sandy Harris speaking, the
3 owner and developer of the Highlands of Los Gatos.

4 Yeah, Commissioner Quintana, I actually wrote
5 something up because I thought I might be asked. The
6 genesis of the building envelopes was this: We placed the
7 envelopes on the lots where they would have in the LRDA and
8 the least impacted area. The way that we developed them was
9 that we took a look mainly at tree impacts and the
10 minimization of grading to place those envelopes.

11 What the dotted lines on the plan with the lot
12 numbers inside of them represent would be the place where
13 the footprint of the house will be required to be located.
14 Those envelopes are larger by quite a bit than any
15 allowable footprint would be, therefore the rest of the
16 envelope will more than likely be used for outdoor
17 amenities such as patios and walks.

18
19 But if there are larger structures that require
20 more grading, such as pools let's say, we'll have to look
21 at the place on the lot where they would make the least
22 impact, and that may be outside of that dotted line with
23 the lot number inside of it.
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1 Lot 5 and Lot 19 are perfect examples of that,
2 where the dotted envelope is sloped, the house would be put
3 on a slope. But there are two areas on both of those lots
4 that are much, much flatter, and if there were a large
5 element perhaps it could be placed in that area, but it's
6 definitely outside of the dotted area.

7 COMMISSIONER QUINTANA: So are you suggesting
8 actual footprint sizes within the building envelopes?

9 DAVID FOX: Are we proposing them right now?

10 COMMISSIONER QUINTANA: Conceptually, some idea,
11 because usually when we see a building envelope we get a
12 submittal for a house that fills the building envelope
13 before we even start with the landscaping.

14 DAVID FOX: We can't fill the building envelopes
15 with a house; that wouldn't be allowed. The envelopes are
16 much, much larger than any house that would be approved. So
17 what we were trying to do there was allow whatever house is
18 going to be built in the future to be moved around within
19 that envelope, for instance for visibility let's say. You
20 could move it around within the envelope so you could
21 mitigate a visibility issue for instance.
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1 COMMISSIONER QUINTANA: But you're saying that
2 the formal landscaped area and structures would be within
3 that envelope?

4 DAVID FOX: What I'm saying is that more than
5 likely most of the structures would be, because they're
6 going to be attached to the house, they're going to have
7 patios next to the house. But if there are structures that
8 would be better placed outside of that envelope than our
9 landscape features, then they'd be placed outside.

10 If someone would want a pool, for instance, and
11 the only area behind the house was a very sloped area, but
12 there was another location on the lot that was much
13 flatter, it doesn't make any sense to build a pool where
14 you're going to need a tremendous amount of grading.

15 COMMISSIONER QUINTANA: Let me rephrase a little
16 bit. The formal landscaping...

17 DAVID FOX: What do you mean by formal
18 landscaping?

19 COMMISSIONER QUINTANA: Help me here. We have a
20 definition of 30' from the structure?

21 RANDY TSUDA: Yes. In the Hillside Standards and
22 Guidelines they have a series of landscape policies saying
23 that the highly ornamental or formal landscaping need to be
24
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1 within 30'. That's in your adopted Hillside Standards and
2 that would apply to this project.

3 COMMISSIONER QUINTANA: And does that 30' include
4 walkways, retaining walls, et cetera, so that beyond that
5 we don't have lots of hardscape, or does that just refer to
6 grass and ornamentals.

7 RANDY TSUDA: That specific section refers to the
8 landscape treatment. Now you have other sections that talk
9 about consolidating the amount of improvements and
10 alternations to cluster around the existing home, and they
11 need to be within the LRDA.

12 COMMISSIONER QUINTANA: Okay, so that's my second
13 question. The buildable area that you show on your plans is
14 not consistent with the area that you've identified as the
15 least restrictive development area, and since you're saying
16 you may be able to building within that area...

17 DAVID FOX: On what lot specifically is the
18 envelope not in the least restricted development area?

19 COMMISSIONER QUINTANA: Not the envelope, but the
20 buildable area extends beyond the least restrictive
21 development area.

22 DAVID FOX: But not for the house.

1 COMMISSIONER QUINTANA: I'm not talking about for
2 the house, but development is development, and my
3 understanding, and Staff, please correct me if I'm wrong,
4 is supposed to be within the least restrictive development
5 area? And why is there a difference between the least
6 restrictive development area and the buildable area?

7 SANDY HARRIS: I'd like to make a comment on
8 that. Miss Quintana, the Hillside Standards and Guidelines
9 were developed for guidelines, and that's what they are is
10 guidelines. Each development has its own set of criteria.

11 This development for example, if it has a
12 driveway that's 100' long and you have a requirement saying
13 you can only landscape to 30' and the other 70' of your
14 driveway can't be landscaped, that's not what we're
15 proposing here. We're not going to have a scenario where
16 there's weeds coming all the way up to the landscape, and
17 then because the Hillside Standards say you can only have
18 30' of landscape, that's where it starts.

19 Now the buildable envelope where the house goes,
20 that is only for the house and the footprint of the house.
21 The other area we surrounded that with is where we're
22 restricting people on a two-and-a-half acre or a three-acre
23 lot, they may have an acre and a tenth that they can maybe
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25

1 put some sort of landscape or use for their actual use. The
2 other part they cannot because it's scenic open space. We
3 don't want to take the entire lot other than just the house
4 and 30' around it and make that just the landscape area.

5 COMMISSIONER QUINTANA: We're talking about two
6 different things. Formal landscaping within 30'...

7 DAVID FOX: Is Hillside Standards.

8 COMMISSIONER QUINTANA: ...landscaping can extend
9 beyond that.

10 DAVID FOX: Right.

11 COMMISSIONER QUINTANA: Not formal landscaping,
12 but landscaping is different then buildable structures, and
13 retaining walls, et cetera, those kinds of things are
14 buildable structures and they're supposed to be within the
15 LRDA.

16 DAVID FOX: Right, but it depends on the
17 structure that you're talking about too. We were talking
18 about homes when we were doing the envelopes. A pool is an
19 at-grade structure. It is an at-grade structure. Like on
20 Lot 19 or Lot 5 when I was there with you, there was a
21 better place to put a pool, if someone desires a pool, than
22 right behind the house within the envelope, because that
23 would cause a lot of grading.
24
25

1 COMMISSIONER QUINTANA: Are you aware that the
2 Hillside Design Guidelines state that pools and sports
3 courts are prohibited above 30% slope?

4 DAVID FOX: The areas on Lot 19 and Lot 5 are
5 well under 30%; in fact they're probably not 10%.

6 COMMISSIONER QUINTANA: Yes, but I'm going to say
7 this one last time and then I'm going to let it go. What
8 you've identified as the buildable area of the lot, not the
9 building envelope, contains areas that are above 30% slope.

10 DAVID FOX: Every single application has to go
11 before A&S. I am sure that that would be guided to the
12 areas that are the least restricted. I have to respectfully
13 disagree with you.
14

15 COMMISSIONER QUINTANA: Yeah, and I have to say
16 that we are setting a planned development zoning that
17 establishes where what can go, and we have to make the
18 finding that this is all consistent with the Hillside
19 Guidelines. That's it.

20 CHAIR BURKE: Commissioner O'Donnell, do you have
21 questions of the applicant at this time?

22 COMMISSIONER O'DONNELL: I want to follow up on
23 the question Commissioner Quintana just asked, but I want
24 to direct it to Staff. Gentlemen, the question that was
25

1 just asked, can I get some help from you two over there?
2 Because what Lee is saying and what I'm getting for an
3 answer seems irreconcilable. Could somebody shed some light
4 on it?

5 RANDY TSUDA: I'm having difficulties putting the
6 two conversations together, but let me just reiterate
7 Staff's understanding of what's been proposed in the
8 official development plan.

9 You have conceptual building envelopes
10 identified. The homes would be located within those
11 conceptual building envelopes; those are located within the
12 LRDA. You also have areas that are within the LRDA but are
13 outside of the building envelopes, and in those areas could
14 in some cases, depending on where the house is located,
15 could be formalized landscaping.

16 There's a tier-two of landscaping, which is
17 landscaping that is more indigenous to the natural area.
18 It's still planted, but it is more indigenous to the area.
19 Those types of landscapings and those tiers could be,
20 again, outside of the building envelope, but within the
21 LRDA.
22

23 Also the same thing with pools. Pools and patios,
24 all those kind of site alterations need to be within the
25

1 LRDA but can be within the outside of the building
2 envelope.

3 DAVID FOX: That's correct.

4 COMMISSIONER O'DONNELL: So long as they stay
5 within the LRDA, is that what you're saying?

6 DAVID FOX: That's right.

7 COMMISSIONER QUINTANA: Can I respond to that?
8 There's a third element that is shown on here.

9 CHAIR BURKE: Which sheet are you on, so we can
10 all follow you?

11 COMMISSIONER QUINTANA: Look at Sheet 222 and
12 Sheet 322 and superimpose the two over each other. The
13 buildable area that's identified on Sheet 22 goes beyond the
14 least restrictive development area that's identified on
15 Sheet 322.

16 CHAIR BURKE: Let me clarify what I read, or I'll
17 read it and we'll get Staff. By the buildable lot area you
18 are looking on the legend at the third item down, correct?
19 That's what you're defining as the buildable lot and
20 landscape area?

21 COMMISSIONER QUINTANA: That's what the applicant
22 is defining.

23 CHAIR BURKE: But that's what you're referring to?

24 COMMISSIONER QUINTANA: Yes.
25

1 CHAIR BURKE: That particular area is not totally
2 contained with the LRDA.

3 COMMISSIONER QUINTANA: That's correct.

4 CHAIR BURKE: Now, I'm going to ask Staff the
5 question differently, because sometimes that helps.

6 It's my understanding that if we look at this
7 backwards, everything that is not buildable lot and
8 landscape area is a scenic easement, which they can't put a
9 fence up, they really can't do anything. So the area that
10 Commissioner Quintana is concerned about is non-scenic
11 easement on the lot.

12 COMMISSIONER QUINTANA: That's correct.

13 CHAIR BURKE: That doesn't mean that they can do
14 what we would call something in that area such as a pool, a
15 deck, a gazebo. It just means that they can't do it outside
16 the area.

17 RANDY TSUDA: And you cannot do it outside the
18 LRDA.

19 CHAIR BURKE: So the area that they can do
20 improvements, be it a gazebo, be it a retaining wall, a
21 bocce court, pool, is the intersection of the buildable lot
22 area and the LRDA. Is that a safe assumption?

23 COMMISSIONER QUINTANA: So you can build a pool
24 and other structures outside of the LRDA?

25 CHAIR BURKE: No, inside the LRDA and only inside
the intersection of the two. So you could draw the LRDA on

1 this and say this is the only place you can put improvements
2 on. But the other area you could probably plant your oak
3 trees, your madrone trees. One doesn't trump the other,
4 okay?

5 COMMISSIONER QUINTANA: Yes, but what I'm saying
6 is that the implication of Sheet 222, if approved, this part
7 of the planned development indicates that you can have
8 structures outside that area, and since I'm not going to be
9 here if the meeting is continued, and I may not be here for
10 the whole meeting because I do have to get some sleep
11 tonight, I am going to leave the Commission with the
12 recommendation that the area outside the LRDA be designated
13 as scenic easement.

14 CHAIR BURKE: Could we at this point agree, and
15 have Staff agree, and have the applicant agree, that area
16 outside the LRDA but is inside the building envelope is only
17 for informal...

18 COMMISSIONER QUINTANA: Not the building envelop,
19 the buildable area.

20 CHAIR BURKE: Excuse me, that is outside the LRDA
21 but is inside what is called the buildable lot and landscape
22 area is only for low density, natural landscaping and is not
23 for structures, pools, decks, things like that?

24 COMMISSIONER QUINTANA: Why don't you just call it
25 the landscape area, and then there's no confusion?

1 CHAIR BURKE: But I mean I'm just trying to make
2 sure you're happy, because you're right. But I'm just trying
3 to make sure everybody's comfortable with this. Is the rest
4 of the Commission following?

5 DIRECTOR LORTZ: Try it a different way. The
6 project has to be compliant with the Hillside Development
7 Standards and Guidelines, so whatever they do, inside,
8 outside, any line that's shown on these plans, have to be
9 compliant with the Hillside Development Standards and
10 Guidelines.

11 COMMISSIONER QUINTANA: Yes, but we're approving
12 zoning.

13 DIRECTOR LORTZ: I understand that. If you want a
14 condition in the PD that says the Hillside Development
15 Standards trumps anything in the conceptual development
16 plan, then that gets to where you want to be. You.

17 COMMISSIONER QUINTANA: It would also get to where
18 I want to be if the development plans were clear and
19 included that and there would be no ambiguity.

20 CHAIR BURKE: I think we could include that by
21 what Mr. Lortz said, by reference, and I think we all
22 understand what that means. Is the applicant okay with that?

23 DAVID FOX: Yes, because my feeling is if we were
24 to take and just take LRDA and just designate that, you'd
25 have snakes all over people's property. We made a gentle
area around a person's property where beyond that point is

1 the most important reason why we have that. We don't want
2 them doing anything.

3 CHAIR BURKE: No fencing, no nothing?

4 DAVID FOX: No nothing.

5 COMMISSIONER QUINTANA: No structures?

6 DAVID FOX: No nothing.

7 COMMISSIONER QUINTANA: No retaining walls?

8 DAVID FOX: No nothing, because what we've
9 done...

10 COMMISSIONER QUINTANA: Well, this might be...

11 DAVID FOX: Can I finish, please?

12 COMMISSIONER QUINTANA: Sorry.

13 DAVID FOX: You asked a question; I'd like to
14 finish. If we have a situation for example that a driveway
15 ends up being 100' long. We've encompassed that with in
16 that area, and there may be areas within that that... Can I
17 finish, please?

18 COMMISSIONER QUINTANA: Yeah.

19 DAVID FOX: Thank you. There's areas within that
20 that are probably going to be greater than 30%, but we
21 didn't define it just with the width of the driveway itself
22 because you have to have some sort of latitude there not
23 for them to put a structure in. They have to come to us
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1 first before they come to the Town to get approval of
2 whatever they want to do with each individual home.

3 And then we're not saying that the Town's
4 Guidelines and Standards are being circumvented by what
5 we're proposing because they have to abide by them, and
6 that's going to be in the CC&Rs as well. So you already
7 have guidelines that restrict the things you're talking
8 about, and why you're making an issue of that to that
9 extent, it's handled within our guidelines you have
10 already.

11 COMMISSIONER QUINTANA: I should make a
12 clarification. I am not referring to the driveways.

13 DAVID FOX: Okay, let me make a clarification.
14 I'm referring to there's more to a home than a driveway,
15 and what I'm saying is we've designated an area that we
16 don't want anybody to go beyond with their fence, if they
17 have animals or whatever type of thing.

18 We're going to have the project as a planned
19 development. We have a scheme that we want to use for
20 restoration of the trees, reforesting of the trees, and
21 those sorts of things, and that's going to happen on
22 someone else's property in the scenic easement area. We've
23 designated an area where we don't want whomever has that
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1 specific house to go beyond that point. It doesn't mean
2 they can build in that area. But if there's a retaining
3 wall that needs to be used for a driveway or whatever it
4 might need to be used for that's within the guidelines of
5 the Town, then they have a right to do that.

6 COMMISSIONER QUINTANA: Okay, then what I would
7 suggest that we have within this PD, on the actual plan
8 set, clear definitions of what the different areas mean,
9 and call it something other than buildable. You can
10 identify that next to driveways you can have X feet of
11 landscaping. But leaving it this way leaves it open to
12 multiple interpretations.

13 RANDY TSUDA: Let me suggest that if this is
14 continued that we can come back with a written proposed
15 condition. If you do like to take action tonight, then
16 between now and then we will try and craft something up.

17 DAVID FOX: Mr. Chairman? Just one additional
18 thing for Commissioner Quintana. On many of the lots the
19 LRDA is a lot larger than the building envelope for the
20 house. What we were trying to do with the building
21 envelopes was to severely restrict where you could put the
22 house, and in many cases that envelope fits well, well
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1 within what would be the least restrictive development
2 area, such as on Lot 18, which is almost flat.

3 CHAIR BURKE: You know, I think we're all on the
4 same page. I'm going to go right back to you, Commissioner
5 Quintana.

6 COMMISSIONER QUINTANA: Actually your plans show
7 that Lot 18, the building envelope goes beyond 30%.

8 DAVID FOX: And that is a proposal. We moved it
9 back there because the house would be less visible.

10 COMMISSIONER QUINTANA: Yeah.

11 DAVID FOX: That's exactly why we pushed it
12 there.

13 COMMISSIONER QUINTANA: And it goes beyond the
14 LRDA.

15 DAVID FOX: Right.

16 COMMISSIONER QUINTANA: I'm not questioning that
17 on that particular lot, because if that is a lot, that seems
18 more logical.

19 DAVID FOX: Yeah.

20 COMMISSIONER QUINTANA: But it is beyond the
21 LRDA, which is not consistent.

22 DAVID FOX: It was probably a poor choice of lot,
23 because we did shove that one back to limit the visibility.
24 But let me say on the flatter lots, like Lot 2.
25

1 COMMISSIONER QUINTANA: Okay, and yes, I'm aware
2 that in most cases the envelopes go beyond the LRDA,
3 although in many of them they hit very close to it or at
4 it.

5 DAVID FOX: Yes, ma'am.

6 COMMISSIONER QUINTANA: I have another question
7 if I may.

8 CHAIR BURKE: Please continue.

9 COMMISSIONER QUINTANA: In our previous study
10 sessions, there was a request for a graphic analysis of the
11 homes or a model of the project so that the Commission
12 would have a better idea of the visibility of the potential
13 homes.
14

15 In the EIR it also states that graphic analysis
16 will be provided by the applicant. Are we going to get that
17 at this stage, because that's when we need it to really be
18 able to access visibility of lots?

19 DIRECTOR LORTZ: I'd like to address that. First
20 of all, the visibility, and there isn't anything in the
21 Hillside Standards by the way, or your guidelines, that
22 have visibility of lots, that has visibility of homes on
23 those lots which none are proposed on this development at
24 this time. Please take time to read that. It's not in
25

1 there. Once the houses are to be designed and developed for
2 the lots, they will come before A&S and they have to adhere
3 to the Hillside Standards and Guidelines. And we're not
4 suggesting that we're going to circumvent that process. \

5 And suggesting that a lot might have a visibility
6 issue, has a right to have a visibility issue. You have
7 special guidelines spelled out in your Hillside Standards
8 what the house has to adhere to if that's the case. So as
9 far as saying a house might have some visibility, they can
10 have visibility. That's already written in your Guidelines.

11 COMMISSIONER QUINTANA: Can I point out to you
12 one last thing?
13

14 CHAIR BURKE: I'll go right back to you. I just
15 want to follow-up on this. A major theme in our Hillside
16 Guidelines or Hillside Specific Plan and even plans being
17 developed by the county is protecting the view shed,
18 visibility. The Hillside Guidelines specifically talk about
19 protecting the current views of the hillsides from all
20 vantage points, including the valley, not whatever the
21 official terms is and I'm drawing a blank on it.

22 I think it would be irresponsible for this
23 Commission to vest a lot that we knew was going to have
24 severe visibility issues when it came to A&S, because one
25

1 of the major themes for the Hillside Standards is reduced
2 visibility. Now they don't have particular standards for a
3 lot, but I think it is very reasonable for us to look at
4 the individual lots and say that one's going to have severe
5 visibility issues.

6 I mean I go back to Kim Haley's lot. We had the
7 choice for a highly visible home on the ridgeline or we
8 could cut down a bunch of blue oak trees and do a bunch of
9 grading. That was a choice we should have never had to
10 make, and this is the time in the process where we make
11 sure we don't have to make that choice on any of the lots.

12 So visibility analysis of the lots in my opinion
13 is critical, because once the lot is vested, you know,
14 Staff knows, everybody knows, that lot's going to get built
15 no matter what the visibility issues are.

16 Commissioner Quintana, I give it back to you.

17 DIRECTOR LORTZ: If the Commission could just
18 identify the lots that they have some concern about, then
19 that information could be forwarded to the Council as part
20 of your recommendation, that you're concerned about the
21 visibility of Lots X, Y, and Z.

22 COMMISSIONER QUINTANA: All of those that are
23 identified in the EIR as being potentially visible.
24
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1 DIRECTOR LORTZ: Any of the lots? Is that what
2 you're saying?

3 CHAIR BURKE: The ones that are identified in the
4 Environmental Impact Report.

5 DIRECTOR LORTZ: So then you have a good
6 reference point, and so you can make that known to the
7 Council. I think what you're really talking about here is a
8 policy question of whether or not lots should be approved
9 that have a potential for a visibility issue, and the
10 Council would be more than willing to answer that question.

