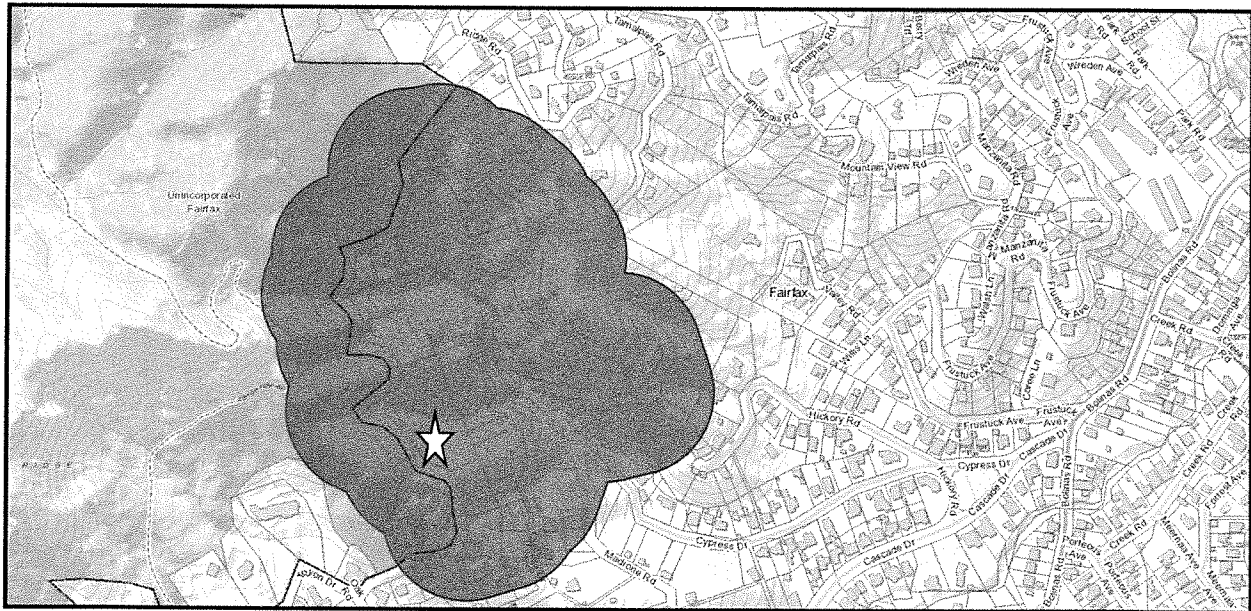


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: March 21, 2019
FROM: Linda Neal, Principal Planner
LOCATION: 200 Toyon Drive; Assessor's Parcel Numbers 003-161-01, 003-171-01 through 08
ZONING: Residential Single-family RS-6 Zone
PROJECT: New single-family residence
ACTION: Hill Area Residential Development, Design Review, Excavation and Encroachment permits and a Retaining Wall Height and Front Setback Variances; Application # 19-03
APPLICANT: Jerry Frate, Architect
OWNER: Ben Ross
CEQA STATUS: Categorically exempt, 15301(a), 15305(a) and (b),



200 TOYON DRIVE

DESCRIPTION

New applications were submitted for Hill Area Residential Development, Excavation, Design Review, Encroachment and a Front Setback Variance on August 15, 2018. The project was declared complete on January 2, 2019.

The proposed project consists of the following: a) construction of 2-story, 33-foot, 8 inch-tall, 2,750 square-foot residential structure with 1,296 square feet of area on the upper (main) floor and 1,454 square feet on the lower floor; b) a 597 square-foot, 2-car garage; and c) 1,724 square feet of deck area. The project also includes construction of an approximately 35-foot long, 20-foot wide extension of the Toyon Drive right-of-way. A fire truck turn around area will be created at the existing terminus of Toyon Road by widening the area downslope through construction of a 4-foot tall retaining wall in the right-of-way. Two public parking spaces and an access path will be developed to connect with the existing public path to the Marin County Open Space land located southwest of the site (See plan sheets 1 and C2); The total proposed project grading consists of 323 cubic yards of cut and 36 cubic yards of fill, for a net off-haul of 287 cubic yards. The retaining walls for the roadway extension, fire truck turn-around, and public parking area and public access path connecting to open space would vary in height from approximately 1 foot to 7 feet and would be located on both sides of the roadway, parking and open space access path. Wall heights on either side of the roadway/parking pathway would be less than a maximum of 6 feet in height on the downhill side and 7 feet on the uphill side.

The proposed residential structure would contain 4 bedrooms, 3½ bathrooms, dining room, living room, kitchen and an expanded hallway with a laundry closet. The three previously-proposed rainwater storage tanks in the underfloor area beneath the eastern, lower floor deck have been eliminated from the current proposal.

The residence complies with the regulations set forth in the Residential Single-family RS-6 Zone District as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	35 ft., 3 stories
Proposed	0 ft.	90 ft.	90 ft.	15 ft. & >600 ft.	over 615 ft.	.006	.006	33' 8", 2 stories

BACKGROUND

This item was continued from the February 21, 2019 Planning Commission meeting, where the Commission directed the applicant and the staff to provide them with the following additional information and to obtain project review comments from the Fairfax

Tree Committee and Open Space Committee:

1. Provide a drawing showing the locations of the required sewer, water, power and cable extensions including locations of any required maintenance/access covers, poles and cables/lines, etc. Call out the distance(s) of the water and sewer line extensions (mains and laterals). **See Attachments B1- nearest hydrant, B2 - sewer line and B3 – water main and project plan sheet, C-5 - utility plan by DVC Group, of the application plan set submitted 3/5/19.**
2. Provide drawings, color elevations including paint chip samples (with the brand and color numbers provided) for at least 3 alternative house color palettes (14 sets). Alternative colors should be of darker shades and more reflective of color elevations. Consider additional features that can be incorporated into the design to minimize the visual impacts of the house on the hillside and provide drawings. **The applicant has provided 3 different color palettes for the project with all 3 utilizing white trim (see project drawing stamped "Town of Fairfax Received March 5, 2019).**
3. Clarify in writing whether or not any landscaping is proposed and if so, provide a landscaping and irrigation plan. **The architect has verified that no landscaping is proposed for the site, it will be retained in its naturally vegetated state.**
4. Have the owner address in writing his position on the suggested construction restriction to allow work only Monday through Friday, eliminating work on weekends. **The owner is willing to limit construction to Monday through Friday. (See Attachment C1 – Architect's response to comments dated 3/5/19)**
5. Call out maximum building height on cross-section, and height of the building above grade on the south elevation. **See drawings received 3/5/19.**
6. Have the owner address in writing his position on the Commission's request that he consider restricting the balance of the property to an open space easement; or, his offering the portions of the property not required to meet the minimum parcel size based on the site 65% slope to the Town for open space. Our calculations indicate that a minimum of 57,000 square feet of property with a minimum width of 215 feet is required to have the house site comply with the Town slope regulations (Town Code §17.080.(C) – minimum parcel size required in the RS-6 Zone). The balance of the site comprises 417,804 square feet of area that would be restricted from development as a permanent open space easement or offered to the Town or Marin County Open Space. **The owner is unwilling to donate or restrict the use of the balance of the property to remain as undeveloped open space (Attachment C1 – Architect's response to comments dated 3/5/19). Staff has researched the Town's ability to require an open space easement over the undeveloped portions of the site, and concludes that it would be difficult to establish a proportionate nexus**

between the proposed project and the Town requiring an open space easement property. The Town accepting open space also increases its liability.

