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January 17, 2012

Steve Rice, Mayor
Los Gatos Civic Center
110 E. Main Street
Los Gatos, CA 95030

Sent via e-mail to: srice@losgatosca.gov

Marico Sayoc, Chairperson
Los Gatos Planning Committee
110 E. Main Street
Los Gatos, CA 95030

Sent via e-mail to: maricosayoc@yahoo.com

Greg Larson
Los Gatos Town Manager
110 E. Main Street
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Sent via e-mail to: manager@losgatosca.gov

Wendie Rooney, Director
Community Development Department
110 E. Main Street
Los Gatos, CA 95030

Sent via e-mail to: wrooney@losgatosca.gov

Re: 339 & 341 Bella Vista Avenue Applications
Applicant: Dan Ross

Gentlepersons:

I live with Mary Badame at 150 Maggi Court, Los Gatos.

Applications are pending for construction of two (2) homes to be built at 339 & 341 Bella Vista Avenue, Los Gatos, directly above us. The applications should be rejected.

The history of this project and the inconsistent application of the law warrant special attention by the Planning Commission and Town Council. Something is terribly wrong when Town personnel recommend a project with umpteen HDS&G exceptions/waivers, that is directly contrary to its prior recommendation(s), will seriously invade our privacy and the privacy of six to eight (6 - 8) other townhome owners in our complex, recommend a project that, in fact, will be a “nuisance” within the legal definition, and inflicts a collective financial loss on us of well over \$800,000.

As to the exceptions/variances requested, several seasoned contractors testified at the 10-12-11 Planning Commission hearing that they have never seen an application ask for this many exceptions, variances, and/or favors. A local architect, well familiar with the process, testified that the exceptions/variances are directly related to Applicant’s design (aka mass & scale), not undue hardships created by zoning regulations and/or specific conditions of these lots – the standard for granting exceptions/variances. Approving/granting any number of Applicant’s requests would re-set the bar for new construction applications – set a precedent contrary to the letter and spirit of the HDS&G.

Procedurally, the Applicant’s last presentation to the Planning Commission took place 10-12-11. The Commission rejected the proposal and advised Applicant to “*dramatically*” ... “*significantly*” reduce the size of both homes. In an e-mail dated 12-19-11 @ 10:54 a.m., Suzanne Davis, Senior Town Planner, advised a member of our neighborhood that they received the revised plans¹ “late Thursday,” 12-15-11. (**Exhibit 10**) These revised plans were meant to be addressed by the Planning Commission at the meeting set for 01-11-12. The delayed submission eliminated the staff’s ability to evaluate them for the 01-11-12 Commission meeting, so the next Planning Commission meeting to address this project will be 02-09-12.

¹ Consistent with Applicant’s regard for the HDS&G, the Planning Commission, Town Council, and his neighbors, and contrary to the “*dramatically*” ... “*significantly*” admonition of the Planning Commission, in the “revised plans” he reduced the Lot 1 home by 128’ and Lot 2 home by 49’. (**Exhibit 10**)

HILLSIDE SPECIFIC PLAN

Adopted as part of the Los Gatos General Plan. Pursuant thereto, in January 2004, the Town adopted Standards to be used in the review of Hillside Development Applications: HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES (“HDS&G”). Consequently, the HDS&G are part of the Los Gatos General Plan ... and the law. (Town of Los Gatos 2020, GENERAL PLAN, Community Design, H. Hillside Development, pg. CD 21)

The Town of Los Gatos Hillside Area and Viewing Platform Map (**Exhibit 1**) depicts large blocks of hillside acreage covered by the General Plan and the HDS&G. You will note thereon three (3) very small fingers of land, and only three (3), all on Bella Vista Avenue, well away from the main-covered area. They are equally protected. Special thought went into providing these three (3) fingers of land stated protections, probably because Bella Vista Avenue runs a ridge for 3/4th of a mile, a ridge that drops dramatically (50°, often 60-80°) 40-80’ immediately from the shoulder of the road. In one (1) section the ridge provides a nice backdrop for the Los Gatos High School baseball field. The Applications that are the subject of this letter apply to the middle finger (ironic) of land on Bella Vista Avenue, above referenced.

HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES (“HDS&G”).

F. Standards versus Guidelines.

“The Hillside development Standards and Guidelines contain both standards and guidelines. Standards are mandatory nondiscretionary regulations that must be followed. The words “shall” or “prohibited” denotes a standard of mandatory regulation. Guidelines are discretionary. ...

Development plans must demonstrate full compliance with all standards, and substantial compliance with all applicable guidelines whenever site conditions require and there is not a substantial reason why the guideline should not be followed. ...”

(Emphasis added)
HDS&G @ pg. 10

THE STANDARD EVIDENCE CODE OF THE STATE OF CALIFORNIA

“Shall” and “May” Construed. “Shall” is mandatory and “may” is permissive.

Evid. Code §11

INTERPRETATION OF LOS GATOS REGULATIONS

Construction – Intent of Legislature or Parties – General Subversive to Particular Provisions.

In the construction of a statute the intention of the legislature, and in the construction of the instrument to intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

(Emphasis added)
Cal. Code of Civ. Proc. §1859

PROPOSED PROJECT - Violations

The project should be rejected for the following reasons:

1. Traffic Safety
2. Lot line change
3. Grading Standards
4. Building height, bulk, & mass
5. Set-backs
6. Floor Area Ratio ("FAR")
7. Architectural Design for Privacy & Respect for
Neighbors
8. Tree Preservation
9. Geologic instability
10. Fire Hazard
11. Drainage
12. Shade
13. Neighborhood support

1. Traffic Safety. Applicant requests a variance for his driveway, allowing him to make it shorter.

Several families living on Bella Vista Avenue testified at the 10-12-11 Planning Commission hearing that the driveway(s) for this project are dangerous to children, joggers, bicyclists, young drivers, Mothers shuttling their High School children to school early in the morning, and basically anyone coming down the road. The road curves, the view is blocked; it's guesswork pulling out. Several Planning Commissioners seemed concerned.

This application has been pending for over five (5) years, yet no one in Planning identified the problem, let alone attempted to solve it.

I'll spare you the legalese on roadway and roadside safety, the Town has an attorney who should be well familiar with the concept of negligence and/or deliberate misconduct. In sum, the Town of Los Gatos is obligated to make our streets reasonably safe. It is now on notice that if anyone gets hurt as a result of this traffic condition, the Town of Los Gatos will be held accountable in a Courtroom.

Let's hope they are only minor injuries, with ample coverage ... and do not involve children.

2. Lot Line Change. The proposed lot line change is illegal. (State: Gov. Code §66412(d); Los Gatos General Plan: “Lot line adjustments are reviewed according to Section 66412(d) of the Government Code of the State of California. ... If the lots are currently nonconforming as to size, they cannot become more nonconforming (smaller).”²

Aside from that illegality (above), the representations made by Applicant to the Planning Committee (10-12-11) that the lot line change is designed to save a protected tree appear to be an outright lie, not a mistake. (**Exhibit 2**)

By design, the lot line moves North, taking land *from* Lot 2, giving it *to* Lot 1. The new lot line will pass through the center of a large, protected Oak Applicant was not allowed to cut down. (Tree #2) What Lot 2 gave up was unusable land – the building footprint for Lot 2 could not be placed in the Southern-most part of the lot beyond its own 8’-Southern setback *from the same tree*. With the new lot line, Lot 1 now has an 8’- Northside setback.³ Without this gift, the proposed home on Lot 1 simply would not fit.

In essence, between Applicant and his cousin, they agreed to share the area *dedicated as unbuildable* because they could not get permission to cut down that tree. This tactic, this gift to Lot 1, still leaves Lot 1 a non-conforming lot.

Credibility is always an issue when discretion is being exercised. The Town should not disregard this charade between family members to make themselves appear to be friends of the environment ... or this Town; they are neither.

² I can not provide you with a citation of the Los Gatos regulation from which I take this quote. I can not figure it out from the Town’s website. Instead, see **Exhibit 13**.

³ The proposed 17’ foundation “cuts” into the hillside for both homes, each ~8’ from this old/large/sprawling tree (44.6 inch trunk diameter @ 3’, 45-65’ canopy), will kill it, anyway. (02-08-05 Arborist’s Report @ pg. 17, Tree #2)

3. Grading Standards.

Standards:

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

Maximum Grade Cuts – 8’ (From Chart)

(Emphasis added)
HDS&G @ pg. 17

The Applicant proposes two (2) grade cuts totaling **17 feet**. The first is 4½’. Three (3) feet later, another 12½ foot cut is required. Because of their close proximity, the two (2) “cuts” should be considered as one (1). To further aggravate the problem, the last 6-10’ of the downhill edge of the house sticks up ~6’ above the natural slope, indicating the cuts should be even more drastic.

The above passage from the HDS&G is a “Standard;” full compliance must be demonstrated. (HDS&G, Standards versus Guidelines, page 3) “*These are maximum numbers ...*” (above) Per the HDS&G, only a reduction to this “*maximum*” is allowed. (See above) Accordingly, what Applicant seeks is not within the authority of the Town to provide.

Note: The elevation diagrams, e.g. A-6, provided by Britt/Rowe, do not accurately depict the slope, ergo the “cuts.” Instead, they depict homes on a 30° slope. The average slope is conceded to be +50°, with Lot 2 being +60°. Use a protractor (provided) and see if it makes a difference in how you look at this excavation. (**Exhibit 11**)

The proposed “cuts” clearly demonstrate that the proposed construction is inappropriate for this site – the two (2) proposed homes will not *blend* with the contours of this +50° hillside - +60° for Lot 2 - but instead, stick out grotesquely.

4. Building height, bulk, & mass.

a. Height.

Standards:

1. The maximum allowed height for homes in hillside areas shall be 25 feet. Building height shall be measured in compliance with provisions of the Town's Zoning Ordinance.
2. The maximum allowed height is a building's tallest elevation shall not exceed 35 feet measured from the lowest part of the building to the highest part, except buildings extending above a ridgeline or that are visible from a viewing platform where the maximum height from the lowest to highest points shall not exceed 28 feet.
3. Ridgeline and visible homes shall not extend more than 18 feet above the existing grade.
4. The height of the lowest finished floor(s) of a structure, excluding cellars, shall not be more than four feet above the existing grade to ensure that buildings follow slopes.
5. Three-story elevations are prohibited.

(Emphasis added)

HDS&G @ pgs. 35-36

The height of these proposed homes from the rear base to the 2nd floor roofline is 36'; 8' above the "*shall not exceed*" limit. (See #1 & 2, above) Applicant's architect, Britt/Rowe, says: "*There is no view of the site from Downtown, Hwy 9 corridor, Hwy 17 or other view points given its location.*" (Undated letter stamped "RECEIVED" 09-01-07) You most certainly can see them from Hwy 9, and had Applicant properly "netted" the property, you could see it even better.

The houses are not supposed to extend more than 18' above the existing grade (# 3, above), yet, by design, much of the house is close to 25' above existing grade. (A-7 Diagram)

The "*existing grade*" (and foundation) at the downhill-most point is ~6' below the lowest part of the house – it's elevated by that ~6'. (See #4, above)

With the attached garage, these houses are three (3) story structures. (See #5, above)

b. Bulk & mass.

Standards:

1. Buildings shall be designed to minimize bulk, mass and volume so as not to be prominently visible from a distance or from surrounding properties.
2. Buildings shall be designed to conform to the natural topography of the site and run with the contours. Blending with the existing terrain reduces the appearance of bulk.

(Emphasis added – the whole thing)

HDS&G @ pg. 36

Lot 2's front-yard setback is only 5½'. The downhill setback at the Northern-most point is only 12'. The home is 36' tall; its downhill foundation starts at the ceiling level of our 2nd floor living room. You can't stuff more home into such a narrow lot, nor make it any more prominent for the downhill residents – we can wave to them from our bed. As to the rest of Los Gatos, these chesty houses will be clearly visible.

As to mitigation, trees are not viable cover for these homes, *even really big ones*, because, inter alia, there is no space between them and the downhill trail for them to grow.

With respect to the design "*conform[ing] to the natural topography of the site and run with the contours*, (#2, above) this project is depicted in the "*Don't do this*" diagrams under this section. (HDS&G @ pg. 37 & 41)

Applicant recognized the fact that this project was an elephant before he bought it. He knew the previous owner of this property sold it because he could not get his proposed project approved (2000 – 2003) in large part because it exceeded the FAR. (**Exhibit 3**) I believe the prior home proposed was smaller than either of Applicant's proposed homes and was to cover both lots. To sidestep the HDS&G "standards" (above) and the same problems the prior owner encountered that were re-iterated to him by Joel Paulson, Assistant Planner, Applicant has been making friends with Town employees.

ANYONE standing on the trail at the foot of these lots, looking up, understands my point. You have an obligation to orient yourself to this problem before making decisions on it – it's not too inconvenient to do so, the lots are within walking distance of Town Hall.

5. Set-backs.

	Lot 2 339	Lot 1 341	Required (29.40.270)
Front	5.5'	7'	15'
Rear	12'	25'	25'
Northside	12.6'	8'	20'
Southside	8'	2'	20'
Height ⁴	36'	36'	28'

Lot 2 is 5½' from the front property line. They claim it's 12½' from the rear property line but that includes 5' of the gravel walkway/trail at the base of the hill that drops (80°) 3-5' from the natural grade of the hill. The topsoil is so soft that the 3-5' drop crumbles down to the trail. Aside from stuffing the house into a narrow property, there is no mention of a retaining wall at the base.

“To limit the intensity of new development ...” “Building setbacks shall increase as mass and height increase.” (Emphasis added; Gen. Plan, CD-2, 2.1) If the application is to build homes 3-4 times the FAR, *increasing* the setbacks is more appropriate; in fact, it's mandated (“shall”). To gauge what is appropriate, here, start with a FAR-sized home *and work up*.

Applicant requests set-back waivers/variances of 50-90% of minimum Standards set for homes anticipated to be 25-30% (per FAR) the size of those proposed.

⁴ I threw in “Height” to give this panel a better concept of “stuffing.” Also consider the project's downhill foundation is 15-20' above our foundation, and starts just below our 3rd floor. The height standard listed above is per HDS&G @ pgs. 35-36.

6. Floor Area Ratio ("FAR")

A. Design Objectives:

Maximum allowed gross floor area. The maximum allowable gross floor area for homes subject to the Hillside Development Standards and Guidelines is determined using a floor area ratio (FAR) adjusted for slope as provided in Table 1, below. However, achieving the maximum floor area allowed is not guaranteed due to individual site constraints. The priority is to comply with the standards and guidelines rather than designing to the FAR. The FAR is a numerical guide and achieving the allowable square footage is not a goal. Greater weight shall be given to issues, including but not limited to, height, building mass and scale, visual impacts, grading and compatibility.

(Emphasis added)
HDS&G @ pg. 27

Allowable floor area for a 5240 sq. ft. lot (currently 4,106 sq. ft. Lot) on a concededly 50° slope (it's steeper) is 723 sq. ft. The Applicant proposes to build a 2728 sq. ft. home – four (4) times the maximum allowed. (Note: the proposed cellars do not meet the definition set forth in Resolution 2002-167. All of that space must be included in the FAR comparison. And further note: Applicant has a history of miscalculating it. (**EXHIBIT 3**))

The FAR adjustment increases as the slope increases, i.e. 10-20° slope = 10% adjustment, 20-30° slope = 30% adjustment, and tops out at 30° slope, i.e. 30°, 40°, 60°, 80° slope, same adjustment – 60%. Lot 2 of the project has a +60° slope. Applicant admits the average slope for the two (2) lots is +50°. Is the winning argument: the steeper the slope the greater the need for disregarding the FAR adjustment? Based on the Planning Department recommendations, it is. The HDS&G dictate otherwise. Here, Applicant wants FAR completely eliminated.

Oh, but wait:

Exceptions to maximum floor area.

The Town Council or Planning Commission may approve residential projects greater than the maximum allowed floor area (but it is not guaranteed) when all of the following conditions apply:

1. The development will not be visible from any of the established viewing platforms.

2. There will be no significant impacts on protected trees, wildlife habitat or movement corridors.
3. Any grading necessary to accommodate the building area that exceeds the allowed FAR or any accessory building will be minimized.
4. All standards and applicable guidelines are being met. ...
9. There will not be a significant visual impact to neighboring properties.

(Emphasis added)
HDS&G @ pg. 29-30

The Planning Commission/Town Council may not approve residential projects in excess of the FAR without satisfying items 1-9, above – all of them. Here, at least five of nine (5 of 9) conditions, above itemized, cannot be met. (Also see 29.40.075(c))

As to Applicant's plea: *I just want to be treated like the owners of 145 Bella Vista Avenue*. Who wouldn't? Recall, that applicant pulled a fast one (1) by *demanding adherence to the Town Code* to get approval of two (2) cellars for one (1) house⁵; thus eliminating 2053 square feet of area from the FAR. They forced removal from the FAR calculation more living area than they had to claim.

145 Bella Vista Avenue is not a fair comparison because:

1. Two (2) cellars, eliminating 2053 sq. ft. from FAR.
 ("... *Mr. Kennedy is pushing the envelope* ..." 11-01-01 Hearing Trans. 228:19-20)
2. 24° slope (versus 50-60° slope).
3. FAR, as written, was strictly enforced.
4. Built before HDS&G enacted.
5. Downhill is a baseball field (no residents).
6. Minimal tree removal.

⁵ Two (2) cellars; that was a good one, prompting the Town to change the definition of a cellar.

7. Architectural Design for Privacy and Respect for Neighbors:

A. Design Objectives:

The standards and guidelines in this section are intended to encourage architectural design that is:

1. in harmony and visually blends with the natural environment,
2. responsive to site constraints and opportunities,
3. compatible with the surrounding neighborhood and respectful of neighbors, and
4. respectful of the rural character of the hillside

(Emphasis added)
HDS&G @ pg. 31

The proposed homes are contrary to items 1 – 4, above. These homes are not in harmony with anything or anybody; they are stuffed into our backyards, towering over us, pointed directly into our bedrooms *that are on the 3rd floor*.

Highlighting/explaining the abuse and disregard for items 1 – 4, above, would add +20 pages to this letter. A quick visit to the site by those responsible to vote on the project would serve the same purpose.

B. Design to be neighbor friendly.

Protecting the privacy of the neighboring homes is a high priority in the siting and design of a new house or addition. The following design standards shall be followed to the greatest extent feasible to ensure privacy to surrounding neighbors.