11 COMMISSIONER QUINTANA: But in order for us to
12 make a recommendation on whether we approve a project or
13 not, that's the kind of information that we need to make
14 that recommendation, I think.

15 RAY DAVIS: (From audience.) Here, here.

16 COMMISSIONER QUINTANA: I mean I may not be here
17 when the decision is made, but...

18 DIRECTOR LORTZ: I understood your question. I
19 understood your comment.

20 CHAIR BURKE: Do you wish to continue,
21 Commissioner Quintana?

22 COMMISSIONER QUINTANA: No, I'll give somebody
23 else a chance.
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1 CHAIR BURKE: Commissioner O'Donnell.

2 COMMISSIONER O'DONNELL: Nothing.

3 CHAIR BURKE: Commissioner Kane.

4 COMMISSIONER KANE: Nothing.

5 CHAIR BURKE: Commissioner Talesfore. Nothing at
6 this time. I have one speaker card and we may only hear
7 one, so we'll get you back up. Citizen Ray, you seem to be
8 the only person who wishes to speak on this item.

9 RAY DAVIS: I'm the only person who cares?

10 CHAIR BURKE: You're the only person who wishes
11 to speak.

12 DAVID FOX: Mr. Chairman, if I may?

13 CHAIR BURKE: Yes?

14 SANDY HARRIS: In the interest of brevity
15 tonight, because I know you folks have had a long night, we
16 have decided that our folks here supporting the project did
17 not put speaker cards in, but it doesn't mean nobody here
18 supports this project, and actually at this time if
19 everybody that's here to support this project, if you could
20 stand up and wave at the Commission.

21 CHAIR BURKE: Please stand up. Use all fingers,
22 please.
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1 SANDY HARRIS: We could have had all of these
2 people speak tonight.
3 CHAIR BURKE: We appreciate that.
4 SANDY HARRIS: And they are all here to support
5 this project.
6 CHAIR BURKE: We appreciate that.
7 SANDY HARRIS: So it's not like there's no one
8 that supports it.
9 CHAIR BURKE: No.
10 SANDY HARRIS: So Citizen Ray, in case you were
11 wondering.
12 CHAIR BURKE: And I want to thank the audience,
13 because it's going to be a long night, whether we get to a
14 decision or not.
15 (Inaudible male voices in the background.)
16 CHAIR BURKE: I can't comment on that, but
17 Citizen Ray, I have a speaker card from you. Would you like
18 your three minutes, sir?
19 RAY DAVIS: (Away from microphone.) Why don't you
20 ask the crowd how they feel? Maybe they don't want to hear
21 anybody on any issue.
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1 CHAIR BURKE: Well, the Town's attorney is not
2 here, so I'm going to indulge myself. Does the crowd want
3 to hear from Mr. Davis, yea or nay?
4 (Crowd shouts out nay.)
5 CHAIR BURKE: Are you going to honor the request?
6 RAY DAVIS: What was that, a nay?
7 CHAIR BURKE: Nay.
8 RAY DAVIS: That's just what I thought. I'm going
9 to speak.
10 MALE: We didn't think we could stop you.
11 RAY DAVIS: Now you've got me energized.
12 MALE: Oh no.
13 CHAIR BURKE: Citizen Ray, you have three
14 minutes. Please use it wisely.
15 RAY DAVIS: You know, I've been doing this for a
16 hell of a long time.
17 MALE: We know.
18 RAY DAVIS: Hey, you want the floor?
19 CHAIR BURKE: I would ask the audience to show
20 respect to Mr. Citizen Ray. In all fairness, I think if
21 anybody else was interrupted at the beginning of their
22 speech I'd reset their timer. I'm trying to be fair to
23 everybody. So Mr. Ray, you have three minutes now.
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1 RAY DAVIS: Yes, before I was so rudely
2 interrupted. I want to tell you I have never seen such a
3 primary example of developer spadework as I see tonight.
4 This lumberyard operator has got every one of you here to
5 approve his project in advance, before the public hearing,
6 before any issues are brought up.

7 I want to tell you people, you are babes in the
8 woods, and I've only got three minutes to show you why, and
9 believe me, you are at risk, those of you who have lovely
10 homes in this area. If you have Mickey Mouse development by
11 a lumberyard operator who doesn't know what the hell he's
12 doing, that's my estimate. You have your wonderful
13 investments in your home totally at risk and you better
14 wake up before it's too late.

15 CHAIR BURKE: Mr. Ray, you should really be
16 addressing your comments to us.

17 RAY DAVIS: Well I am. Can't you hear? You know,
18 I went through this in Orinda, as many of us did. We bought
19 our lovely homes, and lo and behold homes in the
20 neighborhood went down the hill into the canyon, all
21 because of the scumbags that developed it. And nobody was
22 taking care of the public interest and we were all put at
23 risk.
24
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1 Slide stigma was on every property on Zander
2 Drive. When you've got a slide stigma you don't get
3 financing on your house and the price of your home goes
4 down. So you better wake up, because this identified by the
5 USGS, Los Gatos quadrangle as being totally slide prone.
6 This property. Any development here must be to the highest
7 of standards, and you don't give a damn about it. It blows
8 my mind. All you care about is your free lunch and free
9 water. Disgusting. But maybe I can save you. I'm going to
10 try.

11 You still want to hear anything? (Answers of no
12 from the audience.) I can't get through to them.

13 Well okay, let's go forward then. Under the EIR I
14 put some questions there, and the biggest one in my opinion
15 is the number of active debris flows and slides. Do you
16 want to leave them unrepaired?

17 CHAIR BURKE: Mr. Davis, your time is up, but
18 please finish the question, because I'm being extremely
19 nice tonight. So I think you did finish the question.

20 RAY DAVIS: Oh no, that's my question and the
21 answer given by the EIR and was incompetent, and I want to
22 tell you why.
23
24
25

1 CHAIR BURKE: Well your three minutes are up. I
2 have to be fair to everybody because I'm holding time
3 limits.

4 RAY DAVIS: There's nobody else speaking.

5 CHAIR BURKE: I understand.

6 RAY DAVIS: So how can you not be fair to
7 everybody?

8 CHAIR BURKE: Because we have rules and we need
9 to follow those rules.

10 RAY DAVIS: (Laughs.) Mickey Mouse. God. But it's
11 so important and you don't even want to hear.

12 CHAIR BURKE: Mr. Davis, please sit down. (Davis
13 is heard in the background.) Mr. Davis, you're disrupting
14 this meeting. I don't want to have you ejected from the
15 chambers. Please sit down.

16 RAY DAVIS: You don't want to hear from me
17 anyway. Nobody does. What the hell should I care?

18 CHAIR BURKE: Mr. Harris, being that there is no
19 one else, would you and your team like to come up? I know
20 that there's going to be questions of your environmental
21 consultant, so she may want to come up. And I'm going to
22 start again, if Commissioner Quintana has any more
23 questions at this time, and go down the list again.
24
25

1 Commissioner Talesfore, do you have any questions
2 at this time for either the environmental engineer, Mr.
3 Fox, or Mr. Harris?

4 COMMISSIONER TALESFORE: Oh, no.

5 CHAIR BURKE: Mr. Kane, do you have any questions
6 for the environmental engineer?

7 COMMISSIONER KANE: No.

8 CHAIR BURKE: Mr. O'Donnell, do you have any
9 questions of the environmental engineer?

10 COMMISSIONER O'DONNELL: No.

11 CHAIR BURKE: Okay, I will take a question for the
12 environmental engineer and then I will pass it over to Ms.
13 Quintana.

14 In the original document you talked about the
15 inconsistency of the project because of the nineteenth lot,
16 and the mitigation for that was what you called the, page 5-
17 8, the "General Plan density alternative," eliminate one
18 lot. And you said this alternative would increase the
19 project's consistency with the Town's General Plan and
20 zoning ordinance eliminating the lot, and on the next page
21 you basically said, "Elimination of one lot under the
22 General Plan Density alternative would increase the
23 project's consistency with the General Plan ordinance."

24 But in the final draft, and maybe I'm misreading
25 this, it seems you've backtracked on that and kind of say

1 you can either eliminate the one lot or adopt the PD. Is
2 that correct?

3 VALERIE GEIER: That was a clarification to our
4 determination. The determination was that the project at 19
5 lots was not consistent with the zoning ordinance's slope
6 density calculation.

7 CHAIR BURKE: Okay.

8 VALERIE GEIER: But it was consistent with what is
9 allowed under the General Plan. In speaking with Staff we
10 felt that it wasn't clear in the draft EIR, even though it
11 is stated in there as such, and we've shown it as a General
12 Plan alternative. It is really to address the zoning
13 ordinance's slope density.

14 CHAIR BURKE: So what is your position now, that
15 the elimination of a lot makes it more consistent?

16 VALERIE GEIER: I think that in terms of the EIR,
17 the slope density calculation shows it should be 18. The
18 alternative suggests that a project is environmentally
19 superior when it complies with the zoning ordinance and the
20 density that's allowed by the zoning ordinance. It can be
21 consistent with the General Plan either way.

22 CHAIR BURKE: Okay. Thank you. Commissioner
23 Quintana, it looks you have a question forming.

24 COMMISSIONER QUINTANA: Well, I have a comment
25 first. I think it's great that the audience doesn't want to
have us listen to all their repeated statements, but I think

1 it would be helpful to get an idea from the audience of why
2 they're supporting the project and so we could ask
3 questions. That's an aside.

4 Yeah, I'm still confused, because in reading this,
5 the wording makes it sound like either it's a 19 lot PD or
6 it's 18 lots and it's not a PD.

7 DIRECTOR LORTZ: May I respond to that? Basically
8 the PD trumps the slope density calculation. So you're
9 approving a PD that exceeds the slope density calculation.
10 That's allowed under the Code.

11 COMMISSIONER QUINTANA: Okay, but it's also
12 allowed under the code--this is a question--because I think it
13 says that yes, the PD zoning sets the density.

14 DIRECTOR LORTZ: Yes.

15 COMMISSIONER QUINTANA: Which means in my mind
16 that that gives the opportunity to make it higher or make it
17 lower, and then it goes on to say that it has to be
18 consistent with the General Plan land use policies.

19 DIRECTOR LORTZ: Sure.

20 COMMISSIONER QUINTANA: And in a specific plan.
21 Clearly it's okay with the General Plan, because zero to one
22 per acre gives you a huge range.

23 DIRECTOR LORTZ: Correct.

24 COMMISSIONER QUINTANA: But is it consistent with
25 the land use policies in the hillside specific plan? I have
questions about that.

1 I have lots of questions, and actually I wish I
2 could ask Staff some of them before I ask you, but I think
3 my primary concern is my difficulty with the visual
4 analysis, which is so confusing that even after reading it
5 27 times I'm not really sure what it says, number one.

6 Number two, the biotics analysis and the analysis
7 about fire safety.

8 Basically these three things tie in together and
9 don't seem to sit well as individual analyses. Now let me
10 give you an example.

11 For fire safety, there's a conflict between trees
12 near sites and fire safety. That's a policy question. The
13 EIR I think should address the question trees near site and
14 all the other things that feed into fire safety. Is there a
15 significant impact and is it mitigated by this project?

16 Conversely, the question about the Town's policy
17 regarding saving trees should be a separate issue and that's
18 the Council's job, to balance the two, but the EIR should
19 clearly identify each significant impact and whether it can
20 be mitigated and whether the mitigation for one impact
21 precludes the mitigation for another impact. I know this all
22 sounds very technical.

23 VALERIE GEIER: Well I think I understand and we
24 actually (inaudible) that.

25 COMMISSIONER QUINTANA: Let me give you an
example. Under the biotics, we have the analysis of the

1 trees with respect to the tree ordinance and whether that
2 can be mitigated. And then we have another analysis about
3 the biological impacts of removing trees and where they can
4 be replaced to provide mitigation, and the two conflict. I
5 can't see how both can be done.

6 In the one analysis it says to replace the trees
7 from the biological standpoint, you use tiny little ten inch
8 pots and they say do it where the eucalyptus trees are and a
9 portion of the grassland so that there's no conflict and no
10 breakup of the mosaic.

11 The tree analysis says we're going to replace them
12 on site, not where that and not where the analysis for the
13 biotic indicates they should be, and is there an ability to
14 do both?

15 Another problem I see with that section, and I
16 should be asking questions, but shoot, I mean it's easier to
17 just say. I can phrase them as questions; it takes more
18 time.

19 You state that you can replace trees at the rate
20 of 100 or 150 per acre, depending on the characteristics of
21 the site. But there's no further analysis of that, and then
22 the mitigation and whether it can be done is based on 100
23 per acre. If they can't be replaced on site for the
24 biological impacts, then that's a significant impact, and
25 it's not clear to me that this establishes that the
mitigation is feasible.

1 VALERIE GEIER: Excuse me, can we go through this
2 point-by-point?

3 COMMISSIONER QUINTANA: Sure.

4 VALERIE GEIER: Because I think that you're kind
5 of getting on to other points here and I'd like to clarify
6 this, because these are issues that we considered and
7 evaluated in the EIR.

8 I'd first like to start with the fire hazards. So
9 on page 4.5-4 we addressed the potential for the fact that
10 that homes are in a high fire hazard area. We identified it
11 as a potentially significant impact, and we identified
12 mitigation measures, and specifically because the houses
13 would be located in woodland areas, we were mindful of the
14 fact that you couldn't remove all the trees around the
15 houses to create a defensible fire area, so put mitigation
16 measures in specifically that address those issues, and that
17 is that you prune the trees, you keep the branches from
18 overhanging the houses, and those are all specified on that
19 page in Mitigation Measure 4.5-2A.

20 In addition to that, in terms of looking at the
21 trees from a biological standpoint and from an arborist's
22 standpoint, we had the arborist and the biologist working
23 closely together. Michele Korpos is here from Live Oak and
24 she can talk more about the mitigations as they relate to
25 the temporal loss, which has to do with the loss of
woodland, the biological productivity loss of the woodland

1 from the time that they're removed to the time that those
2 trees mature.

3 We coordinated that with the arborist because we
4 wanted to make sure the tree numbers correlated to make sure
5 that we could mitigate and replant on the site. That was a
6 key issue in this, because we wanted to make sure that
7 mitigation could occur completely onsite; otherwise it was a
8 significant and unavoidable impact, so we worked a lot on
9 that issue.

10 COMMISSIONER QUINTANA: Maybe I should ask my
11 questions to Michele Korpos.

12 VALERIE GEIER: Sure, she's right here.

13 COMMISSIONER QUINTANA: Could you tell me how you
14 arrived at the figure of 1.4 acres loss of woodlands?

15 MICHELE KORPOS: The total loss of woodlands was
16 based on an average of trees within an acre, and so we're
17 assuming onsite, based on the arborist's report, that there
18 are between 100 to 150 trees, mature oaks, because this is
19 mostly an oak woodland, on an acre.

20 I would like to say actually that the developer
21 had started out with a tree loss that was much greater than
22 we have arrived at at this point, and so instead of taking
23 out over 500 trees, we're now taking out I think it's 129
24 trees.
25

1 COMMISSIONER QUINTANA: But doesn't the EIR talk
2 about not the specific loss of trees, but the loss of
3 habitat?

4 MICHELE KORPOS: Well we talk about both,
5 actually. So in an ecological standpoint what we're looking
6 at is the value to birds, and bats, and invertebrates, and
7 whatnot that would live among these woodlands.

8 COMMISSIONER QUINTANA: And why do you use that
9 for the loss of woodlands instead of the actual acreage that
10 the trees occupy that are being removed, but for grassland
11 and scrub you use the actual land that's being affected? On
12 part of this document—I'm sorry I don't have the reference
13 to it—you state that most of the area affected is woodlands,
14 and in another section you say only 1.4 acres is affected,
15 but a higher percentage of the grasslands and the shrubs are
16 affected. We're talking about two different things.

17 MICHELE KORPOS: I'm looking on page 4.3-1, and
18 there is a table of the habitats onsite, so we have 65% is
19 mixed oak woodlands, and native grasslands, and California
20 sagebrush comprise approximately 15 acres apiece.

21 COMMISSIONER QUINTANA: And when you say—you
22 probably are more familiar with what page it's on—about the
23 acreage of grasslands and chaparral that's been impacted,
24 and the oak woodlands, what page is that on?

25 MICHELE KORPOS: Tree removal impacts is on page
4.3-24.

1 COMMISSIONER QUINTANA: Okay, here it is. You say
2 that in addition to the loss of mixed oak woodlands, the
3 project would also directly affect approximately 30%, 3.18
4 acres, of the sagebrush, and 50% of the non-native
5 grasslands. So you're using the actual footprints of the
6 houses or where development is going to go on those, but on
7 the woodlands you're not. It seems like you're using apples
8 and oranges, because if you look at the habitat map and
9 superimpose it on the development envelopes...

10 MICHELE KORPOS: Can you tell us what page you're
11 on when you're referring to the chaparral and the
12 grasslands?

13 COMMISSIONER QUINTANA: 4.3-25, the bottom, last
14 sentence.

15 MICHELE KORPOS: Okay, so what we can say
16 is...let's see, one divided by 60. I'm not going to be good
17 at math right now.

18 COMMISSIONER QUINTANA: No, you're not getting my
19 point.

20 MICHELE KORPOS: I understand. So in here it says
21 1.4 acres of woodland, and then later on it says
22 approximately 30%, and in parenthesis it says 3.18 acres of
23 California sagebrush and 5.6 acres. So the question is what
24 is the percentage of woodlands?

1 COMMISSIONER QUINTANA: No, the question is how
2 did you arrive at 1.4 acres, because on the grasslands and
3 the sagebrush it appears that you took...

4 MICHELE KORPOS: I think I already answered that
5 in the beginning and that was based on a tree density.

6 COMMISSIONER QUINTANA: No, no. Let me finish my
7 question. Let me try and rephrase it. When you look at the
8 habitat map, which is on page 4.3-2. If you superimposed the
9 development plan on that, I believe that—and this is for you
10 to answer—that the three-point-whatever acres of grassland
11 and whatever acres of chaparral includes the roads, the
12 development envelopes, et cetera, for those categories, but
13 it doesn't use that same criteria to define the area of the
14 woodlands that is being affected. Not just replacement value
15 of the trees, but the actual area.

16 MICHELE KORPOS: If you could give me a minute
17 please.

18 COMMISSIONER QUINTANA: Yeah, and while you're
19 looking for it I'll go on to my next question related to
20 visibility, biotics, and whatever.

21 CHAIR BURKE: I don't know if she can multi-task
22 if she's trying to find this and entertain your question.

23 MICHELE KORPOS: Well does the visual issue relate
24 to something I can answer, or does that relate to the
25 biological issues?

1 COMMISSIONER QUINTANA: It probably relates to
2 both visual and biological.

3 CHAIR BURKE: Commissioner Quintana, may I clarify
4 your question of you to make sure I'm following it?

5 COMMISSIONER QUINTANA: I know. Okay, go ahead.

6 CHAIR BURKE: I'm going to make sure I understand.
7 Your concern is that while we have a map of woodlands, we're
8 obviously losing more than one-point-whatever acres of
9 woodland, but your concern is that the computation was based
10 on the number of trees we're losing and the density that
11 those trees appear naturally, as opposed to the actual area
12 of woodland we're losing.

13 COMMISSIONER QUINTANA: Because the document
14 states that placing homes within this habitat type reduces
15 the value of the habitat and therefore is not just the
16 specific trees that are being lost.

17 CHAIR BURKE: But the first part of my question
18 was your concern pretty much?

19 COMMISSIONER QUINTANA: Repeat it again.

20 CHAIR BURKE: That we are losing acreage in the
21 blue here that's only being reflected by the number of trees
22 we're losing and their native density as opposed to the
23 actual acreage we're losing.

24 COMMISSIONER QUINTANA: I'm not so concerned
25 specifically on an acre-by-acre, but an acre-by-acre of the
26 habitat value.

1 CHAIR BURKE: Okay, and I don't know where this is
2 going, but we should probably try to find a path.

3 COMMISSIONER QUINTANA: The connection between
4 fire safety, biotics, visual. Fire safety will require
5 clearing of...

6 VALERIE GEIER: No, our mitigation measure says
7 you're going to trim the trees; you're not going to remove
8 the trees.

9 COMMISSIONER QUINTANA: You didn't let me finish
10 my question.

11 VALERIE GEIER: Sorry. I'm sorry.

12 COMMISSIONER QUINTANA: That's okay. I understand;
13 we're all tired. I believe the new regulations from the
14 State Fire Marshall are that you have to clear brush and
15 weeds within one hundred feet...