7. The project soils engineer shall analyze the impacts of the roadway extension construction and tree removal on the stability of the slope/road cut between the proposed road and the residence upslope at 183 Toyon Drive. Provide a written explanation of how preparation for final design and construction (soils tests, etc) will ensure/improve stability of this area and/or make recommendations for how stability of the area can be achieved. ***Attachment D – 3/4/19 analysis letter from Geoengineering.***
8. Describe 'green' building features (e.g., CA Energy Code compliance and other). ***(See Attachment C2).***
9. Show how a future rainwater collection system would collect water from the roofs. ***The applicant has eliminated the rainwater collection system from the project proposal ((See Attachment C1 – Architect's response to comments dated 3/5/19)).***

Planning Staff

1. Determine an approximate amount that will be required for the roadway damage bond. ***Public Works has recommended that for this project a \$25,000 cash deposit be placed into an escrow account. Bonds are difficult to collect on. The amount would not be released until after the project is completed, and any roadway damage is repaired to its pre-construction condition.***
2. Check with the Ross Valley Fire Department to verify whether or not an additional fire hydrant will be required, if so its location, and verify whether or not the existing pressure at the existing/proposed hydrant will meet the department's gallons per minute flow requirements. ***Per Rob Bastianon, Ross Valley Fire Inspector, the property is within 350 feet of the hydrant located in the right-of-way at the midpoint of the 181 Toyon Drive property. This hydrant has a flow of 605 gallons per minute. The Fire Department requires a flow of 500 gallons per minute for the project site. The flow and location of the existing hydrant meets RVFD's requirements. At this point in time Ross Valley Fire does not believe an additional hydrant will be required the development of the residence as currently proposed for 200 Toyon Drive.***
3. In the March 21, 2019 staff report, provide an expanded analysis of the geotechnical and hydrology report including measures be implemented to address concerns or potential impacts of the project on soils stability/drainage. ***Weathered sandstone/shale bedrock underlies the entire site and is typical of the soils found throughout the hillsides of Fairfax. Bedrock underlies the proposed building site at 2 to 4 foot depths and can be observed in the fire***

road cut leading to the proposed house site. The depth of the bedrock was confirmed using an impact probe. The project geotechnical engineer has recommended that a drilled pier and interconnected grade beam foundation with piers penetrating 7 feet into the bedrock be used for the current proposal. The project Civil Engineer used hydraulic analysis to determine the 10 year and 100 year flows coming from the hillsides above the site and flowing over the site to the downslope areas. The same calculations were used to determine the 10-year and 100-year depth of drainage flow for 2 proposed storm drain pipes and a swale that have been designed as the proposed drainage system. These improvements are marked as SD #1, 2 and swale # 1. The improvements were designed using a computer modeling program that conservatively assumed 100-year flow volumes and designed worst-case sizes for the designed drainage system conveyances on a hillside with over a 50% slope. The hydraulic capacity calculations show sufficient capacity in all 3 proposed drainage conveyances to meet or exceed the worst-case 100 year storm event and the Town Engineers agree with this assessment. The drainage system will slow the water coming from the hillside above, the road and the house, and disperse it across the hillside on either side of the house to mimic the way the water crosses the site currently and will minimize impacts on the areas below the house and roadway extension. The Town Engineers have reviewed and approved the proposed preliminary drainage system design. Staff has included a new condition in the Resolution recommending the approval of the project if the applicants prepare a drainage system maintenance agreement including a recordable exhibit of the proposed drainage system in its entirety including a maintenance schedule. The maintenance agreement will have to be signed, notarized and recorded at the Marin County Recorder's office prior to issuance of the building permit. This will ensure that subsequent owners of the property are informed about the system and its maintenance requirements in order to continue to function properly (see February 21, 2019 staff report attachments for project geotechnical and hydrology reports).

4. Include the previous biologist and botanist surveys of the site with the March 21, 2019 staff report. **See Attachment E1 –5/14/17 Botanist report and E2 – Northern Spotted Owl 3/2/17 Raptor Ecologist report.**
5. Provide further analysis of why the proposed project and roadway and utility extensions do not have the potential to lead to additional development on the property north and northeast of the site. **The proposed utility extensions will only extend to the house location. The property, made up of 9 Assessor's Parcels, was merged into one property by the Town in 1984 (Attachment F – merger notice). The single-parcel site currently allows a maximum of 2 units on the site, a main residence and (potentially) an accessory dwelling unit. The General Plan designation for the site is .25 dwelling unit per acre. An owner could apply to the Town to subdivide this 10.9 acre site into 2**

properties with a single-family residence and ADU on each site for a total of 4 units (2 of which could be associated with the existing development). A subdivision application would require environmental review consisting of an initial study and potentially, due to the undisturbed nature of the site and the construction difficulties of providing access and services to the site, an Environmental Impact Report. There is no guarantee that potential environmental impacts could be mitigated and the subdivision would be approved by the Town.

6. Have the Town Attorney address the ability of the Town to require one property owner to fully overlay the privately maintained portion of the road once construction is complete. ***The Town can only require one property owner to repair the damage they cause, do but can require damaged areas to be restored to their pre-construction condition.***
7. Determine whether the road name is Toyon Road or Drive. ***Staff has checked the original subdivision map for this area and it indicates this portion of Toyon Drive was originally designated Oak Road (Attachment G). The first set of Assessor's Maps after the Town's incorporation lists the roadway as Toyon Drive.***
8. Consider how to ensure that the owner pays a fair share of future private roadway maintenance and repair costs. ***The owners utilizing the privately maintained roadway can prepare and enter into a shared private roadway maintenance agreement that would set forth the parameters for the roadway maintenance, including the frequency of resurfacing, percentages different owners would have to pay of maintenance/repair costs based on how much of the road they use to access their site, etc. Staff has included a condition in the Resolution indicating that the owner is required to participate in a roadway maintenance agreement if/when one is prepared and approved by the owners using the privately maintained portion of Toyon Drive. Staff has enclosed a sample shared roadway agreement as Attachment H.***

For a further and more detailed analysis of the project see the February 21, 2019 staff report for this item.

Tree Committee Action

The Tree Committee recommended removal of the proposed trees in accordance with the recommendation contained in the Urban Forestry Associates, Inc. Tree Preservation Plan dated 10/11/18 (Attachment I1).

Fairfax Open Space Committee (FOSC) Comments

The Fairfax Open Space Committee's comments on the project are included as Attachment I2.

RECOMMENDATION

1. Conduct the Public Hearing.
2. Move to approve # 19-03 by adopting Resolution No. 2019-03 setting forth the findings and conditions of approval.

ATTACHMENTS

- Attachment A – Resolution No. 2019-03
- Attachment B1 – fire hydrant location and gallon per minute map
- B2 – sewer main location map
- B3 - MMWD water main location map
- Attachment C1 – Architect response to request for additional information
- C2 – green building features
- Attachment D – Project Engineer's review of slope stability and proposed construction below 183 Toyon Drive
- Attachment E1- rare plant survey
- E2 –Northern Spotted Owl survey
- Attachment F1 – merger notice
- Attachment G – original subdivision map for project portion of Toyon Drive
- Attachment H – Sample shared roadway maintenance agreement
- Attachment I1 – Fairfax Tree Committee 2/25/19 meeting minutes
- Attachment I2 – Fairfax Open Space Committee project comments

RESOLUTION NO. 2019-03

A Resolution of The Fairfax Planning Commission Approving Application No. 19-03 for a Hill Area Residential Development Permit, Excavation Permit, Encroachment Permit, Front Setback Variance, Retaining Wall Height Variance and Design Review Permit for a Residence at 200 Toyon Road

WHEREAS, the Town of Fairfax has received an application from Ben Ross to build a 2-story, 2,750 square-foot, 4 bedroom, 3½ bathroom single-family residence with an attached 597 square-foot garage on August 15, 2018; and

WHEREAS, the Planning Commission held duly noticed Public Hearings on February 21 and March 21, 2019 at which time the Planning Commission determined that the project complies with the Hill Area Residential Development Overlay Ordinance; and

WHEREAS, based on the plans and other documentary evidence in the record the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary to approve the Hill Area Residential Development, Excavation, Encroachment, Front Setback Variance, Retaining Wall Height Variance and Design Review Permits; and

WHEREAS, the Commission has made the following findings:

The project is consistent with the 2010-2030 Fairfax General Plan as follows:

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size and mass.

Policy LU-7.2.2: to the extent feasible natural features including the existing grade, mature trees and vegetation shall be preserved for new and renewed development.

Policy LU-4.1.4: New and renewed development shall be designed to minimize run-off in a manner that does not cause undue hardship on neighboring properties.

Policy LU-7.2.2: To the extent feasible natural features including the existing grade, mature trees, and vegetation shall be preserved for new and renewed development.

Policy S-3.1.3: Maximize access and egress for emergency response vehicles.

Hill Area Residential Development

The proposed development is consistent with the General Plan and the Residential Single-family RS 6 Zone regulations.

1. The site planning preserves identified natural features as much as possible while also complying with other agencies' regulations.
2. Vehicular access and parking are adequate.
3. The proposed development harmonizes with surrounding residential development and meets the design review criteria contained in Town Code § 17.020.040.
4. The approval of the Hill Area Residential Development permit for one single-family residence on this 10-acre parcel shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
5. The development and use of property as approved under the Hill Area Residential Development Permit will not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
6. Approval of the proposed Hill Area Residential Development permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
7. Approval of the Hill Area Residential Development permit will result in equal or better development of the premises than would otherwise be the case.