Standards:

1. Privacy impacts shall be addressed and resolved during the constraints analysis phase and initial design stage, not with mitigation measures imposed as an afterthought. Sight lines shall be studied so that windows and outdoors areas are placed to maintain privacy.

Guidelines:

1. The following design guidelines should be implemented to the greatest degree feasible where privacy impacts are of concern;
 - a. Minimize second-story windows facing close neighbors properties.
 - b. Orient upper floor windows, decks, and balconies to avoid impacting the privacy of neighbors.
 - c. Incorporate screening measure (e.g., solid railing walls, lattice work, or planters) to obscure lines of sight to neighboring properties
 - d. Limit the size of decks and balconies to six feet in depth in areas where privacy is a concern. This will limit their use to passive activities.
 - e. Use landscaping to screen view to your neighbor's living areas most sensitive to privacy. Use evergreen trees and shrubs to provided year round privacy.
 - f. Existing vegetation that protect privacy should not be removed.
 - g. Screen and control noise sources such as parking, outdoor activities, and mechanical equipment (e.g., air conditioning and pool equipment).
 - h. Locate outdoor activity areas adjacent to neighbors' out door activity areas rather than in close proximity areas (bedrooms).

(Emphasis added)
HDS&G @ pg. 32

“Privacy impacts,” are “standards” - they must be (aka “shall”) “addressed” **and** “resolved.” They were “addressed” in the MND dated June 2011 (**Exhibit 8**), but not “resolved.” The audacity of the MND “resolutions” listed is not surprising having dealt with their ilk in other settings. That Planning Department personnel could walk the project and agree with their report/declaration absolutely amazes me. Seriously, it’s not possible.

With respect to the Guidelines (items a-h, above), due to the placement of each home, none of these guideline “resolutions” will eliminate or even alleviate the privacy invasion – the proposed homes are too close; the proposed homes are too big - we will be intimately familiar with their daily activities, and they ours. I addressed most of these items, and voiced my opinion of the reliability of the Mitigated Negative Declaration in a letter dated 07-01-11, previously submitted. (**Exhibit 9**)

In my letter to the Town of Los Gatos Community Development Department, dated 07-01-11, I addressed the issue of these homes being a nuisance within the definition of the California Civil Code. It bears repeating: *“Anything that is ... indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.”* (Cal. Civil §3479). Approving either of these homes is relegating us to living in a fishbowl. I think that qualifies as a nuisance.⁶

8. Tree Preservation

Standards:

1. Existing trees shall be preserved and protected in compliance with the Town of Los Gatos Zoning Regulations and any additional tree protection specifications adopted by the town.

HDS&G @ pg. 54

The arborist's report indicates that 13 of 20 “regulated” trees, including 3-4 Black Oaks over 100 years old, can be eliminated – they say they are diseased. “Degenerative diseases” are not really diseases, they’re a sign of aging, e.g. degenerative disc disease. Five (5) more trees will be “adversely impacted” by the construction ... so they, too, will be dead. These trees add character to our Town and our neighborhoods (uphill and downhill). Because you can cut them down does not mean you should. In their place will be two (2) spanking new, fat-faced homes staring down over the Town and our complex ... separating the two (2) surviving trees (of 20).⁷

Also see 07-01-11 correspondence re: MND (**Exhibit 9**, pg. 6)

⁶ In *City of Monte Sereno v. Padgett* (2007) 149 Cal.App.4th 1530, the City alleged that the height of a fence and location of a few trees was a nuisance. I think I can make my case, here.

⁷ With the proposed Grading (See: “3. Grading Standards,” *supra*), one (1) of the two (2) trees allowed to live (Tree #2) will be dead without the need to cut it down, other than for firewood. In essence, of 20 “regulated trees,” only one (1) will survive the construction.

9. Geological Hazards:

Standards:

2. Construction shall be avoided in areas with geological hazards (e.g., *slope instability* seismic hazards, etc.) as identified in the in the site specific geological investigations and reports, unless adequate mitigation design measures are proposed to achieve a low level of risk.

HDS&G @ pg. 23

The hillsides of Los Gatos are notoriously soft. In the Town's file, the Geological Report compares the project site with the visible portion of the Saratoga-Sunnyvale Road directly beneath Bella Vista Avenue (overpass area). The pictures within the report clearly show soft dirt twenty feet (20') deep. Bedrock appears to be something deeper than 22 feet – the maximum depth of their borings – so we do not know where the bedrock is (how deep?). Several geological reports in the Town's file itemize serious concerns about the area and insufficient data being provided, all of which concerns are eventually blown off with a simple: *no problem*.

The proposed two (2) houses will cut away the *alluvial soil*⁸ in two (2) large swatches, each ~60' x 30', with "cuts" up to 17' deep. Lot 2 is only 50' deep. Couple this removal with the need to remove surface vegetation for a good distance to each side of the two (2) houses. We have two (2) homes in soft dirt. Worse, the project weakens the hill's slide resistance. Bella Vista Avenue residents, the road itself, and the downhill complex – ours – are at risk.

10. Fire Hazards:

Standards:

1. Building locations shall be selected and structures designed to minimize exposure to wildfires.
3. Development shall have adequate fire access.
4. A dependable and adequate water supply for fire protection and suppression purposes, as required by the Santa Clara County Fire Department, shall be provided for all properties ...

HDS&G @ pg. 24

⁸ "Alluvial soil" is sediment deposited by moving water.

Guidelines:

1. Development shall avoid areas subject to severe fire danger. In order to achieve this, development should:

- a. be set back from the crest of the hill
- b. not be located at the top of a canyon
- c. not to be located on or adjacent to slopes greater than 30°.
- d. not be located within densely wooded areas

HDS&G @ pg. 25

The applicable area is at the crest of a ridge and slopes downward in excess of 50° (60° for Lot 2). Access to the back of these proposed homes is poor, at best – only via a narrow, gravel, downhill trail running parallel with the rear-face of these homes. The trail has no water supply.

A fire at either of the proposed homes would likely burn both of them to the ground, then run downhill to the Maggi Ct. Properties, less than 25 feet away.⁹ Because of the steep slope and limited access, the back of these homes is secure from fire fighting equipment and effort.

Applicant may have solved the tree-fire issue by cutting them all down, however, the house-fire issue remains. Has the Fire Department been consulted? It's not in the Report.

⁹ Note: the proposed homes would be approximately 25 feet away laterally and tower over the condos on Maggi Court, making it an easy jump for ambers. Trees between us – for privacy?? (proposed but not functional idea) - that would only enhance the threat/risk.

11. Drainage

Standards:

1. Runoff shall be dispersed within the subject property to the greatest extent feasible. Runoff concentrated that requires larger drainage facilities shall be avoided.
2. Upslope drainage shall not negatively impact downslope development.
3. Natural drainage courses shall be preserved with any native vegetation intact and shall be enhanced to the extent possible, and shall be incorporated as an integral part of the site design in order to preserve the natural character of the area.

HDS&G @ pg. 21

The roofs of these two (2) houses are massive (combined area of +3024 sq. ft.) During the rainy season we can expect substantial runoff to a drainage system. Doubtful it will be pumped uphill to Bella Vista Avenue,¹⁰ but instead, allowed to run downhill using a gravitational system ... and into our complex.

With respect to the vegetation currently protecting us from excessive drainage, it will be gone, e.g. most of Lot 2 (60-70%) will be covered by the building with the balance being cleared away from the homes.

A quick rejection of this argument is cavalier. It was certainly an issue in a less threatening site addressed by Suzanne Davis, Senior Planner. (Also see **“HDS&G - Inconsistent Enforcement,”** *infra*)

¹⁰ Note: the Town file reflects uphill pumping of sewage/drainage. Again, doubtful. Regardless, if the pump fails, or is not turned on, this water (and sewage?) will flow freely into our back yards ... along with a good portion of the hillside.

12. Shade. The California Environmental Quality Act (CEQA; 14 Cal. Code of Regs. §15070) requires a shade/shadow report. A Negative Declaration is required. (Pub. Res. Code §21080) Casting a shadow over our residence for “*more than three (3) hours*” is presumed to have a “*significant*” impact on us. If the shadow/shade lasts only 2½ hours and therefore not technically “*significant*,” what is it? Inconsequential?

The Shadow Study diagram (A-9; **Exhibit 12**) is not accurate. First, the lines depicting sun rays in Winter are bass-ackwards. They have the sun higher at 9:00 a.m. than at 12:00 p.m. Second, the 12:00 noon angle shows 30°; the 339 Bella Vista home towers +50’ above us, that keeps the shadow on our home. Third, the diagram is supposed to depict how the shadows affect the buildings around them; no buildings are depicted. We are only 25’ away. Please see comp. (**Exhibit 12**)

Finally, Mary read a Shadow Report written by Geier & Geier that was in the Town’s file. It reported shadows on our property for in excess of three (3) hours. She asked for a copy. Suzanne Davis refused to provide her with a copy. That report is no longer in the Town’s file. (Also see “**HDS&G - Inconsistent Enforcement**,” infra, for further Suzanne Davis references)

13. Neighborhood support. Of the 69 pages of public comments made part of the 10-12-11 Planning Committee meeting record (Exhibit 11 of Hearing record), not one (1) neighbor supports this project.

HDS&G - Inconsistent Enforcement

Dan Ross is the primary, if not exclusive applicant on this project. The other named owner is his cousin who lives in Utah and probably not involved, at all.

Pre-Dan Ross history of this site is appropriate. The Planning Department of Los Gatos stated:

COMMENTS/CONCERNS:

11. The Town sets *a high priority* in preserving its hillsides, natural views, and the character if its neighborhoods. *This site is in a very visible location* that has the potential to greatly impact these views and the character of this neighborhood. The Planning Department can not recommend approval of the design as submitted because of *its potential to greatly impact these views, is not in keeping with the residences in the area, and has potential privacy impacts with the residences of the Bella Vista Development* that is now under construction. The applicant should consult with an architect to develop a design that addresses *the massiveness of the rear elevation*, articulates the bulk of the second story from the lower story, *minimizes privacy and view impacts*, minimizes grading and retaining walls, and preserves the sites existing trees. ...

(Emphasis added)

Bella Vista Proj. App. PRJ-97-020

Rec: 02-12-97

Similar concerns were voiced by the MAYOR AND TOWN COUNCIL on April 3, 2003:

DISCUSSION:

The Planning Commission considered this matter on February 26, 2003. The Planning Commission unanimously denied the appeal due to lack of progress. The Commission further directed

the applicant to, should they resubmit an application, incorporate the following:

- Merge the two lots, APN 529-23-015 and 529-23-016;
- Home and garage *shall not exceed the FAR* and be compatible with the characteristics and conditions of the lot; ...

(Emphasis added)

Mr. Ross knew or should have known the history of this property when he purchased it on or about 12-23-04 for the focused purpose of building on it. He's a seasoned developer of SFD (He has owned +10 homes in Santa Clara County and developed several).

In 2005-2006, Mr. Ross' (Applicant's) Application – this project – was reviewed by Joel Paulson, Assistant Planner. Among the “DEFICIENCIES” he noted:

06-14-06 (Exhibit 3)

2. Reduced driveway variance
3. FAR *calculation* is not correct
4. Max height exceeded
9. Cellar exception to FAR incorrectly *calculated*
12. Provide a Letter of Justification/Description detailing how the proposed project is compatible with surrounding neighborhood, complies with HDS&G, complies with the General Plan. Justification for the variance, reduction in required setbacks, and exceeding the FAR is also necessary.
13. Speak to the neighbors (he did not)

Mr. Paulson, Assistant Planner, was taken off the case and it was assigned (?) to Suzanne Davis.

Appropriate, here, is the attitude Suzanne Davis – *and this Town* – had toward enforcing the HDS&G circa 2006, prior to her taking the Dan Ross project. In a project she was assigned from before 05-08-06 until 09-24-08 (107 Colorado Court, Los Gatos), a vacant lot way up in the hills, a SFD project objectionable to possibly one (1) neighbor from afar, her report to the Planning Commission (05-08-06; **Exhibit 4**) recites the same, numerous objections I set forth, above; she quotes the same nine (9) “*criteria for allowing an exception to the FAR*” and references that Applicant to the

same HDS&G as apply here. (Ibid; 05-10-06 Report, pgs. 4-5) She says the house proposed is too large (Ibid @ pg. 3), she's concerned about the +30° slope (it wasn't much more, if it was even a 30° slope; Ibid), the height (30') was too great (Ibid @ pg. 5), the grading cuts too deep (less than this project; Ibid), drainage is questionable (Ibid), too many trees will be cut down (fewer than this project; Ibid @ pg. 6), and ironically refers Applicant to specific violations of the HDS&G and General Plan. (Ibid @ pgs 7-8) You don't see that detail – itemized violations – in her report on Mr. Ross.

The Colorado Court Applicant was invited to re-submit plans, which they did. Ms. Davis' response – there was none, the case had been transferred to Joel Paulson, Assistant Planner – the same guy taken off this project. His response was “wake up,” comply with the FAR, comply with the HDS&G, and comply with the General Plan. (**Exhibit 5**; 09-24-08 Report)

To date, 107 Colorado Court has not been developed.

Back to this project; not to be deterred by Mr. Paulson, Assistant Planner, after the initial application of Mr. Ross was denied, instead of modifying his Plans, he becomes a member of the 2020 General Plan Update Advisory Committee. He remained on the Committee through 2010. Mr. Ross was present for every committee meeting I could confirm. Very frequently, almost always, present was Wendie Rooney, who, we all recall, signed off on the Environmental Impact Report re: Mitigated Negative Declaration submitted on behalf of Mr. Ross (**Exhibit 8**) and the 10-12-11 Staff Report with the “soft approval” recommendation. Also present was Suzanne Davis, who, too, signed off on Mr. Ross' “soft approval” Staff Report.

In 2010, to further ingratiate himself with those from whom he wants special favors, Mr. Ross completed the Los Gatos Chamber of Commerce Leadership Program.

From early 2011 to present, Mr. Ross has been an active member of the North-40 Advisory Committee. A primary member of the North-40 committee is Wendie Rooney. I don't have attendance records for this committee but I'd bet Dan Ross was present and helpful as often as he possibly could.

Mr. Ross and his wife make it known that they are strong supporters of Council Member Diane McNutt, being named “Individual” endorsers of note in at least one (1) campaign brochure/handout for her November 2010 election. (**Exhibit 6**)

In March 2011, Mr. Ross graciously volunteered his band, The Blue Rockers, to play at a Friends of the Library fundraiser. (**Exhibit 7**)

Mr. Ross and Suzanne Davis are “Facebook friends.” GIVE THIS ONE MORE THOUGHT. Dan Ross stands to make a substantial profit from this project ... at our expense – a conflict. The Senior Planner (Suzanne Davis), with oversight responsibilities on this project, has provided or will provide The Town’s recommendation *on this project*. One (1) of them had to ask the other to be my facebook friend. The other had to acknowledge – Yes, I would like that. A developer asked a Town planner? A Town planner asked a developer? Before? Or after the assignment of this project? No scenario bodes well.

Mr. Ross advised me – twice (2x) - along with a group of others from our neighborhood, that he was getting help from someone in the Planning Department *on this project*.

Mr. Ross advised me – twice (2x) - along with a group of others from our neighborhood, that he was told by some member of the Planning Department not to bother submitting plans compatible with the FAR *on this project*.

Dan Ross is one (1) of you: a representative of the residents of Los Gatos.

OTHER

1. City of Monte Sereno v. Padgett (2007) 149 Cal.App.4th 1530
2. Los Gatos Citizens for Responsible Development vs. Town of Los Gatos (09-14-11), Case# 1-11-CV-209214 [The Netflix issue]

I think we are all aware of the problems created by selective enforcement of the law. And if the Town is not going to enforce the law, do you really want to make all these exceptions for an insider?

EXHIBITS

<u>Exh. #</u>	<u>Item</u>
1	Hillside Development areas
2	05-16-06 Correspondence: Dan Ross to Town of Los Gatos
3	06-14-06 Report – Joel Paulson, Assistant Planner (Bella Vista)
4	05-08-06 Report – Suzanne Davis (Colorado Ct)
5	09-24-08 Report - Joel Paulson, Assistant Planner (Colorado Ct)
6	November 2010 Election Brochure
7	March 2011 Friends of The Library fundraiser
8	June 2011 EIR: MND
9	07-01-11 PKT complaint re: MND
10	12-15-11 E-mail re: Submission of Revised Plan
11	Grading diagram (modified) & protractor
12	Shadow diagrams (2)
13	Lot line Regulation – Town of Los Gatos

CONCLUSION

The presentation(s) made to you by Applicant and your own staff is not accurate, not reliable, tainted, not in compliance with the law, and very favorable to a Town insider.

For the Town to approve either of these Applications, it must waive virtually every major Hillside Standard it codified and be deliberately complicit in Applicant's invasion of our privacy.

The law should be uniformly applied. Using the "Dan Ross Model," one (1) could argue that the HDS&G should not be enforced at all – they certainly did not apply to Dan.

I like Town Councilperson Diane McNutt's comment to Wendie Rooney, a North-40 advisory committee member and speaker at the hearing of 01-10-12: I want a presentation that "*reflects the Town's values and priorities.*" She gets it. Why is this attitude and direction not impressed on Town planners? Or Town advisors (Dan Ross)?

The applications should be rejected; the law and integrity of the planning process dictate you do so ("shall").

Respectfully,

A handwritten signature in black ink, appearing to read 'P. Tillman', with a long horizontal line extending to the right.

Patrick K. Tillman

cc: Mary Badame

EXHIBIT 1

Town of Los Gatos Hillside Area and Viewing Platform Map

Northwest Corner of the Intersection of
W. Main Street and Bayview Avenue

West of the Intersection of the Southbound
Highway 17 On-Ramp and Los Gatos-Saratoga
Road (Highway 9)

Southwest Corner of the Intersection of Blossom
Hill Road and Los Gatos Boulevard

Northwest Corner of the Intersection of Selinda
Way and Los Gatos-Almaden Road



LEGEND

- VIEWING PLATFORM LOCATIONS
- HILLSIDE AREA

EXHIBIT 2

May 16, 2006

To: Town of Los Gatos Planning Department

From: Dan Ross

Re: Letter of Justification-Single Family Residence with no demolition.