16 MICHELE KORPOS: Yes, brush and undergrowth.

17 COMMISSIONER QUINTANA: Undergrowth, right. A lot
18 of the site has undergrowth. I assume that has value for
19 habitat, animals, et cetera. But in addition, trimming the
20 trees and removing the brush will have an impact on
21 visibility, and the triangles are not crossed, one
22 integrated into the other.

23 VALERIE GEIER: It happens that on this site most
24 of the undergrowth that we were referring to with respect to
25 clearing are under trees, and so in terms of visibility, if
this was a site where there was a lot of brush and just

1 brush, I would agree with you. Like on the northern part of
2 the site where there's a lot of brush, if we were to clear
3 that for fire reasons, there would be a change in the
4 aesthetic of that hill.

5 But we're talking about the undergrowth under the
6 tree canopy, and assuming the tree canopy is retained
7 because we're telling them you're not going to remove the
8 trees, you're going to just remove the branches that
9 overhang your houses and you're going to remove the
10 undergrowth that serves as a fire ladder into the trees,
11 that you're going to reduce the fire hazard that way.

12 COMMISSIONER QUINTANA: You are. However, I've
13 seen, from personal experience, sites before they've been
14 built on and after they've been built on, and the impression
15 that you get before they're built on, just looking at the
16 trees and the tree removal and not considering the other is
17 so totally different that I think it needs to be addressed
18 in the visibility aspects of the project, not just from afar
19 but closer homes and within the site itself.

20 CHAIR BURKE: Commissioner Quintana, may I ask you
21 a question here?

22 COMMISSIONER QUINTANA: Yeah.

23 CHAIR BURKE: Where are we going with this? Are
24 you saying that this is a shortcoming that you see and would
25 affect your recommendation on certification?

1 COMMISSIONER QUINTANA: Yes, because CEQA calls
2 for an interdisciplinary approach that will take these
3 interconnections into account. I have other reasons why I
4 have concerns about the EIR, none of which I think
5 ultimately might affect the decision on the project maybe,
6 but affect the intent of CEQA to provide a full disclosure
7 informational document that identifies all potential
8 impacts, identifies their mitigation, and states clearly
9 that that mitigation is feasible, and that there's no
10 conflicts between mitigations.

11 CHAIR BURKE: Okay. I'd like to go and maybe get
12 some questions from other commissioners now and come back,
13 because we are running late. I know my eyes are dropping, I
14 know the audience's eyes are dropping, and so Commissioner
15 O'Donnell, do you have any questions at this point?

16 COMMISSIONER O'DONNELL: No, I'm satisfied.

17 CHAIR BURKE: Commissioner Kane.

18 COMMISSIONER KANE: I'm torn between doing the
19 right thing and moving on. This is not the best display of
20 good government.

21 (Applause from audience.)

22 COMMISSIONER KANE: No. Now wait a minute. Now
23 Commissioner Quintana has got a Ph.D. in this stuff and has
24 done it most of her life. She knows what she's talking
25 about; I don't. She knows what she's talking about and I'm
thinking we've got to find another way to do that than have

1 you all here until midnight, because she knows what's she's
2 doing, don't ever doubt that. But I think we just need to
3 find another way to do it that's more accommodating to the
4 amount of people we have here. Can I get a help from the
5 Chair or Staff?

6 ORRY KORB: Well first of all, this is the place
7 where this discussion occurs. One of the great disadvantages
8 of our system is that we do everything in an open and public
9 way, which means the least efficient way possible,
10 particular when dealing with technical issues such as this.

11 COMMISSIONER KANE: I guess I wanted to create
12 understanding to that point, Counselor. Thank you.

13 ORRY KORB: One other issue, and I think it's an
14 important one for purposes of your analysis of the EIR, and
15 I'm not going to second guess or even anticipate any of
16 Commissioner Quintana's questions, but there may very well
17 be disagreements amongst the people with expertise regarding
18 some of the analyses. Disagreements do not render the
19 document inadequate. A document is inadequate if it fails to
20 identify an impact that should be identified or properly
21 analyze one that should be analyzed, or mitigate for one
22 that should be mitigated, or say it can't be mitigated and
23 recommend a statement of overriding consideration so that
24 project's going to be approved notwithstanding the impact.

25 CHAIR BURKE: I'm going to add, and Mr. Korb can
correct me because he's a lawyer and I'm not, but the

1 Environmental Impact Report document is a very important
2 document in the eyes of the state. It's the state that
3 dictates we do this, not local government, and their
4 procedures I think they very much value this report, so a
5 lot of what you're seeing is I think is rules required by
6 the California Environmental Quality Act.

7 ORRY KORB: Correct.

8 COMMISSIONER O'DONNELL: The one thing I think we
9 may be going a little inefficiently is if a commissioner is
10 satisfied that the EIR is not complete, then they can vote
11 that it is not complete. If on the other hand other
12 commissioners think it is complete, they can vote that it is
13 complete.

14 In other words, as I listen to the questions, the
15 questions are not clear, and they run together, and they're
16 very difficult to answer when they don't end. And so the
17 forum is not a good place to rewrite an EIR. If this Body
18 decides the EIR is not complete, it will be rewritten, but
19 it won't be rewritten in this room while we talk about it.

20 So my point I guess would be it can be a lot more
21 efficient if we find out whether... So far I've heard one
22 set of questions, and I'm not denigrating the questions, but
23 if we don't have any other questions from the other
24 commissioners, and maybe we heard some from you, perhaps we
25 ought to find out whether the lack of questions means those

1 commissioners think it's complete or the lack of questions
2 means something else.

3 ORRY KORB: Can I just remind you of where you
4 are? You haven't completed the public hearing yet. You did
5 ask the environmental consultant up to answer questions. At
6 the conclusion of those questions then the applicant still
7 has the opportunity to complete their rebuttal. Then you
8 close the public hearing, and then you can have your
9 discussion and hopefully a vote.

10 COMMISSIONER O'DONNELL: My point goes simply to
11 the way the meeting is being run, and that is if we intend
12 to sit here and ask two hours worth of questions to the
13 experts, I've never seen it done that way and I question
14 whether it's an efficient way to do anything.

15 CHAIR BURKE: Oh I don't think we're going to ask
16 questions for two hours, but I think we do have some. I know
17 I have some because they go to the consistency of the
18 Environmental Impact Report with some of the guidelines of
19 the project, because I think it's important that if the
20 environmental document says one thing that the planned
21 development document shouldn't say something else. So I've
22 got a question to follow up on that.

23 Have you looked at the landscape rules and
24 guidelines for this project?

25 VALERIE GEIER: No.

1 CHAIR BURKE: Okay. I mean I'm looking at a couple
2 of things, and these are big lots and part of this is
3 subject to interpretation, so what I'm kind of asking you is
4 how are we going to interpret these to be consistent with
5 your document and your mitigation measures?

6 And the thing that jumps out at me is Architecture
7 Rules C, "Owners are responsible to maintain their lots in a
8 weed free and fire safe condition." Now we could define the
9 lots as the immediate building area, whatever. But if we
10 defined the lot as the entire lot, then suddenly the loss of
11 the various types of chaparral and things like that are
12 going to go way up. I personally consider chaparral a weed
13 and maybe we shouldn't, but I also know it is one of the
14 true incubators for oak trees and things like that.

15 So from an environmental standpoint of grasslands
16 and things like that, how do we interpret comments like that
17 and make sure they are consistent with your document?

18 VALERIE GEIER: Sandy would like to answer. I will
19 answer afterward.

20 SANDY HARRIS: She has not seen the landscape part
21 of our CC&Rs we're going proposing with our development.
22 What that purpose is there for is for fire purposes. The
23 fire department requires a certain area to be cleared for
24 fire purposes, and you have to clear the brush and fire
25 related material, not landscape, but fire related material,
if someone's going to have that type of thing in an area

1 where you want to have fire safety, that's what that's
2 written for.

3 It's not written in a format where they're going
4 to clear their whole lot; it doesn't say that. It's for fire
5 purposes and the fire purpose is around a structure that
6 might burn. It doesn't mean they're going to clear their
7 hillside. You have specific hillside standards that say you
8 can't clear more than 1,000' of area on any lot, whether the
9 lot is a million square feet or whether it's 10,000 square
10 feet, and they have to adhere to that.

11 But we want to have someone, if they have a home
12 and don't have the landscaping we want to see around it,
13 without weeds and stuff going around it so if there's a fire
14 it would affect everybody in the site, and that's why that
15 was written. And if it needs to be changed or altered I'd be
16 happy to do that if it makes a difference.

17 CHAIR BURKE: Because I read your lots to be a
18 weed free condition, saying that you've got to pretty much
19 clear your lot. That's what I read this is.

20 SANDY HARRIS: No, that's not what that's
21 intention for.

22 CHAIR BURKE: And to me that just flew in the face
23 of this, and that's what I wanted to clarify.

24 SANDY HARRIS: No, that's not the intent of that.
25 That is so that we have a zone around a structure that is
fire safe. People have no right to go beyond that buildable

1 area and do anything. And what you're saying it sounds like
2 they can clear the lot; they cannot do that.

3 CHAIR BURKE: Well I was reading it that they were
4 required to, but that's fine. Okay. That didn't jibe with
5 this. So now it's clear. Commissioner Talesfore.

6 COMMISSIONER TALESFORE: I have a question I guess
7 about that. I'm not sure. You're referring to landscape
8 rules and guidelines?

9 CHAIR BURKE: Yes, I am.

10 COMMISSIONER TALESFORE: Okay, then on the desk
11 item here, the conceptual landscape plan, are those one and
12 the same?

13 DIRECTOR LORTZ: No. There's architectural
14 standards that are being proposed by the applicant, which
15 will come back to you, and that's in the desk item. The
16 landscape standards are separate from that and that's what
17 Mr. Burke is discussing.

18 CHAIR BURKE: My question was to make sure that
19 the landscape standards that were being proposed did not
20 conflict with the EIR.

21 DIRECTOR LORTZ: Now if the Commission has a
22 concern about that I would recommend the condition that
23 basically says the final landscape guidelines shall be
24 reviewed to be compliant with the EIR and safe fire
25 protocols.

1 CHAIR BURKE: Right. That's fine, and that's kind
2 of the reason I asked the question. So Commissioner
3 Quintana, do you have anything? I'm trying to do good
4 government here, but I also know that CEQA is a very
5 important part of good government. I also know that we can't
6 rewrite the EIR; we can recommend it not be certified. But
7 do you have any questions that you feel is critical that we
8 hear at this point?

9 COMMISSIONER QUINTANA: Yes, I have lots of
10 questions, but I know nobody wants to particularly listen to
11 them. So let me just give one example of what I mean about
12 the EIR not providing the information that makes it clear
13 that the mitigation that's being proposed is feasible. Let
14 me see if I can find where this is. Maybe you can help me.
15 I'm talking about the improvements to Gum Tree Road and
16 Drysdale Lane and the safety considerations.

17 VALERIE GEIER: Okay, that's on page 4.7-19,
18 Mitigation Measure 4.7-3.

19 COMMISSIONER QUINTANA: Well let's go a little bit
20 further up where it says that, "The access roads are curvy
21 and hilly and the existing pavement conditions are poor.
22 Prior to adding traffic to these roads the Town will require
23 the project to implement measures to improve roadway
24 conditions, including widening pavement where practical,
25 provision of curve, delineators and advisory speeds, and
repaving of the accessory roads."

1 Now under the mitigation measures, its says that,
2 "The following measures shall be required to reduce traffic
3 hazards." Number A is the roads are recommended to be
4 widened. Well recommended and shall require are different.

5 VALERIE GEIER: Because we were concerned about
6 tree removal, we are recommending that they be 22' wide, but
7 we don't want trees removed, we don't want big retaining
8 walls, and so there has to be some flexibility.

9 COMMISSIONER QUINTANA: Okay, so you say where
10 practical. This doesn't tell me or the final decision makers
11 or the public where it's practical so they can make a
12 judgment of whether that actually mitigates the impact or
13 not. Now I know I have talked with Fletcher since then and
14 he has shown me where it is possible, but that information
15 isn't available in this document so that somebody can follow
16 the logic and analysis of why the conclusion was reached.

17 The same thing is true with the parking bays and
18 with a whole number of other things. This is an information
19 document that's supposed to convey this information so that
20 decision makers know what they're deciding, and I'm going to
21 say this to the Commission and Commissioner O'Donnell, thank
22 you, that CEQA actually says that the focus of the hearing
23 on a project should be on the Environmental Impact Report
24 and how it interacts with the project so that you're
25 focusing your decision, because CEQA's whole intent is to

1 get decision makers to make informed decisions knowing what
2 the potential impacts are.

3 VALERIE GEIER: CEQA also...

4 COMMISSIONER QUINTANA: And the mitigation... But
5 it also says...

6 VALERIE GEIER: Also limits you on the number of
7 pages that you prepare and they recommend that you not
8 exceed a hundred pages.

9 COMMISSIONER QUINTANA: I'm not going to get into
10 a debate, but it also says be concise and don't...

11 VALERIE GEIER: Clarify that. Concise...

12 COMMISSIONER QUINTANA: Don't give information
13 that isn't particularly pertinent to the environmental
14 decision and all that.

15 CHAIR BURKE: Right.

16 COMMISSIONER QUINTANA: Yeah. Let me just finish
17 my thought if I can, and then I'm going to shut up.

18 CEQA doesn't determine whether you can approve or
19 deny a project. You can approve a project with significant
20 unavoidable impacts if you make the statements of overriding
21 consideration. Conversely, it doesn't limit you to denying a
22 project for discretionary reasons, even if it meets all of
23 the requirements of non-significance.

24 CHAIR BURKE: Okay. One of the things I would like
25 to do tonight, just for the applicant and everybody, is to
take the vote on the recommendation for certification of the

1 Environmental Impact Report tonight, so that at the meeting
2 next week you don't need to bring your environmental
3 consultants back, and I don't know, does the Commission
4 agree with me on that?

5 COMMISSIONER QUINTANA: Sure.

6 CHAIR BURKE: Okay, so we will make sure we get
7 that done tonight for Mr. Harris. If nobody has any further
8 questions of the environmental consults, I'm going to say
9 they can sit down. I'll get the rebuttal and close the
10 public hearing, and then we'll probably vote on the CEQA
11 document and then move on to continue. Rebuttal, Mr. Harris?

12 SANDY HARRIS: In regards to what Lee was saying
13 as far as the road improvements. I've had extensive meetings
14 with the Town's engineer as far as what needs to be done
15 with those roads and I've never met anybody more sensitive
16 to the conditions out there as far as addressing the
17 environmental impact of what needs to be done and not going
18 beyond the envelope to make something larger than it needs
19 to be to accommodate what's out there.

20 Whatever is improved is better than what is there
21 existing at this time, and that is something we've
22 discussed, it's something we have in our plans that we're
23 going to do, and that has all been taken into consideration,
24 the things that we've been discussing for the past 20
25 minutes. We're very sensitive to that, because we could go
in there and put retaining walls in and widen those roads to

1 City standard sizes and that sort of thing, but we're trying
2 to make a difference up there and we're trying to be as
3 sensitive to the environment in doing so, and do minimal
4 grading, try to minimize the impact on the trees and all the
5 things that the Town wants us to do.

6 And I've met with the engineer up there several
7 times. In fact, if you want me to make part of that in our
8 document, it is. And to try to assert that we're not doing
9 that I think is unfair. We spent a lot of time on that
10 issue.

11 COMMISSIONER QUINTANA: I'm not asserting that
12 you're not doing it. I am saying that the environmental
13 document doesn't provide that information. The two things
14 are totally different.

15 SANDY HARRIS: The environmental document was
16 written based on not meetings that the engineer and I had on
17 specifics as far as what we're going to do where roads can
18 possibly be widened without doing excessive grading and
19 without putting retaining walls in where they're not
20 necessary.

21 COMMISSIONER QUINTANA: That's correct, but it's
22 not identified in the EIR that it's possible or where it is.
23 That's all I'm saying.

24 CHAIR BURKE: Can I just get us to move on?
25 Commissioner Quintana has a disagreement with the

1 environmental document. I understand that; I respect that.
2 But I don't know if this debate is going to go on.

3 COMMISSIONER QUINTANA: Can I just clarify one
4 thing. My concerns about the environmental document are not
5 the same concerns I have with the project. They're two
6 different things. They're connected, but not necessarily the
7 same.

8 CHAIR BURKE: We've hit 11:00 o'clock. I want to
9 poll the Commission. I probably have ten to fifteen minutes
10 worth of questions of the applicant and Staff before I could
11 move on for a vote. If the other Commissioners have the same
12 amount, we're here past midnight. If they're ready to go
13 ahead, I can start asking questions and we can try to get
14 this thing done tonight, but I want a feel from you guys of
15 how much more you think you need before you can vote.
16 Commissioner O'Donnell. I'll start in the middle and work
17 out.

18 COMMISSIONER O'DONNELL: Well I could vote right
19 now, but let me say this. We've already picked another date.
20 I don't see anything to be served by going until midnight, I
21 really don't. I know personally I'm getting tired. I don't
22 think I think my best as I get tired. We've already got
23 another night set, which I think is a self-fulfilling
24 prophecy, and I think we ought to go there fresh.

25 CHAIR BURKE: Okay. Commissioner Kane.

1 COMMISSIONER KANE: I think I agree with
2 Commissioner O'Donnell.

3 COMMISSIONER TALESFORE: Agreed as well.

4 CHAIR BURKE: Commissioner Quintana, I know you're
5 not going to be here next week. What's your feel? You want
6 to push through to this.

7 COMMISSIONER QUINTANA: Absolutely not. However, I
8 don't think that you should vote on the adequacy of the EIR
9 prior to asking all of your questions of Staff and the
10 applicant.

11 CHAIR BURKE: But they are related to the project,
12 not the environmental document. Okay. Commissioner
13 Talesfore.

14 COMMISSIONER TALESFORE: What? I said I agreed. Is
15 this another question?

16 CHAIR BURKE: No, it's not.

17 COMMISSIONER TALESFORE: And that is exactly why I
18 agreed with Commissioner O'Donnell and Commissioner Kane two
19 times ago to not continue.

20 CHAIR BURKE: Two times ago. In that case,
21 gentlemen, I will close the public hearing. I will ask the
22 Commission for a vote on the environmental documents, and we
23 will then vote to continue. Because I have issues with your
24 documents that I really would like to go into a little
25 detail with, but everybody's tired tonight and I know I'm
not thinking straight right now.

1 SANDY HARRIS: That's fine. That's great.
2 ORRY KORB: Commissioner Burke, I think you can
3 continue the entire matter. We don't need the environmental
4 consultant back here.
5 CHAIR BURKE: Okay. If that's the case, but I'm
6 hoping your client will let you stay home next week.
7 ORRY KORB: Actually, we're their client.
8 CHAIR BURKE: Oh, okay.
9 DAVID FOX: They're your client actually.
10 CHAIR BURKE: In that case, never mind. Okay
11 COMMISSIONER O'DONNELL: Could I ask the Chair
12 though at least to get a consensus. I don't know where the
13 Commission is coming from. I don't know whether the
14 Commission would be prepared now to make a motion on the
15 adequacy and completeness of the EIR or whether they'd
16 rather come back and discuss it some more. I do think it's
17 somewhat unfair to say to the applicant to come back but
18 don't bring your people, oh and by the way, we want to ask
19 you some questions.
20 COMMISSIONER QUINTANA: It's not their people.
21 COMMISSIONER O'DONNELL: So I am just trying to
22 find out if a majority of us, and I don't know if that's the
23 case at all, would be prepared to vote now, close the public
24 hearing, vote on the completeness of it. Why don't we do
25 that? If that isn't the consensus here, then we won't do it.

1 CHAIR BURKE: We are not the final authority on
2 this document, so all we would be voting on is a
3 recommendation for it to go forward, so if there were issues
4 raised later I assume that those could be taken up by the
5 Council. Is that correct?
6 ORRY KORB: That's correct. And Commissioner
7 O'Donnell, the reason that I am inclined to recommend that
8 the Commission withhold action on the EIR until you take
9 action on the project itself is because I understand there
10 may be some questions of Staff of a technical nature. Those
11 technical issues may reflect some of the issues in the EIR.
12 They're not necessarily issues that have to be addressed by
13 the EIR consultant, but they can color your view of some of
14 the mitigation measures, and can make or break in the minds
15 of any of the commissioners the adequacy of the EIR. So I
16 think for safety's sake, get your record together before you
17 take that vote.
18 CHAIR BURKE: I'm going to point out the general
19 areas where I'm going to be questioning the applicant and
20 Staff, just so everybody is prepared next week. I'm going to
21 be talking to you about your existing standards I have
22 issues with.
23 SANDY HARRIS: Can I make a comment? It's late;
24 you don't need to stay. Thank you very much for coming.
25 We're not going to get an answer on anything tonight and I

1 appreciate your help and if you want to go home and go to
2 bed, please do so, and thank you for coming.