Excavation Permit

8. The Town Engineers have reviewed the following plans and reports and have determined the project can be constructed, with certain conditions of approval, without creating any hazards:
 - a. Architectural plans by Jerry Frate Architecture and Planning, pages 0 through 4 dated 4/18/18 and 6/29/18, sheets C1 through C4, by DVC Group, dated 11/20/18, overall schematic site plan by ILS Associates, sheet 1 of 1, Tree Removal and Protection Plan sheet T-1, by Urban Forestry, dated 10/11/18. Geotechnical report by Geoengineering, Inc. dated 11/6/18, 6/27/18, 7/9/15 and 6/8/01, preliminary drainage report by DVC Group, dated 9/7/18T and Tree Preservation/Protection Plan Report dated 10/11/18.
9. Based on the Town Engineer's review and recommendation that the project can be safely constructed, the Planning Commission finds that:

10. The health safety and welfare of the public will not be adversely affected;
11. Adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work;
12. Adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work;
13. The amount of the excavation or fill proposed is not more than that required to allow the property owner substantial use of his or her property;
14. The visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary;
15. Natural landscaping will not be removed by the project more than is necessary; and
16. Town code § 17.072.090(c)(4) prohibits grading of hillside properties from October 1st through April 1st of each year. Therefore, the time of year during which construction will take place is such that work will not result in excessive siltation from storm runoff nor prolonged exposure of unstable excavated slopes.

Front Setback and Retaining Wall Height Variances

17. The site is steeply slopes and the road easement is 40 feet wide which results in the front property line being 16 feet from the edge of the improved roadway location. These are the special circumstances applicable to the property, including size, shape, topography, location of surroundings that would result in the strict application of the front setback and retaining wall height regulations depriving the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
18. The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
19. The strict application of this title would result in excessive or unreasonable hardship.
20. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. The project is approved per the following plans and documents: Architectural plans by Jerry Frate Architecture and Planning, pages 0 through 4 dated 4/18/18 and 6/29/18, sheets C1 through C4, by DVC Group, dated 11/20/18, overall schematic site plan by ILS Associates, sheet 1 of 1, Tree Removal and Protection Plan sheet T-1, by Urban Forestry, dated 10/11/18. Geotechnical report by Geoengineering, Inc. dated 11/6/18, 6/27/18, 7/9/15 and 6/8/01, preliminary drainage report by DVC Group, dated 9/7/18T and Tree Preservation/Protection Plan Report dated 10/11/18.
2. Prior to issuance of any of the building permits for the project the applicant or his assigns shall:
 - a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:
 - I. Construction delivery routes approved by the Department of Public Works.
 - II. Construction schedule (deliveries, worker hours, etc.)
 - III. Notification to area residents
 - IV. Emergency access routes
 - b. The applicant shall prepare, and file with the Public Works Director, a video tape of the roadway conditions on the public construction delivery routes (routes must be approved by Public Works Director).
 - c. Submit a cash deposit, bond or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible damage to public roadways. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Town Engineer. Upon approval of the contract costs, the applicant shall submit a cash deposit, bond or letter of credit equaling 100% of the estimated construction costs.
 - d. The foundation and retaining elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Structural Engineer.
 - e. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project Geotechnical Engineer.
 - f. Prior to submittal of the building permit plans, the applicant shall secure written approval from the Ross Valley Fire Authority, Marin Municipal Water District and the Ross Valley Sanitary District noting the

development conformance with their recommendations.

- g. Submit 3 copies of the record of survey with the building permit plans.
 - h. All retaining walls that are visible from the street and are constructed of concrete shall be heavily textures or colorized in a manner approved by the planning staff prior to issuance of the building permit. This condition is intended to mitigate the visual impact of the proposed walls.
 - i. Three copies of the Tree Protection/Preservation Plan by Urban Forestry Associates, Inc. dated 10/11/18 shall be submitted with the building permit application and all recommendations included in this report shall be conditions of the project approval including but not limited to recommendations for the treatment of multi-stemmed trees and tree protection fencing, trunk and limb protection and soil armoring. All the inspections contained in the inspection schedule on page 3 of the report shall be made by the project arborist who shall provide the Town with written verification after each inspection that the work is progressing in compliance with the recommendations and conditions of the arborist.
 - j. Prior to the removal of any trees not approved by the Planning Commission through this action, the applicant shall secure a tree cutting permit, if required, from the Fairfax Tree Committee prior to removal of any on-site trees subject to a permit under Town Code Chapter 9.36. To further minimize impacts on trees and significant vegetation, the applicant shall submit plans for any utility installation (including sewer, water and drainage) which incorporates the services of the project arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation or trenching operations. In particular, cross country utility extensions shall minimize impacts on existing trees. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation and diversion dams. Any pruning shall take place during the winter when trees are dormant for deciduous species and during July to August for evergreen species.
 - k. **The applicants shall prepare a drainage system maintenance agreement including a recordable exhibit of the proposed drainage system in its entirety including a maintenance schedule to be approved by the Town Engineer. The maintenance agreement will have to be signed by the owner, notarized and recorded at the Marin County Recorder's office prior to issuance of the building permit.**
3. During the construction process the following shall be required:
- a. The geotechnical engineer and the project arborist shall be on-site during

the grading process and both shall submit written certification to the Town Staff that the grading and tree protection measures have been completed as recommended prior to installation of foundation and/or retaining forms and drainage improvements, piers and supply lines.

- b. Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans.
 - c. The Building Official shall field check the concrete forms prior to the pour.
 - d. All construction-related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the Building Official on a case-by-case basis with prior notification from the project sponsor.
 - e. Any proposed temporary closures of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
4. Prior to issuance of an occupancy permit the following shall be completed:
- a. The geotechnical engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, retaining, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.
 - b. The Planning Department and Town Engineer shall field check the completed project to verify that all and planning commission conditions and required engineering improvements have been complied including installation of landscaping and irrigation prior to issuance of the certificate of occupancy.
5. Excavation shall not occur between October 1st and April 1st of any year. The Town Engineer has the authority to waive this condition depending upon the weather.
6. The roadways shall be kept free of dust, gravel and other construction materials by sweeping them, daily, if necessary.
7. Any changes, modifications, additions or alterations made to the approved set of

plans will require a modification of Application # 19-03. Modifications that do not significantly change the project, the project design or the approved discretionary permits **may** be approved by the Planning Director. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 19-03 will result in the job being immediately stopped and red tagged.

8. Any damages to the public portions of Toyon Rd., Oak Rd., Laurel Dr., Cascade Dr., Bolinas Rd., or other public roadway used to access the site resulting from construction-related activities shall be the responsibility of the property owner.
9. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.
10. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
11. Conditions placed upon the project by outside agencies or by the Town Engineer may be eliminated or amended with that agency's or the Town Engineer's written notification to the Planning Department prior to issuance of the building permit.
12. Conditions placed upon the project by the project arborist may be amended or

eliminated by the approval of the Planning Director after receiving a request for the elimination/amendment in writing from the project arborist.

13. The building permit plans shall be reviewed and approved by the Town Engineer, at the expense of the applicant, prior to issuance of the building permit. The project shall be inspected by the Town Engineer prior to issuance of the occupancy permit for the residential structures for compliance with the engineering plans.

Ross Valley Fire Department

14. Project has been deemed a "substantial remodel" and as such requires installation of a fire sprinkler system that complies with the National Fire Protection Association regulation 13-D and local standards. The system will require a permit from the Fire Department and the submittal of plans and specifications for a system submitted by an individual or firm licensed to design and/or design-build sprinkler systems.
15. The property is located within the Wildland Urban Interface Area for Fairfax and the new construction must comply with Chapter 7A of the California Building Code or equivalent.
16. All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of each sleeping room in a central location in the corridor and over the center of all stairways with a minimum of 1 detector on each story of the occupied portion of the residence.
17. Carbon monoxide alarms shall be provided in existing dwellings when a permit is required for alterations, repairs, or addition and the cost of the permit exceeds \$1,000.00. Carbon monoxide alarms shall be located outside of each sleeping area in the immediate vicinity of the bedrooms and on every level of the dwelling, including basements.
18. Address numbers at least 4 inches tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers must be placed in location that is visible from the street. The numbers must be internally illuminated or illuminated by and adjacent light controlled by a photocell that can be switched off only by a breaker so it will remain illuminated all night.
19. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.
20. All approved alternatives requests, and their supporting documentation, shall be included in the plan sets submitted for final approval by the Fire Department.