I am writing on behalf of myself, owner of 341 Bella Vista Avenue and Mr. Jake Peters, owner of the adjacent lot at 339 Bella Vista Avenue. We have the mutual goal of each building a home, and have decided to pursue this process jointly to achieve some economies of scale as well as present a more cohesive plan to the Town and surrounding neighbors. We'd like to offer the following points:

- 1) Our plans have been designed around Town guidelines, fit into FAR requirements and follow the General Plan recommendations.
- 2) We have taken our design cue from the surrounding homes on Bella Vista, as well as the Townhomes on the downslope of our lots. Our goal is to build homes that successfully integrate into the existing neighborhood.
- 3) Our "footprint" cue comes from 145 Bella Vista, a more recent approved and constructed home on the same West downslope side of Bella Vista as our lots.
- 4) After site and tree location/arborist analysis, we are asking for a lot line adjustment as part of this application. Viewing the 2 lots, it makes sense to move my Northern lot line approximately 15' to the North. This will put one of the large Oak trees on the lot line, between the proposed homes. Our goal is to save this tree, and make two nonconforming lots more equally proportionate, as it relates to the mass and scale of each proposed home and surrounding homes. Mr. Peters and I are in agreement on this.
- 5) We propose to use fencing/landscaping at the back of our homes between the existing townhomes to mitigate privacy issues and visual impact.

There are numerous homes on this side of Bella Vista. We are asking for the same privileges enjoyed by the other properties in this vicinity.

We are asking for a front setback variance, due to the downslope of the lot. Town engineering has reviewed this, they have stated that 18' of driveway from garage to edge of pavement is acceptable. Other setbacks are within guidelines.

Thank you for your consideration.

Best regards,



Dan Ross
408-314-5626

EXHIBIT 3

341 Bella Vista Avenue

Architecture and Site Application S-06-64

Subdivision Application M-06-09

Requesting approval of a lot line adjustment and to construct a new single family residence which exceeds the allowed Floor Area Ratio and a variance for driveway backup on a nonconforming parcel zoned R-1:8. APN 529-23-016

PROPERTY OWNER/APPLICANT: Dan Ross

PLANNING DEPARTMENT COMMENTS

June 14, 2006

This application for Architecture & Site Approval is **INCOMPLETE** because of the deficiencies and/or concerns noted below:

DEFICIENCIES:

1. The property owner needs to sign the application.
2. A Variance is required for the reduced driveway backup. A \$2,992.50 fee is required for the Variance application. Please note that this fee will be increased on July 1, 2006.
3. The FAR calculation is not correct, please provide the correct FAR calculation.
4. The maximum height from the lowest point to the highest point is 35'. It appears that this proposal exceeds this standard.
5. Please provide a table of the existing trees over 4" in diameter including size, species, canopy spread, and whether they are proposed to be removed or saved.
6. Please show the height to existing or proposed grade on all elevations, whichever grade is lower. Label existing and proposed grade.
7. Please fill out a Single Family Residential Data Sheet (Attached).
8. Please provide a color and materials board. Proposed colors shall not exceed an LRV of 30 and shall blend with the surrounding vegetation. A deed restriction for the exterior color will be required.
9. Any portion of the cellar area that is 4' above grade counts as floor area. It appears that most of the proposed cellar area will be counted as floor area.
10. You should continue the sections to show the roadway. 3 sections for each home should be provided and make sure the section references are accurate.
11. The cellar stairway connections need to be explained further.
12. Please provide Letter of Justification/Description detailing how the proposed project is compatible with the surrounding neighborhood, complies with the Hillside Design Guidelines, complies with the General Plan. Justification for the Variance, reduction in required setbacks, and exceeding the FAR is also necessary. Include a neighborhood plan showing the square footage of surrounding homes.
13. You should speak with the neighbors to address any concerns they may have.
14. Parcel square footage information should be provided pre and post Lot Line Adjustment.
15. Please provide a letter/memo illustrating how you have addressed all of the deficiencies/comments included in this document.

EXHIBIT 4

Date: May 8, 2006
For Agenda Of: May 10, 2006
Agenda Item: 4

REPORT TO: The Planning Commission

FROM: The Director of Community Development

LOCATION: 107 Colorado Court
Architecture and Site Application S-06-022

Requesting approval to construct a new single family residence on property zoned HR-2½. APN 527-56-033.

PROPERTY OWNER/APPLICANT: Stewart and Colette Fahmy

FINDINGS: None

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

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

ENVIRONMENTAL ASSESSMENT: It has been determined that the project could have significant impacts on the environment. An Initial Study and Negative Declaration will be prepared prior to final consideration of the project.

EXHIBITS:

- A. Location map (one page)
- B. Considerations for the review of A&S applications (three pages)
- C. Letter from Dawn & David Andersen (one page), received October 14, 2005
- D. Letter from Vernon & Sherian Plaskett (one page), received October 19, 2005
- E. Letter from Jack & Laurie Goldstein (one page), received March 28, 2006
- F. Letters from Jerry S. Glembocki (two pages each), received October 17, 2005 and April 11, 2006
- G. Letter from Robert & Judith Kuechler (one page), received April 11, 2006
- H. Letter from Janet Mushet (two pages), received April 18, 2006
- I. Project data sheet (one page)
- J. Applicant's letter (two pages), received April 20, 2006
- K. Development plans (7 sheets), received April 12, 2006

A. BACKGROUND:

Site Description

The subject property is located on the west side of Colorado Court, two lots north of Santa Rosa Drive (see Exhibit A). There are a number of large oak trees located within the proposed building site and the majority of the lot has slopes greater than 30%, making it extremely challenging to develop. Although the property is 40,075 square feet, the allowable floor area is 4,300 square feet due to the applicable slope reduction.

Previous Approval

In 1997, the Development Review Committee approved plans for a new 5,923 square foot house with a 909 square foot garage and a swimming pool. However, that application expired in 1999 and is no longer valid. The approval was made prior to the adoption of the new General Plan in 2000 and prior to the adoption of the new Hillside Design Standards and Guidelines.

Chronology of Project

9/28/2005	Architecture and Site application filed (staff met with the applicant on several occasions prior to submittal).
10/12/2005	Staff Technical Review meeting. Many concerns were raised and many technical deficiencies were identified.
10/20/2005	Meeting between applicant, architect and staff (including Randy Tsuda, Assistant Community Development Director).
3/13/2006	Applicant submitted preliminary plan revisions in response to technical review comments and staff concerns.
4/4/2006	Meeting between applicant, architect and staff (including Bud Lortz, Community Development Director). Applicant was informed that staff could not support the proposed project.
4/12/2006	Revised plans submitted for referral to Planning Commission.
4/18/2006	Development Review Committee meeting.

Status of Project

Staff has advised the applicant on numerous occasions that the plans are in need of major revisions to comply with the Hillside Development Standards & Guidelines (HDS&G). Staff typically tries to work with an applicant to evolve a project to the point where it can be approved or approved with conditions. While the applicant has reduced the overall house size from that of the initial submittal, the project remains significantly noncompliant with the HDS&G. The applicant believes that the project has merit, that it is consistent with other homes within the Alta Vista subdivision, and does not wish to reduce the house size further.

Staff has forwarded the plans and supporting information to the Planning Commission so that direction can be provided to the applicant for a significant redesign of the project or the application can be denied. The technical and peer reviews (includes arborist, architect, geotechnical and environmental evaluations) have not been completed in the interest of saving the applicant time and expense and saving staff and Town consultants from expending significant time to completely analyze plans that are significantly noncompliant with the HDS&G. Recommended conditions of approval have not been prepared for the same reason. If the Commission decides to remand the project for significant redesign, the technical reviews and evaluations and conditions of approval will be completed before the application is returned to the Commission for final action.

B. REMARKS:

Exhibit I provides general project data. The applicant has also submitted a letter of justification (see Exhibit J). Staff has summarized the main issues relative to the proposed project for the Commission's consideration and discussion as follows:

House Size

The proposal is for a 5,775 square foot house with an attached 1,230 square foot garage. The total floor area is 6,605 square feet excluding 400 square feet of the garage. In addition, there are 1,875 square feet of covered terraces and porches. The total floor area exceeds the maximum allowable FAR of 4,400 square feet (4,800 square feet including the 400 square foot garage exemption).

Most of the property consists of slopes in excess of 30% and a new home cannot be built within the least restrictive development area (LRDA) of the site. However, Staff believes the encroachment outside the LRDA should be minimized as much as possible and that the size of house is too large for the site. The proposed project is located predominantly on slopes in excess of 30%, impacting most of the mature oaks trees and requiring a significant amount of grading and retaining walls.

The following table compares the proposed residence with other homes on Colorado Court.

Address		house	garage	total sq. ft.	lot size	FAR
471	Santa Rosa Drive	9,305	822	10,127	46,174	0.22
108	Colorado Court	5,542	822	6,370	41,818	0.15
109	Colorado Court	4,578	1,020	5,598	45,302	0.12
111	Colorado Court	4,798	1,008	5,806	88,427	0.07
112	Colorado Court	5,239	780	6,019	42,253	0.14
114	Colorado Court	3,896	611	4,507	50,030	0.09
	average	5,560	844	6,405	-	0.13
107	Colorado Court	5,775	1,230	7,005	40,075	0.17

The house at 471 Santa Rosa is not representative of the average home size within the Alta Vista subdivision and does not meet current hillside requirements. At the time the house was approved, both the Commission and Town Council indicated that it would not be supportive of a future project that is similar in size, scale and massing to this home. Even with this house included the applicant's proposal exceeds the neighborhood average for house and garage size and FAR.

As stated in the HDS&G, achieving the maximum floor area is not guaranteed due to individual site constraints. The priority is to comply with the standards and guidelines rather than designing to the FAR. The FAR is a numerical guide and achieving the allowable square footage is not a goal. Greater weight will be given to issues including but not limited to height, building mass and scale, visual impacts, grading and compatibility.

Criteria for allowing an exception to maximum allowed floor area (pages 29 and 30 of the HDS&G) is as follows:

1. The development will not be visible from any of the established viewing platforms.
2. There will be no significant impacts on protected trees, wildlife habitat or movement corridors.
3. Any grading necessary to accommodate the building area that exceeds the allowed FAR or an accessory building will be minimized.
4. All standards and applicable guidelines are being met.

5. Compliance to Title 24 Energy Efficiency Standards are shown using computer methods. The compliance margin must be at least 10.0.
6. The house will be pre-wired for future photovoltaic (PV) installation.
7. A minimum of 25% of hardscape material is permeable (certain types of interlocking pavers, grasscrete, pervious concrete, etc.).
8. A significant cellar element is included in the design, unless it conflicts with other standards.
9. There will not be a significant visual impact to neighboring properties.

The project does not comply with items 2, 3, 4 and 8. The Commission should discuss these issues and provide direction on the overall bulk and mass, the size of the proposed home and the overall development area.

Building Height

The proposed house is 30 feet eight-inches at the highest point. This exceeds the 30 foot height limit established by the Zoning Ordinance and would require approval of a variance. The maximum height allowed by the HDS&G is 25 feet, and any increase in height would require approval of an exception.

Swimming Pool

The proposed pool is located on a slope that exceeds 30% which is prohibited by the HDS&G. The HDS&G also states that due to topographic constraints not every lot will be able to accommodate a pool. The applicant should eliminate the pool.

Grading

Cuts in excess of the HDS&G grading criteria are required to construct the proposed house, driveway and pool. The standards allow a maximum cut of eight feet, excluding cellars within the house footprint, and a four foot maximum cut in all other areas. A cut of 15-feet is proposed in the northwest house corner and a high stem wall is proposed. The driveway requires a 14-foot fill and fill depths of up to 10 feet are proposed around the rear deck (three feet is allowed by the HDS&G).

Estimated grading volumes total 2,126 cubic yards (596 cubic yards of cut and 1,530 cubic yards of fill). The grading break down is shown in the following table:

Grading Volumes		
<i>Area</i>	<i>Cut</i>	<i>Fill</i>
driveway	0	443
house	134	222
pool	238	0
landscaping	(224)	865
total	596	1,530

Retaining Walls

The table on the following page shows that retaining walls have been limited to less than five feet; however there are numerous walls needed to support the proposed design and the total length of the walls is significant. Generally when a large number of retaining walls are needed, the development is not appropriate for the site.

Retaining Walls			
	<i>number of walls</i>	<i>wall height range (ft.)</i>	<i>total liner feet</i>
front yard	6	2½-5'	115'
driveway/garage	7	2-5'	155'
pool area	6	5'	775'

Drainage

Roof rainwater leaders will be required to be discharged onto energy dissipaters that are designed to spread out the water so it enters landscaped areas as sheet flow. Runoff from the site should not be collected into a pipe system, concentrated and discharged down slope as shown. Provisions for drainage behind the retaining walls will also be required.

Trees

There are 16 Coast Live Oaks on the site that are concentrated on the front half of the property. Eleven of the oak trees are proposed to be removed, and two others will be severely impacted by construction. Three of the oaks can potentially be saved under the proposed plan. The Consulting Arborist has not yet evaluated the plans to evaluate the feasibility of maintaining any of the existing trees.

Hillside Development Standards & Guidelines

The proposal does not comply with the following provisions of the HDS&G:

- The house and driveway have not been sited within the LRDA.
- The overall square footage exceeds the maximum allowed and justification is not sufficient to grant an exception.
- The height limitation is being exceeded by five feet.
- Amount of development is extensive (building area is extremely limited by site constraints); the site may not be able to support the proposed pool.
- Tree removals are significant.
- Total grading volume is significant and cut and fill criteria has been exceeded.
- Extensive use of retaining walls is necessary to construct the proposed project.

General Plan Conformance

The project may be in conflict with the following policies and implementing strategies from the General Plan:

- L.P.8.4 Emphasize preserving the natural land forms by minimizing grading. Grading should be limited only to the area needed to place the main house on the property.
- L.P.8.8 Existing specimen trees shall be preserved and protected as a part of any development proposal.
- L.I.8.10 Hillside Design Standard: Houses shall be designed to step down the contours rather than be designed for flat pads.
- CD.P.2.3 Mass Grading in New Construction: Follow natural land contour and avoid mass grading in new construction. Grading large, flat yard areas shall be avoided. Siting of the house must consider natural topography.

CD.P.2.4 Reducing Visible Mass: Effective visible mass shall be reduced through such means as stepping structures up and down the hillside, a maximum of two stories shall be visible from every elevation following the natural contours, and limiting the height and mass of the wall plane.

CD.P.2.6 Hillside landscaping: Hillside landscaping shall be designed with the following goals in mind:

- A. Preservation and use of native/natural vegetation
- D. Following the natural topography
- E. Preservation of natural trees, vegetation

C. RECOMMENDATION:

The Planning Commission should deny this application because a complete redesign is required for the project to comply with the HDS&G. However, the Commission may refer this application back to staff with specific direction to the applicant for desired plan changes. If the Commission finds merit with the proposed development to the extent that it could be approved through redesign staff suggests direction be provided on the following issues:

- house size
- house height
- overall development area
- pool/outdoor area
- grading
- retaining walls
- tree removals

The Commission may identify additional issues that have not been raised by staff. If the application is continued, staff recommends that a hearing date not be specified as the length of time to complete the technical and peer reviews cannot be determined at this time. The applicant will be charged for the cost of the additional public notice.

If the Commission decides to deny the application, findings for denial should be made. The Commission's input on the key issues would be helpful to the Council in the event an appeal is filed.

The Planning Commission - Page 9
107 Colorado Court/S-06-22
May 10, 2006

Prepared by:
Suzanne Davis, Associate Planner

Vu-Bang Nguyen, Assistant Planner

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

BNL:SD:mdc

cc: Stewart & Colette Fahmy, 331 Santa Rosa Drive, Los Gatos, CA 95032
Cherine Bassal Planning & Design, 4912 Bradford Place, Rocklin, CA 95765

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EXHIBIT 5



TOWN OF LOS GATOS
PLANNING COMMISSION STAFF REPORT
Meeting Date: September 24, 2008

ITEM NO.: 3
STUDY SESSION

PREPARED BY: Joel Paulson, AICP
Associate Planner

APPLICATION NO.: Planned Development S-08-011

LOCATION: **107 Colorado Court** (Located on the west side of Colorado Court,
two lots north of Santa Rosa Drive)

APPLICANT: Preston Scott Cohen

PROPERTY OWNER: Sarwat and Colette Fahmy

CONTACT PERSON: Scott Cohen (617) 441-2110

APPLICATION SUMMARY: Requesting approval to construct a new residence on property zoned
HR-2 1/2. APN 527-56-033

RECOMMENDATION: Provide direction to staff and the applicant regarding the proposed
project.

PROJECT DATA: General Plan Designation: Hillside Residential
Zoning Designation: Hillside Residential (HR – 2 1/2)
Applicable Plans & Standards: General Plan and Hillside
Development Standards and
Guidelines
Parcel Size: 40,075 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Hillside Residential	HR – 2 1/2
East	Residential	Hillside Residential	HR – 2 1/2
South	Residential	Hillside Residential	HR – 2 1/2
West	Resource Conservation	Open Space	RC

ACTION: Provide direction to staff and the applicant regarding the proposed
project.

EXHIBITS:

1. Location Map
2. Letter from Jack and Laurie Goldstein (2 pages), dated May 2, 2008
3. Letter from Reza Nikfar, received May 5, 2008
4. Letter from Jerry S. Glembocki (6 pages), received May 5, 2008
5. Letter from applicant (2 pages), dated June 18, 2008
6. Presentation from applicant (29 pages), received August 28, 2008
7. Development Plans (16 pages), received February 6, 2008

PROJECT DESCRIPTION:

The applicant is proposing to construct a 4,380 square foot residence which contains four levels and includes an attached 853 square foot three-car garage and 2,884 square feet of cellar area. The cellar area is exempt and is not included in the floor area total noted above. Although the property is 40,075 square feet, the allowable floor area is 4,400 square feet for the home and 400 square feet for the garage due to the applicable slope reduction. The garage is accessed from and faces Colorado Court. There are a number of large oak trees located on the property and the majority of the lot has slopes greater than 30%, making it extremely challenging to develop. General project data is included in Exhibit 5. Additional information has been provided by the applicant in Exhibits 6 and 7 which provides discussion and exhibits illustrating the proposed project and previous proposals.