3 CHAIR BURKE: I want to thank the audience
4 tonight. As you guys are leaving I want to thank the
5 audience. You guys have been great. But this is the biggest
6 project in acreage we're going to see in Los Gatos in a long
7 time, and if we need to take an extra night to really do it
8 right, because for the next 50 or 100 years people are going
9 to look at the houses up there and say either, "What were
10 you thinking?" or, "Good job," so let's do it right.

11 But just so you guys know, I'm going to be going
12 over your standards here and how they fit into the landscape
13 standards.

14 With general areas you talk a lot about the
15 landscaping fitting in with the architecture of the house
16 but not the natural environment, and that's peppered through
17 there, you talk about fountains and statuary, things like
18 that that are kind of hit real hot button issues with me
19 that kind of make me cringe, and I know that this is going
20 to be important because this is what's going to dictate how
21 this development looks, so I want to spend some time with
22 that.

23 SANDY HARRIS: I'd be more than happy to talk
24 about it.

25 ORRY KORB: Mr. Chair? Before everybody leaves I
just wanted to make sure that you know, once again the

1 matter will be continued for decision to the 15th of November
2 at 7:00 o'clock, so that will be finalized, but that's what
3 I understand the motion will be. The public hearing is
4 closed, even though under the Brown Act you do have an
5 opportunity to address the Commission at that meeting
6 because it is a public meeting should you choose to do so.
7 The public hearing is closed. There will be no five minutes
8 and then three minutes and then rebuttal at that meeting. It
9 will simply be an opportunity to ask questions of Staff and
10 enable the Commission to have their discussion and hopefully
11 reach decisions on both the EIR and the project.

12 CHAIR BURKE: We will be able to ask questions of
13 the applicant I assume?

14 ORRY KORB: Yes, you can.

15 CHAIR BURKE: Okay, because I will also be asking
16 some questions as you know on some of your conceptual
17 grading quantities for some of the lots that may or may not
18 be problematic, but until I have those numbers I won't know,
19 as well as maybe a few more visibility questions on some of
20 the lots I think are problematic that way. So those are
21 going to be the thrust of my questions. I figure they're
22 probably going to take ten or fifteen minutes and there will
23 be questions of Staff. Does anybody else want to prime the
24 pump with the questions they'll be asking the applicant in a
25 week? Commissioner Quintana.

1 COMMISSIONER QUINTANA: Well I won't be here to
2 ask the questions, so can I state some of my general
3 thoughts?

4 CHAIR BURKE: Please.

5 COMMISSIONER QUINTANA: First of all, the CC&Rs
6 are referred to in the environmental document as being
7 consistent and providing mitigation on some of the impacts.
8 We haven't looked at those and we're not going to see them
9 until after certification of the EIR and a decision on the
10 project.

11 I'd also like to point out that the Zoning Code
12 states that in PDs they should be part of the submittal of
13 the application.

14 The other concern I have is with the project
15 description, and again, this relates sort of back to the
16 EIR. I understand that we're going to get more information
17 about the water system and the water tank, and I think we
18 have something that shows where the new line is going to go,
19 and it's something that wasn't addressed in the
20 environmental document.

21 Nor does the environmental document address or
22 discuss in description the extent of the retaining walls
23 that are proposed along the roadways.

24 And many other things. That's the kind of thing
25 I'm concerned with. I have lots of other things.

1 When we get diverted by the little details, which
2 I am famous for, sometimes you lose the big picture. So when
3 you're looking at is this lot okay, is lot okay, is this lot
4 okay, you're losing the picture if it meets the big overall
5 objectives of the Hillside Design Guidelines and Standards.

6 And lastly, I found it interesting that for this
7 project, which is very big, we are not requiring conceptual
8 design. We didn't require showing of the spaces over 50%. We
9 didn't require all kinds of things that we did for the
10 little two lot subdivision, and why the difference?

11 CHAIR BURKE: Thank you, Commissioner Quintana.
12 Anything else we want to add before we vote to continue?
13 Commissioner Talesfore.

14 COMMISSIONER TALESFORE: I just have a question of
15 Staff, and that is about the CC&Rs. Isn't the process that
16 that will come back to us?

17 RANDY TSUDA: That's the way the condition is
18 worded. Not to the Planning Commission. The CC&Rs?

19 COMMISSIONER TALESFORE: Right.

20 RANDY TSUDA: Not the Planning Commission. Now the
21 architectural restrictions would come back to the Planning
22 Commission.

23 COMMISSIONER TALESFORE: Right, okay.

24 ORRY KORB: But the CC&Rs are submitted to Staff
25 for review and approval.

1 CHAIR BURKE: But don't they become part of the
2 PD?

3 ORRY KORB: The CC&Rs? The requirement of the
4 CC&Rs is part of the PD. The requirement that the CC&Rs be
5 completed is part of the PD. The technical individual CC&Rs
6 are submitted later, reviewed by Staff, reviewed for
7 compliance with the PD with all of the conditions of
8 approval, et cetera, and then approved by staff. And that's
9 always been the case in the eight and a half years I've been
10 dealing with land use here.

11 COMMISSIONER TALESFORE: Okay. Thank you.

12 CHAIR BURKE: Commissioner Kane.

13 COMMISSIONER KANE: Mr. Tsuda, at our next meeting
14 I'll probably ask again for a short reeducation on what-
15 these may not be the right words-what is it we give up when
16 we recommend a PD? We give up certain aspects of the
17 hillside or... I remember we had that discussion. I reread
18 the minutes of our meeting from a long time ago, and that
19 was my concern then, and I think you gave a good answer. I'd
20 like to review that again when we meet, that the aspect of
21 going into a PD changes the rules, and that's where I get
22 concerned because I think I'm going in with applying the
23 normal watch dog procedures, and remind me again which ones
24 don't apply.
25

1 CHAIR BURKE: Thank you, gentlemen. I'm going to
2 ask one last question I just want to make sure I haven't
3 missed. The tennis court is gone, right?

4 SANDY HARRIS: Yes.

5 CHAIR BURKE: Okay, good. Okay, I'm going to close
6 the public hearing and ask for a motion to continue this to
7 a date certain.

8 ORRY KORB: One suggestion. Because I understand
9 that you do want to continue your questions of the
10 applicant, which are the questions that normally follow the
11 rebuttal, I'm going to recommend that you continue the
12 public hearing to a date certain so that the answers to the
13 questions are on the record as part of the public hearing.

14 CHAIR BURKE: So we need a motion to continue the
15 public hearing to November 15th.

16 COMMISSIONER TALESFORE: So move it.

17 CHAIR BURKE: Do we have a second?

18 COMMISSIONER KANE: Second.

19 CHAIR BURKE: All those in favor? Opposed?

20 ORRY KORB: So that's a special meeting that will
21 be held on the 15th at 7:00 o'clock.

22 CHAIR BURKE: I thank the neighbors for their
23 consideration on this, or understanding. I don't know how
24 understanding you are. We have other business. Any
25 director's reports?

DIRECTOR LORTZ: No.

1 CHAIR BURKE: Any subcommittee reports?
2 COMMISSIONER KANE: The Historical Preservation
3 Committee, about six items I'd like to get in at our next
4 meeting.
5 DIRECTOR LORTZ: So we'll continue subcommittee
6 reports at the next meeting.
7 CHAIR BURKE: At the next regular meeting?
8 DIRECTOR LORTZ: We can continue it to next
9 Tuesday if you want.
10 CHAIR BURKE: Next Tuesday as well. Okay. And the
11 final item is movement for adjournment. A move for
12 adjournment.
13 COMMISSIONER TALESFORE: I move for adjournment.

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A P P E A R A N C E S:

Los Gatos Planning
Commissioners: Michael Burke, Chair
Michael Kane
Phil Micciche
Tom O'Donnell
Joanne Talesfore

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

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5500 Van Fleet Avenue
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P R O C E E D I N G S:

CHAIR BURKE: Written communications, we do
have one desk item from Staff on this, which is a revised
planned development ordinance, which I assume the
Commission has a chance to read. We have no requested
continuances, and the consent calendar is empty, which
brings us back to continued public hearings, which is the
Terminus of Shady Lane, Planned Development Application PD-
04-3, and Environmental Impact Report ERI-04-01.

This is a continued hearing. We do have a few
speaker cards and it's my thought that I let members of the
public speak, being that the applicant has already made his
statement, and then he can come up for rebuttal and
questions.

Before I begin I want to set the tone for the
audience. We are making a recommendation tonight. We are
not making a final decision. We are making a recommendation
to the Town Council. So whether or not you think we are
seven of the dumbest people in town or seven of the
smartest people in town, there is another group of people

1 that's going to make the final decision, so all we're doing
2 is making a recommendation to them.

3 Having said that, I'm going to call the first
4 speaker, Bernard Coullihan.

5 BERNARD COULLIHAN: Good evening, my name is
6 Bernie Coullihan and I live on Drysdale Drive in Los Gatos,
7 and I'm representing my family tonight and the 15 members
8 of the Shady Lane Mutual Water Company. I'm also the vice-
9 president of that company.

10 I've been involved in this project for some two-
11 plus years now when the Town of Los Gatos, the Staff, asked
12 Sandy to come and meet with the local neighbors to share
13 his development plans and understand what your issues and
14 concerns were. At that initial meeting, we the neighbors
15 bombarded Sandy with our most pressing problems:
16 substandard water system and inadequate fire protection.

17 All I can say is thank God that Sandy
18 demonstrated some strategic thinking and could see the
19 benefits to his properties as well as our properties by
20 offering to extend his water system to help the
21 neighborhood. To me this is a significant community benefit
22 and it is the most important community benefit, in my mind,
23 of his development.
24
25

LOS GATOS PLANNING COMMISSION 11/15/2005
Item #1, Terminus of Shady Lane

1 Without Sandy's 19-lot development we will
2 continue to be at high risk of an Oakland-style firestorm
3 that could sweep through our hills. The whole street of Gum
4 Tree has absolutely no fire hydrants on that street at all.
5 I've been in all the meetings that occurred and all the
6 planning sessions with you folks. The Staff has said that
7 he meets the requirements of the Hillside Guidelines; he
8 meets all the legal requirements.

9 Everything is within the power of the people in
10 this room to make a recommendation to approve and go
11 forward, and I am recommending tonight, along with all of
12 my neighbors, that this project be approved and go forward
13 so we can gain the benefits and not continue to live with a
14 high risk of fire. Thank you.

15 CHAIR BURKE: Any questions for him? Seeing none,
16 thank you very much. Joe Musser.

17 JOE MUSSER: Hi. I came last week for personal
18 reasons on my family's home and another landscaping that
19 I've been helping out with on University Avenue and I heard
20 about this topic. It was of interest to me as well because
21 I have extensive education in environmental studies at San
22 Jose State and environmental horticulture science at Cal
23 Ply State University.
24
25

LOS GATOS PLANNING COMMISSION 11/15/2005
Item #1, Terminus of Shady Lane

1 I think I'm in favor of developing this land, but
2 I think the Environmental Impact Report needs to be
3 reviewed more closely by your panel or whoever, because
4 it's only been not more than a month since you guys
5 received it.

6 I walked the property today for about two hours,
7 and the first thing that came to my mind is there is a sign
8 right at the entrance, "Warning. Coyotes," and it says be
9 careful for children, all this. So if there are houses
10 here, if you have open garbage cans or anything like that,
11 that could be a danger for coyotes, for children and all
12 that.

13
14 Another thing is I didn't see any tags on the
15 eucalyptus trees. That should be the first thing to be
16 tagged because those are non-native species and they have
17 allelopathic qualities, which means that they drop
18 chemicals that inhibit natural species to grow there.

19 There's an abundance of wildlife here. It's
20 repairing an ecosystem basically.

21 There are seasonal creeks here. I think at least
22 ten of the lots are on seasonal creeks, or there's a
23 partial seasonal creek on these lots.
24
25

1 The main frontage road on the right side of it,
2 when I walked up it, there is erosion that's happening
3 already I think because we've had more than the average
4 amount of rain in the last five years. I think that there
5 needs to be a substantial retaining wall along this
6 frontage road.

7 As far as the fire hazard with the trees being
8 removed, they said about 150 trees need to be removed. I
9 think approximately 20% of those at most need to be
10 removed. Ten percent of those trees should be removed
11 because of fire hazard, because they're more than 33% dead.
12 In arborist's terms that means that they should probably be
13 irradiated. And also 10% should be removed because they're
14 obstructing driveways and things like that.

15 That's just things I noticed in two hours today,
16 just by observation. Thank you.

17
18 CHAIR BURKE: Any questions? Citizen Ray. You
19 have three minutes, Mr. Ray.

20 RAY DAVIS: First off, remember the open space was
21 to be open space, and that's where the three identified
22 landslides are. One of them is 100' in diameter, circular
23 shape. It's a 100' in diameter, seven feet deep. Even though
24 the Staff Report says there isn't much dirt there, I say
25 bull. Bull. The dimensions I gave you I got from the Staff

1 Report. That's one hell of a lot of dirt, and when that dirt
2 gets moving, who is going to fix it? The developer says he
3 doesn't want any part of it.

4 So then I noticed in the Staff Report, much to my
5 amazement, it say here, "The open space in the northern part
6 of the area would be private, to be maintained by the
7 Homeowners Association." No wonder there's no provision for
8 fixing the slide, when and if it goes, because the Homeowner
9 Association, the 19 people that buy into this, will be on
10 the hook for the slide repair, and there's not a word in the
11 conditions to that effect.

12 So these are just weasel words in my opinion put
13 in here by Bud Lortz, and they mean nothing, and there's
14 nobody there as there should be to back up a land use
15 failure, and landslide failure. It's a major flaw in this,
16 and the developer of course, a lumber salesman, is ducking
17 it real quick.

18 I read under Hydrology, Condition 53, the
19 detention pond is to serve as an overflow for the
20 floodwaters of the 100-year storm. That is one hell of a
21 storm. It goes on to say here, "The road shall be
22 designed..." not any old road, it's Shady Lane where all you
23 people drive to go home, and you ought to listen up to this.
24 It's right in here and not one of you has brought it up.
25 "The road shall be designed to act as a spillway in the
event of overflowing from a storm larger than a 100-year."

1 Now stop and think about that. A 100-year storm is a huge
2 storm. Anything over a hundred years is bigger than huge,
3 and where's that excess going to go? Right down Shady Lane,
4 where you drive home. It's crazy. I'm telling you this is
5 crazy in Los Gatos, and you ought to speak up.

6 CHAIR BURKE: Mr. Davis, your time is up.

7 RAY DAVIS: I know you want to shut me up. I know
8 that. I know you want to shut me up. Thank you.

9 GARY HARWIN: My name is Gary Harwin; I live at
10 15423 Francis Oaks Way. I've spoken before you before, and
11 tonight I'd just like to say that this Commission is charged
12 with the responsibility of ensuring that the community's
13 interest is preserved within the framework of specific
14 guidelines of the Town's objective, goals, plans, and codes.

15 At the first study session earlier this year I
16 spoke of the traumatic impact on our family when the home
17 next door, now occupied by the Weismans (phonetic), burned
18 the ground, killing its occupant, primarily because of the
19 inadequate water supply and the lack of any fire hydrants in
20 close proximity of the property. Our three daughters still
21 to this day live with the trauma of that event.

22 As has been demonstrated by the Engineering Peer
23 Review Committee, by Town Staff, by soils and geotechnical
24 consultants, by professional arborists and biologists, and
25 by the Town's environmental consultant, these 66 acres
adequately support 19 home sites in full compliance with

1 Town Standards and Guidelines for a planned development. The
2 19 home sites are nicely tucked into the landscape with
3 minimum visibility from adjoining areas, and with minimum
4 impact on trees and grading.

5 So it time for the Planning Commission to
6 recognize not only the quality of the project before you,
7 but also what it can bring to the town and community of
8 surrounding neighbors. This project is now proposed to be a
9 flagship example for communities up and down the state on
10 how best to develop in the foothills.

11 At a previous hearing one of the commissioners
12 asked what the public is supporting, since few of us spoke.
13 So in answer, this project as now proposed is exactly what
14 we are supporting for all the reasons I've stated above. I
15 support this project in every way whether we get water or
16 not.

17 Tonight I expect nothing less than to see my
18 Planning Commission move this project, as proposed, in tact,
19 to the Town Council. Thank you.

20 CHAIR BURKE: Questions? The last speaker card is
21 for Bill Harris.

22 BILL HARRIS: Thank you. I've been working on this
23 project for a little over a year.

24 I've been able to go up on the property and work
25 with the different people that have come and tested soils.

1 We've dug more holes than Swiss cheese at the local Whole
2 Earth.

3 We've looked at the different habitats for the
4 trees. We looked at the draft EIR that had over 400 trees
5 being taken out and we got it down to right around 100. We
6 worked with the wildlife people and the habitat people to
7 make sure that trees that were left there met environmental
8 criteria that they had for correct habitats for a variety of
9 different kinds of animals that they wanted to see at the
10 property.

11 Sandy has been very interested in making sure that
12 the scenic quality has been maintained on the property. We
13 have fought with the arborist to leave trees. He's wanted to
14 take them out; we wanted to leave them in. We met with the
15 biologist and we fought over a number of trees that she
16 wanted to leave in and that the arborist wanted to take out
17 and that we left in.

18 So we've done I think a great job of making sure
19 that this met a lot of different criteria. We've worked with
20 the staff here at Los Gatos to make sure that their needs,
21 their desires; their recommendations, were implemented as
22 often as we could.

23 There are a number of different things that have
24 been mentioned at a number of different hearings of
25 community benefits. You've heard about the water pressure.
There are a variety of different kinds of things that go

1 along with water. One is as a survivor of the Oakland Hills
2 fire where my house was burned down but I got out with just
3 what I was wearing when I went to church, I've experienced a
4 fire firsthand in a community that was devastated by over
5 3,200 homes being burned down.

6 So when I looked at what we're trying to do up
7 there in the Los Gatos hills, I think it's some good stuff
8 up there. The people that are up there deserve to have water
9 pressure to keep their house from not being burned down. I
10 think it's one of those great things in life.

11 The other is that we're gaining a lot of scenic
12 open space there if you look at the number of acreages that
13 are actually going to have houses on it versus the amount of
14 scenic open space.

15 The walkways that we're putting through there, the
16 emergency access that is going to be provided to a variety
17 of different roads up there, whether it's Francis Oaks, Gum
18 Tree, or even Shannon.

19 If you look at the things we're going to do as far
20 as repairing the slumps up there, look at the roads that
21 we're actually going to be putting in, there are no new
22 roads being put in. We're using the existing roads that are
23 there. We're not going to be changing the grade very much,
24 if anything. We've been moving the roads around trees and
25 where it could go in straight we've made it crooked.

1 There's lots of different things we've done just
2 to make sure that we don't impact anymore than we have to as
3 far as the trees, the wildlife, or the habitats there.

4 Also this is a great opportunity for you guys to
5 really put your stamp on a great project and I'm looking
6 forward to hearing you do that. Thank you.

7 CHAIR BURKE: Thank you. I have one more speaker
8 card. It's Tony L. Alercon.

9 TONY ALERCON: Hello, I'm Tony Alercon. I live at
10 333 Johnson Avenue. I'm also a real estate developer; I
11 develop out in the Central Valley. I wanted to say that I
12 think this project, as far as I read from the neighbors,
13 would provide some water that's needed and meets the
14 guidelines of the City, and I think that's what you need to
15 go on. If it meets the black and white, then you need to
16 approve it.

17 Secondly, for a personal reason, I would like it
18 to be approved because I need a bigger lot to move to. I
19 live on Johnson Avenue and my house is at the FAR limit
20 ratio. I have three bedrooms upstairs, one bedroom
21 downstairs, and three young daughters. I can't add on to my
22 house, so I have to move. Because of the average sized city
23 lot I don't have any options, so hopefully if this gets
24 approved, I'll have a spot to come build a house. Thank you.

25 CHAIR BURKE: Having no more cards, I'm going to
call the applicant up to rebut. Before I do that, are there

1 any other members of the audience who want to speak? Once
2 the applicant comes up, he gets the last say, and so this is
3 your last chance. So any people who haven't spoken? Once,
4 twice, sold. Would the applicant please come up and rebut
5 these people that obviously you need to rebut and answer any
6 questions we have.