Marin Municipal Water District (MMWD)

21. A low pressure water service application is required as well as a notarized low pressure water agreement and the applicant may be required to install a mechanism to pressurize the water supply system.
22. A copy of the building permit must be provided to the district along with the required applications and fees.
23. The foundation must be completed within 120 days of the date of application.
24. All indoor and outdoor requirements or District Code Title 13, Water Conservation must be complied with.
25. Any landscaping plans must be reviewed and approved by the District.
26. Backflow prevention requirements must be met.
27. Ordinance 420., requiring installation of grey water recycling system when practicable, must be incorporated into the project building permit plans or an exemption letter from the District must be provided to the Town.
28. All of the District's rules and regulations if effect at the time service is requested must be complied with.

Ross Valley Sanitary District (RVSD)

29. The public sewer must be extended to serve the proposed single-family residence.
30. An application for public sewer extension must be filed and approved and the applicable fees and plans must accompany the application for a public sewer extension.
31. The public sewer extension must be installed in accordance with the District's specifications.
32. Once the public sewer extension is installed and accepted by the District, a sewer connection permit is required for each building having sewer service, the District will issue the sewer connection permit after the building permit is obtained and the District's fees have been paid, the private sewer line must meet District specification and be inspected by a District inspector before being covered.

Fairfax Public Works Department

33. A Civil Engineer shall prepare an existing condition report including video and photographs on the portion of Toyon Road that is not Town maintained documenting the existing roadway condition. The report shall be submitted with the building permit application and the applicant shall be responsible for restoring any damaged portions of the road to preconstruction condition prior to the final project inspection.
34. \$25,000 shall be placed in an escrow account to be held until the project final inspection and issuance of an occupancy permit have occurred. The final inspection and occupancy permit shall not be issued until any roadway damage is repaired and the damaged portion of roadway is restored to its pre-construction condition.

Miscellaneous

35. The Revocable Encroachment Document memorializing the approved encroachments must be signed, notarized and recorded at the Marin County Recorder's Office prior to issuance of the Building permit.
36. The roadway damage bond must be submitted prior to issuance of the building permit and its amount shall be set by the Town Engineer taking into consideration that a portion of the roadway is not a town maintained street and has recently been repaired and repaved.
37. The roadway extension, public parking spaces and driveway must be completed before any construction of the house above the foundation begins.
38. The sign that identifies the 2 public parking spaces in the roadway easement shall include language prohibiting overnight parking.
39. The applicant shall enter into any shared maintenance agreement between the neighbors created to formalize maintenance responsibility for the portion of Toyon Road that is not maintained by the Town.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Hill Area Residential Development Permit, Excavation Permit, Encroachment Permit, Front Setback and Retaining Wall Height Variances and Design Review Permit are in conformance with the 2010 – 2030 Fairfax General Plan, the Fairfax Town Code and the Fairfax Zoning Ordinance, Town Code Title 17; and

Construction of the project can occur without causing significant impacts on neighboring residences and the environment.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 21st day of March, 2019 by the following vote:

AYES:

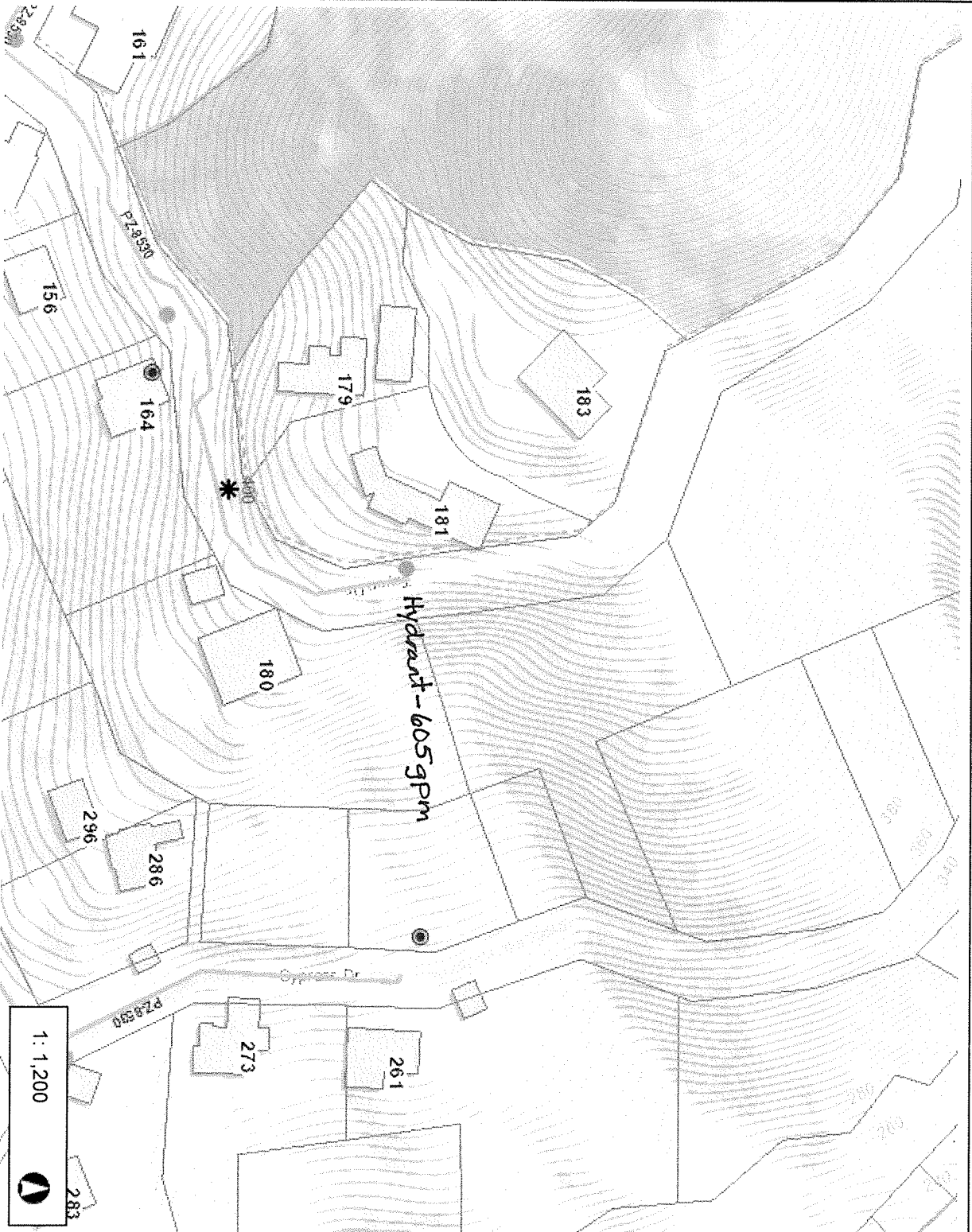
NOES:

ABSTAIN:

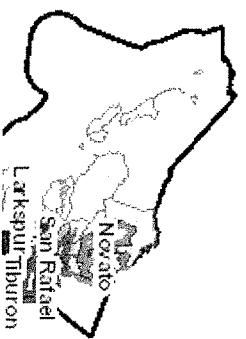
Chair, Swift

Attest:

Ben Berto, Director of Planning and Building Services



1 : 1,200

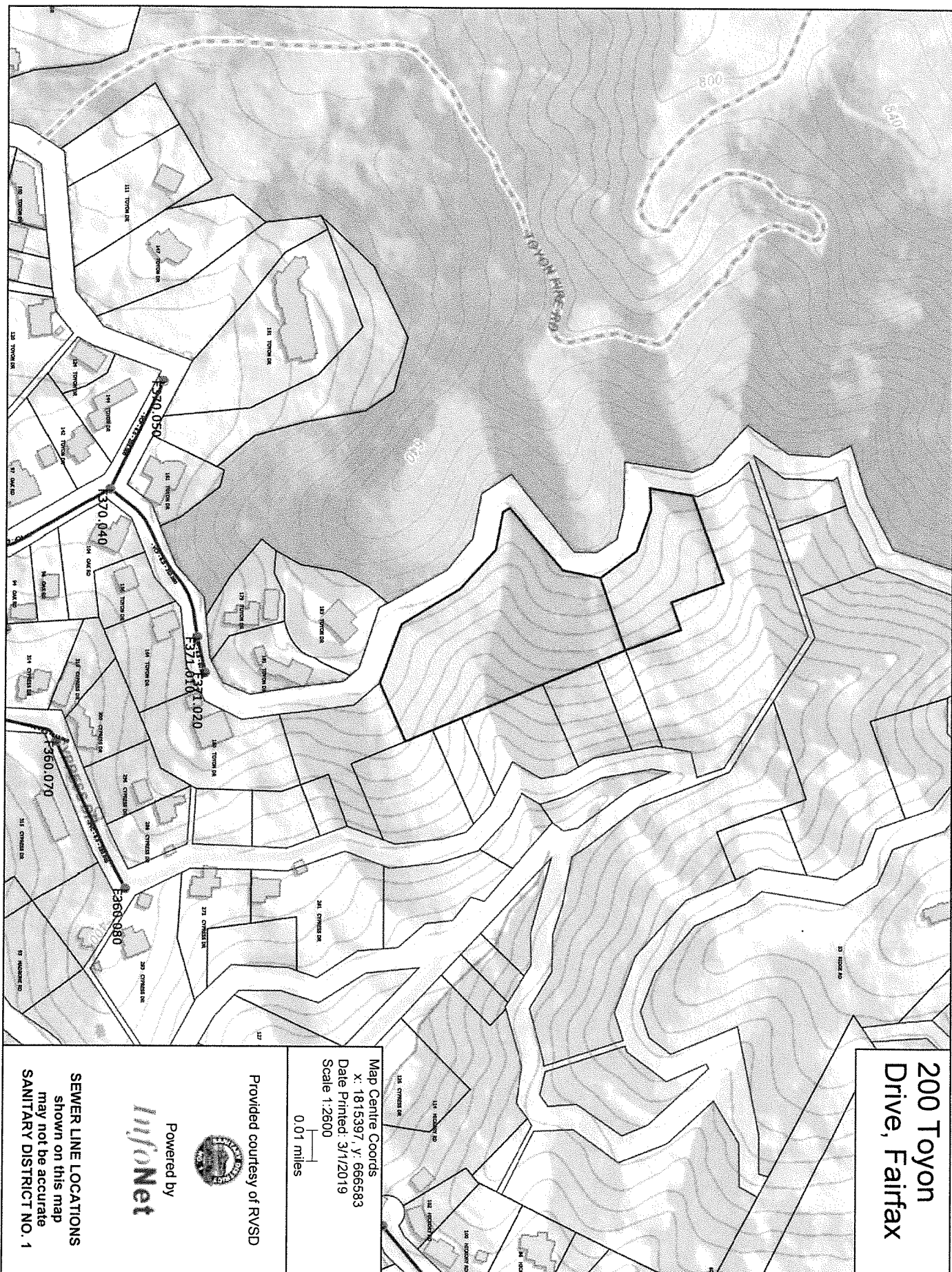


Legend

- Potable Hydrants
 - 55 - 499
 - 500 - 999
 - 1000 - 1499
 - 1500 - 15000
 - UNK. FLOW
- Recycled Hydrants
- Potable Tank
 - <all other values>
- PRESSURE SYSTEM
- Recycled Tank
 - <all other values>
- PRESSURE SYSTEM
- MMWD Non-System Facilities
 - <all other values>
- Dam
- Pump
- Tank
- MMWD Emergency Pump Con
- MMWD Pressure Zones - Pola
- <all other values>
- <Null>
- PZ-8000
- PZ-8005
- PZ-8010
- PZ-8015
- PZ-8020
- PZ-8025

Notes

200 Toyon
Drive, Fairfax

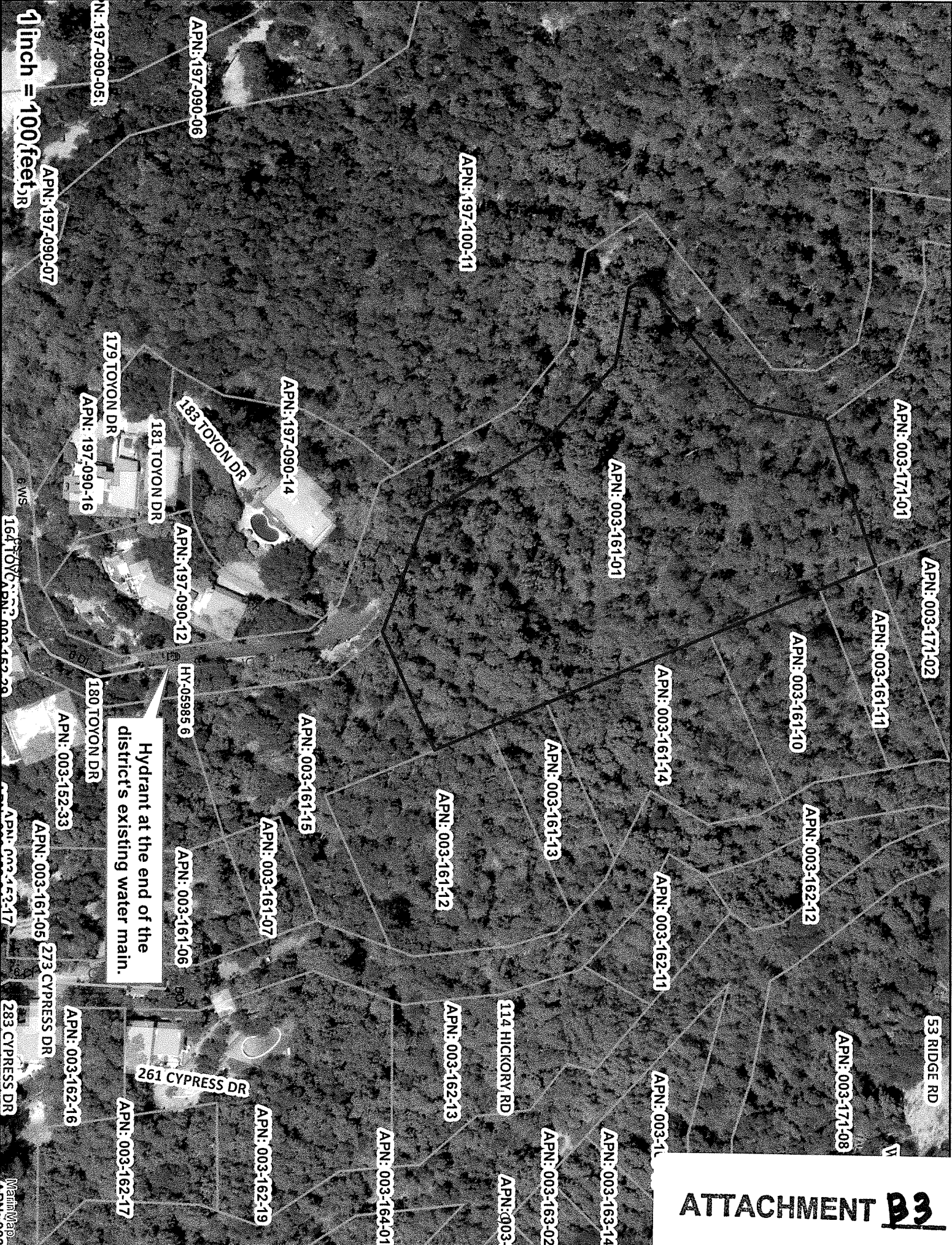


Map Centre Coords
X: 1815397, Y: 666563
Date Printed: 3/1/2019
Scale 1:2600
0.01 miles

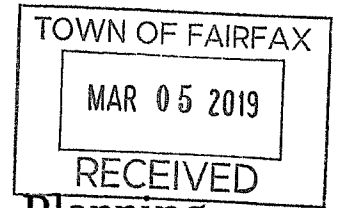


Powered by
InfoNet

SEWER LINE LOCATIONS
shown on this map
may not be accurate
SANITARY DISTRICT NO. 1



Jerry Frate



Architecture & Planning

193 Isle Royale Court, San Rafael, California 94903 (415) 472-0320

March 5, 2019

Linda Neal
Principal Planner
142 Bolinas Road,
Town of Fairfax, CA 94930

Response to Planning Commission Action Letter of February 25, 2019

Re: 200 Toyon Road; Application #19-03

Dear Linda, below is our response to the Applicant List found in your letter requesting additional information for our single family home design approval.

- Item 1 Please see newly prepared civil exhibit for new information concerning utilities in the existing Toyon Road.
- Item 2 Please see new colored elevations showing 3 new color schemes for the project.
- Item 3 Please consider this clarification in writing that the project proposes no new landscaping.
The house will be sitting above a steep slope and there is no real access to the property below for residential landscaping. We would like to keep the surrounding area in its natural setting with the local plants that grow on the hillside.
- Item 4 Please consider the owners position, with this writing, that he would be willing to have a condition of approval limiting construction work to only Monday through Friday.
He would also like to note that given the absence of Saturday, work the overall project duration might be prolonged.