BACKGROUND

The subject property is one of two remaining undeveloped lots in the Alta Vista subdivision and is located on the west side of Colorado Court, two lots north of Santa Rosa Drive (see Exhibit 1). Most of the neighborhood was developed in the mid-1980s.

In 1997, plans were approved for a new 5,923 square foot house with a 909 square foot garage and a swimming pool. However, that application expired in 1999 and is no longer valid. The approval was made prior to the adoption of the new General Plan in 2000 and prior to the adoption of the new Hillside Design Standards and Guidelines (HDS&G).

On May 10, 2006, the Planning Commission considered an architecture and site application to construct a 5,775 square foot house with an attached 1,230 square foot garage. The total floor area was 7,005 square feet including the garage. The Commission received public testimony and discussed the project. The Commission voted 5-1 to deny the application based on the following:

- The proposed project was not in compliance with the HDS&G.
- A complete redesign was needed to bring the project into compliance with the HDS&G.
- There was significant neighborhood objection to the proposed project.

On June 19, 2006, the Town Council considered an appeal of the Commission's decision. The Council determined that the Commission's decision was correct and denied the appeal.

REMARKS:

This study session was scheduled because staff identified the need for Planning Commission input on high level issues that will impact how the project design evolves. Staff has identified several key issues for the Commission's consideration as discussed below. No formal action on this application is requested at this study session. The technical and peer reviews (includes arborist, architect, geotechnical, and environmental evaluations) have not been completed in the interest of saving the applicant time and expense and saving staff and Town consultants from expending significant time to completely analyze plans that may need significant redesign. Recommended conditions of approval have not been prepared for the same reason. Staff and its consultants will undertake more detailed analysis prior to the Commission's formal consideration of the application.

A. Site Constraints

Most of the property consists of slopes in excess of 30% and there are a number of existing trees. A new home cannot be built within the least restrictive development area (LRDA) of the site and an exception to this requirement will be necessary. However, staff believes the encroachment outside the LRDA should be minimized as much as possible. The proposed project is located predominantly on slopes in excess of 30%, impacting most of the mature oaks trees, and requiring a significant amount of grading and excavation.

B. Mass and Scale / Neighborhood Compatibility

The proposed total square footage of the structure (house, garage, and cellar area) is 8,117 square feet. While cellar area is not counted in the FAR, the Commission has raised concerns on previous projects where above ground square footage is maximized and large cellar elements are incorporated. The proposed project has two levels that contain cellar area due to the parcel's topography.

The downhill elevation at the interior area of the two wings of the home presents the most visible mass of the proposed structure. While this will not be as apparent from the valley floor given the proposed retaining walls and grotto, it is still a concern that needs to be addressed because it will be visible from homes across the canyon on Madera Court.

The following table compares the proposed project with other parcels on Colorado Court:

Address	House	Garage	Total	Lot Size	FAR*
471 Santa Rosa Drive	9,305	822	10,127	46,174	.22
108 Colorado Court	5,542	822	6,370	41,818	.15
109 Colorado Court	4,578	1,020	5,598	45,302	.12
111 Colorado Court	4,798	1,008	5,806	88,427	.07
112 Colorado Court	5,239	780	6,019	42,253	.14
114 Colorado Court	3,896	611	4,507	50,030	.09
107 Colorado Court Previous Submittal	5,775	1,230	7,005	40,075	.17
107 Colorado Court Current Submittal	4,380	853	5,233	40,075	.13

*FAR is based on lot size and building size from Metrosan and does not include cellar area.

As stated in the HDS&G, achieving the maximum floor area is not guaranteed due to individual site constraints. The priority is to comply with the standards and guidelines rather than designing to the FAR. The FAR is a numerical guide and achieving the allowable square footage is not a goal. Greater weight will be given to issues including but not limited to height, building mass and scale, visual impacts, grading and compatibility.

C. Building Height / Visibility

The proposed house is approximately thirty five feet at the highest point. This condition exists at the downhill side of the junction of the two proposed wings adjacent to the proposed courtyard/reflecting pool. This exceeds the thirty foot height limit established by the Zoning Ordinance and would require approval of a variance. The other elevations of the proposed home are less than twenty five feet. However, the existing parcel is visible from the viewing platform at Selinda Way and Los Gatos-Almaden Road. As a result, the HDS&G state that the maximum height from lowest to highest point shall not exceed twenty eight feet. The proposed project is approximately thirty five feet from the lowest to the highest point and would require approval of an exception. Additionally, the maximum height allowed by the HDS&G when a home is visible is eighteen feet. The proposed project exceeds eighteen feet and would require approval of an exception as well.

D. Architecture

Given the existing site constraints the architect has designed a unique home that incorporates the use of two wings. The design also incorporates a below grade patio element on the south side of the proposed home. Staff has discussed this element with the applicant and determined that it is appropriate given that it serves to provide light and ventilation into that area of the proposed home and also allows for a modest outdoor area on a parcel that is constrained to the point that useable outdoor space is limited. Another element that staff has discussed with the applicant is the area located in between the two wings on the west side of the proposed home. This element contains a courtyard, reflecting pool, and grotto. This area also provides light, ventilation, and useable outdoor area similar to the below grade patio on the south side of the home. However, this is a much larger element that creates impacts relating to building height and grading. Staff has asked for additional information regarding the cellar calculation on the lowest level. It appears that the amount of soil removal in this location does not meet the intent of the cellar policy and will result in portions of the cellar area to be counted as FAR.

E. Trees

The applicant's arborist has identified eighteen protected trees on the subject site. Twelve of the trees are proposed to be removed. Based on the applicant's arborist's evaluations nine of the existing trees to be removed are in poor or very poor condition, one is in fair condition, and two are in good condition. The Consulting Arborist has not reviewed the proposal and will evaluate tree impacts after input from the Commission is evaluated by the applicant and any necessary revisions are incorporated.

F. Grading

Cuts and fills in excess of the HDS&G grading criteria are required to construct the proposed project. The standards allow a maximum cut of eight feet, excluding cellars within the house footprint, a four foot maximum cut in all other areas (up to eleven feet cut proposed), and a three foot maximum for fill in all areas (up to twelve feet of fill proposed). It should also be noted that there are cuts up to approximately twenty six feet within the house footprint. While the HDS&G excludes cut depth for cellar areas within the building footprint staff is concerned that twenty six feet does not meet the intent of the HDS&G given the grading impacts. The proposed grading cuts and fills would require the approval of an exception.

Estimated grading volumes total 2,804 cubic yards (2,761 cubic yards of cut and 43 cubic yards of fill).

G. Hillside Development Standards and Guidelines

The proposal does not comply with the following provisions of the HDS&G:

- A house cannot be sited within the LRDA.
- The height limitation will be exceeded.
- Tree removals are significant.
- Total grading volume is significant and cut and fill criteria will be exceeded.
- Extensive use of retaining walls is necessary to construct the proposed reflecting pool and grotto.

GENERAL PLAN GOALS AND POLICIES

The project may be in conflict with the following policies and implementing strategies from the General Plan:

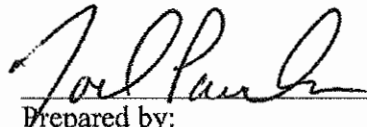
- L.P.8.4 Emphasize preserving the natural land forms by minimizing grading. Grading should be limited only to the area needed to place the main house on the property.
- L.P.8.8 Existing specimen trees shall be preserved and protected as a part of any development proposal.
- L.I.8.10 Hillside Design Standard: Houses shall be designed to step down the contours rather than be designed for flat pads.
- CD.P.2.3 Mass Grading in New Construction: Follow natural land contour and avoid mass grading in new construction. Grading large, flat yard areas shall be avoided. Siting of the house must consider natural topography.
- CD.P.2.4 Reducing Visible Mass: Effective visible mass shall be reduced through such means as stepping structures up and down the hillside, a maximum of two stories shall be visible from every elevation following the natural contours, and limiting the height and mass of the wall plane.
- CD.P.2.6 Hillside landscaping: Hillside landscaping shall be designed with the following goals in mind:
- A. Preservation and use of native/natural vegetation
 - B. Following the natural topography
 - C. Preservation of natural trees, vegetation

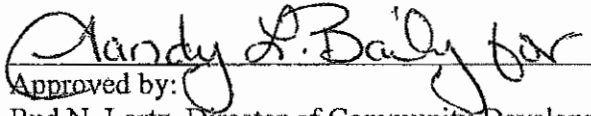
CONCLUSION / RECOMMENDATION:

Staff has carefully considered the applicable General Plan provisions, Town Code, and HDS&G. Based on the above information, staff and the applicant are looking for direction from the Commission on the following matters:

- Are an exception and/or variance for height (both maximum height and height from lowest to highest point) appropriate given the site constraints and visibility from a viewing platform?
- Are the proposed architecture and materials appropriate?
- Are the courtyard, reflecting pool, and grotto appropriate?
- Are the proposed tree impacts appropriate?
- Are the proposed grading exceptions appropriate?

The Planning Commission should provide direction on each of the above items and any other issues of concern.


Prepared by:
Joel Paulson, Associate Planner


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

BNL:SB:JP:mdc

cc: Sarwat and Colette Fahmy, 331 Santa Rosa Drive, Los Gatos, CA 95032
Preston Scott Cohen, Inc., 675 Massachusetts Avenue, 8th Floor, Cambridge, MA 02139

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EXHIBIT 6

This is an archive of a past election.

See <http://www.smartvoter.org/ca/scl/> for current information.

Santa Clara County, CA

November 2, 2010 Election



Additional Endorsements for Diane McNutt

Candidate for
Council Member; Town of Los Gatos



This information is provided by the candidate

REGIONAL LEADERS

U.S. Congressman Mike Honda
California State Senator Joe Simitian
California State Assemblyman Ira Ruskin
California State Assemblyman Jim Beall
District Attorney Elect Jeff Rosen
Santa Clara County Board of Supervisors President Ken Yeager
Santa Clara County Supervisor Don Gage
Santa Clara County Supervisor Liz Kniss
San Mateo County Supervisor Rich Gordon

ORGANIZATIONS

Silicon Valley Association of Realtors
California Apartment Association, Tri-County Division

FORMER LOS GATOS MAYORS

Randy Attaway
Steve Blanton
Joanne Benjamin
Jan Hutchins
John B. Lochner
Linda Lubeck Speicher
Mike Wasserman

INDIVIDUALS

Ann Atkinson
Tom Atkinson
Rita Baum
Pamela B. Bancroft
Barbara Beck
Mark Beck
Bonnie Becker
Janice Benjamin
Jim Benjamin
Ken Benjamin
Jan Berliner
Stan Berliner

Toni Blackstock
Debbie Blackwell
Boyd Bowdish
Jade Bradbury
Beverley Bryant
Carol Burt
Jim Burt
Don Callahan
Barbara Cardillo
Irene Carrion-Upson
Dennise Carter
Peter Carter
Elizabeth Cilker Smith
Brian Copeland
Kim Couchee
Phil Couchee
Gay Crawford
Jill Cronk
Michael Cronk
Mary P. Curtis
Jane Decker
Martin D. Dermer
Sandra Hutchins Dixon
Liz Dodson
Lyn Dougherty
Paul Dubois
Kristen Dryden
Charles Erekson
Stuart Ferguson
Dave Flick
Shari Flick
Susan Fitts
Stan Garber
Sandy Gordon
Heidi Grassman
Elke Groves
Carl Guardino
Charles Hackett
Alice Hansen
Eric Hansen
Dave Henderson
Bill Hirschman
Teri Hope
Holly Hunter Morley
Chris Hutchins
Duffy Jennings
Marc Jensen
Monique Jensen
Bob King
Kitty King
Joan Kjemtrup

Donald Knight
Jonathan Knowles
Anne Johnson
Sara LaBerge
Mike Loya
Jack Lucas
Michelle Mann
Jeanne Martin
Mary Martin
Janice McCabe
Mary McCall
Joe McCarthy
Phil Micciche
Chris Miller
Phil Mills
John Moore
Sara Morabito
Mike Moresco
Eric Morley
Nicole Morley
Sean Morley
Jan Morris
Ike Nassi
Ronee Nassi
Larry Noon
Maureen O'Connell
Tom O'Donnell
Rick Oderio
Jane Ogle
Peggy O'Laughlin
Keith Plottel
Aana Pregliasco
Larry Pregliasco
Jeanne Rajabzadeh
Steve Ravel
James Reber
Linda Rice
Steve Rice
Lisa Richardson
Dan Ross
Deb Ross
Ed San Juan
Dave Sandretto
Nancy Sandretto
Eric Schmidt
Mark Sglarto
JoAnn Shank
Paul Shephard
Connie Skipitares
Ervie Smith
Margaret Smith

Ken Spice
Terri Spice
Ed Stahl
Rochelle Stone
Marie Tallman
Chris Tanimoto
Nancy Thielmann
Howard Thomas
Sue Thomas
Mary Tomassi-Dubois
Kim Vestal
Chad Walsh
Mark Weiner
Bill Wheelehan
Dana Wheelehan
Colleen Wilcox
Chris Wiley
Jan Willoughby
Susanne Wilson
Steve Yvaska
Jim Zanardi

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[November 2010 Home \(Ballot Lookup\)](#) || [About Smart Voter](#)

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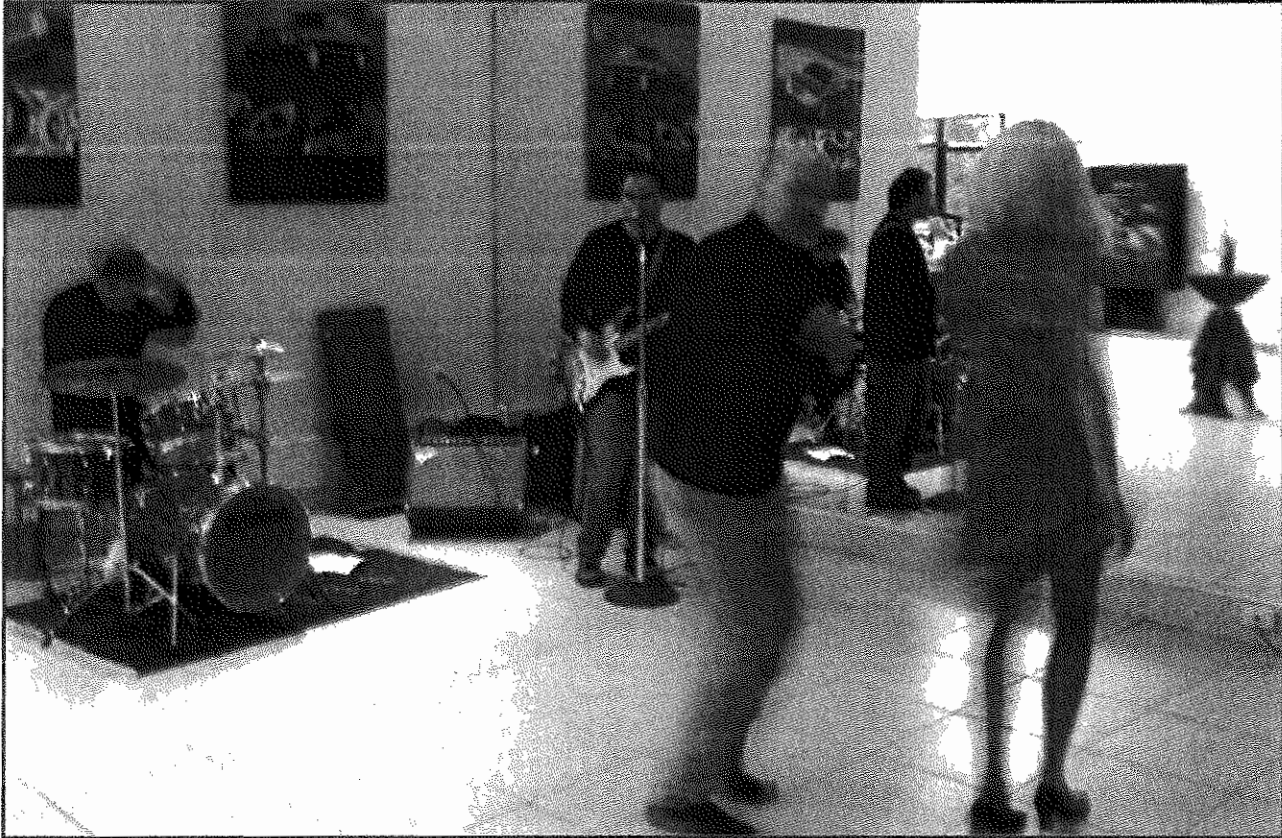
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EXHIBIT 7

Los Gatos Mayor Joe Pirzynski and former mayor, County Supervisor Mike Wasserman



Sandi Grenwell and Bob Long dance to the music of The Blues Rockers (Dan Ross on drums, Ed Goguen on bass)

EXHIBIT 8

NOTICE

Town of Los Gatos Environmental Impact Review

Mitigated Negative Declaration

Lead Agency: Town of Los Gatos
Community Development Department
110 East Main Street
Los Gatos, CA 95031

Project Title and Location: 339 Bella Vista Avenue
Architecture and Site Application S-06-46
Subdivision Application M-06-09
Negative Declaration ND-08-02

Project Description: The project sponsor is requesting Lot Line Adjustment¹ and Architecture and Site approvals for construction of one single-family residence on the west side of Bella Vista Avenue, just north of Bella Vista's bridge over Los Gatos – Saratoga Road. The project sponsor proposes to reduce the project site's existing lot size from 6,049 square feet (s.f.) to 4,915 s.f., and construct a single-family residence on the reconfigured lot (indicated as Lot Two on the site plan dated October 27, 2007). This parcel's (APN 529-23-015) southern property line would be relocated northward and the size of the immediately adjoining parcel (APN 529-23-016) to the south would be increased from 4,106 s.f. to 5,240 s.f.

The proposed residence would be 2,760 s.f. (including the cellar and garage). The proposed residence would have one main floor encompassing 1,038 s.f. and an attached garage (441 s.f.) at street level. Below street level, a lower floor would consist of 1,281 s.f., including a cellar area of 399 s.f.

Access to the residence would be provided from Bella Vista Avenue to the garage by a proposed 19-foot wide driveway that would be approximately 22 feet long. The proposed garage would be 441 s.f. and attached to the main floor of the proposed residence.

Determination: Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures listed below have been added to the project, mitigating potential impacts to a less-than-significant level. An Environmental Impact Report will not be required.