7 SANDY HARRIS: Well the first thing I'd like to do
8 is I'd like to thank the Commission and the Staff for going
9 out of their way and coming here tonight and making a
10 special session for my project; I appreciate that. I know
11 you've got other things to do, but I really appreciate your
12 concern and sensitivity to this.

13 Secondly, David Fox has a breakdown here I'd like
14 to have him share with you, and then I'd like to speak when
15 he's though if that's fine.

16 CHAIR BURKE: Please do. Mr. Fox.

17 DAVID FOX: Just a couple of things in rebuttal
18 about the retention pond. If in the event that there was a
19 greater than a 100-year storm, the road has been designed so
20 that the water would flow across the road and into the
21 channel that the retention pond dumps into anyway, so there
22 would be no flooding of Shady Lane. There would be water
23 outside of the channel that is going to carry the water away
24 at any rate.

25 As far as the lots being on seasonal creeks, there
have been no seasonal creeks identified in all of the

1 project at all, so there are not ten lots on seasonal
2 creeks.

3 And as far as the erosion goes on the entry to the
4 project, there is a retaining wall proposed on the right-
5 hand side that would control all that erosion. In fact, on
6 many parts of the project there are retaining walls proposed
7 that would control the erosion that has already happened
8 after those slopes are repaired.

9 CHAIR BURKE: Thank you. Any questions of Mr. Fox
10 on his statements? I have one. Talk to me about the 100-year
11 storm, or the greater than 100-year storm. How much water
12 are we talking running across Shady Lane? Are we talking a
13 half-inch of water, an inch?

14 DAVID FOX: Well I think the telling thing about
15 the 100-year storm is that nobody makes you design to
16 greater than a 100-year storm. The 100-year storm is
17 considered the benchmark for the big mamoo storm, so that's
18 what everybody designs to. And yes, have there ever been
19 larger than what is concerned the design 100-year storm?
20 Yes, I'm sure there have been, but it's a hundred year event
21 because it is so unusual and so rare.

22 CHAIR BURKE: I guess my question was kind of like
23 what's the failure mode? You said it runs across. What are
24 we talking about when it runs across? Are we talking just a
25 quarter inch dribble, or is it a foot?

1 DAVID FOX: No, you would never reach a foot for
2 the water because it would spread out. It would not reach
3 that level. There would be so much water coming across, you
4 couldn't fill the retention pond to that point to get that
5 kind of flow across the street.

6 CHAIR BURKE: Any other questions? Mr. Harris.

7 SANDY HARRIS: Just for maybe the audience's
8 benefit, there has never been another development in the
9 town of Los Gatos of the magnitude of this one that has even
10 had a retention pond. This retention pond is put in place;
11 the state of California actually requires it, and their
12 basis with the 100-year storm is based on guesswork. We have
13 no idea how much rain is going to come in from a 100-year
14 storm, so it's based on the best criteria we can have and
15 develop that.

16 Secondly, the runoff from this project is minimal
17 in comparison to other types of soils. I've actually had the
18 Town's engineers up to the site because someone had concerns
19 with Lot 1 as far as the drainage on Lot 1. Last year when
20 we had our most significant rain, I had taken the Town
21 engineer up to show him there is no water going down Lot 1,
22 and he witnessed that for himself, because telling you that
23 doesn't do any good; seeing it makes a difference.

24 If you take a look at all the work we've done
25 within the plans, it addresses all issues that are required
of us to be addressed. We've met all the Hillside Standards

1 and Guidelines. We've dotted our i's and crossed our t's.
2 We've worked with the neighbors. We've done everything that
3 the Town has required of us to do, and at this point I don't
4 really know anything more I can do other than sit down and
5 let you guys make a decision.

6 CHAIR BURKE: Thank you. I'm not going to close
7 the public hearing right now because I know we're going to
8 probably have questions of you, we're going to have
9 questions of Staff, and they're going to generate more
10 questions of you. So at this point I'm going to leave you
11 standing up there, but please feel free to sit down. But
12 first I think I'll ask Commissioners who have questions if
13 they would like to ask them. Commission, any questions of
14 Mr. Harris?

15 COMMISSIONER TALESFORE: I do.

16 CHAIR BURKE: Miss Talesfore.

17 COMMISSIONER TALESFORE: I was reviewing your
18 plans and I have a question, Sandy. The question is how does
19 your plan address the public recreational use of multi-use
20 parking areas? How is that incorporated?

21 SANDY HARRIS: There is no public recreation on
22 the development.

23 COMMISSIONER TALESFORE: Okay, let's talk about
24 parking. Otherwise we're going to have kind of a de facto
25 gated community here and I'm not sure that that's what you
meant, because these streets are open to the public,

1 correct? So if I drive through because I want to maybe walk
2 on the public trail, where am I going to park my car? I
3 don't know where I could do that and I was looking for it in
4 the plans. Am I missing something?

5 SANDY HARRIS: There is no place set aside to park
6 for the public trail anywhere on Shady Lane, on my project,
7 or on Angel Court. It just hasn't been designed for any part
8 of that.

9 And secondly, we've gone far beyond our envelope
10 to visit with Mr. Haley, because the Town never required him
11 to extend the trail through his property into ours, so
12 someone that might want to be walking that trail would not
13 be able to do so because it doesn't continue at that point.
14 Mr. Haley has agreed, provided the Town can offer him some
15 sort of liability coverage or whatever, so if someone gets
16 hurt or whatever on that trail he's not responsible for it,
17 and will allow us to continue that trail through.

18 But there is nowhere within the trail where it
19 starts or anywhere within our development that we've set
20 aside parking for that trail, because I wouldn't know
21 exactly where to put that parking, because it doesn't start
22 in our development, it starts at Angel Court. So I would
23 believe if someone were walking on that trail that's
24 probably where they would want to park. And then if they go
25 to the end of the project, they could walk all the way back

1 through to I believe almost over to Harwood, because I
2 believe it goes back in that direction.

3 So I don't know necessarily that they'd want to
4 park in any specific spot midstream in the trail. I think
5 they'd start on one end or the other, and if you go over to
6 the Harwood side there is parking there associated with it,
7 and at the end of Angel Court if someone wanted to park,
8 they could park there and get out and walk the trail.

9 COMMISSIONER TALESFORE: And is there a par course
10 still planned?

11 SANDY HARRIS: The Town has asked me to put in a
12 par course, that's correct, and that is an optional thing,
13 and I don't know whether we're going to do it or not. That
14 will be up to the Town, not myself. That's not my
15 suggestion. And if that goes in, the people on Francis Oaks
16 don't want cars parking up there, and I don't know
17 necessarily if that's going to go in. That's not something
18 that is locked into our project at this point.

19 COMMISSIONER TALESFORE: And then just to follow-
20 up with that about parking, so perhaps you gave a big party,
21 where would people park, just assuming that you invited a
22 hundred friends?

23 SANDY HARRIS: If I'm going to have a big party or
24 someone living there?

25 COMMISSIONER TALESFORE: If anybody up there is
going to have a party. I'm a little concerned about not

1 having any turnouts for a variety of reasons, and I don't
2 know how we can address that.

3 SANDY HARRIS: We have not designed the project
4 for parties or for people having weddings or people having
5 events, because we have no idea how many spaces you would
6 need for something like that.

7 COMMISSIONER TALESFORE: I understand that.

8 SANDY HARRIS: But we do have areas if it were
9 required of us to put parking in, but I don't know if it
10 would necessarily be in a spot that's going to work for a
11 specific house having specific parking.

12 COMMISSIONER TALESFORE: It was just a question.
13 And what about turnouts, or something where if you had to
14 turn around?

15 SANDY HARRIS: Well we have cul de sacs. We have
16 emergency access routes, three of them. At the beginning
17 when you come into the project and you make the loop coming
18 around by Lot 1, there's all kinds of room there to do it.
19 If somebody wanted to turn around or do whatever, there's a
20 huge area there.

21 COMMISSIONER TALESFORE: Thank you.

22 CHAIR BURKE: Follow up. Is there any place, and I
23 couldn't see any, that if say I wanted to drive up there,
24 stop, park and look around, that I can legally park that's
25 not on private property up there once this development goes
in?

1 SANDY HARRIS: No, there's not.

2 CHAIR BURKE: So basically we have a public street
3 that people can drive on that goes nowhere.

4 SANDY HARRIS: Well they could park on the public
5 street if they chose.

6 CHAIR BURKE: Is the street wide enough for public
7 parking? That's my question?

8 SANDY HARRIS: It is, but I don't know if it's
9 legal for them to park on it or not. That's not my
10 jurisdiction or my area. The width of the street was
11 mandated by the Town, not me. I wanted a 24' street; the
12 Town wanted a 22' street. We've got 22' street.

13 The Town does try to set up their hillsides for
14 people to go up and park in it, and people that have parties
15 to set up parking and use your hillsides for that purpose.
16 So we didn't design this project based on that; we designed
17 it based on what the Town has guided us on. If that needs to
18 change, we need to know that.

19 CHAIR BURKE: Okay. Mr. Tsuda, would parking be
20 allowed on any of those streets up there?

21 RANDY TSUDA: I'm going to have to defer to Mr.
22 Rohani.

23 KEVIN ROHANI: This subdivision actually was
24 designed with the Hillside Standards in mind to have the
25 streets with 11' lanes. Typically for public streets down in
the bottom part of the valley these are going to be 12'

1 lanes, much wider. But again, taking the Hillside Standards
2 into account and having it more like a rural setting, these
3 are 11' lanes. So technically, yes, you could. They have
4 rolled curbs. This subdivision, we do not have the
5 conventional curbs and gutters, so they have rolled curbs so
6 somebody pretty much any time or anywhere could pull off and
7 be able to run over the rolled curbs and park to the side of
8 the street. And again, that's not a parking place, but it
9 would be feasible.

10 RANDY TSUDA: And legal.

11 CHAIR BURKE: Okay. Other questions of the
12 applicant and his representative? Mr. Kane.

13 COMMISSIONER KANE: Mr. Harris, I haven't sat in
14 on a planned development before, and certainly no one's ever
15 sat in on a planned development this large and complex
16 before. So I don't know if all of my remarks are appropriate
17 to what's going to eventually come out as a PD. I know when
18 we recommend the draft PD to the Town Council, I guess along
19 with that go the CC&Rs. The CC&Rs, were they in fact written
20 by you or your staff?

21 SANDY HARRIS: No, the CC&Rs were not written by
22 me and our staff, but the landscape CC&Rs were edited by Mr.
23 Fox and myself.

24 COMMISSIONER KANE: Bear with me. I'm looking at a
25 document, Exhibit K, Landscape Rules and Guidelines for the

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1 Highlands of Los Gatos, whereas the Board of Directors, et
2 cetera?

3 SANDY HARRIS: That's correct.

4 COMMISSIONER KANE: That's your document?

5 SANDY HARRIS: That's correct.

6 COMMISSIONER KANE: So you incorporate adherence
7 to the CC&Rs vis-à-vis this document, and it says that, "The
8 Board of Directors has the authority and responsibility to
9 govern the Highlands of Los Gatos in accordance with the
10 Highlands of Los Gatos Declaration of Covenants, Conditions,
11 and Restrictions," CC&Rs.

12 SANDY HARRIS: Correct.

13 COMMISSIONER KANE: It's the first time I've
14 looked at a document like that. It just seems strong to put
15 in the word "govern." Who in fact is the Board of Directors?

16 SANDY HARRIS: The Board of Directors gets
17 appointed by whoever is in the development itself, and the
18 purpose of the strong language is when you're in a planned
19 development you don't have the freedom to do what you feel
20 like doing. You have guidelines to adhere to, and these are
21 the guidelines, and these are the specific plants and
22 associated things you can do in the planned development, and
23 you don't have a right to venture beyond that.

24 COMMISSIONER KANE: Just wanted to know who the
25 Board of Directors were. So when folks settle up there,
they'll decide who their BOD is?

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1 SANDY HARRIS: That's correct.

2 COMMISSIONER KANE: And it goes on to say that
3 whereas Section 42 of the CC&Rs, among other things,
4 provides no alterations, etc cetera, without obtaining
5 approval from the Architectural Review Committee of the
6 Highlands of Los Gatos. Who is the Architectural Review
7 Committee?

8 SANDY HARRIS: We're in the planning and
9 development stage at this point. There is no board of
10 directors. None of those things happen until you have a
11 development; we don't have that yet.

12 What you have is you have Guidelines and Standards
13 that we put into place. The Town has their own Hillside
14 Standards and Guidelines that are already in place, so
15 whomever wants to do what they do have to adhere to what we
16 want them to do, then they have to come before the scrutiny
17 of the Town and adhere to your Guidelines and Standards as
18 well.

19 When you draft a document like this, you can't
20 leave your board of directors and all the legal stuff that
21 has to be in there. Those are things that have to be on any
22 CC&Rs, and the Town's staff, by the time we get to a final
23 map, has to adopt and approve our CC&Rs.

24 At that point still we won't know who the Board of
25 Directors are because we don't have people in the project
yet and it's made up of the people in the project, and what

1 they're trying to do is make sure people adhere to what we
2 want guideline wise in addition to what the Town requires.

3 COMMISSIONER KANE: Did I ask all of that?

4 SANDY HARRIS: I hope so.

5 COMMISSIONER KANE: I just want to know who they
6 are.

7 SANDY HARRIS: Well, I don't know.

8 COMMISSIONER KANE: So in the case of BOD, it's
9 residents? In the case of your ARC, it's residents?

10 SANDY HARRIS: Correct, yes.

11 COMMISSIONER KANE: I moved into the Belwood
12 section of Los Gatos. I came to town for the first time in
13 1980, and I would allege that the realtor in fact told me
14 that anybody who lives in Los Gatos can go to Los Gatos High
15 School. And as my babies were babies at the time, I said
16 great, and I stored it.

17 CHAIR BURKE: Is this going to a question, Mr.
18 Kane?

19 COMMISSIONER KANE: Yes.

20 CHAIR BURKE: Okay, thank you.

21 COMMISSIONER KANE: So guess what? They weren't
22 able to go to Los Gatos High School, notwithstanding the
23 promise of the nefarious suspect alleged realtors. And I was
24 listening to someone, or reading something the other day,
25 and Palo Alto has adopted a signoff procedure, where people
who buy homes sign off a disclosure from the realtor that

1 they're children may not be able to go to the local schools
2 either. I was wondering in context of that, the question...

3 CHAIR BURKE: In the words of Alex Trebek, "Please
4 make sure your response is worded in a question."

5 COMMISSIONER KANE: Tom, tell them what peroration
6 is. I'm building to it.

7 COMMISSIONER O'DONNELL: Can I just say one thing?
8 Maybe the Town attorney ought to tell you. I mean they have
9 to get a white paper to sell any of these things. That white
10 paper is approved by the State of California. They will
11 approve the CC&Rs. They will have the documentation to local
12 school districts. So they'll have CC&Rs. They'll have a
13 white paper before they can sell one house.

14 COMMISSIONER KANE: Are you saying we already sign
15 off on school districts?

16 COMMISSIONER O'DONNELL: The school district will
17 tell them, give them a letter, so they will know. When you
18 get the white paper before you buy the house, it will tell
19 you what district you're in. It will also tell you whether
20 there is a construction tax for example, like Los Gatos
21 Elementary. So you can ask these folks these questions, but
22 I think the Town attorney could probably bring you up to
23 speed fairly quickly.

24 CHAIR BURKE: Mr. Attorney, can you bring us up to
25 speed quickly?

1 COMMISSIONER KANE: Can I continue with this? You
2 all seem to know where I'm going with everything.

3 ORRY KORB: I didn't want to interrupt the flow of
4 the question, and Mr. O'Donnell I think has already brought
5 the Commission up to speed.

6 Basically the CC&Rs are governed by state law.
7 They are regulated by the state. We do review them to ensure
8 that they comply with all of the approval requirements that
9 are imposed by the Commission and by the Council on a
10 project of this nature, including those requirements related
11 to site planning and architecture.

12 SANDY HARRIS: Commissioner Kane, I'd like to
13 respond to your question, and I understand where you're
14 coming from, because that's a very passionate question that
15 people have.

16 To me there's a huge, huge difference of being in
17 the Los Gatos school district as opposed to being in any
18 other school district. But when you have a development like
19 this, disclosure is everything, and it's not like buying a
20 house from a realtor. Disclosure is everything. You have to
21 have all the disclosure, because you're mandated by the
22 state.

23 In any event, the people that buy the houses have
24 to sign off that they've read the CC&Rs, and they also have
25 to sign off that they've read all the disclosures, which
will include where the school districts are.

1 COMMISSIONER KANE: Will they get a copy of the
2 Hillside Guidelines?

3 SANDY HARRIS: Oh absolutely.

4 COMMISSIONER KANE: And schools. This is a minor
5 point, but the gentleman speaking about the wildlife. I was
6 wondering if we should give them something on that as well
7 regarding contained garbage and small pets inside and the
8 existence of coyotes.

9 I was just wondering, because I didn't know how
10 much was revealed and disclosed and they signed off on when
11 they bought the houses. I've heard numbers bantered about on
12 what the houses might cost, so these will not be your
13 everyday Joe Citizen type folks.

14 SANDY HARRIS: Correct.

15 COMMISSIONER KANE: And I wanted to make sure
16 before they laid down their zillions that they were
17 comfortable with what they were buying, so they didn't come
18 in here later and get angry at us.

19 SANDY HARRIS: Absolutely, and the disclosure goes
20 through every single aspect that they could possibly think
21 about, including the fact that when they live in this
22 development if they want to buy in it, they have to buy into
23 the concept of our restrictions and guidelines, not just
24 landscape wise, but for their building and everything else.
25 Our guidelines and restrictions are going to be more
restrictive than the Town's guidelines and stuff themselves,

1 and once they satisfy us, then they take their application
2 to the Town to get approval for whatever they want to have
3 put in there.

4 COMMISSIONER KANE: And that's part of the reason
5 I was asking this kind of question, because I read that
6 where you stated that your package would be more stringent
7 than the Town's CC&Rs, and I just wondered how that was
8 going to be communicated to them?

9 CHAIR BURKE: Okay, that was the question I was
10 looking for.

11 SANDY HARRIS: Well because the Town doesn't have
12 the ability to tell someone what color they can paint their
13 house... It can't. The Town has the ability to tell you you
14 can't have reflectivity.

15 Look at Kim Haley's house for example. I mean it's
16 purple and red. I would rather not have a purple and red
17 house in our development, and there won't be, because we're
18 going to have specific guidelines that won't allow that. We
19 want to have earth tone colors, and I don't believe that
20 purple and red are earth tone colors. We want a development
21 that's harmonious with our hillsides, and when you drive
22 into our development, it will be. You're not going to see
23 white, pink, blue. You can't stop someone from painting a
house that color, but we can.

24 Those are the type of things we're going to
25 control. You can't control what someone is putting on their

1 roof, but we can. There are a lot of things we can do to
2 make this development feel like it belongs in the hillside
3 that Town doesn't have the ability to do, and those things
4 we will have within our CC&Rs to make sure that happens.

5 COMMISSIONER KANE: Thank you.

6 CHAIR BURKE: Commissioner Talesfore, you had a
7 question.

8 COMMISSIONER TALESFORE: My follow up question is,
9 I'm understanding then that this is a draft?

10 SANDY HARRIS: Yes, absolutely.

11 COMMISSIONER TALESFORE: Because this has to come
12 back before us and our architectural rules, I believe.

13 SANDY HARRIS: Yes, and this is only the landscape
14 portion of it.

15 COMMISSIONER TALESFORE: Right, so we'll address
16 that at a different meeting. Thank you.

17 CHAIR BURKE: Okay, you guys ready for me.

18 SANDY HARRIS: Yes.

19 CHAIR BURKE: I'll disclose that Mr. Harris was
20 kind enough to email me a soft copy of his tentative
21 landscape guidelines, which I have marked up. I believe Mr.
22 Fox was given a copy back by Staff. I just wanted to give
23 the Commission a chance to look for those, and what you'll
24 find are my changes are bold italics. The first one you can
25 see right above the architectural rules, so if you'll look
for that you'll see some changes I made. While the

1 Commission is looking at that I wanted to ask you a couple
2 of questions.

3 What you have labeled as the private court, which
4 I think goes Lot 2, Lot 5, and then out to Gum Tree, is that
5 a private road or is it a public road?

6 SANDY HARRIS: Going to Lot 2?

7 CHAIR BURKE: Lot 2 and Lot 5.

8 SANDY HARRIS: Lot 2 and Lot 5 is a private road,
9 because it connects to the emergency access that takes you
10 all the way from Gum Tree, Drysdale, back through the
11 project, and it's not a through area. I met with the fire
12 department up there and we went over the whole scenario, and
13 that's basically what they have signed off on, and they're
14 the ones that we're actually making the emergency access
15 for.