ATTACHMENT CL

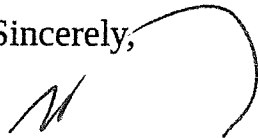
Jerry Frate

Architecture & Planning

193 Isle Royale Court, San Rafael, California 94903 (415) 472-0320

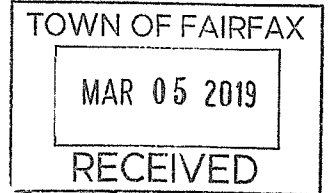
- Item 5 Please see new revised section and south elevation for requested information.
- Item 6 Please consider this is the owners position, with this writing, that he does not want to give away land to the Town of Fairfax, The County of Marin or to any other organization.
- Item 7 Please see the soil engineer's letter concerning the neighbor's concerns about the impact of the road extension to his property.
- Item 8 Please see the architects letter concerning green building items that can be incorporated into the single family residence during the building permit stage of the project.
- Item 9 Please note that the "future rainwater tanks" have been removed from the project.
We do not need them for water pressure as noted from the water district. And we do not need them for landscaping due to the fact we are not planting any new landscaping on the property.

Sincerely,



Jerry Frate,
project architect

Jerry Frate



Architecture & Planning

193 Isle Royale Court, San Rafael, California 94903 (415) 472-0320

Response to Planning Commission Action Letter of February 25, 2019

Re: 200 Toyon Road; Application #19-03

Planning Item number 8: Describe 'green' building features.

- We will provide capability for electric vehicle charging in the garage.
- We will meet the requirements of the California Building Energy Efficiency Standards.
- We will provide low flow plumbing fixtures and low flush toilets.
- We will recycle and/or salvage for reuse a min. of 65% of the nonhazardous construction materials.
- We will make adhesives, sealants and caulks be compliant with VOC and other compound limits.
- We will make paints, stains and other coatings be compliant with VOC limits. (volatile organic compounds (VOC)).
- We will use carpet and carpet systems that are compliant with VOC limits.
- We will use particleboard, fiberboard and hardwood plywood at interior finishes that comply with low formaldehyde emission standards.
- We will use a vapor barrier to control ground moisture.
- We will use downlight shield for all exterior light fixtures.
- We will use manufactured trusses to cut down on wood waste.
- We will use recycled-content or FSC-certified wood decking.
- We will use energy star ceiling fans vented to the outside.
- We will use energy star clothes washing machines & dryers.
- We will use energy star dishwasher & refrigerator.
- We will use LED light fixtures for the whole project.
- We will use the Town of Fairfax's Green Building requirements in our construction plans.

GEOENGINEERING, INC.

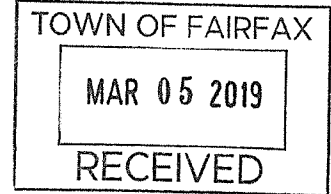
Geotechnical Engineering Consultants

124 Paul Drive, Suite #105
San Rafael, CA 94903

Phone & Fax (415) 492-1747
Robert H. Settgest P.E. G.E.
rhsettgest@hotmail.com

Mr Ben Ross
1 Hickory Lane
San Rafael, CA 94903
<benross28@comcast.net

March 4 2019
File 1-186-br



*GEOTECHNICAL RESPONSE
IMPACTS OF ROADWAY EXTENSION
ON RISING SLOPES ABOVE
PROPOSED DOWNSLOPE DWELLING
AT PROJECTION FROM
TOYON DRIVE REVERSE CURVE
200 TOYON DRIVE
FAIRFAX, CALIFORNIA*

Our firm had initially submitted a 6/8/02 geotechnical evaluation report for the downslope parcel on the same roadway but ~500 ft to the north. The site was then relocated to its current position. We are responding to issues raised in 2/25/19 notice to from the town to Jerry Frate, the architect. The civil engineers are DVC Engineering of Healdsburg.

As the attached Site Plan shows, the current building site lies on irregular slopes that originate ~100 ft upslope from the unimproved access road cut. They fall easterly at 50% to 70 % from the roadway shoulder to Cypress Road, which lies ~500 ft further downslope. The dwelling will lie ~20 to ~60 ft downslope from the access road shoulder.

Weathered bedrock or hard residual soils were typically sounded at 2 to 3-1/2 ft depths using an impact probe, although it was measured 4 ft deep at random positions. This formation is exposed on the cuts into the rising slopes above the access roadway. The mantle soils are mainly typical stiff sandy clay slope deposits with heavy roots within their upper foot

In item 7 of the 2/15/19 notice, the planner requires a review of project impacts on the access road and upslope property at 183 Toyon Drive.

There are no special stability concerns here that are unique for similar construction in comparable settings. The access road will entail upslope cuts up to 5 ft deep that will be sustained by concrete walls that will be founded in bedrock. The downslope shoulder will entail ~3 ft of fill that will also be sustained by a concrete retaining wall that may be drilled. The shallow bedrock will probably preclude the need for drilled piers for the upper wall— but this determination will be made following the geotechnical evaluation. The civil engineers have designed the wall back drainage, which will be refined during final design.

Excavations and tree removal will be monitored by the geotechnical engineer. The retained fill below the roadway shoulder will be placed under the technical supervision of the geotechnical engineer, and tested as needed.

In view of the above points, all indicators show that this project is feasible from a geotechnical standpoint, and the design may proceed.

We trust that this report provides the information required.
You may contact us for clarification.

*Respectfully submitted,
GEOENGINEERING, INC.*

Robert H. Settcast

Robert H. Settcast
Professional Geotechnical Engineer

RHS: rhs

Attachments:

Site Plan
Areal Photos
Site Photos

CC: <jerryfrate@att.net>
<dan@dvcgroup.net>
<jewett@millerpac.com>



OTON DR

E370.050

104-20-200-000

144 TONON DR

161 TONON DR

E370.040

104 OAK RD

150 TONON DR

164 TONON DR

300 CYPRESS DR

296 CYPRESS DR

286 CYPRESS DR

E360.080

283 CYPRESS DR

273 CYPRESS DR

261 CYPRESS DR

127

179 TONON DR

181 TONON DR

183 TONON DR

183 TONON

PROJECT
X SITE.

E371.020

180 TONON DR

Rare Plant Survey for
Napa False Indigo, *Amorpha californica* var. *napensis*



Napa false indigo, photo by Shelly Benson

Prepared by:
Shelly Benson, Biological Consultant
PO Box 658, Woodacre CA 94973
Shelly.Benson@yahoo.com
707-479-6777

Prepared for:
Ben Ross
PO Box 4266
San Rafael CA 94913

Date Submitted:
May 14, 2017

Summary

This report documents the findings of a rare plant survey for Napa false indigo (*Amorpha californica* var. *napensis*) at the Ross property, 200 Toyon Drive, Fairfax CA. On May 4, 2017, approximately 45 stems of Napa false indigo were observed adjacent to the Ross parcel and all were within 100 feet of the footprint for the proposed Ross residence.

Background

This rare plant survey of the Ross parcel at 200 Toyon Drive, Fairfax CA was conducted to determine the presence/absence of Napa false indigo. The survey results are intended to inform the permitting process for the proposed construction project of a private residence. Two previous plant surveys had been conducted in 2016 by a representative from the Marin County Parks and Open Space District. The first survey found Napa false indigo but upon a subsequent visit to map the plants in the fall of the year, they could not be relocated. This species is a deciduous shrub and when its leaves drop it is difficult to distinguish from other woody stems and vines in the forest.

Napa false indigo is a native shrub endemic to California. It grows both on sunny slopes and in shaded forests (Howell et al. 2007). The bloom period is April-July; however, in Marin County it typically blooms in May. This species is rare in California, with known occurrences in Napa, Sonoma, and Marin counties (Calflora 2017). It is listed by the California Native Plant Society (CNPS) as a list 1B.2 species (rare, threatened, or endangered in California and elsewhere) and has a state conservation rank of S2 (Imperiled—at high risk of extinction or elimination due to very restricted range, very few populations, steep declines, or other factors) (CNPS Rare Plant Program 2017).

Methods

Local botanist, Shelly Benson, conducted a focused rare plant survey for Napa false indigo at the Ross parcel on May 4, 2017. The survey area included a 125 foot buffer around the footprint for the proposed residence and a 30 foot buffer centered on the road leading to the proposed residence. The survey entailed traversing the survey area enough times to visually inspect areas with suitable habitat for the target species. Prior to conducting the survey, a reference population of Napa false indigo at Sky Oaks Rd, Fairfax, CA was visited to ensure the plants would be fully leafed out and flowering at the time of the survey. The reference site was visited on April 28, 2017.