Statement of Reasons to Support Finding:

1. Aesthetics: The project site is located on the west side of Bella Vista Avenue, and homes on the east side of Bella Vista Avenue (#320 and 322 opposite the site) currently have partially obscured, distant views of the mountains to the west. Existing mature trees on the project site partially screen scenic vistas from these homes, particularly the 45-inch oak tree located at the project's southern boundary. Since this

¹ While this project is technically a subdivision application, it is actually a lot line adjustment because there are already two existing lots and the project would not create a new lot.

oak tree would be retained, distant views would continue to be similarly screened because the roof of the proposed home would be lower than this oak tree. Therefore, the proposed home would not significantly alter available distant views from homes to east, although views of trees from these homes would change to views of the proposed home.

From Bella Vista Avenue, the proposed residence would appear as a one-story home. The height of the proposed residence (12 feet, 6 inches high) would be similar to adjacent proposed residence to the south. Homes along the east side of Bella Vista Avenue in the project vicinity are one and two stories with heights ranging from approximately 15 to 25 feet. Since the proposed home would be similar in height when compared to other one-story homes along Bella Vista and lower than existing two-story homes, the proposed home would not substantially alter the existing visual character along Bella Vista.

The project site is located within the area subject to the Town's Hillside Development Standards and Guidelines (HDS&G). The HDS&G requires a "view analysis" for any development project with the potential for being visible² from any established viewing platform. Story poles were placed on the site and it was determined that the proposed home would not be visible from established viewing platforms. Intervening trees block views of the story poles from the closest viewing platform located on Los Gatos Saratoga Road at Highway 9. Trees also block views of the story poles from eastbound Los Gatos Saratoga Road (except for a brief glimpse just west of the Bella Vista overpass). Story poles indicate that these homes would be visible from the south end of Alberto Way, but future visibility would be blocked by an approved new building on the parcel located between the site and Alberto Way.

The proposed project will be subject to design review as part of the Architecture and Site Review process. During this process, the proposed design is evaluated for consistency with the Town's HDS&G. As part of Architecture and Site review, the Town determined that the project would be consistent with the HDS&G policies for site planning, development intensity, architectural design, site elements, and landscape design (see Attachment 1 of the Initial Study). The HDS&G emphasizes minimizing grading and preserving natural features (including drainage channels and trees). Six of the site's 13 trees are proposed to be removed, but trees along the site margins would be retained and landscape screening is proposed along the western project boundary. This screening would help to minimize loss of privacy at the existing townhomes immediately downhill of the site since the proposed home would directly overlook these townhomes.

Outdoor lighting would be provided on the exterior of the home. The proposed home would be located approximately 75 feet from homes to the east (across Bella Vista) and 40 feet from townhomes to the west. Project exterior lighting could illuminate distant nighttime views to the west (overlooking the site) from existing homes to the east, although the 75-foot distance would help minimize the effects of nighttime illumination depending on lighting design. Exterior and interior lighting also could have nighttime illumination effects on existing townhomes to the west, although the intervening distance and required landscape screening (see above mitigation) would minimize the potential for impacts associated with nighttime illumination. Proposed exterior lighting will be specifically reviewed as part of Architecture and Site review. To reduce the potential for disturbance due to nighttime lighting, the final plans will need to satisfy Town Code Section 29.10.09035, which prohibits the production of direct or reflected glare (such as that produced by floodlight onto any area outside the project boundary).

2. Agriculture and Forestry Resources: The 0.11-acre project site is currently undeveloped, but the site's agricultural and timberland production potential is low due to the small size of the site, existing

² "Potential" is defined as capable of being seen from a viewing platform if trees or large shrubs are removed, significantly pruned, or impacted by construction.

nearby residential development, and the site's steeply sloping topography. State farmland mapping shows the project site as "Urban and Built-Up Land," indicating that this land has already been converted to non-agricultural use. There are no existing agricultural or forestry uses/operations at or adjacent to the site.

3. Air Quality: The San Francisco Bay Area Air Basin is classified by the Bay Area Air Quality Management District (BAAQMD) as non-attainment for ozone and inhalable particulates (PM₁₀). To address these exceedances, the BAAQMD, in cooperation with the MTC and ABAG, prepared the Bay Area 2005 Ozone Strategy (BAOS) in September 2005 and Particulate Matter Implementation Schedule (PMIS) in November 2005. The PMIS discusses how the BAAQMD implements the California Air Resources Board's 103 particulate matter control measures. The BAAQMD recently adopted the 2010 Bay Area Clean Air Plan, which updates the BAOS. The consistency of the proposed project with the most recently adopted regional air quality plan, the CAP, is determined by comparing the project's consistency with the Los Gatos General Plan. Since the CAP is based on population projections of the Association of Bay Area Governments (ABAG) that are based on the Town's General Plan in effect at the time the CAP was approved, consistency of the project with the General Plan would indicate consistency with the CAP. The project would be consistent with the use and density allowed on the project site by the Los Gatos General Plan, and therefore, the project would be consistent with the CAP.

In June 2010, the Bay Area Air Quality Management District (BAAQMD) adopted new CEQA significance thresholds and updated their CEQA Guidelines, which include these adopted thresholds of significance for criteria air pollutants for both construction and operation of proposed projects. The proposed project's construction and operational emissions are expected to not exceed these thresholds when compared to screening criteria identified in the 2010 BAAQMD CEQA Guidelines. For single-family residential use, the screening criteria are 325 single-family units for operational emissions and 114 units for single-family residences for construction emissions. The proposed single-family residence would remain below these criteria and therefore, a detailed air quality assessment would not be required and the project's air quality impact is expected to be less than significant. However, 2010 BAAQMD Guidelines also specify that the project must also meet two other criteria: (1) the BAAQMD's Basic Construction Mitigation Measures must be implemented during construction; and (2) the project does not include demolition, simultaneous occurrence of more than two construction phases, simultaneous construction of more than one land use type; extensive site preparation; or extensive material transport (more than 10,000 cubic yards of soil). The project would meet the second criterion so that implementation of the following measure is considered to reduce the project's construction-related criteria pollutants to a less-than-significant level:

MITIGATION 1: To limit the project's construction-related dust, criteria pollutants, and precursor emissions, the following BAAQMD-recommended Basic Construction Mitigation Measures shall be implemented:

- a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c. All visible mud or dirt tracked-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. All vehicle speeds on unpaved roads shall be limited to 15 mph.

MITIGATED NEGATIVE DECLARATION – 339 BELLA VISTA AVENUE

- e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h. A publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints shall be posted at the site. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

MITIGATION MONITORING: Prior to issuance of any Grading Permit, the Director of Community Development shall be responsible for ensuring that these measures are properly incorporated into project plans and implemented during project construction.

4. Biological Resources: The project site consists of a steeply sloping hillside vegetated with coast live oaks (*Quercus agrifolia*) and an understory of vinca (*Vinca major*), an ornamental groundcover. A large number of the trees present on the site are the result of regrowth from the stumps of trees previously cut on the property.

Special-Status Species. Within the study area, oak woodland habitat also provides nesting habitat for special-status bird species, as well as many other migratory bird species. Site clearing activities (e.g., grubbing, grading, trenching, and tree removal or pruning) could result in direct or indirect impacts to nesting birds by causing the destruction or abandonment of occupied nests. Direct and indirect impacts on special-status and migratory bird species would be considered significant under CEQA guidelines. Implementation of the following measures will reduce significant impacts on special-status and migratory bird species to a less-than-significant level:

MITIGATION 2: If tree removal, pruning, or grubbing activities are necessary, such activities should be conducted outside of the breeding season between September 1 and January 31 to avoid impacts to nesting birds.

MITIGATION 3: If project construction begins during the breeding season (February 1 to August 31), preconstruction surveys shall be conducted within the project footprint and a 300-foot buffer, by a qualified biologist no more than two weeks prior to equipment or material staging, pruning/grubbing or surface-disturbing activities. If no active nests are found, no further mitigation is necessary.

MITIGATION 4: If active nests, i.e. nests with eggs or young birds present, are found, non-disturbance buffers shall be established at a distance sufficient to minimize disturbance based on the nest location, topography, cover, the nesting pair's tolerance to disturbance and the type/duration of potential disturbance. No work shall occur within the non-disturbance buffers until the young have fledged, as determined by a qualified biologist. Buffer size should be determined in

MITIGATED NEGATIVE DECLARATION – 339 BELLA VISTA AVENUE

cooperation with the CDFG and the USFWS. If buffers are established and it is determined that project activities are resulting in nest disturbance, work should cease immediately and the CDFG and the USFWS should be contacted for further guidance.

MITIGATION 5: If active nests are found within 300 feet of the project area, a qualified biologist shall be on site to monitor the nests for signs of nest disturbance. If it is determined that construction activity is resulting in nest disturbance, work shall cease immediately and the CDFG and the USFWS shall be contacted.

MITIGATION MONITORING: The Directors of the Community Development and Parks and Public Works Departments will be responsible for ensuring that these recommendations are reflected in final project plans and are properly implemented during and after construction.

Construction activities in the vicinity of occupied bat roosts could result in the destruction of the occupied roosts of special-status bat species. In addition, disturbance during the maternity roosting season could result in potential roost abandonment and mortality of young. Direct and indirect impacts to special-status bat species would be considered significant under CEQA guidelines. Implementation of the following measures will reduce significant impacts on special-status bat species to a less-than-significant level:

MITIGATION 6: Preconstruction surveys shall be conducted to identify suitable bat roosting habitat including rock outcroppings, snags, rotten stumps, decadent trees with broken limbs, exfoliating bark, cavities, etc. Sensitive habitat areas and roost sites shall be avoided to the maximum extent practicable. If no suitable roost sites or evidence of bat roosting are identified, no further minimization measures are necessary.

MITIGATION 7: If suitable roosting habitat is identified, the following measures shall be conducted:

- a. A qualified biologist shall survey suitable roost sites immediately prior to the removal or grading of rock outcroppings, debris piles, man-made structures, etc.
- b. Removal of suitable tree roost sites shall be conducted by first removing limbs smaller than 3 inches in diameter and peeling away loose bark. The tree should then be left overnight to allow any bats using the tree/snag to find another roost during their nocturnal activity period.
- c. A qualified biologist shall survey the trees/snags a second time the following morning prior to felling and removal.
- d. Trees should be removed during the non-breeding season between September 1 and February 1 to avoid disturbance to maternal colonies or individuals.

MITIGATION MONITORING: The Directors of the Community Development and Parks and Public Works Departments will be responsible for ensuring that these recommendations are reflected in final project plans and are properly implemented during and after construction.

Tree Removal. The Los Gatos Tree Protection Ordinance states that the preferred tree replacement is two or more trees of a species and size designated by the Director of the Parks and Public Works Department. Tree replacement requirements are based on canopy size, which is defined in Table 3-1 of the Ordinance, *Tree Canopy – Replacement Standard*. Tree canopy replacement requirements range from two to six 24-

inch box size trees or two 36-inch and/or 48-inch box size trees, depending on the canopy size of the tree to be removed.

In order to evaluate the potential effects of the proposed project on site trees, the project applicant retained Deborah Ellis, consulting arborist and horticulturalist, to complete an arborist report. The Town retained Arbor Resources (AR) to conduct a peer review of Ellis' arborist report, and to update the peer review for the current proposal. The Ellis and AR surveys were completed in February 2005 and January 2007 and February 2011. Copies of these reports are on file at the Los Gatos Community Development Department. Report recommendations are included as Attachment 2 of the Initial Study.

The arborists' surveys of the project site indicate that there are 13 trees on the property. These include coast live oak, valley oak, a pine, and two almonds. Of these trees, eight are regulated by Town code (Nos. 3, 5–9, 19, and 21). The proposed new residence and its access driveway would require removal of five regulated trees (Nos. 3, 5–7, and 21) and one non-regulated almond tree (No. 4). With respect to the footprint of the new residence on the site, AR identifies additional ordinance-size coast live oak trees (Nos. 22, 23, and 24) to be retained in the vicinity of the new residence. AR indicates that the longevity and stability of two oak trees on the site (Nos. 8 and 9) and one large oak tree on the adjacent property (No. 2) would be adversely affected by the proposed project design and, makes the following recommendations:

- Tree No. 2: The large live oak located on the adjacent lot (341 Bella Vista) but very close to the property boundary, would be adversely affected by implementation of the proposed design. To reduce impacts and increase the opportunity for tree survival and longevity, AR recommends that any storm drains and sub-drains located within 20 feet of the tree's trunk be established so that they are no farther than 24 inches beyond the proposed retaining walls. The sections of the lines extending uphill and downhill from the retaining walls should be realigned to be parallel to the homes' walls until they are 20 to 30 feet from the tree's trunk (this may also require shifting the inlets and overflow pump wells farther away).
- Tree No. 8: Although proposed plans indicate this tree would be retained, it would be severely affected by project construction and predisposed to premature decline and instability. This is a relatively young oak that grows upslope, away from the proposed home at 339 Bella Vista. The impact of primary concern is the proposed walkway that would be located at roughly three feet downhill from this tree's trunk. When considering overexcavation needed to construct the walk, a cut within one to two feet from the trunk would be expected. To minimize excavation and impacts, AR recommends that the walkway be constructed on top of grade (including base materials, edging and forms) with a maximum soil cut of four inches, and overexcavation limited to 12 inches beyond the walkway edge. One potential option is for the walkway to be super-reinforced and base material omitted from the design.
- Tree No. 9: Proposed plans indicate this tree would be retained, but it would be severely affected by project construction and predisposed to premature decline and instability. This oak is situated at the street and appears to be in reasonably good health. However, its structure is formed by four relatively equally-sized trunks with very weak attachments. Removal of this tree is recommended in the applicant's arborist report, and AR concurs regardless of the proposed project. Based on its structural condition, AR indicates that no design revisions are warranted. However, if project-related impacts are to be reduced, they should include omitting any grading beyond the proposed driveway and wall, and restricting overexcavation beyond the driveway and wall to 12 inches. Removal of one of the four trunks would be necessary due to its low clearance and orientation toward the drive.

MITIGATED NEGATIVE DECLARATION – 339 BELLA VISTA AVENUE

Development of this project in combination with the home proposed on the adjacent property at 341 Bella Vista Avenue, would have potentially cumulative effects on Tree No. 2, which is located between these two proposed homes. Implementation of tree protection measures specified by the arborists (specified below) would reduce the project's impact on this tree to a less-than-significant level, and therefore, the project's contribution to this cumulative impact would be less than cumulatively considerable.

To minimize potential damage to trees that are proposed to be retained (particularly those with significant value identified above) as well as those potentially affected by the development of the proposed project (339 Bella Vista) as well as development of the adjacent lot (341 Bella Vista), the following measure will be required to reduce potential tree impacts to a less-than-significant level:

MITIGATION 8: The project applicant shall be required to implement all Tree Protection Specifications made by Deborah Ellis (February 8, 2005) and Arbor Resources (January 29, 2007 and February 24, 2011). These measures are included in Attachment 2 of the Initial Study.

MITIGATION MONITORING: The Directors of the Community Development and Parks and Public Works Departments will be responsible for ensuring that these recommendations are reflected in final project plans and are properly implemented during and after construction.

5. Cultural Resources: The project site is undeveloped and the potential for encountering cultural resources during project construction would be low due to the site's relatively steep topography and the site's elevated location away from creeks. There is typically a higher potential for encountering archaeological resources in areas adjacent to or near a river or creek.

6. Geology and Soils: The project site slopes downhill toward the north with slopes averaging 53 percent. The proposed plan estimates that approximately 247 cubic yards (c.y.) would be cut and 96 c.y. would be filled. Town requirements will include provision of a interim and final erosion control plans. Such measures would reduce potential erosion hazards to a less-than-significant level.

A review of the Town's hazards maps indicates that the project site has no erosion potential, moderate shrink-swell potential, low slope stability hazard (due to slope steepness), high potential for fault rupture, and moderate potential for seismic shaking. Very low liquefaction and no debris flow hazards were identified for the site. The Town's Fault Map indicates that the site is located approximately 500 feet north of a concealed fault.

Between 1998 and 2007, soil and foundation as well as geotechnical investigations were completed for the project. Several peer reviews of these investigations were completed by the Town's geotechnical consultant, Geomatrix, between December 2006 and November 2007. Copies of these studies are on file at the Los Gatos Community Development Department. These investigations involved review of available geologic maps and aerial photographs, drilling four test borings, and laboratory soils testing. These investigations concluded that the site has a low potential for liquefaction and lateral spreading. These studies also indicate that the site does not present any signs of slope instability hazards such as colluvium-filled swales, undercut cliffs or banks, or areas with recent evidence of landsliding. These analyses recommend that a soldier pile retaining/debris wall be constructed on the east side (upslope side) of the building footprints to keep the Bella Vista right-of-way stable during excavation and construction.

The site lies within the seismically active Bay Area, but is not within any of the "Earthquake Fault Zones" established by the Alquist-Priolo Earthquake Fault Zoning Act of 1972. The project would be subject to strong groundshaking in the event of an earthquake, with a low potential for ground rupture at the site. Geomatrix indicates the closest known faults are traces of the potentially active Berrocal and Shannon fault

zones located about 1,200 feet north-northeast and 1,000 feet south-southwest of the project site. The active San Andreas fault zone is located about 2.5 miles southwest of the property. The potential for fault ground rupture on the project site is considered to be low because of the distance from these faults. However, the subject property will be subject to very strong to violent ground shaking during a future large earthquake on the nearby San Andreas fault zone, or on one of the other major active faults zones in the region. It should be noted that most of the Bay Area as well as surrounding residences are subject to groundshaking hazards. Compliance with seismic design parameters per the Uniform Building Code would be adequate to address regional seismic safety concerns such as groundshaking.

Given the extent of grading proposed and the extensive portion of the home that would be located below grade, the following measure shall be required to reduce identified potentially significant geologic, soils, and geotechnical constraints to less-than-significant levels:

MITIGATION 9: The project shall incorporate all recommendations in Ali M. Oskoorouchi's geological and geotechnical investigation for the proposed project (included as Attachment 3 of the Initial Study) in order to minimize the potential impacts resulting from regional seismic activity and subsurface soil conditions on the site.

MITIGATION MONITORING: Prior to issuance of the grading permit, the Directors of the Community Development and Parks and Public Works Departments shall be responsible for ensuring that the recommended measures are properly incorporated into the project design and implemented during construction.