16 CHAIR BURKE: Is it a trail? Are you allowed to
17 walk, ride your bicycle, and connect to the other places
18 across both the emergency access in there, or is it dead end
19 fenced emergency access where pedestrians and bicyclists
20 cannot progress through there?

21 SANDY HARRIS: It's a through access. It's got
22 something so you can't drive through it, so you wouldn't be
23 able to drive your car through it. It's an emergency access,
24 but if you wanted to walk or ride your bike. Our neighbor up
25 there, Eric Hamilton, every day rides his bike and runs his
dogs on the property. We do have a barricade up there so you

1 can't drive a car through, but it won't be restricted to
2 where you couldn't walk or ride a bike.

3 CHAIR BURKE: So it is open to the public for non-
4 vehicular traffic?

5 SANDY HARRIS: Correct.

6 CHAIR BURKE: Okay, great. The other thing I
7 wanted to ask you and Mr. Fox, if I go to your sheet LD2,
8 which is your proposed entry monument, and I look at our
9 Hillside Guidelines, that's kind of the don't, and I'm just
10 wondering how we resolve that.

11 SANDY HARRIS: Well, what we put in there isn't
12 the exact final draft of what we're going to have for the
13 monument, and that's something we can take up through A&S
14 when we're going to get to that point of what we're actually
15 going to put there. We're entitled to a monumentation and
16 the Hillside Standards and Guidelines allow us to do that.
17 Now if it's something to do with the bulk and size of it, we
18 just put something there so at least we had something to say
19 we're going to have monumentation there, because that's what
20 we'd like to have.

21 CHAIR BURKE: Can we agree that maybe that's not
22 appropriate within the Hillside Guidelines?

23 SANDY HARRIS: Are you saying monumentation, or
24 that specific one?

25 CHAIR BURKE: What you're showing here.

1 SANDY HARRIS: I wouldn't have a problem with
2 that.

3 CHAIR BURKE: Saying that it doesn't fit with the
4 Hillside Guidelines?

5 SANDY HARRIS: Right.

6 CHAIR BURKE: Okay.

7 SANDY HARRIS: Because what I put down there was a
8 proposed monumentation. Exactly what we're going to have we
9 haven't proposed yet, and we just wanted to show you where
10 the location was and that we're going to have monumentation.
11 But I just want it adopted that we're going to have
12 monumentation, and the final monumentation will be
13 determined once we know what we're going to be putting
14 there.

15 CHAIR BURKE: This is sheet LD2 and that
16 corresponds with page 44 of the Hillside Design Guidelines.

17 RANDY TSUDA: Right, and the Commission could add
18 a condition requiring that be modified and approved through
19 a separate A&S.

20 CHAIR BURKE: I wanted to go over my suggested
21 changes to your landscape guidelines if I may. Mostly I want
22 to put in clarification that these guidelines are
23 subordinate to the Hillside Development Standards.

24 SANDY HARRIS: Correct, and in the Hillside
25 Standards, and actually in the CC&Rs. The CC&Rs spell out

1 the Hillside Standards and Guidelines, and everything
2 obviously has to adhere to that.

3 When the people buy their properties they're going
4 to get copies of the Hillside Standards and Guidelines. When
5 they have their architects, or whomever the architects are
6 going to be to do whatever design work, they need to have
7 the criteria for them to base their designs by in addition
8 to what we have here. We're not representing that this
9 supersedes anything. This is what we require. Then you go
10 deal with the Town with what their requirements are.

11 CHAIR BURKE: Right, okay. On page three,
12 Retaining Walls, I added a section, or I'm tentatively
13 suggesting a section be added, that basically says walls
14 three feet and higher should not be used to facilitate
15 landscape features.

16 These are suggestions from me. They're not
17 dictates. We at the Planning Commission don't dictate; we
18 make suggestions and recommendations to the Council. Mr.
19 Fox, you have a comment on that?

20 DAVID FOX: I believe what you're looking for
21 there, that is a landscape. A three-foot wall would be less
22 of an impact than, say, a five-foot wall. But if you have
23 let's say five foot of grade to take up and you put in one
24 five-foot wall, and you cover it up or you screen it, it is
25 less of an impact than say putting in two three-foot walls,

1 which require a lot more grading to reach the same amount of
2 retention.

3 CHAIR BURKE: What I was referring to though is
4 this would be for a landscape feature; not for the house,
5 not for the driveway or the turnaround, but for your garden
6 or whatever. Just the idea of the landscaping needs to do a
7 better job of following the topology, and that if you need
8 more than a three-foot wall to do your landscaping, that
9 maybe your landscaping is incorrect for the site.

10 DAVID FOX: In practical terms, I don't believe
11 you could apply that effectively in that people are only
12 able to use areas of a certain slope, and if the back of
13 your house slopes off at such a rate that a three-foot wall
14 would not accommodate you to be able to use that spot, then
15 you couldn't use it at all. And there are lots of instances
16 of that in Town that I've run into time and time again.

17 CHAIR BURKE: What about in no case should walls
18 of this height be used to create flat turf areas? I mean
19 once again we're in the hillsides where we discourage lawns
20 to begin with.

21 DAVID FOX: I would suppose if you're going to use
22 a wall to create flat turf area, you could relegate the
23 height of that wall, but I'm not sure that that would
24 actually stop anybody from putting turf in. Turf is one of
25 those things that you can slope off.

CHAIR BURKE: Right.

1 DAVID FOX: It is one of those things that over a
2 long period of time if you've got 100' feet of turf you can
3 drop it at three-percent, or four-percent even, so you're
4 four feet down at the wall. Then you put a three-foot wall
5 in and you've actually taken seven feet of topography on
6 that sort of thing.

7 CHAIR BURKE: That's fine. I believe it was my
8 father's uncle who said San Francisco would be a great city
9 if they could just get rid of those hills. A lot of people
10 move into hillsides and they say, "How can I flatten this
11 out to put in my big lawn?" And that's what I'm trying to
12 express in here is we don't want that to happen early on
13 when they're looking to move in rather than when they're
14 coming out to get a site and architectural.

15 DAVID FOX: I think a more effective approach, if
16 I could suggest, would be looking at the amount of dirt
17 being moved rather than the heights of walls, because
18 effectively I could build a three-foot wall, I could slope
19 up it two to one, which I can hold, and if I ran ten feet of
20 two to one slope I come up an additional five feet and I
21 create a dead flat lawn that is eight feet above the toe of
22 the slope. So in essence, even though I only have a three-
23 foot wall, I've created an eight-foot wall because I've
24 sloped back up to the lawn. So I think that controlling or
25 having guidelines that suggest the amount of earth movement

1 are much more effective ways to control the flattening of
2 hills.

3 CHAIR BURKE: So would you support that as a
4 condition going forward, that there be limits on that?

5 DAVID FOX: We'd have to really look at that. We'd
6 have to come to some kind of a language on that, but I
7 believe that the Hillside Guidelines address the amounts of
8 grading on lots anyway.

9 CHAIR BURKE: Not the volume I don't believe.

10 RANDY TSUDA: They do not address the volume. But
11 for yard areas they do limit the depth of the cut and fill
12 to four and three respectively.

13 DAVID FOX: Then you've already got controls on
14 quantities.

15 CHAIR BURKE: Like I said, I'm trying to address
16 this. Okay.

17 I question your definition of hardscape on Section
18 8. You're basically saying everything that isn't landscaped
19 or house is hardscape? Because you do have a lot of natural
20 areas, what I wouldn't think would be hardscape.

21 DAVID FOX: If that is the impression, that is not
22 the impression that was trying to be conveyed. You know when
23 it says hardscape elements, i.e. patios, walks, et cetera.

24 CHAIR BURKE: It says, "All components of a home
25 site other than the home itself, planted landscape areas,
and shade areas."

1 DAVID FOX: Well if they're planted areas or the
2 home itself.

3 CHAIR BURKE: They're not hardscape.

4 DAVID FOX: Right.

5 CHAIR BURKE: But then you have an area of
6 decomposed granite, you have an area on tanbark. I mean
7 that's not hardscape, and I just question that.

8 DAVID FOX: Well, it depends on the jurisdiction
9 you're in, and in most jurisdictions in Northern California
10 decomposed granite is considered hardscape.

11 CHAIR BURKE: You're sure? Okay. That was probably
12 a bad choice.

13 DAVID FOX: But you're right, a tanbark area,
14 although a tanbark area would be tantamount to a planted
15 area.

16 CHAIR BURKE: Okay. But you understand my concern?

17 DAVID FOX: I do understand your concern.

18 CHAIR BURKE: That people don't have to cover
19 their entire property with landscape in order for it not to
20 be hardscape.

21 DAVID FOX: It could be planted with natural
22 hillside plants that naturally occur.

23 CHAIR BURKE: Right. Which takes me to decomposed
24 granite. You had, "Large areas of decomposed granite will
25 not be acceptable." What's wrong with it? I mean I've seen
decomposed granite look very good. I mean it's kind of a

1 rural type thing, and this is supposed to be, as we talk
2 about in Hillside Standards, the "rural feel."

3 DAVID FOX: Decomposed granite performs
4 magnificently as long as it's kept to a slope of under two
5 percent. Even with the alum-based stabilizers that are
6 available, once you get above that, when the water starts to
7 run down, once it gains any velocity, it will cut right
8 through the decomposed granite so that erosion becomes a big
9 problem with this material.

10 CHAIR BURKE: Okay, very good. On your Sections 12
11 and 13 I asked that you referenced the Hillside Design
12 Standards and Guidelines, just because pools and tennis
13 courts have caused grief here in front of the Planning
14 Commission before. I understand we're going to reference,
15 but the type of thing is when you have those you want to
16 emphasize that these are restricted by the guidelines,
17 because we've had people come and be very upset that they
18 couldn't get a pool or sports courts or whatever because the
19 guidelines don't do it. Part of what I'm trying to do is to
20 make sure that when people come in, they don't get
21 surprised.

22 DAVID FOX: And wouldn't that go back to your
23 first comment that says, "Where there is a conflict the
24 stricter rule applies"?
25

1 CHAIR BURKE: Yes, but it's one of those things,
2 some people read what they want to read, and the more places
3 you put it maybe they'll read what they don't want to read.

4 DAVID FOX: Well like Sandy said, they're going to
5 have to comply with both the CC&Rs of the project and the
6 Hillside Guidelines both. They have to comply with those.

7 CHAIR BURKE: Right, okay. Oh, I've been told I
8 went by something.

9 DAVID FOX: You did.

10 CHAIR BURKE: Decks and patios. With the slope
11 lots I'm seeing there, you have a restriction of your deck
12 can't be higher than 18" above finished grade. To me it
13 sounds like that's encouraging grading. I mean ideally the
14 deck should step down, but there are times you need a
15 certain amount of area, so I don't see what the problem is,
16 as long as it's attractive, of being 24" or 30" up if it
17 fits the standard and reduces the grade.

18 DAVID FOX: That is something that harkens
19 directly back to visibility, because if you look like up to
20 Santa Rosa and Sierra Azule up there, there are some
21 tremendously high decks.

22 CHAIR BURKE: Does it say 18" or 18'?

23 DAVID FOX: Yeah, the ones up there are 18' off
24 the ground, so that if you build a deck that's a little
25 higher off the ground it makes it a little more visible.

1 But I agree with you. The use of decks on
2 hillsides is a good alternative because you don't have to
3 grade. You can build something over a grade, you can put the
4 foundations in, but the natural hillside stays the slope of
5 the natural hillside. You are flattening area up above, but
6 you're not grading that area in order to create that patio.
7 So it does harken back to visibility and that's something
8 that everyone here has mentioned to us time after time, so I
9 would be very happy to have something 36" or even 48" off
10 the ground.

11 CHAIR BURKE: My concern is that causes grading,
12 because you come off a pier and grade beam foundation, your
13 floor is going to be 18" above grade minimum to start off
14 with.

15 DAVID FOX: Correct.

16 CHAIR BURKE: So you want to bring a deck up flush
17 that you're already out of line with that, and then it
18 slopes away it all. All of sudden you've made it where you
19 can't have a deck, so when the guy wants to put in his deck,
20 he has to justify grading because he's saying the CC&Rs
21 don't do it.

22 DAVID FOX: If you folks could see your way clear
23 to having something higher than that, even though it creates
24 a little more visibility, it would absolutely positively
25 lessen the amount of grading that would have to be done on
that slope.

1 CHAIR BURKE: Mr. Tsuda.

2 RANDY TSUDA: I just want to point out to both the
3 applicant and Commission that when Staff reviews situations
4 like this regarding heights of decks, we not only look at
5 the height of the deck above grade, we also look to see if
6 the design incorporates grading to try and disguise that
7 height of the deck. In other words, we discourage extra
8 grading in order to bring the perceived height of the deck
9 down or to reduce that. So we're looking at it from both
10 perspectives, limiting the amount of grading and requiring
11 that deck to be as low as possible.

12 CHAIR BURKE: And the last two biggies I have
13 here, one is fountains and statues. I know there are some
14 God awful fountains and statues that are visible from
15 Shannon Road as you drive by. I would like to see something
16 in here that fountains and statues are not visible from the
17 street and other public areas. I mean if you want to hide
18 them in your backyard.

19 COMMISSIONER MICCICHE: Are these just ugly
20 statues?

21 CHAIR BURKE: Well, we are not the fashion police.
22 Miss Talesfore I think is.

23 COMMISSIONER TALESFORE: Not really, but I think
24 it's pretty hard to determine what to one person is
25 beautiful and to another person is questionable, so I'm not
sure we can do that.

1 The point I would like to make though with the
2 fountains and the statues, because I did try to come up with
3 some language that said design in a manner that's hillside
4 characteristic, what does that mean? Bambi? I have no idea.
5 But I think I could address fountains or water features to
6 maybe something like they be flowing, natural appearance
7 like to reflect where they are, if at all possible.

8 DAVID FOX: I mean no offense to people that like
9 leaping dolphins out of pools of water, but I think that a
10 strong statement might be architecturally appropriate
11 fountains, things that go along with the architecture of the
12 house for instance.

13 COMMISSIONER TALESFORE: Right, so there's not a
14 terrific conflict.

15 DAVID FOX: Exactly. If you have a house that is
16 stone veneered for instance, then maybe the water feature is
17 also a stone veneer, something that really attaches itself
18 to the architecture.

19 COMMISSIONER TALESFORE: Right, but I was thinking
20 in the CC&Rs you may just want to instead of fountains maybe
21 you put down water elements that are natural, flowing in
22 appearance, characteristic to the hillside.

23 DAVID FOX: I think that, in addition to attaching
24 it to the architecture, would be good.

25 COMMISSIONER TALESFORE: Right, okay.

1 CHAIR BURKE: And part of my reason for raising
2 this point is I assume the Council will be getting a
3 verbatim transcript of this and these will be issues that
4 they can struggle with.

5 Lastly horse corrals and barns. This has been a
6 traditional rural area and I would think it would be a shame
7 to say you can't have a horse up there. That's my opinion,
8 but I float that now. I see Mr. Fox grimacing. I guess Mr.
9 Harris may be allergic to horses.

10 SANDY HARRIS: No, I would like to inflict my
11 opinion there. I don't want barns in our development. The
12 Town Hillside Standards and Guidelines have a square footage
13 mandate as far as structure is concerned, and if someone
14 builds a house and then they decide they want to have barn,
15 you need a fairly sizable barn to accommodate a horse.

16 We have mandated areas where people can have
17 houses built on envelopes. We don't have an area mandated
18 where someone can build barns, or sheds for tools, or
19 whatever they may want to do. We're trying to restrict the
20 buildable area within the envelope that we want for the
21 house, and we have not accommodated for barns nor do we want
22 to accommodate for barns. In my opinion that's a deal
23 breaker. I mean we're not going to put barns on our project.

24 CHAIR BURKE: Okay.
25

1 DAVID FOX: Additionally, Commissioner Burke, I
2 have a real concern. I work a lot in Woodside and there are
3 a lot of horses and things there.

4 CHAIR BURKE: That's right.

5 DAVID FOX: But the town of Woodside has provision
6 for walking your horse on something other than an asphalt
7 street, and this subdivision doesn't have that
8 accommodation, and I worry about the impact of horses on
9 public streets.

10 CHAIR BURKE: Like I said, I raise these as issues
11 and suggestions, not mandates.

12 I added a section on turf limitation. I know that
13 the Shannon Valley Ranch project does have a limitation and
14 I was suggesting that maybe there be some limitation, and
15 whether it's five-percent or ten-percent of the buildable
16 area, but I think we should express that typically we're not
17 big fans of turf in the hillside, just because of the water
18 usage, the runoff, and things like that.

19 DAVID FOX: Right. The ten-percent is low. It's
20 low in terms of this particular project, because the
21 development areas are very small. So if you have a 7,000'
22 envelope area that you can develop in, you're talking about
23 700' of turf, which is not even half the size of this room.

24 CHAIR BURKE: I believe I said five-percent of the
25 landscape area, and the landscape area is the non...

1 DAVID FOX: The total area that is not scenic
2 easement?

3 CHAIR BURKE: ...that's not scenic easement.
4 That's an acre, so you're talking anywhere from 2,000-4,000
5 square foot alone, which is a whole lot of lawn.

6 DAVID FOX: That's fine.

7 CHAIR BURKE: And like I said, suggestion going
8 forward to Council.

9 DAVID FOX: Yeah, that's fine.

10 CHAIR BURKE: And my last suggestion is minor one.
11 I thought on your supplemental planning list for trees, I
12 was going to recommend a giant sequoia. I have seen them up
13 on the Bear Creek redwoods. I don't know where they come,
14 but I also know they grow quite well along the south side of
15 the ridge you're building on. I know that from personal
16 experience.

17 DAVID FOX: Yeah, giant sequoias are fine. They
18 get giant.

19 CHAIR BURKE: But they take many years if you
20 don't over water them.

21 DAVID FOX: In 4,000 years they're going to be
22 really big, you know.

23 CHAIR BURKE: Well, I think luckily the 100-year
24 flood will have taken out the problem by then.

25 SANDY HARRIS: I'd like to comment on that if I
might. The last house I had I planted sequoia redwoods, and

1 those fellas are really, really tall at this point and they
2 leave a big, big mess. Redwood trees have an acidic value to
3 them that doesn't let anything grow anywhere around or
4 underneath it, and they are constantly dropping stuff to
5 eliminate any type of growth underneath it, and we kind of
6 really want to have landscape areas and we want to have the
7 project look nice, and redwood won't allow you to do that.

8 They're very similar eucalyptus trees. Eucalyptus
9 trees don't want anything growing around them either, and
10 that's why they drop what they do. That's why we didn't put
11 them in here and I'd rather not have them in if that's
12 something that we can have.

13 CHAIR BURKE: Well that's your call, but redwoods
14 are already in here, and I was just trying to put in one
15 that requires less water.

16 SANDY HARRIS: But the sequoia is a big fella, and
17 it takes a huge area, and its umbrella can be the size of
18 this room.

19 CHAIR BURKE: That's fine, just suggestions on my
20 part. And two last things. You don't allow solid fences.

21 SANDY HARRIS: Right.

22 CHAIR BURKE: Now it was brought up, coyotes,
23 garbage, and I'm just wondering if you would want to have an
24 exemption for solid fences within say 6'-8' of the
25 structure, because I know that at one point neighbors don't
want to look in and see the garbage cans, and secondly, you

1 do want to keep the wild animals out of there. So that was
2 just a thought.

3 DAVID FOX: Sure. I mean if the Commission sees
4 its way clear to including some solid fencing around the
5 house, that would be great, because it would absolutely
6 ensure the security of the garbage areas and things like
7 that.

8 COMMISSIONER BURKE: And lastly, are you going to
9 have a minimum house size on your CC&Rs? I've seen some
10 developments where they say you can't build anything under a
11 4,500 square foot house.

12 SANDY HARRIS: Minimum lot size?

13 CHAIR BURKE: Minimum house size.

14 SANDY HARRIS: Like 10,000 feet?

15 CHAIR BURKE: No, like are you going to require a
16 3,500 square foot minimum or anything like that?

17 SANDY HARRIS: No.

18 CHAIR BURKE: Okay. That's it. I'm done with my
19 questions. Any more questions or questions of Staff at this
20 point? If not, I'm going to close the public hearing and
21 we're going to look for comments. Questions of Staff may
22 generate questions of the applicant from Staff, from one of
23 us, or something like that. I mean questions of Staff may
24 come out in our discussion. So seeing none, I'm going to
25 close the public hearing. I'm going to thank you two
gentlemen very much for putting up with my list of

1 questions, but I always feel it's the details that make a
2 project good, and I just want to make sure we weren't boxing
3 ourselves into a corner.