Results

Three small patches of Napa false indigo were detected, each approximately 10 feet in diameter (Table 1). All were within 100 feet of the footprint for the proposed Ross residence (Figure 1). Each patch contained approximately 15 stems. Most plants were trailing with branched stems less than 0.5 inch diameter. Three plants were growing as upright shrubs with stem diameter between 0.5-1 inch. The vine-like growth habit of the plants made it difficult to determine the number of individuals, so a rapid estimate of the number of stems was used to determine abundance. Of the estimated total 45 stems, approximately 10% were blooming, 5% were in bud, and the remaining 85% were vegetative. The plants were growing in the understory of a coast live oak-madrone forest. Most of the survey area had an understory dominated by French broom (*Genista monspessulana*). In the area with Napa false indigo, cover of French broom was considerably less and other associated species included: *Heteromeles arbutifolia*, *Lonicera hispidula*, *Toxicodendron diversilobum*, and *Polypodium californicum*.

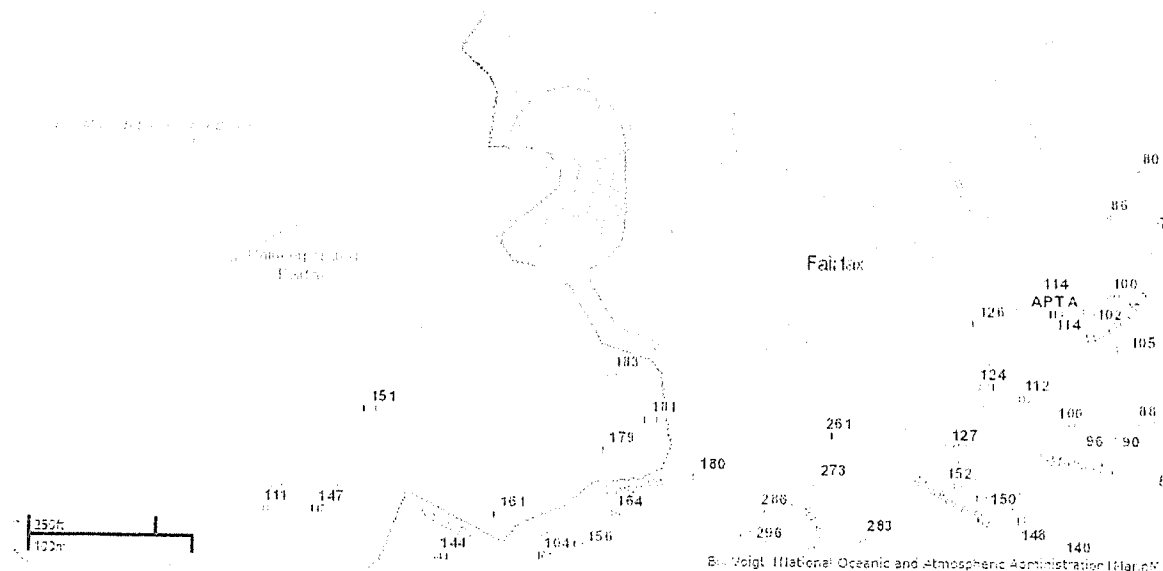


Figure 1. Survey area and location for Napa false indigo. Yellow dots represent Napa false indigo patches. The blue polygon represents the rare plant survey area: 125 foot buffer around the footprint for the proposed residence and a 30 foot buffer centered on the road leading to the proposed residence.

Table 1. GPS coordinates for Napa false indigo.

Latitude	Longitude	Accuracy (m)
37.98292	-122.602	6
37.983	-122.602	6
37.98311	-122.602	6

References

- California Native Plant Society, Rare Plant Program. 2017. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed 11 May 2017].
- Calflora 2017. Information on California plants for education, research and conservation, with data contributed by public and private institutions and individuals, including the Consortium of California Herbaria. [web application]. 2017. Berkeley, California: The Calflora Database [a non-profit organization]. Available: <http://www.calflora.org/> (Accessed: May 11, 2017).
- Howell, J., F. Almeda, W. Follett, and C. Best. 2007. *Marin Flora*. San Francisco, CA: California Academy of Sciences and The California Native Plant Society (Marin Chapter).

2 March 2017

Ben Ross

Benross28@comcast.net

Dear Mr. Ross,

On 23 February 2017, I visited the proposed project located at 200 Toyon Drive in Fairfax, CA. The purpose of this visit was to perform a habitat assessment for the Northern Spotted Owl (*Strix occidentalis caurina*), a species listed as "threatened" under the Endangered Species Act (ESA). This owl is protected under the ESA as well as the Migratory Bird Treaty Act and the California Fish & Game Code (section 3503, 3503.5 and 3513). These regulations protect the owl from take, possession, or destruction of a nest or eggs. I reviewed the building plans outlining the footprint of the house and access driveway that will determine the development activity. During this visit, I did not detect nor find any evidence of Northern Spotted Owl presence. Furthermore, the property does not contain the structurally complex forest features that constitute preferred breeding habitat for spotted owls. As such, this property is not conducive to breeding activity by local Northern Spotted Owls.

Marin County represents a stronghold for this species at the southern limit of the Northern Spotted Owl's range. In other portions of their range Spotted Owl numbers are on the decline, fortunately in Marin owl numbers are stable. Biologists at Muir Woods National Monument estimate that there are approximately 80 pairs of Spotted Owls inhabiting Marin County. Within Marin, Spotted Owl home ranges are found within forests of variable age and mixed tree species. These forests (primarily coast redwood, Bishop pine, Douglas fir, and mixed evergreen-deciduous hardwoods) provide the habitat heterogeneity needed for successful nesting and foraging. Spotted Owls do not build their own nests but rather rely on natural mature forest structures such as broken top trees and cavities, or mistletoe brooms as well as nests made by squirrels or raptors. Spotted Owls place their nest in a core area of older large coniferous trees that offer safety from predators and a stable microclimate for raising vulnerable chicks. Mixed age forests surrounding the core breeding area are used for foraging. In Marin, the primary prey species is the dusky-footed woodrat (*Neotoma fuscipes*), a charismatic rodent that builds large stick nests on the ground or within the understory. Highly structured forests are good foraging areas because the limited understory allows Spotted Owls to detect a woodrat and then silently pounce on its' prey.

In light of the above description of Northern Spotted Owl habitat preferences, in my assessment the Toyon property does not provide breeding habitat for this species for the following reasons.

- The forest structure does not support owls. Forest on the Toyon property consists of an even aged stand of hardwood species (primarily Bay Laurel, Madrone and Coastal live oak). There are no sizeable coniferous trees on the

property. Due to this lack of mature large trees, nesting structures are limited to a few squirrel nests that were observed.

- Invasive Scotch broom impedes prey abundance and availability to owls. The understory at the Toyon site is completely covered with broom throughout the limits of the property. The density of broom severely impedes the availability of prey for predators, such as Spotted Owls, that require a more open understory to detect and then capture a variety of prey species. Furthermore, the presence and dominance of invasive broom changes prey composition reducing the abundance of prey.
- Although, no formal woodrat survey was performed during the habitat assessment visit, it was noted that no woodrat nests were discovered on the property.
- Nesting Spotted Owls are sensitive to microclimate and generally do not use north facing drainages for nesting. The general aspect of the Toyon property is north facing.
- The lands adjacent to the Toyon property consist of open grassland (Marin County Open Space) on the upslope border and more developed neighborhoods below. Spotted owls are shy forest birds that generally avoid open habitats because the risk of mortality from predators is higher there. Moreover, the adjacent lands are more likely to harbor a newly arrived species, the Barred owl (*Strix varia*). Unlike the Spotted owl which is a habitat specialist, the Barred owl is a habitat generalist that is rapidly expanding its' range. Barred owls are a serious threat for Spotted Owls, they are an aggressive species that will kill, take over nesting habitat, and hybridize with Spotted Owls.

If you have any further questions or require clarification please contact me.

Thank you,

Colleen Lenihan, PhD
Raptor Ecologist

RECORDING REQUESTED BY:

RECORDED AT REC.

84030751

Town of Fairfax

AGENCY SHOWN

WHEN RECORDED, MAIL TO:

1984 JUN 28 AM 8:00

Department of Community Development
Town of Fairfax
142 Bolinas Rd.
Fairfax, CA 94930

OFFICIAL RECORDS
MARIN COUNTY CALIFORNIA
W. BRUCE SHAFER

NO 722 CC6103

(Space above this line for Recorder's Use Only)

NOTICE OF MERGER

(Pursuant to Article 15, Chapter 3, Division 2, Title 7 of the California Government Code)

NOTICE IS HEREBY GIVEN that, the Town of Fairfax has determined that the real property described below has been merged into one parcel.