7. Greenhouse Gases: "Greenhouse gases" (so called because of their role in trapping heat near the surface of the earth) emitted by human activity are implicated in global climate change, commonly referred to as "global warming." These greenhouse gases contribute to an increase in the temperature of the earth's atmosphere by transparency to short wavelength visible sunlight, but near opacity to outgoing terrestrial long wavelength heat radiation. The principal greenhouse gases (GHGs) are carbon dioxide, methane, nitrous oxide, ozone, and water vapor. Fossil fuel consumption in the transportation sector (on-road motor vehicles, off-highway mobile sources, and aircraft) is the single largest source of GHG emissions, accounting for approximately half of GHG emissions globally. Industrial and commercial sources are the second largest contributors of GHG emissions with about one-fourth of total emissions.

California has passed several bills and the Governor has signed at least three executive orders regarding greenhouse gases. The Governor's Office of Planning and Research is in the process of developing CEQA significance thresholds for GHG emissions but thresholds have yet to be established. GHG statutes and executive orders (EO) include EO S-1-07, EO S-3-05, EO S-13-08, EO S-14-08, EO S-20-04, EO S-21-09, AB 32, AB 1493, AB 3018, SB 97, SB375, SB 1078 and 107, and SB 1368. AB 32 establishes regulatory, reporting, and market mechanisms to reduced statewide GHG emissions to 1990 levels by 2020. Pursuant to this requirement, the California Air Resources Board (CARB) adopted its Scoping Plan, which contains the main strategies to achieve required reductions by 2020. However, on March 18, 2011, the San Francisco Superior Court issued a final ruling that effectively blocks the CARB from implementing GHG reducing actions outlined in the Scoping Plan until CARB complies with CEQA. If the decision is finalized, the CARB will have to reconsider the environmental impact of the Scoping Plan and examine alternatives to the Scoping Plan's cap and trade policy.

Although implementation of certain elements of the Scoping Plan at the statewide level may be delayed, local GHG reduction policies would still apply to this project. In April 2008, the Town adopted near-term policy recommendations from the Santa Clara County Cities Association Green Building Collaborative. These policies require the submittal of a completed LEED or Build It Green's GreenPoint Rated checklist

as part of all planning applications and require all new public construction and renovation projects over 5,000 s.f. to achieve at least a LEED Silver certification. Requiring a checklist as part of a planning application does not require that the proposal incorporate green building practices. However, it will enable the Town to track the current use of green building practices and establish a baseline for future green building practices and requirements. The checklist requirement will also draw the attention of design and building professionals to the possibility of incorporating green building techniques into future projects. In addition, requiring LEED certification for new public construction and renovations will set an example and encourage sustainable practices for private developments.

Short-term GHG emissions would also be generated by project-related construction activities. The BAAQMD does not have a quantitative significance threshold for construction-related GHG emissions, but the project's construction-related emissions are expected to have a less-than-significant impact on global climate change based on GHG modeling results done for larger projects. However, the BAAQMD encourages implementation of construction-related GHG reduction strategies where feasible, such as: using alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment, local building materials (within 100 miles), and recycling of construction and demolition waste, to reduce construction-related GHG emissions. The proposed project would also be subject to the existing CARB regulation (Title 13 of the California Code of Regulations, Section 2485), which limits idling of diesel-fueled commercial motor vehicles, and compliance with this regulation would further reduce GHG emissions associated with project construction vehicles (compliance with idling limits is required under Mitigation Measure #2 in Section 3, Air Quality).

Implementation of the proposed project would contribute to long-term increases in greenhouse gases (GHGs) from direct sources (traffic increases and minor secondary fuel combustion emissions from space heating). Development occurring as a result of the proposed project would also result in other indirect operational increases in GHG emissions as a result of electricity generation to meet project-related increases in energy demand. Electricity generation in California is mainly from natural gas-fired power plants. However, since California imports about 20 to 25 percent of its total electricity (mainly from the northwestern and southwestern states), GHG emissions associated with electricity generation could also occur outside of California. Space or water heating, water delivery, wastewater processing and solid waste disposal also generate GHG emissions.

The adopted BAAQMD's operational GHG screening criterion for single-family residences is 56 units, and the proposed project would fall well below this criterion and therefore, the project's operational GHG emissions would not exceed the BAAQMD GHG significance thresholds; consequently, a detailed, quantitative assessment of the project's GHG emissions would not be required. Although GHG emissions would be less than significant, the proposed project will be required to comply with energy efficiency requirements of the California Energy Code (Title 24, Part 6 of the California Administrative Code). In addition, a GreenPoint checklist has been prepared for the project consistent with Town's adopted GHG policies and the project. The project is estimated to achieve a GreenPoint rating score of 105, which would meet the minimum advisory GreenPoint rating score of 50 points. The GreenPoint checklist considers project design elements, but also considers recycling of construction waste.

8. Hazards and Hazardous Materials: The project site is not included on any Hazardous Wastes and Substances Sites List. No significant public health risks are anticipated since the project site is undeveloped. There are no known previous uses on the site that would pose the potential for public health risks or presence of contaminants at the site.

9. Hydrology and Water Quality: Storm Drainage. At present, the 0.11-acre project site is undeveloped. The proposed residence would result in development of 2,063 s.f. of impervious surfaces (building,

driveway, and porch), covering 42 percent of the site. Such a small increase in areal extent of impervious surfaces would not be expected to result in a significant change in downstream peak surface flows or runoff volumes from the project site.

Runoff from the roof of the proposed residence and garage would collect in gutters and discharge via downspouts to splashblocks at the base of the residence. All surface flows would be directed away from buildings into drainage swales, storm drain inlets, and drainage systems. Project drainage plans indicate that overland flows would collect in three storm drain inlets on the south, east, and west sides of the residence. Six-inch PVC drain pipe on the east and south sides of the site would convey accumulated drainage flows westward to detention trench consisting of a shallow gravel basin on the lower hillside of project site for on-site percolation. An overflow pumpwell would pump any excess accumulated runoff flows to an energy reduction box on Bella Vista Avenue for discharge by overland flow on the street.

This storm drainage methodology is consistent with requirements on similar properties and proposes to direct drainage to public facilities and limit impact on adjacent properties. Although runoff from the proposed residence would be collected in a pipe system, storm flows would be discharged slowly into subsoils through the use of on-site infiltration areas, protecting surface water quality. Design and sizing of on-site percolation areas would be subject to review and approval by the Town, and such approval would reduce the potential for downstream flooding and erosion hazards to a less-than-significant level.

Flood Hazards. According to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps for the project area, the project site is not within the 100-year floodplain. The Santa Clara Valley Water District's Maps of flood control facilities and limits of one percent flooding as well as the Town of Los Gatos Safety Element Flood Plain maps show the project site does not lie within a flood zone. Therefore, no significant flood hazard impacts would be anticipated.

Water Quality. New, more stringent water quality regulations of the Clean Water Act have recently been triggered because the NPDES (National Pollution Discharge Elimination System) permit program has failed to protect beneficial uses of Santa Clara County's creeks and the South San Francisco Bay. Evidence includes violations of ambient water quality criteria, high concentrations of toxic substances, and fish consumption health advisories.

These new regulations require that all discharges shall comply with Provision C.3, New and Redevelopment Performance Standards of Order No. R2-2009-0074 of the NPDES permit program. However, single-family home projects that are not a part of a larger plan of development are not considered Regulated Projects per the provisions of C.3. In addition, the total development area would be less than one acre and, per the provisions of the State Construction General Permit, no Storm Water Pollution Prevention Plan (SWPPP) would be required for the project. The proposed project plans (Sheets C-1 through C-7, dated July 22, 2010) include extensive storm runoff collection and treatment facilities to address the maintenance of water quality conditions for drainage flows from impervious surfaces. The proposed project is a single family detached home and is therefore not a Regulated Project per Provision C.3. Even if both 339 and 341 Bella Vista proposals were considered combined, their total impervious area created and/or replaced would be approximately 5,050 s.f., which is below the Regulated Project threshold of 10,000 s.f.

10. Land Use and Planning: The proposed project is consistent with the existing General Plan designation of "Medium Density Residential, 5 - 12 units per acre." This designation allows for residential uses at densities of up to 12 units per acre. The proposed residence would be developed on a 0.11-acre site, which would be within allowable densities. The minimum lot size in the R-1:8 zone is 8,000 square feet for each dwelling unit, and the proposed project would be located on a 4,915 square-

foot lot. Since the lot is smaller than the required minimum lot size, it is considered a nonconforming lot. Nonconforming lots are considered a hardship for the owners and certain exceptions to the Town's Code (such as minimum building setbacks) may be allowed if compatible with established setbacks in the neighborhood.

The project site is located adjacent to residential uses. Access is from Bella Vista Avenue and the project parcel is a residential lot that is undeveloped, located adjacent to developed residential properties to the west and east. The proposed single-family residential use would be consistent with existing adjacent and nearby single-family residential uses on Bella Vista Avenue.

11. Mineral Resources: The Los Gatos General Plan does not identify any regionally or locally-important mineral resources on the project site or in its vicinity.

12. Noise: The Town Noise Ordinance (Chapter 16) restricts construction activities to the hours of 8:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 7:00 p.m. on weekends and holidays. This ordinance also limits noise generation to 85 dBA at the property line or 85 dBA at 25 feet. Project construction would result in temporary short-term noise increases due to the operation of heavy equipment. Construction noise sources range from about 82 to 90 dBA at 25 feet for most types of construction equipment, and slightly higher levels of about 94 to 97 dBA at 25 feet for certain types of earthmoving and impact equipment. If noise controls are installed on construction equipment, the noise levels could be reduced to 80 to 85 dBA at 25 feet, depending on the type of equipment. With controls, construction noise levels could be made to comply with the Town Noise Ordinance.

Residential uses are generally considered to be noise-sensitive uses or sensitive receptors. There are single-family residences located east and west of the site. The residences to the east are located approximately 75 feet from the proposed residence, while the townhomes to the west are located approximately 40 feet from the residence. At 40 feet, the ordinance noise limit (85 dBA at 25 feet) would result in maximum noise levels of 81 dBA, respectively at the closest residences to the west and east. Temporary disturbance (e.g., speech interference) can occur if the noise level in the interior of a building exceeds 45 to 60 dBA. To maintain such interior noise levels, exterior noise levels at the closest residences (with windows closed) should not exceed 70 to 80 dBA and this exterior noise level is used as a significance threshold or criterion. Therefore, even with compliance with the Noise Ordinance limit of 85 dBA at 25 feet, construction noise levels could result in periodic speech interference effects when heavy equipment is operated on the project site. However, such levels would only occur for a short period, primarily when grading and drilling equipment are operating near the western project boundary, not during the entire project construction period. Due to the small size of this project and short duration of construction, such a temporary impact would be mitigated to a less-than-significant level by enforcement of time restrictions and noise level standards contained in the Town Noise Ordinance.

Long-term noise increases associated with the project would result from increased traffic along Bella Vista Avenue and residential activities (i.e., operation of appliances and maintenance equipment such as lawnmowers, blowers, etc.). Traffic increases associated with the project would be minor and would not significantly or measurably increase ambient noise levels in the project vicinity. Noise generated by project residential activities would be similar to noise generated by adjacent or nearby residential uses and would not conflict with the existing residential noise environment in the neighborhood.

13. Population and Housing: The proposed project would consist of one single-family residence on one parcel, and would not result in intensification of residential uses or significantly increase local or regional population. Since the project would not extend new roadways or utilities to any adjacent undeveloped

lands, the project would not induce new growth. The project site is currently undeveloped and no existing housing units would be displaced by the project.

14. Public Services: Services are currently provided to residential uses surrounding the project site. The project would not significantly increase demand for public services since this is an in-fill development and services are already provided to the surrounding area. The Santa Clara County Fire Department provides fire protection services to the project area. The Department has reviewed the proposed project only with respect to site access and water supply as they pertain to fire department operations. The required fire flow of 1,000 gpm at 20 psi residual pressure is available from area water mains and fire hydrant(s) meet the required spacing. The proposed residence also would be subject to formal plan review by the Department requirements and will be required to comply with adopted model codes.

15. Recreation: The proposed addition of one residential unit would incrementally add new population to the area, and thereby increase the demand for recreational services. This incremental increase would not be significant given the small size of the project.

16. Transportation and Traffic: The Town's Traffic Impact Policy (Resolution 1991-174) specifies that a project with a traffic impact of 19 or less additional AM or PM peak hour trips could be approved without a comprehensive traffic report if it is determined that the benefits of the project to the Town would outweigh the impact of increased traffic. However, the project would be subject to payment of a traffic mitigation fee. The project would result in a net increase of ten trips per day with one trip during the AM peak hour and one trip during the PM peak hour. According to the Town's traffic determination, traffic generated by the proposed project would represent a minor impact and no additional traffic studies would be required.

The Town's Zoning Ordinance would require provision of two parking spaces for the proposed single-family residence. The project would meet the parking requirements by provision of a two-car garage and two additional parking spaces in the proposed driveway.

Approximate grading quantities for the project are 247 c.y. of cut and 96 c.y. of fill, resulting in a net export of 150 c.y. of fill. Export of 150 c.y. of material off-site could generate up to 13 truckloads or a total of 26 one-way truck trips (assuming 12 c.y. per haul truck). If the adjacent home (341 Bella Vista) is constructed at the same time, a total of 28 truckloads or 56 one-way truck trips could be generated on Bella Vista Avenue. Since the Town will prohibit haul truck operations on local roads between 7 a.m. and 9 a.m. as well as 4 p.m. and 6 p.m., trucks operations would occur 6.5 hours per day. Assuming approximately five to nine trucks could be filled per hour, the 28 truckloads or 56 truck trips would occur over a one- to two-day period. Due to access limitations on Bella Vista Avenue, the Town will require the applicant to work with the Town Parks and Public Works 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 would include, but would not be 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. All trucks hauling soil, sand, and other loose debris will be required to follow a designated route between Los Gatos Boulevard and Bella Vista Avenue (as specified by the inspector) and be covered (or at least two feet of freeboard must be maintained). These requirements will reduce potential traffic safety hazards to a less-than-significant level.

17. Utilities and Service Systems: Utilities are currently provided to adjacent residential uses. While some utility extensions may be required onto the site, no major off-site utility improvements would be expected to be required for project development since this is an in-fill development and involves development of one residence on one existing parcel.

MITIGATED NEGATIVE DECLARATION – 339 BELLA VISTA AVENUE

18. Cumulative Impacts: When the proposed project is considered together with the home proposed on the adjacent property at 341 Bella Vista Avenue, the proposed project could contribute to cumulative impacts, particularly those related to biological resources and traffic during and after construction. The project's contribution to cumulative impacts associated with construction of both proposed homes are described under relevant topics above. With implementation of mitigation measures specified in this report, they were determined to be less than cumulatively considerable and therefore, less than significant.

Copies of the Initial Study used to make the above recommendation are on file and available for public inspection during regular business hours at the Town Community Development Department, 110 East Main Street, Los Gatos, California.

Date

Wendie R. Rooney, Director of Community Development

EXHIBIT 9

PATRICK K. TILLMAN

Attorney at Law

July 1, 2011

Lead agency: Town of Los Gatos
Community Development Department
110 East Main Street
Los Gatos, CA 95031

Project Title and

Location: 339 & 341 Bella Vista Avenue
Architecture and Site Application S-06-46 and S-06-64
Subdivision application(s) M-06-09
Negative Declaration ND-08-02 and ND-08-03

Regarding: Objections to MITIGATED NEGATIVE DECLARATION[S]

To Whom it may concern:

I am an owner of 150 Maggi Court, Los Gatos, California. I will be seriously-negatively impacted if the above-referenced application(s) to build at 339 & 341 Bella Vista Avenue, Los Gatos, California are granted.

I read the MITIGATED NEGATIVE DECLARATION[S] pertaining to the above. They are completely devoid of the "human" aspect to the proposed projects and their technical information is evasive garbage.

In 2008, these same people submitted an application for the same project. It, too, was chalked full of distortions, e.g. 1) discussions were had with the affected neighbors and 2) pictures were submitted of the impacted residents (looked like they were building in the Yosemite National Park). When we were drug into that process, we – 10-15 families in our neighborhood – told Applicant several times, we warned him in no uncertain terms, that any building on these lots must be in strict compliance with the Hillside Development Standards and Guidelines ("HDS&G").

The primary applicant this year is again Dan Ross. Since his/this project application was shot down in 2008, instead of heeding our warnings, Mr. Ross made himself part of the Los Gatos General Plan Update Advisory Committee (from 2008 until 2010), and then part of the North-40 Advisory Committee (since 2011). Mr. Ross has been providing his invaluable opinions regarding land use to the Town of Los Gatos on a volunteer basis, actively ingratiating himself with the powers that be.

Mr. Ross told us/me that he was getting the assistance of Los Gatos Planning personnel in this re-submission. Most troubling of all his comments was that he has no plans consistent with the FAR requirements because he was told by a Town of Los Gatos official, someone in the Planning Department, not to even bother submitting any. In essence: "*don't worry about it.*"

On an historical note, as to this same location and a similar project, the Planning Department of Los Gatos stated:

COMMENTS/CONCERNS:

11. The Town sets **a high priority** in preserving its hillsides, natural views, and the character of its neighborhoods. ***This site is in a very visible location*** that has the potential to greatly impact these views and the character of this neighborhood. The Planning Department can not recommend approval of the design as submitted because of *its potential to greatly impact these views, is not in keeping with the residences in the area, and has potential privacy impacts with the residences of the Bella Vista Development* that is now under construction. The applicant should consult with an architect to develop a design that addresses ***the massiveness of the rear elevation***, articulates the bulk of the second story from the lower story, ***minimizes privacy and view impacts***, minimizes grading and retaining walls, and preserves the sites existing trees. ...

(Emphasis added)

Bella Vista Proj. App. PRJ-97-020

Rec: 02-12-97

Similar concerns were voiced by the MAYOR AND TOWN COUNCIL on April 3, 2003:

DISCUSSION:

The Planning Commission considered this matter on February 26, 2003. The Planning Commission unanimously denied the appeal due to lack of progress. The Commission further directed the applicant to, should they resubmit an application, incorporate the following:

- Merge the two lots, APN 529-23-015 and 529-23-016;
- Home and garage *shall not exceed the FAR* and be compatible with the characteristics and conditions of the lot; ...

(Emphasis added)

Why is this Applicant being treated differently?