4 SANDY HARRIS: Likewise. I'd still like to
5 reiterate, thank you for making time for us tonight. I know
6 we're coming into the holiday season and you don't have
7 another hearing until sometime next month, and I appreciate
8 you guys making an exception for us tonight. Thank you.

9 DAVID FOX: Thank you very much.

10 CHAIR BURKE: Thank you. So I'm going to close
11 this public hearing and open this up to comments, questions
12 of Staff, and a motion.

13 As far as a motion, we're making a recommendation
14 on the Environmental Impact Report certification. We're also
15 making a motion on the recommendation for this PD. Being
16 that this is a recommendation, if there's any chance we
17 could get a consensus motion with pros and cons of some of
18 the areas, that would probably be the best way to send it to
19 Council. Mr. Micciche.

20 COMMISSIONER MICCICHE: I was not at the last
21 meeting, but I unfortunately got the tape Saturday and
22 painfully listened to it for an hour and a half today on a
23 plane. And then after listening to it I sat another half
24 hour and wrote down some comments I'd like to read here at
25 this point.

 CHAIR BURKE: Please read your comments.

1 COMMISSIONER MICCICHE: I think you all know, the
2 PD process here was established to allow alternative
3 developmental approaches more consistent with the site
4 characteristics than the ones typically allowed by the
5 zoning regulations, and it's intent is to create an optimum
6 quantity of open space and encourage good design. That's the
7 whole purpose of it.

8 This is a unique site. Sometime ago it was
9 approved for 30 lots. I don't know if many of you know that,
10 but it was, and as a result the roads were graded in. And
11 the roads were installed in the appropriate locations based
12 on that and it doesn't make sense for me to suggest any
13 relocation of those roads, so they ought to stay as they
14 are.

15 I think this application does exceed the strictest
16 interpretation of the slope density formula by a fraction of
17 a lot, but it does comply with the General Plan as far as
18 I'm concerned, and the newly adopted Hillside Development
19 Standards. I believe they are consistent with that.

20 The PD process allows for a properly designed
21 project to exceed that strict interpretation of the slope
22 density formula, but there has to be a compelling reason to
23 do so. There's no question in my mind that the public water
24 system offered by this project offers that significant
25 community benefit, so I think we've covered ourselves on
that.

1 We're appointed to the Planning Commission to
2 provide Counsel with our best thinking and to apply good
3 judgment in formulating a recommendation. Hillside
4 development projects are challenging to design, and the PD
5 process offers a logical way to ensure that best design is
6 achieved. It's incumbent on us to use our best judgment in
7 formulating our recommendation on a project of this nature,
8 and I think you can tell, a number of the commissioners have
9 worked hard to do that.

10 The PD process specifically allows projects to
11 deviate from the strict zoning rules providing the project
12 demonstrates good design. I believe this project achieves an
13 optimum design and provides a significant amount of open
14 space. The proposed water system will also provide the area
15 with a much needed public water system for the residents and
16 will address a critically needed fire safety issue.

17 So I am clearly going to be recommending that we
18 pass this along to Council for definite approval, modified
19 by a lot of the inputs that were given tonight by the rest
20 of the commissioners. That's not a motion at this point.

21 CHAIR BURKE: Understood. Do we have comments from
22 other commissioners at this point?

23 COMMISSIONER KANE: As I said at the last meeting,
24 I was going to ask Mr. Tsuda to refresh our memories of
25 exactly what we're giving up when we approve a PD. What are

1 we giving up in terms of protection for the hillsides, if
2 anything?

3 RANDY TSUDA: Well you're really not giving up
4 anything. The intent of the PD ordinance and PD process is
5 it's established to allow the Commission and ultimately the
6 Council to approve projects that have essentially their own
7 self-contained set of zoning and development standards that
8 accomplish a few objectives. One is as Phil mentioned,
9 achieve good design, that achieve a design and a quality of
10 project that warrants flexibility from the standard
11 requirements of our zoning codes, in this case the HR zone.

12 In exchange for that you have the ability to
13 require certain things. In this situation you can request
14 detailed architectural standards. We've spent a lot of time
15 talking about the landscape standards, and those all need to
16 be revised to reflect the comments of the Commission,
17 Council, and of Staff, this whole concept of amount of
18 public benefit that's being provided, on and on.

19 So there's essentially a tradeoff in that yes, you
20 are giving some flexibility from the standard requirements
21 of the HR zone, however you are also achieving more
22 certainty in terms of the quality of the design and the
23 ability to impose specific standards.

24 COMMISSIONER KANE: In going the direction of a
25 PD, not having done one before, is there anything I should
be concerned about, anything that's going to jump out of the

1 hallway and say well you gave that one up, you can't have
2 that one? Is there anything in there, Randy, that I should
3 be concerned about or worried about that we are, for the
4 sake of a facilitation if you will, that we're giving
5 something up? Visibility?

6 RANDY TSUDA: Through this process, at this point
7 you have not waived any of the requirements of the Hillside
8 Standards and Guidelines. Those are still in place, those
9 are still required, and they're referenced in several
10 sections of your conditions and approval, so those standards
11 remain. All the new homes in the A&S application will be
12 reviewed based on those standards, so in this case what you
13 are potentially getting, depending on how the architectural
14 standards are crafted, is more assurance, a higher level of
15 control over what can ultimately be built. The Hillside
16 Standards will set a benchmark. The applicant's
17 architectural standards can go beyond that and be much more
18 prescriptive than what is normally required.

19 COMMISSIONER KANE: Thank you very much.

20 CHAIR BURKE: Commissioner Talesfore.

21 COMMISSIONER TALESFORE: Questions of the road
22 have come up tonight and previously and in a letter that we
23 all received, which I don't know where it is in this packet,
24 but I think you probably know the one I'm talking about.

25 So I just wanted you to please comment on the road
conditions that lead to the property. Is there anything we

1 need to be aware of? How are the ditches? I haven't seen any
2 glowing thing from Staff or anything, but I just wanted to
3 address that.

4 RANDY TSUDA: Are you specifically referring to
5 Gum Tree Lane?

6 COMMISSIONER TALESFORE: Well probably any of them
7 that might impact the development of this future project.

8 RANDY TSUDA: The applicant is proposing some
9 upgrades to Gum Tree Lane where it doesn't require the
10 elimination of trees and doesn't require retaining walls, et
11 cetera, and those are actually identified now as part of the
12 package. The Town's traffic engineer and Parks and Public
13 Works Department have reviewed that. They walked Gum Tree.
14 They concur with what is proposed at this point. So we're
15 comfortable with the way the design of Gum Tree is currently
designed.

16 COMMISSIONER TALESFORE: Okay. And then I had
17 another question. May I continue, Mike?

18 CHAIR BURKE: Please do.

19 COMMISSIONER TALESFORE: And I realize the Staff
20 has worked really hard to make the lots feasible and then
21 the guidelines, and I appreciate that. But there's a
22 multitude of lots, and some are positive and some are rather
23 kind of questionable at this moment.

24 There was Lot 22, and I was looking at the
25 driveway, and if you refer to Exhibit G, in the Hillside

1 Design Guidelines, and correct me if I'm wrong on this or if
2 things have been mitigated or altered that I'm not aware of,
3 but I think it calls out the driveway shouldn't be graded
4 more than 15%.

5 RANDY TSUDA: That's the typical standard
6 established by the fire department.

7 COMMISSIONER TALESFORE: And so this one on Lot
8 22, is that 15.25%? Are we going to the absolute maximum
9 allowability on that? Are we comfortable with that? Can you
10 comment on that?

11 RANDY TSUDA: Well 15.25%, we know from past
12 experience with the fire department, is perfectly drivable
13 from their standpoint. And as you approach Lot 17 and Lot 18
14 they do get more concerned, but I don't think they're going
to oppose a project given that it's at 15.25%.

15 Based on the Commission's previous concerns, this
16 is a different design than you previously saw in order to
17 address some grading concerns and try to minimize the
18 impacts on the trees. I think it's the tree impacts that we
19 are going to be particularly concerned about as we go
20 through the A&S process on this lot.

21 COMMISSIONER TALESFORE: On this particular lot?
22 Okay. Thank you. That's all my questions for now.

23 CHAIR BURKE: I'm going to make my comments now.
24 As some of you remember from some of the study sessions, I
25 have made the comment that I've lived for about 40 years

1 with the private water system. I used to not always know
2 when I turned on the faucet in the morning whether I was
3 going to get water or air. When I got air, for the next
4 couple of days I'd have kind of brown water because it had
5 knocked the scale off the pipes. I see people smiling who
6 can relate to that too.

7 Put as a planning commissioner my primary duty is
8 to the General Plan, the policies that have been set up by
9 the Council. I've struggled with this. I've looked and I
10 have printed out sections of the Code, sections of the
11 General Plan, and think what can I do? Because I do think
12 what Mr. Harris is offering is a community benefit that
13 probably we've never seen before, we will probably never see
14 again.

15 I am concerned he's trying to do too much, and by
16 that I mean, and I don't mean this as criticism to anybody,
17 but what point does taking the water to the people's lots as
18 opposed to running the main down the street just go a little
19 bit beyond what we should expect a developer to do today?
20 Are we setting the bar too high tomorrow for developers, and
21 Are we encouraging neighbors tomorrow to demand too much
22 from their developers where we really go beyond the nexus of
23 community benefit? But I'm not going to be critical of Mr.
24 Harris's generosity at all. I think it's great.

25 But where I do have fault is when do we lower our
standards for that generosity? I do have concern about the

1 19th lot. I'm going to state my reasons for it. That doesn't
2 mean I won't support a motion for 19 lots, but I do want to
3 get my concerns on the record, because I think they're
4 important.

5 If I look at some of the Town's ordinances, I
6 think Mr. Micciche talked about that, but that the purpose
7 of the PD overlay zone is to provide for alternative uses
8 and developments that are more consistent with the site
9 characteristics. We don't talk about any place in there
10 where it is for a higher density development to provide a
11 community benefit, and once again I'm not disputing the
12 community benefit, but I am just going by what the Town has
13 done over the past 25 or 30 years and what do the
14 regulations say.

15 I also look at the Hillside Guidelines. The
16 Hillside Guidelines say that PDs will be used to reduce
17 visibility from the valley floor. Well the PD is gaining us
18 an extra lot, and whether that is Lot 2 or Lot 12, which
19 would be the one I would get rid of due to visibility
20 reasons if we didn't have a PD. Those lots are very visible.

21 So according to the Hillside Guidelines, we are
22 not following the intent of the reason to have a PD, we are
23 going opposed to the intent.

24 So these are my concerns that I stress with the 19
25 lots, not with the community benefit.

1 The slope density and the densities are permeated
2 throughout our zoning. Even in our General Plan we list the
3 density ranges over here for hillside developments, and the
4 zoning ordinance, if you're going to zone the hillside,
5 basically says an ordinance zoning HR must set one of the
6 density ranges, two-and-a-half to ten acres per dwelling,
7 and then goes on define that, and this is must, and we do
8 define that in this ordinance.

9 And so I believe that this PD has a lot of gray
10 area here. While it may be dark gray, I can't call it white.
11 But as I said in the beginning, we're not the final arbiters
12 of this decision, and there's another group of people that
13 have the flexibility to say dark gray isn't black so I can
14 call it white. So I state that up front.

15 But those are my concerns. I wanted to state them
16 now for the record. Thank you. Mr. O'Donnell, you'd like to
17 make a motion.

18 COMMISSIONER O'DONNELL: If I understand it, and
19 I'm directing this to Staff, when I look at the last page of
20 the report of November 9th, it says that if we're satisfied
21 with the information that has been presented, we should
22 formulate a recommendation inclusive of the following. So do
23 we do these sequentially? In other words, initially make a
24 motion to recommend the certification of the EIR to the Town
25 Council? Take them separate steps or put them all together?

1 ORRY KORB: I would recommend that you take them
2 in separate steps and you do your motion regarding the EIR
3 first.

4 COMMISSIONER O'DONNELL: Okay, then I would move
5 that we recommend to the Town Council that they certify the
6 EIR as being complete.

7 COMMISSIONER MICCICHE: I'll second that motion.

8 CHAIR BURKE: All those in favor? Next motion, Mr.
9 O'Donnell.

10 COMMISSIONER O'DONNELL: The next motion you have
11 listed here is acceptance of the mitigation monitoring
12 program, which is Exhibit C, and I would move that we
13 recommend to the Council that they accept the mitigation
14 monitoring program, which is attached as Exhibit C, and I
15 think it's attached to the final EIR.

16 COMMISSIONER MICCICHE: I'll second.

17 CHAIR BURKE: Okay, we have a motion and second.
18 All those in favor?

19 Mr. Donnell, before you make your third motion,
20 which I assume you're going to make, I'll make a request and
21 you can feel free to honor it. But I think to put this clear
22 to Council, if we could get a consensus motion and maybe
23 part of the consensus motion could reflect various views so
24 it's all part of the motion, and that way they have a nice
25 summary of our overall feelings, what our concerns are, and
it goes through with the unanimous motion where we may not

1 all agree with all the points of the motion, but at least
2 they'll all be in one place for the Council to check.

3 COMMISSIONER O'DONNELL: Let me do this. Let me
4 make a motion and then maybe get a second, and then we can
5 step back and let people hang things that they want to on
6 the motion. Is that what you're suggesting?

7 CHAIR BURKE: That's what I'm suggesting, and if
8 not everybody can agree with it, we can at least include
9 that as part of the motion that two of the commissioners
10 thought this while three thought this.

11 COMMISSIONER O'DONNELL: That would be fine with
12 me. What I want to be careful of is in making the motion
13 that we recommend to the Town Council essentially that they
14 adopt the ordinance which we have been provided a copy of
15 tonight, which deals with the change from HR 2.5...

16 COMMISSIONER MICCICHE: To 2.5 PD.

17 COMMISSIONER O'DONNELL: ...to the PD. This is a
18 very detailed ordinance, but I take it this is what we're
19 recommending to the Town that they adopt, so that being the
20 case, I would move that we recommend to the Town Council
21 that they adopt the ordinance, a copy of which we have
22 before us.

23 COMMISSIONER MICCICHE: I'll second.

24 CHAIR BURKE: I will start with a request for
25 amendment to the motion. I would request that as part of
this, the Council set out clear policy guidelines, being

1 that this is the first HR-PD that is actually exceeding the
2 density of the underlying HR zone, on when that should and
3 should not be done, because we're in really uncharted
4 territory.

5 The Town has never had an HR-PD, an HR 2.5 PD or
6 an HR 1 PD or an HR 5 PD that exceeded the underlying
7 density of that particular zone. So we are very much in
8 uncharted territory here, and I think that the policy has
9 been on the Council not to do that. Lee Bowman, the planning
10 director here for about 30 years, said a PD will not be used
11 to increase density in hillside.

12 But I think we're recognizing there is significant
13 community benefit here, and so what I'm saying is this is a
14 good chance for the Council to give clarification on when
15 this is appropriate. And I don't know how to word that, but
16 I think you know where I'm going.

17 COMMISSIONER TALESFORE: You just did.

18 COMMISSIONER O'DONNELL: I don't have a problem
19 with that, assuming I fully understand it. The one question
20 I guess I have is you're stating it as a black and white
21 proposition, whereas previously you stated it as a perhaps
22 gray, black, and white. Have you suddenly found clarity?

23 CHAIR BURKE: No, what I'm saying is we are
24 venturing into an area that goes against Council policy for
25 about 30 years, or 25; I don't know how long they've had PDs
in the hillside. We need to recognize that we are doing

1 that, and we need to as part of this motion. Council is
2 making the final decision, but we need a little bit of
3 guidance. Well, I'll say you guys will need guidance going
4 forward for the next HR-PD that comes through. That's all
5 I'm saying.

6 COMMISSIONER O'DONNELL: I have no problem with
7 that.

8 COMMISSIONER MICCICHE: Let me get some
9 clarification. I think this is very specific and I'm
10 concerned that we're trying to make something general out of
11 it, so I'm going to ask Staff for a moment.

12 I read this thing as we can exceed the slope
13 density formula with a compelling reason. That is the
14 policy. Am I wrong on that, because that's the way I read
15 it? That's what I stated before.

16 RANDY TSUDA: Let me just read to you what the PD
17 ordinance states on density regulations. "In residential
18 planned developments the official development plan
19 prescribes the density, which may not exceed the allowable
20 density limits of the land use element of the General Plan."

21 COMMISSIONER MICCICHE: Period.

22 RANDY TSUDA: Period.

23 ORRY KORB: I think that the issue raised by Mr.
24 Burke is his understanding, and I can't confirm what has
25 been Council's policy and if there even has been a policy on

1 this question, about the use of PDs to increase density
2 beyond what is otherwise considered allowable density.

3 The PD ordinance by its own wording says that
4 density cannot be increased beyond the General Plan, and so
5 arguably this does not violate any policy. But I think what
6 you're saying, and perhaps I can suggest wording, is that
7 you ask Council to note that by approving this PD that the
8 Town would be permitting the use of a PD to exceed the
9 density formula in the zoning code, but not beyond that
10 which is allowed in the General Plan, period, and that, if
11 Council says yea to that does give at least the limited
12 guidance that I think you're asking for with regard to any
13 future application.

14 CHAIR BURKE: Thank you, Mr. Korb. I think that
15 clarifies that to me. I don't know if it was ever a written
16 policy or not of the Council; I just know from what my
17 research says that an HR-PD has never exceeded in all the
18 years they've ever granted one.

19 COMMISSIONER MICCICHE: I have no problem heading
20 that. Go ahead. Anything else?

21 CHAIR BURKE: I would like at least some
22 references to the suggestions I put in the landscape
23 guidelines. I referred to them that are suggestions to the
24 Council to consider.

25 COMMISSIONER MICCICHE: The ones you agreed on
with the...

1 CHAIR BURKE: The ones we agreed on with the...

2 COMMISSIONER O'DONNELL: Let me say this, and just
3 again for the record. I don't personally believe that the
4 Planning Commission should sit around rewriting guidelines,
5 CC&Rs or otherwise. I think that that is a task that is not
6 within our purview. Therefore I don't support that. I won't
7 stand in the way. In other words, you've suggested we say
8 who is favor of that and who is not and the Council can
9 consider that. I just think it would be a painful, slow, and
10 inefficient way to do things if the Planning Commission got
11 to work over CC&Rs, guidelines, and landscape things. My
12 personal experience is we are not qualified, nor do we have
13 the time to do that. So that having been said, fine.

14 CHAIR BURKE: Okay. I respect your opinion, Mr.
15 O'Donnell.

16 ORRY KORB: I should add one additional point.
17 There are times when I have in the past recommended language
18 for CC&Rs that has been rejected by the state Department of
19 Real Estate, so the last thing in the world we want to have
20 is a condition imposed by the Planning Commission that can't
21 ultimately be complied with because of some regulatory body
22 that we don't control.

23 COMMISSIONER O'DONNELL: Well as an example of
24 that, we had a long discussion about the stricter rule
25 applying. Somebody cannot adopt their own rules that are
stricter than the Town and have that tap the Town's

1 ordinance; it can't be done. You cannot by private
2 organization adopt CC&Rs that trump the Town's ordinances,
3 no more than they can the state.

4 So when we say the strictest shall apply, that's
5 just wrong. So it's unenforceable and it's wrong, and that's
6 why I say we're not qualified to do that, because you're
7 dealing with things the state has to approve, you're dealing
8 with things that have been litigated, you're dealing with
9 drafting. So when I see those kind of comments, I realize
10 they're from the best of intentions, but we're straying in
11 an area that we don't have expertise in.

12 ORRY KORB: If I can just add also for
13 Commissioner Burke's sense of well being about this project,
14 when I look at CC&Rs and review them, it is a standard
15 practice on my part to ensure that all of the Town's codes,
16 guidelines, approvals, et cetera, are incorporated expressly
17 into the CC&Rs where appropriate to ensure that they haven't
18 been dropped, that everybody who will reside in that
19 development forever will be aware of those in every context,
20 including future architectural changes that they may be
21 proposing for their projects, landscaping, et cetera.

22 CHAIR BURKE: Clarification. So Mr. Harris can't
23 have guidelines that are stricter than the Town's?

24 COMMISSIONER O'DONNELL: No, what I'm saying is
25 yes he can, so long as they do not conflict with the Town's
ordinance. That's all I'm saying.

1 CHAIR BURKE: Okay, that's fine. Mr. Kane.

2 COMMISSIONER KANE: When the Council listens to
3 this transcript of our discussion on the motion, I feel
4 compelled that it also hear that I have a Staff Report in
5 front of me that on slope density says the maximum number of
6 lots is 18, not 19, and I have a Staff Report in front of me
7 that say the EIR expresses concern for the density. I've
8 read that EIR and at 647,000 pages it wasn't an easy thing
9 to do.