As to specific issues raised in the MITIGATED NEGATIVE DECLARATION[S]:

Project Description.

a. Lot size. The lots are small – 6,038 sq. ft. and 4,106 sq. ft. Applicant proposes to reduce the size of the larger lot from 6,038 sq. ft. to 4,915 sq. ft. He disregards the law that says you can not make a non-conforming lot more non-conforming. (Gov. Code §66412(d)) The adjacent lot would then increase in size from 4,106 sq. ft. to 5,240 sq. ft. Both lots, before and after the shift, are substantially below the 8,000 sq. ft. minimum for R-1:8 zoned projects.

b. House Size. Applicant wants to construct two (2) 2,760 sq. ft. homes, one (1) on a **4,915 sq. ft. lot** and the other on a **5,240 sq. ft. lot**. Both lots sit on a +53° (average) slope within the purview of the HDS&G.

There is virtually no room in front of each house (to the road) and none between their downhill face and multiple neighbors - us. Applicant represents that there is forty feet (40') between the downhill face of the project and the neighbors – us. Again, a lie. He also omits the fact that 25 feet of that distance consists of a gravel walkway (~ 10 feet wide) and our 15 foot backyards. At the Northern end of the project, these monstrosities will be built right up to the downhill lot-line.

c. Environmental Impact Report. He says one is not needed. Do you need an EIR to build in someone's backyard?

1. Aesthetics.

a. Across the street. No problem for those living across the street that may have enjoyed the trees and/or the view, he says, the roof of the proposed homes will be lower than the canopy of the +150 year old oak trees they are killing/ removing. The Bella Vista residents will certainly be far happier looking at the new roofs.

b. "Visual character along Bella Vista." Construction of these two (2) homes will look like an overstuffed backpack on the West side of the street. They detract from the serenity of that section of the street – they are out of place.

c. View analysis. Applicant's report properly defines the "view analysis"¹ issue, then goes on to prove/factually admit – contrary to his own conclusions – that his project violates the HDS&G from all three (3) of the locations to which he makes reference. At all three (3) locations – according to this report – the project is visible based on the HDS&G standard. But instead we get: *"Hey!! You can't see the poles from here ... good thing these damn trees and shrubs block the view, otherwise, we'd have failed the 'view analysis'."*

Applicant also invokes the view blockage "by an approved new building on the parcel located between the site and Alberto Way." First, view blockage by a building more appropriately calls for moving the viewing platform. Second, for how many years have we been threatened with more construction at The Los Gatos Motor Lodge? 10!! Third, when will this proposed project block the view? 5-10 years from now? Fourth, the view of the project is not blocked if you move 10 feet from either side of the viewing platform. And fifth, if built, you can probably see the project from Cupertino. Who is he kidding?

¹ Applicant identifies the issue in footnote #2: " 'Potential' is defined as capable of being seen from a viewing platform if trees or large shrubs are removed, significantly pruned, or impacted by construction." (Emphasis added)

d. HDS&G Minimum Grading.

Grading Standards:

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

meet grading standards or is not consistent with the goals and objectives of the Hillside Development Standard and Guidelines.

Maximum Grade Cuts – 8' (From Chart)

The Applicant proposes two (2) grade cuts totaling **17 feet**. The first is 4½'. Three (3) feet later, another 12½ foot cut is required. Because of their close proximity, the two (2) "cuts" should be considered as one (1). To further aggravate the problem, the last 4½' of the downhill edge of the house sticks up 3' above the natural slope, indicating the cuts should be even more drastic and demonstrates just how steep this hillside is.

In the "6. Geology and Soils" section, Applicant asserts that "approximately 247 cubic yards" of soil will be cut from each house location – presumably to build the foundation of the house. The quantity of soil to be removed does not sound massive because it's not – the angle of the hillside is so steep, they need only shave off a little topsoil.

He goes on to state that 96 cubic yards of soil will be returned – "filled." True (maybe), but again misleading. The 96 cubic yards is "filled" outside the house-foundation footprint to build up a platform for the garage. Almost 50% of the soil removed to build the whole house is needed to build up a 20' x 20' garage pad. Again, reflecting just how steep this slope is.

e. "This screening would help to minimize loss of privacy at the existing townhomes, immediately downhill of the site since the proposed home[s] would directly overlook these townhomes."

You Asshole!! You lying sack. The lowest part of each proposed home – the foundation – is level with the very top portion of our living room. They look down on us and into our living room area (2nd floor) and bedroom area (3rd floor) *from their basement*. They tower over our homes. Because of the steep slope, they would have to have 60 foot trees to block their view; and then, where do they plan on putting these trees - there is probably not 10 feet of room anywhere between their foundation and the lot line ... then there is the gravel walkway, then there is our 15 foot deep backyard.

f. Outdoor lighting. According to Applicant, they are 40 feet from our homes ... and uphill. Both our living room (2nd floor) and bedroom (3rd floor) have large sliding glass doors, easily 10 feet wide. Any lights on the downhill side of these homes will light up our entire backyard, living room, and bedroom.

As to the “*landscape screening*” they claim will mitigate, see above.

In a Solar/lighting study submitted to the Town of Los Gatos in 2008 by Applicant (Geier & Geier contractor), they recommended a “set-back” from the downhill neighbors of 75 feet – as opposed to their currently proposed 40 feet. This report was removed from Town’s file. (Also see “**Solar Study**,” supra)

4. Biological Resources.

a. Tree removal. NO ARBORIST IS ADVOCATING REMOVAL OF THE TREES. And, no arborist voices any serious concerns about the health of these trees if no construction goes forward. All the reports are based on the premise that these homes will be built. The closest an arborist came to making a recommendation was:

There are already high density condominiums or apartments on the east[sic] (downslope) side of the parcel, and these trees in their intact groves provide a good buffer and screening between the condominiums and the single family residences on the west[sic] side of Bella Vista Avenue. It is too bad that this small parcel cannot be kept as an open space buffer, or a low-maintenance park. If this were not possible, then the construction of only one house on the lot would preserve more of the trees and the general open space nature of the parcel.

(ARBORIST REPORT 09-20-01)

For the Town of Los Gatos
Community Development
Department

Unfortunately, now that this arborist is on Applicant's payroll, and not consulting for the Town of Los Gatos, she seems less enthusiastic about allowing these trees to survive and contribute to the community. Her opinion of the health of the trees now seems a bit less hopeful, as well. Regardless, the opinions regarding removal are *only if* the homes are constructed. And if so, the whole damn lot of them can go.

Applicant wants to remove 12 "regulated trees" and jeopardize the health of 6 more – out of 21 – leaving basically none. Completely omitted are the new owners' plans for a lawn.

As to replacement trees, where are you going to put them, on top of the homes? They're not going to fit between the downhill face of the home and the property line.

Feigning environmental concerns is very telling about the nature of this project.

9. Hydrology and Water Quality. Each of these homes will result in at least 2,063 sq. ft. of "*impervious surfaces*" (building, driveway, and porch) – ***between the two (2) of them, over 4,126 sq. ft. of impervious surface*** within a 100 foot distance, on a +53° (average) slope, leading down to a gravel pathway (approximately 10 feet wide), leading down to our homes.

No problem. Applicant has a septic system to handle even the biggest storm. And much like they do at the better trailer parks, any excess can be pumped uphill right onto the street ... where it can accumulate ... or run downhill, right back to the project from where it came – *they are downhill of the street.*

"And NO!!" this system is not consistent with requirements on similar properties. There are no properties similarly situated to those being addressed.

10. Land Use and Planning.

a. “Medium Density Residential” apparently is 5-12 units per acre. This entire plot of land is “0.11 acres.” With two (2) homes on it, that would be +18 units per acre ... on +53° (average) sloped land. Are we not going in the wrong direction for density??

b. Consistent with existing adjacent and nearby residences.

Again: “NO, it’s not.” The only homes with any similarities, i.e. on downhill side of Bella Vista, are at least a ¼ mile down the street, on the other side of Highway 9. Downhill of these homes, and I believe there are four (4) of them, is the parking lot to the Los Gatos Lodge and the Los Gatos High School Baseball field. None of them have downhill residents.

12. Noise. Nobody cares about the noise level during construction. Construction is noisy, but temporary. Noise that does concern the downhill residents is, and will be, tolerating the ongoing noise of those living above us. This noise will not “*be similar to noise generated by adjacent or nearby residential uses.*” Another outright lie.

Standing in our backyard, standing on our upstairs deck, without trying, I can listen in on conversations taking place on Bella Vista Avenue. I hear the words clearly. With that as my standard, I anticipate being privy to far too many conversations to which I was not invited. There’s also parties, kids, barbeques, television to be concerned about. I do not want to be hollering “*shut up*” at my neighbors. If I do, I expect to get an equally nasty response. Did I mention we are downhill of them? That would put me/us at a disadvantage.

OTHER

Solar Study. Applicant is obligated to submit a Shade and Shadow Study, setting forth potentially significant impacts on the project neighbors. Such study was submitted to the Planning Department in 2008, commissioned by Applicant and prepared by Geier & Geier. *It was removed from the Town’s file.* Therein, Geier & Geier identified substantial impacts on the downhill neighbors. In particular, in Winter months the project would block the sun from the downhill neighbors from before 9:00 a.m. until shortly after 12:00 p.m.

I find no reference to this mandate in the MITIGATED NEGATIVE DECLARATION[S].

CONCLUSION

These Mitigated Negative Declarations are a fraud. Those submitting them are shameless liars.

This is Los Gatos. Our homes boarder on \$1.0 million in value. Having the proposed projects built will certainly harm the value – estimated to exceed \$100,000 *per household* times at least eight (8) households; but more importantly, our privacy is gone, our quality of life is gone. We did not move into Los Gatos to live like this.

The Town Council is charged with preserving its hillsides, natural views, and the character if its neighborhoods. At the very least, I expect my Town not to rubber-stamp a lifetime nuisance.² Allowing this Applicant, this insider, a waiver (aka “variance”) to virtually everything this community and the HDS&G stand for is certainly not appropriate.

The projects proposed should be rejected based on the integrity of the presentations, alone.

Respectfully,

Patrick K. Tillman

cc: Bella Vista Home Owners

BellaVista.NegDecl070111

² **Acts Constituting Nuisance.** “Anything that is ... indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, ... (CC §3479)

EXHIBIT 10

Patrick K. Tillman

From: Debra Chin [debrachin@aol.com]
Sent: Tuesday, December 20, 2011 10:13 AM
To:

— Redacted —

Subject: Update: Hearing Date Proposed for Feb. 9

See update below from Suzanne. Please send your address in to her if you would like to be copied directly on the notice for the hearing date. For those of you who have knowledge of the west side of Bella Vista, please chime in when we know the properties he is using for justification for setbacks and driveways with any perspective.

Debra,

The list of setbacks and driveways lengths should be in today, along with the letter of justification. The applicant was unable to measure any side or rear setbacks in the area as he did not want to trespass on neighboring properties. We will see if we can use the GIS system to estimate some side and rear setbacks before the hearing.

I will be recommending that the hearing be continued to February 9, 2012 as staff does not have time to complete analysis and the report to the Commission due to the holiday closure. Courtesy notices will be sent to neighbors before the February meeting, and I will email those people that I have addresses for so they are aware of the delay.

Suzanne

-----Original Message-----

From: Debra Chin <debrachin@aol.com>

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— Redacted —

FYI - see the latest update on size - one house has been reduced by 128 sq. ft and the other by 49 sq. feet! Note that in an earlier email Suzanne said he was working on "including a list of properties in the area that have non-conforming setbacks, and a list of house sizes and driveway lengths for the properties on the west side of Bella Vista".

I don't know if these have as yet have been submitted but it will be interesting to see what examples he is using from other properties. Chances are I will not be able to get a copy of the plans until after holidays but will keep everyone abreast of whether the date for the hearing is still on for Jan. 11th.

Happy Holidays,
Debra

12/20/2011

-----Original Message-----

From: Suzanne Davis <sdavis@losgatosca.gov>

To: debrachin <debrachin@aol.com>

Sent: Mon, Dec 19, 2011 10:54 am

Subject: 339-341 Bella Vista

Hi Debra,

I am sorry for the delay in response to your email last week. I was waiting for the full size sets of plans which came in late Thursday. The house size for 339 Bella Vista has been reduced to 1,792 sq. ft. The garage size is unchanged at 441 sq. ft. and there is a small cellar (399 sq. ft.). The house reviewed by the Planning Commission in October was 1,920 sq. ft.

The house at 441 Bella Vista is 1,780 sq. ft. with a 399 sq. ft. cellar and 441 sq. ft. garage. The plan reviewed by the Commission in October was 1829 sq. ft. with a 481 sq. ft. cellar.

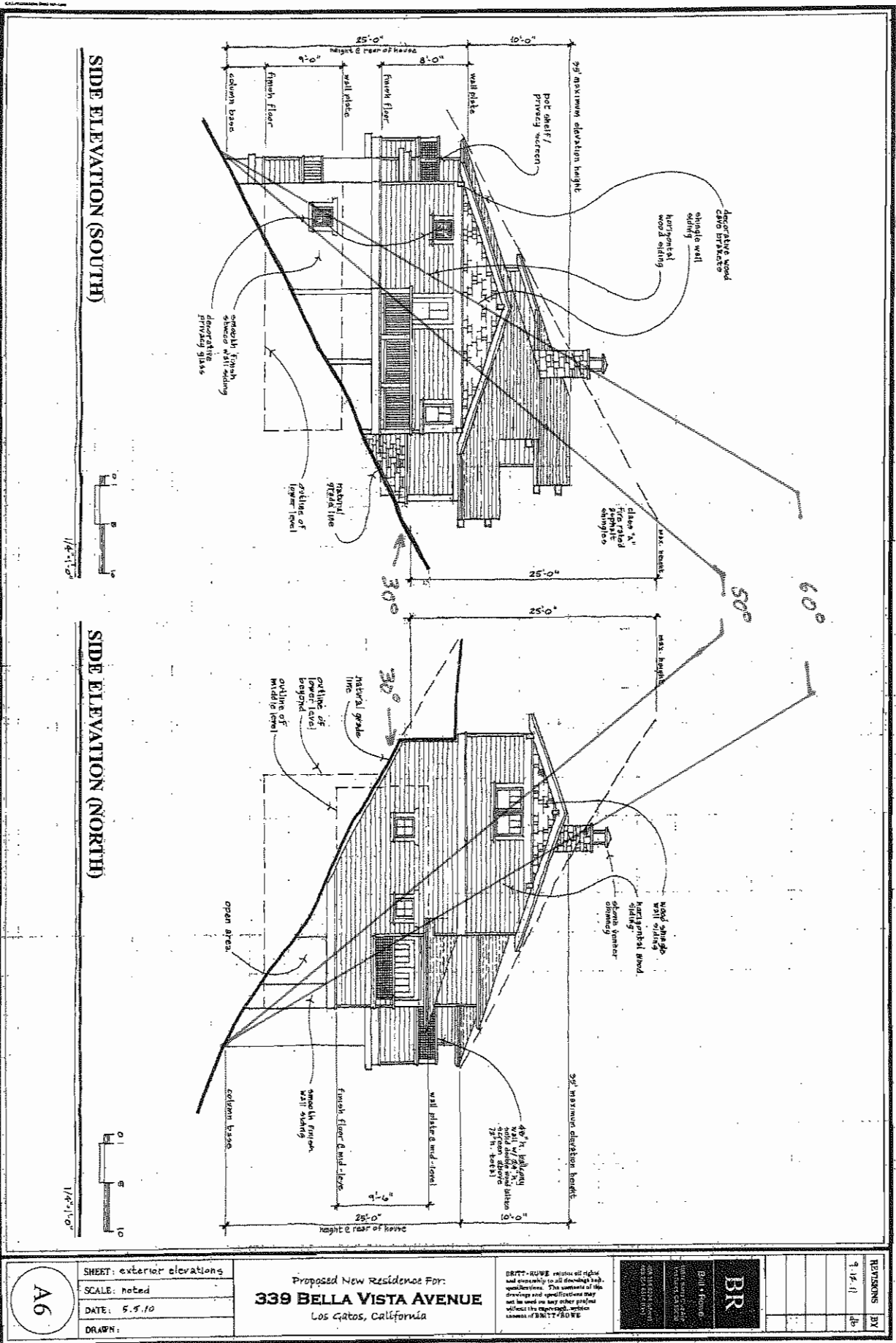
I advised the applicant that the Commission recommended a greater reduction. They have decided to move forward with the plans as revised.

You are welcome to come in and look at the plans. The public counter is open from 8 am to 1 pm through Thursday of this week. Town offices will be closed from December 23, 2011 through January 2, 2012.

Suzanne

49

EXHIBIT 11



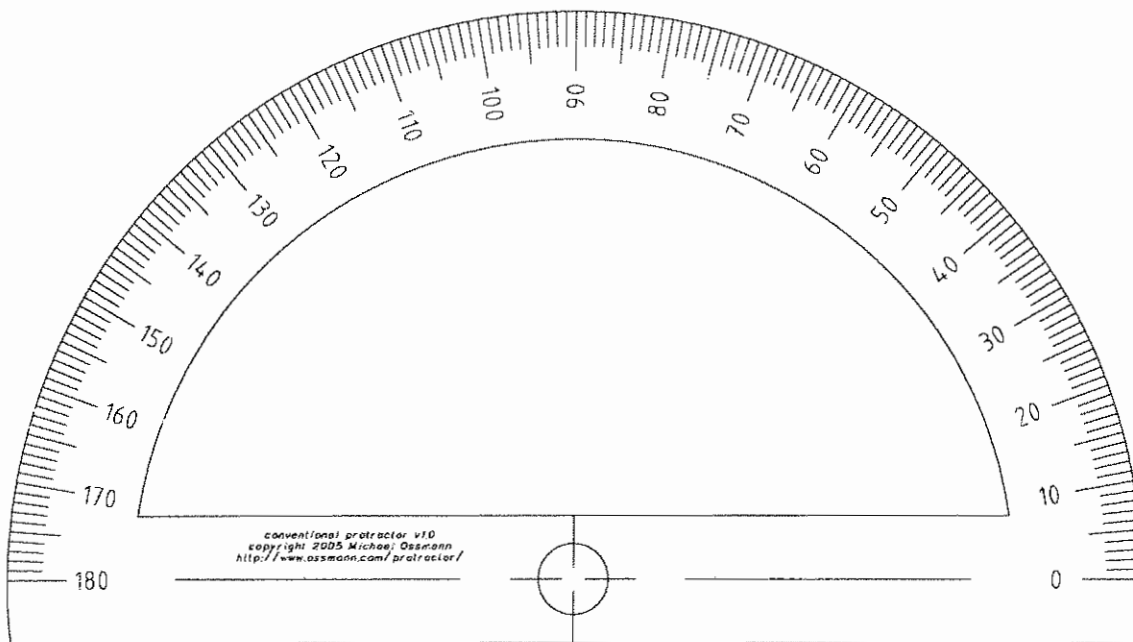
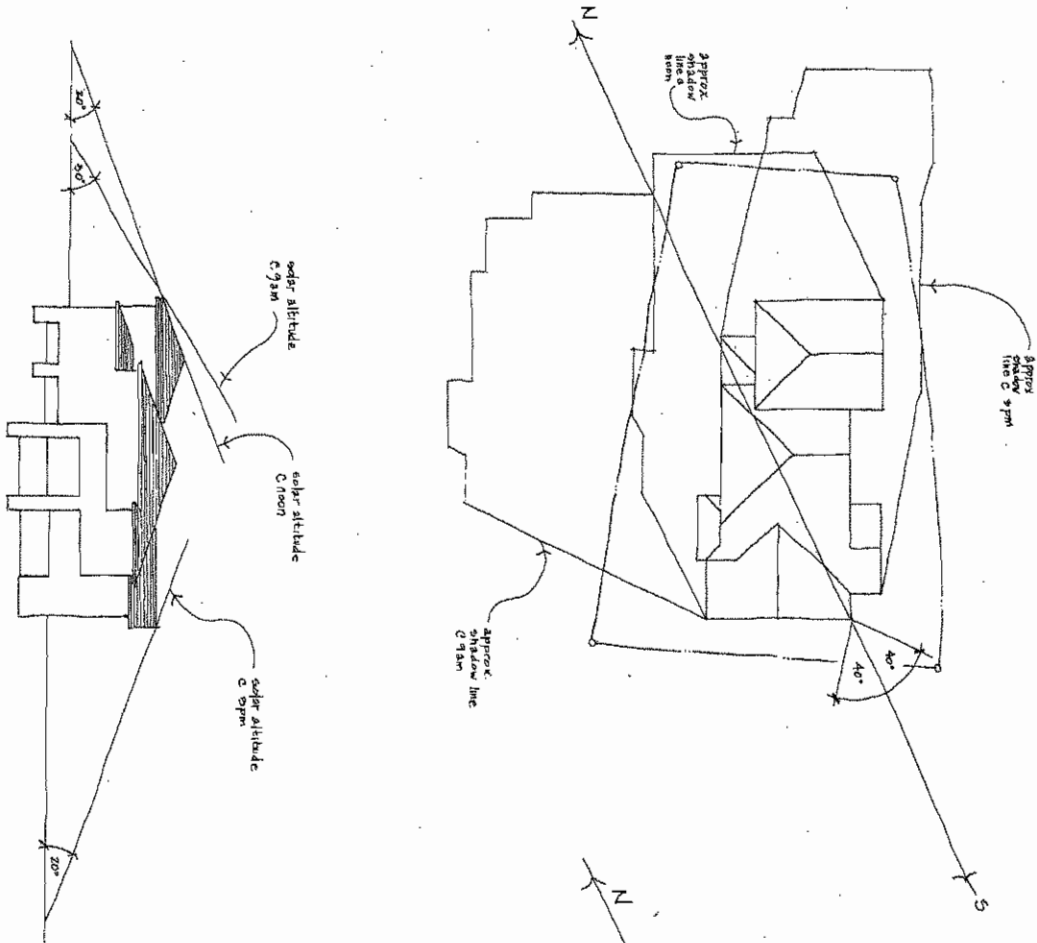


EXHIBIT 12

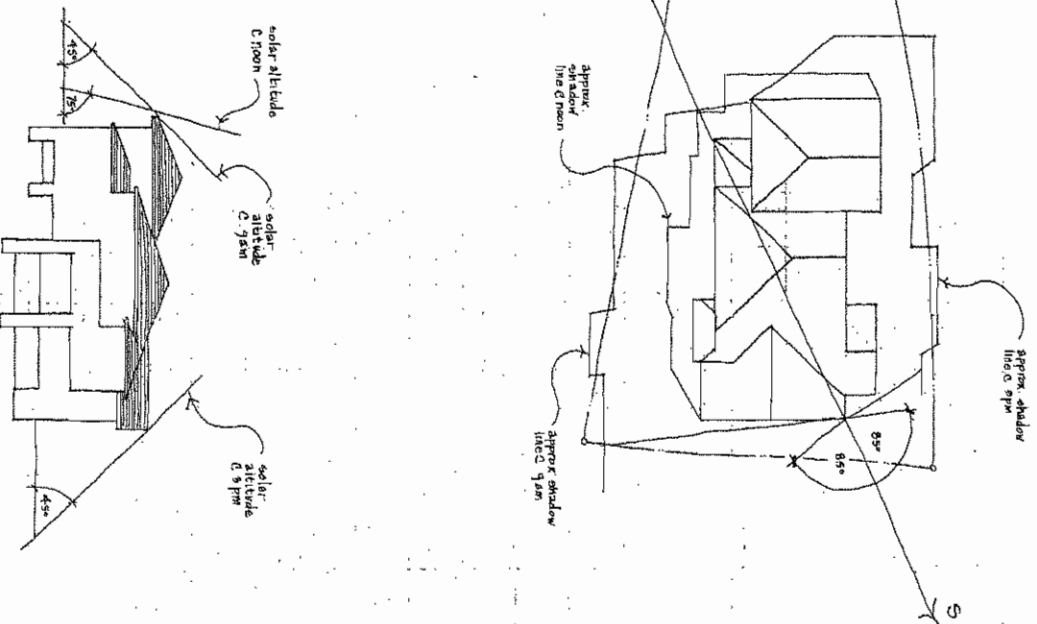
SHADOW STUDY @ December 21

1"=10'-0"



SHADOW STUDY @ June 21

1"=10'-0"

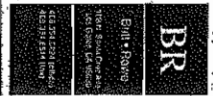


A9

SHEET: streetscapes
SCALE: 1/8"=1'-0"
DATE: 5/6/10
TMR: JMN

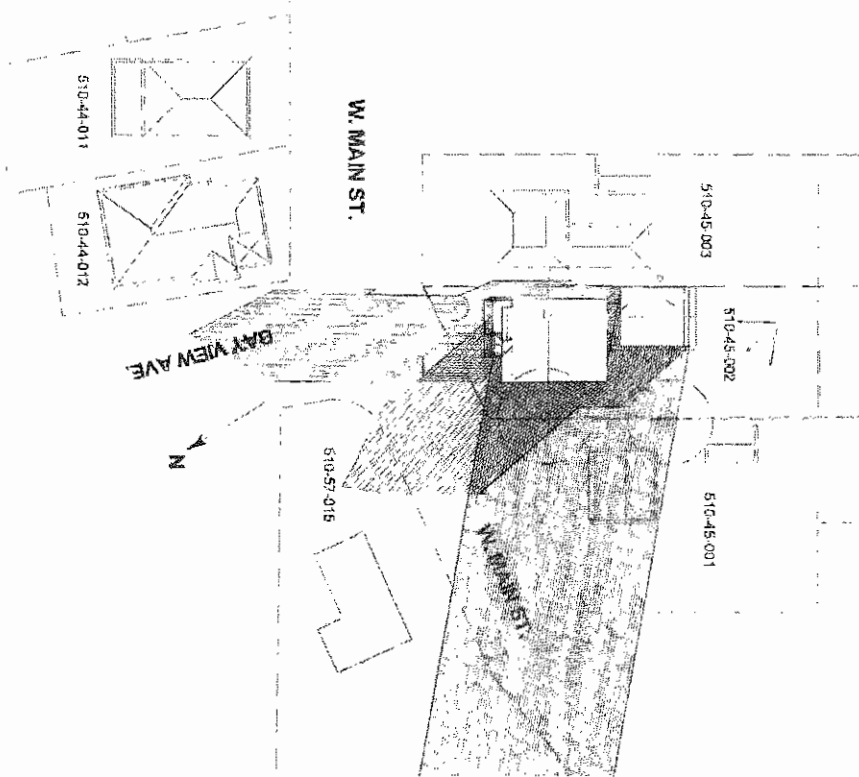
339 BELLA VISTA AVENUE
Los Gatos, California
Proposed New Residence For

BRITTE + BOWE, architects
1000 SAN JOSE AVENUE
SUITE 100
SAN JOSE, CA 95128
(408) 291-1111
www.britteandbowe.com

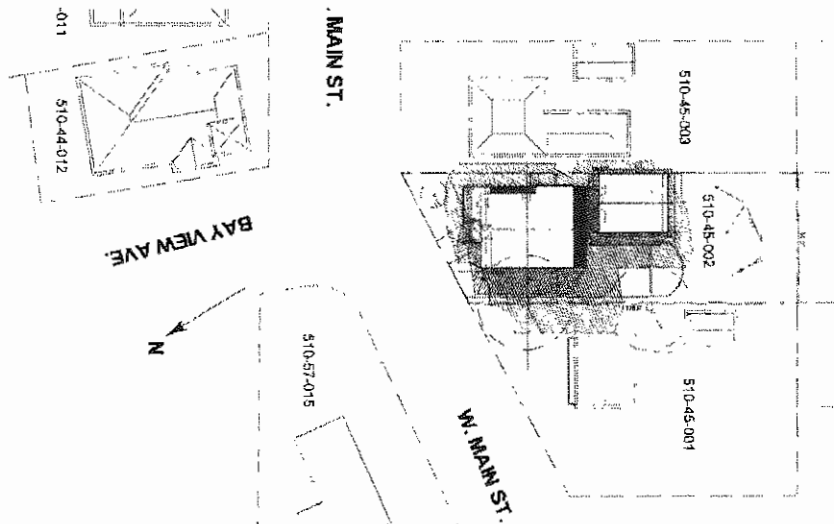


REVISIONS

B1



WINTER SHADOW STUDY 12/21/11
SUN 12:00 PM



SUMMER SHADOW STUDY 6/21/11
SUN 12:00 PM

A-5	SHADOW STUDIES	REGINALDI RESIDENCE 121 W. MAIN ST. COR. BAY VIEW AVE. APN: 885-015-100	DeMattei Construction Inc. 1154 Tola Avenue, Encinitas, California 92026 Office: 408.245.7518 Fax: 408.245.6809 www.demattei.com	
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EXHIBIT 13



[Government](#) | [Living in Los Gatos](#) | [Doing Business](#) | [Visiting Los Gatos](#)



NOTIFY ME

You are here: [Home](#) > [Living in Los Gatos](#) > [Town Services](#) > [Parks and Public Works](#) > [Engineering Services](#) > [Maps](#) > [Lot Line Adjustment Procedures](#)

Lot Line Adjustment Guide

Lot line adjustments are reviewed according to Section 66412(d) of the Government Code of the State of California. The applicant has the option of using this procedure or completing the lot line adjustment by filing a Parcel Map.

Application

1. Application for lot line adjustments (boundary changes) shall be made to the Community Development Department on the prescribed form.
 - All owners of record must sign the application.
2. Submitted the following items with the application:
 - Evidence that any holders of Deeds of Trust have no objections to the proposed boundary changes.
 - Title reports covering all parcels involved dated within 30 days.
 - The required Planning Department processing fee.
 - Six (6) copies of a drawing no larger than 24" x 36" showing existing and proposed boundaries, all improvements (houses, driveways, trees, etc.), and required building setbacks that may be affected by the proposed boundary change.

Processing

1. All Lot Line Adjustment applications will be reviewed by the Development Review Committee (DRC). The DRC must limit its review to the following items:
 - Lot size remains conforming to the existing zoning ordinance. If the lots are currently nonconforming as to size, they cannot become more nonconforming (smaller).
 - Setbacks remain conforming or do not become more nonconforming.
 - Lot frontage and lot depth requirements remain conforming.

- The existing houses do not become nonconforming as for Floor Area Ratio (FAR) requirements of the zone.
 - The existing buildings meet the requirement of the Uniform Building code for fire separation or fire wall construction.
2. After final action by the Development Review Committee, the applicant will be notified by the Planning Department that the application is complete and any requirements that must be met before the certificate or map can be recorded.
 3. The Development Review Committee has authority to approve this application. The Development Review Committee may approve or deny the application but may not attach conditions, except to meet the requirements of the Building or Zoning regulations, per Section 66412(d) of the California Government Code. If the application is denied, the applicant may appeal this decision to the Planning Commission.

Final Action

1. When the application has been approved by the Development Review Committee, the applicant shall submit the following items to the Engineering Division of the Parks & Public Works Department:
 - Updated title reports, for all parcels, if the title reports are older than 90 days.
 - Two copies of the legal descriptions of the new parcel configurations, labeled "Exhibit A" and "Exhibit B". These documents must be wet stamped by your Licensed Surveyor or Civil Engineer.
 - Two copies of a map, 8-1/2" x 11", suitable for reproducing and recording, showing the original parcel configuration and the new parcel configurations. Label the map "Exhibit C." These documents must be wet stamped by your Licensed Surveyor or Civil Engineer.
 - One copy of the closure calculations.
 - Copies of any maps referenced in the title reports or legal descriptions.
 - Engineering Division plan checking and processing fee.
2. The Engineering Division will review the legal descriptions, map and title reports, and prepare a document entitled "Certificate of Lot Line Adjustment".
 - Any corrections that must be made will be sent your Licensed Surveyor or Civil Engineer, and corrected documents resubmitted.
3. The Director of Parks and Public Works will sign the Certificate of Lot Line Adjustment once the legal descriptions and map documents have been reviewed and approved by the Engineering Division staff.
4. The Town Clerk's Office will send the documents to your title company with instructions for recording.

Additional Information

1. Legal descriptions and map of the new parcel configurations shall be prepared by a Registered Civil Engineer or Licensed Land Surveyor, Per Sections 6731 and 8726 of the California Government Code, these are the only persons authorized to prepare such documents.
2. Your title company should provide you with new Grant Deeds for the new parcel configurations and arrange for the recording of these documents.

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For further information on topics such as fees, applications, or Building/Planning regulations, please contact the Community Development Department: (408) 354-6874

www.lsgatosca.gov

**Town of Los Gatos
Community Development
Department**



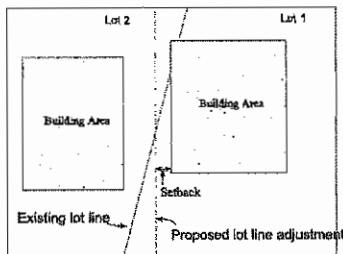
Lot Line Adjustment

Summary Handout

What is a lot line adjustment?

Lot line adjustment is the relocation of an interior lot line between two or more neighboring parcels. Lot line adjustments are reviewed according to Section 66412(d) of the Government Code of the State of California. The applicant has the option of using this procedure or completing the lot line adjustment by filing a Parcel Map.

Example illustration:



How to apply for a lot line adjustment?

Application for lot line adjustments (boundary changes) shall be made to the Community Development Department on the prescribed form. Application forms and pertinent information can be obtained at the Community Development Department.

What items shall be submitted with the application?

- All owners of record must sign the application.
- Evidence that any holders of Deeds of Trust have no objections to the proposed boundary changes.
- Title reports covering all parcel involved

dated within 30 days.

- The required Community Development Department processing fee.
- Seven (7) copies of a drawing no larger than 24" x 36" showing existing and proposed boundaries, all improvements (houses, driveways, trees, etc.) and required building setbacks that may be affected by the proposed boundary change.

What is the lot line adjustment process?

Once an application is accepted at the Community Development Department, all Lot Line Adjustment application will be reviewed by the Development Review Committee (DRC) and sent to pertinent departments and organizations for review and recommendation.

1. The DRC will limit its review to the following items:

- Lot size remains conforming to the existing zoning ordinance. If the lots are currently nonconforming as to size, they cannot become more nonconforming (smaller).
- Setbacks remain conforming or do not become more nonconforming.
- Lot frontage and lot depth requirements remain conforming.
- The existing houses do not become nonconforming as for Floor Area Ratio (FAR) requirements of the zone.
- The existing buildings meet the requirement of the Uniform Building Code for fire separation or fire wall construction.

2. After final action by the DRC, the applicant will be notified by the Community Development Department that the

application is complete and any requirements that must be met before recordation of the certificate or map.

Note:

The DRC has authority to approve or deny the application but may not attach conditions, except to meet the requirements of the Building or Zoning regulations, per Section 66412(d) of the California Government Code.

3. When the application has been approved by the DRC, the applicant shall submit the following items to the Engineering Section of the Community Development Department:

- Updated title reports, for all parcels, if the title reports are older than 90 days.
- Three (3) copies of the legal descriptions of the new parcel configurations, labeled "Exhibit A" and "Exhibit B". These documents must be wet stamped by your Licensed Surveyor or Civil Engineer.
- Three (3) copies of a map, 8 1/2" x 11", suitable for reproducing and recording, showing the original parcel configuration and the new parcel configurations. Label the map "Exhibit C". These documents must be wet stamped by your Licensed Surveyor or Civil Engineer.
- Two (2) copies of the closure calculations.
- Engineering Section plan checking and processing fees.

4. The Engineering Section will prepare a document entitled "Certificate of Lot Line Adjustment" including legal descriptions,

maps and title reports and send it to our outside consultant for review and approval. **Note:**

Any corrections that must be made will be sent to your Licensed Surveyor or Civil Engineer, and corrected documents resubmitted.

5. The Community Development Director will sign the documents, once the documents have been approved and signed off by our plan check consultant.
6. The Town Clerk's Office will send the documents to your title company with instructions for recording.

How to appeal a decision?

If the application is denied by the Development Review Committee (DRC), the applicant may appeal the decision to the Planning Commission. The applicant must file a written notice of appeal with the Town Clerk within 10 calendar days of the decision.

Additional information?

Legal descriptions and maps of the new parcel configurations shall be prepared by a Registered Civil engineer or Licensed Land Surveyor. Per Sections 6731 and 8726 of the California Government Code, these are the only persons authorized to prepare such documents.

Your title company should provide you with new Grant Deeds for the new parcel configurations and arrange for the recordation of these documents, after the Town approves the lot line adjustment.