10 Those concerns just don't go away. As guardians of
11 the hills, they just don't go away. But I can't argue
12 against the merit of the water argument; it's very difficult
13 to do. I don't like being over a barrel. I'm probably not
14 going to stand in the way of the water, but if the Council
15 wants to go and examine further the concerns of the EIR on
16 density and the issue the Town report puts in front of us on
17 slope density, that's fine. But I think it needs to be said
18 that that's here, even though the water clearly is
19 critically important.

20 CHAIR BURKE: For the audience, because I know
21 people have brought this up, that everything is consistent
22 here. I'm going to read that because I want to let people
23 know what Mr. Kane's concern is.

24 This is the California Environmental Quality Act
25 document prepared by the consultant. This is one of the

1 reasons we struggled with this project. I'm going to read
2 this section to you real quickly.

3 Basically they talk about an alternative to Mr.
4 Harris's project. They call it the General Plan Density
5 Alternative: Eliminate One Lot. "This alternative would
6 result in the development of 18 lots, which would represent
7 a density that is consistent with the maximum density
8 allowed by the Town's slope density formula. Since the
9 proposed 19 lot subdivision is inconsistent with the density
10 allowed by the Town, this alternative would increase the
11 project's consistency with the Town's General Plan and
12 zoning ordinance."

13 So I know some of you have said it's completely
14 consistent. The state consultant says it isn't. We've
15 struggled with it, but we also realize—we can't really use
16 the term overriding consideration, because that's a
17 technical term—but there are other things we need to take
18 into account here. That's why we struggled with this.

19 RANDY TSUDA: We should also just note that at
20 last week's meeting the EIR consultant did clarify what
21 happened subsequent to the draft EIR and noted that it is
22 consistent with the General Plan land use density and
23 clarified that through the adoption of the PD ordinance it
24 would be consistent with the Town's zoning code.

25 ORRY KORB: So to be clear, there is no
inconsistency with the General Plan, and there would be no

1 in consistency with the zoning code, because the PD
2 ordinance essentially trumps that provision of the zoning
3 code.

4 CHAIR BURKE: Right, but that's why we struggled
5 with it, because it did take a change in order to do it. I
6 mean we were basically a legislative change to change it to
7 make it consistent. Mr. O'Donnell.

8 COMMISSIONER O'DONNELL: Mike, I just also want to
9 be clear that on the community benefits we've all talked
10 about water, but there is a list of community benefits on
11 page eight of this report we have of November 9th and I want
12 to make sure the record reflects that I think we all agree
13 with those community benefits, namely the open space
14 dedication and scenic easements. We talked about the water
15 system. The extension of public utilities, including a
16 sanitary sewer, provision of additional fire protection,
17 i.e. hydrants and water source for the hillside. Emergency
18 access road connections to Gum Tree Lane, Shannon Road, and
19 Francis Oaks. Tree restoration program and improvements to
20 Gum Tree Road to improve site lines. So all of those are
21 also community benefits.

22 The other question I have for Staff is on page one
23 of that item. There are a number of findings that are there,
24 which I take to mean that somebody has got to make those
25 findings or make those recommendations. Are those

1 recommendations we should make as to findings? Yes, I think
2 that means yes.

3 I would like to then append those findings, which
4 I will read, to the motion that we've previously made that
5 we're hanging things on. The findings would be that the zone
6 change is consistent with the General Plan and Hillside
7 Specific Plan, subject to Mike's question and caveat.

8 The Town's traffic impact policy requires a
9 finding that the benefits of the project outweigh the
10 project's associated traffic impacts, and I believe we've
11 heard sufficient testimony on that part to agree with that.

12 The Town's infill policy requires findings for
13 approval of the project inclusive of excellence in design
14 and community benefit, and I think we've heard a lot of
15 testimony on the excellence of design and even more
16 testimony on community benefit.

17 And then we've already made findings for
18 recommending the certification of the Environmental Impact
19 Report.

20 So those are the findings I think we're supposed
21 to add, and as the maker of the motion I'm asking if I can
22 amend it to put it on?

23 COMMISSIONER MICCICHE: So add it.

24 CHAIR BURKE: Here's my last comment for the
25 motion. I would ask that the Commission either agree with me
or disagree with me that the proposed monument as shown on

1 sheet LD-2 is inconsistent with the gating and monument
2 provisions of the Hillside Development and Guidelines.

3 COMMISSIONER TALESFORE: I agree.

4 CHAIR BURKE: Okay. Thank you. I'll say the design
5 of that, not the concept of it. Commissioner Talesfore.

6 COMMISSIONER TALESFORE: First of all, Mr. Harris,
7 you've certainly embraced the concept of community benefit
8 and should be a model for that when we refer to it in the
9 near future.

10 In the meantime I do struggle with a couple of
11 lots. It's not referred to in here in the conditions, and I
12 want to hear what my other commissioners think about this.
13 Some of these things will come back to us, some of the
14 proposed lots will, et cetera, and yet I keep seeing over
15 and over that in the Conditions 9 and 10 that Staff is also
16 struggling with several of the lots.

17 I'd like to somehow expand on Condition Two, which
18 is architecture and site approval required; where it only
19 say a development and review committee may be the deciding
20 body for these site applications when the proposed home is
21 in compliance with the Hillside Development Standards and
22 Guidelines, I'd like to possibly expand that and clarify
23 that we somehow include Condition 10 in that, so that those
24 lots would come back to the Planning Commission. I'm sorry,
25 proposed development.

1 CHAIR BURKE: I'm looking at the latest conditions
2 as of today. What's the name of the condition?

3 COMMISSIONER TALESFORE: The latest conditions. Oh
4 well, I didn't check. They changed?

5 CHAIR BURKE: Mmm-hmm (Yes).

6 COMMISSIONER TALESFORE: Two, I'm sorry. I've been
7 reading so much.

8 CHAIR BURKE: Were you referring to Condition 12,
9 aesthetics mitigation measures?

10 COMMISSIONER TALESFORE: Yes, 12. Right. Exactly,
11 and that's fine, but I'm thinking that some of these things
12 need to come back to us.

13 COMMISSIONER MICCICHE: What, the lots?

14 COMMISSIONER TALESFORE: Well just the aesthetics
15 mitigation measures. Yeah, the lots.

16 CHAIR BURKE: Not the lots.

17 COMMISSIONER TALESFORE: I mean not the lots. I'm
18 sorry, the site and architecture on those lots.

19 COMMISSIONER MICCICHE: (Inaudible)?

20 CHAIR BURKE: No, it's not.

21 COMMISSIONER MICCICHE: A&S?

22 CHAIR BURKE: No. Let me paraphrase, and Staff
23 will correct me. Normally a PD comes back for site and
24 architecture to the Planning Commission. Under the
25 provisions of this PD, if I read it correctly, if they're
consistent with the Hillside Guidelines, which means if the

1 house would be 5,000 square feet or under and meet the other
2 conditions, they would not have to come back to us. They
3 could be approved at staff level, and for most of the lots I
4 think that's a wonderful thing because it really encourages
5 more compact, less visible, less impacting houses, because
6 who wants to come in front of us? That's my opinion. Okay,
7 continue, Commissioner Talesfore.

8 COMMISSIONER TALESFORE: So I'm asking that we
9 have some of these more difficult lots proposal (inaudible).

10 COMMISSIONER MICCICHE: They may not be approved
11 by the designer (inaudible)?

12 COMMISSIONER TALESFORE: Right, a lot of them come
13 back to us, especially the ones that are singled out here in
14 Condition 12.

15 COMMISSIONER O'DONNELL: I don't know how that
16 works.

17 COMMISSIONER TALESFORE: I don't either. I'm just
18 bringing it up for discussion. I just think that we see
19 those lots over and over again throughout the Staff Report.

20 ORRY KORB: Can I explain what I'm hearing? What
21 Condition 2 says is that any lot in essence that complies
22 with the Hillside Standards can be approved by a DRC.
23 Condition 12 says that Lots 2, 9, 11, 12, and 12 again, 14,
24 15, 17, and 19 shall be subject to a view analysis in
25 accordance with the Hillside Development Standards and
Guidelines.

1 What I'm hearing Commissioner Talesfore asking is
2 that those lots not be subject to the allowance under
3 Condition 2 and that those lots would have to come before
4 the Commission for approval, simply because of the fact that
5 they are required to go through the view analysis required
6 under the guidelines. That's what I'm hearing.

7 COMMISSIONER TALESFORE: That's perfect. Thank
8 you.

9 ORRY KORB: So the way that that condition would
10 be modified then would be to, say, in Condition 2 with the
11 exceptions of the same lots that are listed in Condition 12.

12 COMMISSIONER TALESFORE: Thank you. Perfect.

13 COMMISSIONER KANE: (Inaudible).

14 COMMISSIONER TALESFORE: I don't know. Would you
15 accept that?

16 COMMISSIONER O'DONNELL: Would you remind me
17 again, how many lots are we talking about?

18 RANDY TSUDA: We're talking about nine lots.

19 COMMISSIONER TALESFORE: Because of the view
20 issues.

21 COMMISSIONER O'DONNELL: I'm very troubled by
22 bringing nine of those lots back before the Planning
23 Commission.

24 COMMISSIONER TALESFORE: Well view seems to be a
25 very big something that we need to look at.

CHAIR BURKE: Commissioner Micciche.

1 COMMISSIONER MICCICHE: I think your comments
2 would be well noted and passed on to the Town Council, but I
3 for one have a firm belief that the process we've developed
4 for meeting the guidelines can be met by the DRC when it's
5 under 5,000, and it encourages people to come under 5,000.
6 That was the whole purpose of it, just to keep those things
7 low.

8 So I'm not in favor of making it part of the
9 motion, but I'm sure they'll add your comments in.

10 COMMISSIONER TALESFORE: Okay. I would still like
11 to see it in there.

12 COMMISSIONER MICCICHE: I'm not going to put it
13 in.

14 COMMISSIONER O'DONNELL: I would like know to who
15 else supports Joanne's feelings?

16 COMMISSIONER KANE: I do.

17 COMMISSIONER O'DONNELL: Because that would good
18 for the Council.

19 CHAIR BURKE: I do on some of those lots. I
20 wouldn't say all nine, but like Lot 2 and Lot 12 I
21 definitely think need to come back to the Commission,
22 because those are highly visible.

23 RANDY TSUDA: There's a couple of different ways
24 to get at the Commissioner's concern. One is that any lot
25 that's visible from a viewing platform would need to be
approved by the Planning Commission. Or another approach

1 would be to just specify exactly which lots you have the
2 most concern with and require those to come back.

3 COMMISSIONER TALESFORE: Okay.

4 CHAIR BURKE: I think Lot 2 and Lot 12 are going
5 to be the ones that this Commission is going to judged by in
6 the future as far as either, "What were you thinking?" or,
7 "Boy, you did a really good job there." And I think that's
8 Lot 2 and Lot 12, in my opinion, because Lot 12 is the one
9 that you kind of look out and you see Leigh High School and
10 the Los Gatos-Almaden and the viewing platform there, and
11 Lot 2 is the one that you can somewhat see, somewhat not
12 see, from Blossom Hill in Los Gatos-Almaden.

13 COMMISSIONER O'DONNELL: I don't have a problem if
14 we cut it down so we're really dealing with the more extreme
15 lots.

16 COMMISSIONER MICCICHE: The serious, yeah.

17 COMMISSIONER O'DONNELL: I'd go along with that.

18 COMMISSIONER MICCICHE: You might note that Lot 12
19 is mentioned twice in that Item 12 by the way.

20 CHAIR BURKE: That's because it's really visible.

21 COMMISSIONER TALESFORE: And along that same line,
22 if I may, for Lot 9 it says the condition is, "The maximum
23 height for homes shall be 25'," and this could either go as
24 a condition or just comments to Council.

25 ORRY KORB: That would be number 11 on the revised
recommended conditions.

1 COMMISSIONER TALESFORE: The new 11. I'm sorry; my
2 notes are on one page. "The maximum height for a home shall
3 be 25' unless it's determined that a home will be visible
4 from a Town viewing platform, in which case the height shall
5 be restricted to 18'." I'm wondering if it might be a good
6 idea for us to perhaps identify the lots that may be in that
7 condition that might be very questionable with us.

8 COMMISSIONER MICCICHE: No.

9 RANDY TSUDA: Is that Lot 2 and Lot 12 again?

10 COMMISSIONER TALESFORE: Yes. It's just I want to
11 throw it out there, if not as a condition, certainly as a
12 comment.

13 CHAIR BURKE: I think part of the problem is until
14 they come in with the site and architectural we don't know
15 which lots are going to be visible and which one aren't.

16 COMMISSIONER TALESFORE: All right. I'll pass that
17 along as a comment to Council.

18 COMMISSIONER KANE: Can we add it as an addendum
19 to the motion?

20 COMMISSIONER O'DONNELL: Well as the maker I'm not
21 going to consent.

22 COMMISSIONER MICCICHE: Well does it have to come
23 to me then?

24 CHAIR BURKE: Anything else? We have a motion, a
25 second, and a bunch of amendments. So I'm going to call the
question so we can move on here.

1 ORRY KORB: Before you call the question I just
2 want to clarify for the Commission one additional point.
3 There is stated as Condition 1, recommended by Staff, that
4 the PD approval would expire within two years unless vested.
5 We're going to look at that condition and determine whether
6 it's appropriate. Generally we don't impose expiration
7 periods on zone changes; zone changes are law. The only
8 thing that generally would expire a PD is if the property is
9 developed utilizing the underlying zoning allowance and the
10 PD goes away. Otherwise the PD remains a law until such time
11 as the law is changed, so we will probably be deleting that
12 condition. I'm just notifying you of that.

13 CHAIR BURKE: Question, Mr. Korb. Didn't the
14 Sobrato, wasn't the whole reason for the rapid need to
15 change the PD on the Sobrato was that the PD was going to
16 expire?

17 ORRY KORB: I don't recall, and if it was that was
18 something that slipped by, but generally, again, PDs do not
19 expire. It's just a question of whether the underlying
20 zoning is used and thus moots the PD approval.

21 CHAIR BURKE: Thank you. Okay, motion and a
22 second, and this is for a recommendation. All those in
23 favor? Opposed? It carries unanimously. Congratulations, Mr.
24 Harris.

25 ORRY KORB: For the audience, this is not an
appealable decision. It is a recommendation to the Town

1 Council. A public hearing will be calendared before the Town
2 Council. It will be noticed in the same manner as the
3 hearing was noticed before the Planning Commission. And
4 again, you may come and testify as you please.

5 CHAIR BURKE: We need a motion to adjournment.

6 COMMISSIONER MICCICHE: I'll make a motion to
7 adjourn.

8 CHAIR BURKE: Second for that motion to
9 adjournment?

10 COMMISSIONER TALESFORE: I second that.

11 CHAIR BURKE: All those in favor? Adjourned.
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For the attention of the Los Gatos Town Council at their meeting of
December 19, 2005

R/E the Highlands of Los Gatos development at the end of Shady Lane

First, I would like it known that this development has my full support. Mr. Harris has positioned his proposed lots very well; he has provided extensive open space around his development; and his proposed infrastructure will benefit not only his development, but also the surrounding neighborhoods.

I would like, in particular, to speak for the proposed emergency road connection between Shady Lane and the upper end of Francis Oak Way. Currently upper Francis Oaks Way has no emergency exit. This connection would allow emergency egress for eight to twelve residences in the event of fire. (Mr Peter Kahn perished in his house at 15431 Francis Oaks when it burned to the ground about twenty five years ago. Fire trucks blocked the road so that those of us at the end were trapped.) Our primary fire station is on Shannon Road. This proposed connection would provide almost straight line access from that station to upper Francis Oaks Way, as compared to the current, more circuitous route over Blossom Hill Road. Mr. Harris met with the involved Fire Department Authority on site recently and the route up the hill which would be satisfactory to the Fire Authorities was staked out.

There may be an objection to this connection because it would scar the hillside. To refute that objection let me point out the upper one half of the road has already been excavated (illegally) by the previous owner, so no more damage will be done there. The lower one half, in its upper third is thinly screened, but in its lower two thirds has considerable tree cover to screen it from the neighbors.

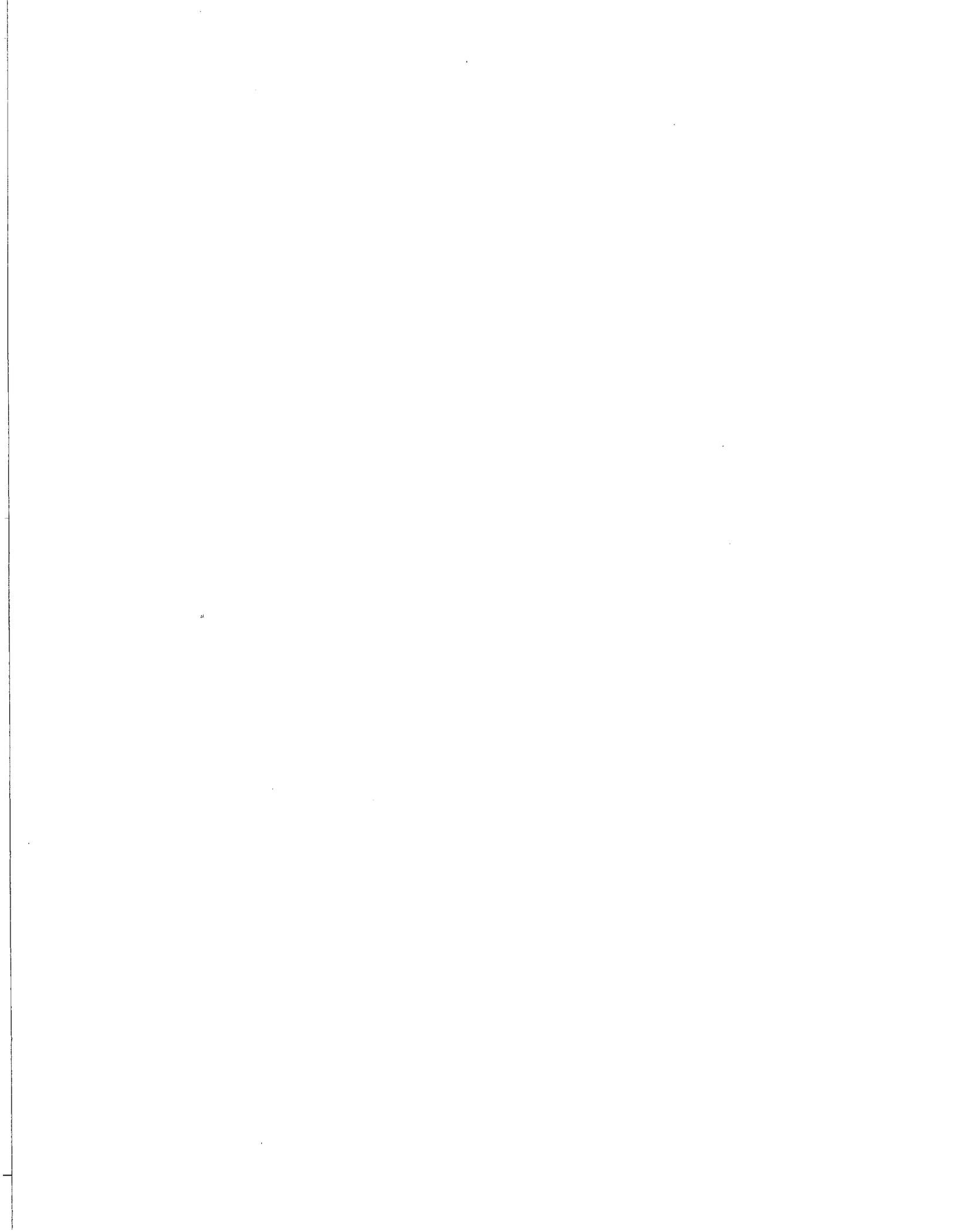
The road would also be for pedestrian equestrian and bicycle use.

We, at the upper end of Francis Oaks Way consider this connection to Shady Lane to be very important. We have been working on it for a long time. Over five years ago we spent considerable money (in legal fees) and countless hours in the process of obtaining easements over the adjacent property at 15500 Francis Oaks Way in anticipation of this connection. These easements will now connect with the connection to Shady Lane, should you approve it.

Don't let us down!

Lee McLaughlin
15626 Francis Oaks Way
December 12, 2005

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DEC 12 2005
TOWN OF LOS GATOS
PLANNING DIVISION





HIGHLANDS OF LOS GATOS
EMERGENCY ACCESS ALTERNATIVES