Property Owner of Record as shown on the latest equalized assessment roll:

Bernard S. Sorkin

Assessor's Parcel No.(s):

3-171-01, 02, 03, 04, 05, 06, 07, 08

3-161-01

Street Address:

None

Description:

Cascades Map No. 2, Amended, Block 4, Lots 65 thru 92, 94, 96 thru 103, 107 thru 109

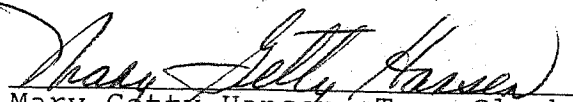
Note: The description has been received from others, and neither the Town of Fairfax nor any of its officers or employees assume responsibility for the accuracy of said description.


Date: 6/27/84

Date: June 26, 1984

TOWN OF FAIRFAX

TOWN OF FAIRFAX

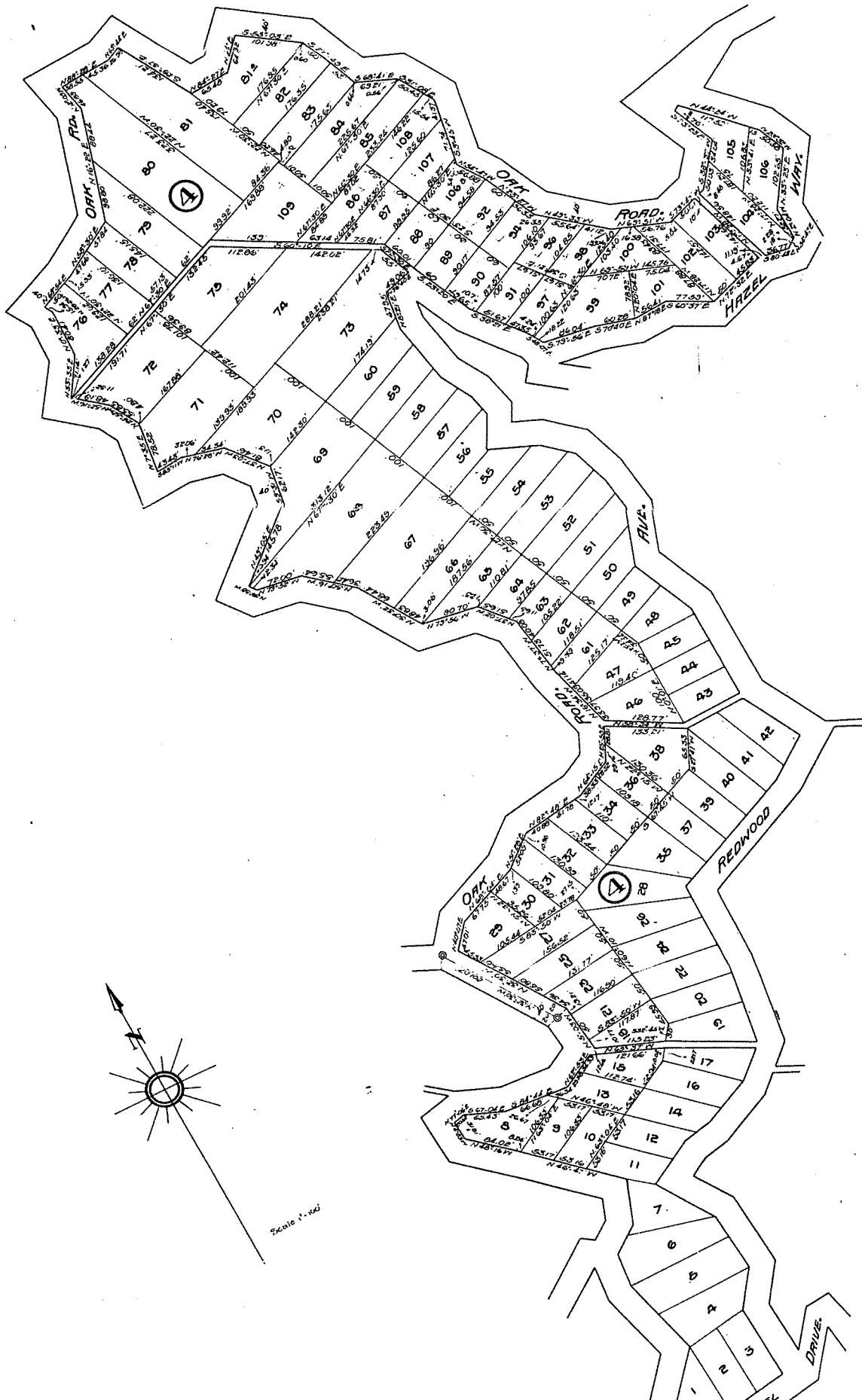

Mary Getty Hansen, Town Clerk


Rebecca R. Hammond
Director of Community Development

Notice No. 655

ATTACHMENT E

AMENDED MAP NO. 2 OF "THE CASCADES", PORTION OF BLM. NO. 4.
SHEET NO. 2 OF FIVE SHEETS.



ATTACHMENT **G**

RECORDING REQUESTED BY:

AND WHEN RECORDED, MAIL TO:

SPACE ABOVE FOR RECORDER'S USE ONLY

NOTE: THIS IS A SAMPLE PRIVATE ROAD MAINTENANCE AGREEMENT ONLY AND IS INTENDED TO ASSIST PRIVATE LANDOWNERS WHO DESIRE TO ENTER INTO A PRIVATE ROAD MAINTENANCE AGREEMENT. ANY PERSON OR PERSONS USING THIS AGREEMENT SHOULD REVIEW IT CAREFULLY WITH THEIR OWN LEGAL COUNSEL.

PRIVATE ROAD MAINTENANCE AGREEMENT

This Private Road Maintenance Agreement ("Agreement") is entered into this ____ day of _____, _____, by and amongst the undersigned parcel owners ("Participating Owners").

RECITALS:

A. *[Inset name of Road]* is a private road situated within the Town of Los Altos Hills, as more particularly shown on Exhibit A, attached hereto ("Roadway Property"). *[Exhibit A should include a legal description of the Roadway Property and drawing prepared by a licensed engineer showing the Roadway segment.]*

B. The undersigned Participating Owners are the owners or users of the Roadway Property.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Road Commission Agent. A Road Commission Agent shall be elected by a majority of the Participating Owners. The Road Commission Agent will serve a term as agreed to by the Participating Owners and shall be subject to removal by a majority vote of the Participating Owners. The Road Commission Agent shall be responsible for monitoring the condition of the road surface and initiating maintenance activities as needed to maintain road surface standards.

2. Road Maintenance and Road Improvements. Road maintenance and road improvements will be undertaken and made whenever necessary to maintain the road in good operating condition at all times and to insure the provision of safe access, ingress, egress and passage by the Participating Owners and by emergency vehicles. A majority vote of the Participating Owners is required to approve any proposed road improvements and related contracts with a value in excess of \$_____. Before authorizing expenditures for future road improvements, Participating Owners will be notified by the Road Commission Agent, cost estimates will be provided, and a majority agreement will be required. If any Participating Owner performs improvements, maintenance, repairs, or replacements to the Roadway Property without prior approval of a majority of the Participating Owners, the Participating Owner performing such work shall be solely responsible for the costs incurred.

3. Cost Sharing. Road maintenance, road improvement and emergency funding costs shall be shared on a pro-rata basis amongst the Participating Owners sharing access to the Roadway Property. Each Participating Owner's share of costs incurred shall be determined as follows: [INSERT ALLOCATION FORMULA]. The Road Commission Agent shall provide the Participating Owners and the Town an updated copy of the cost allocations whenever the cost allocation is amended.

4. Prepayment. Prepayment of maintenance, improvement and emergency fund costs will be made to the Road Commission Agent by each Participating Owner. Annually, on or before a date as specified by the Road Commission Agent, each Participating Owner will contribute their pro-rata share of the estimated annual cost for road maintenance, road improvements and emergency repair funding. The Road Commission Agent shall send each Participating User a notice of the annual payment due not less than two weeks prior to the due date and each Participating Owner shall pay the invoice within two weeks of receipt of the notice.

5. Future Parcels. Any additional parcels gaining access to the Roadway Property by way of subdividing an existing parcel shall be bound by all terms and conditions of this Agreement, and will be required to pay that portion of the maintenance, improvement and emergency repair costs incurred after the split as determined using the formula contained in Section 3 above.

6. Bank Account, Budget and Annual Report. The Road Commission Agent shall establish and maintain a bank account to hold the funds paid by the Participating Owners and to pay maintenance, improvement and emergency repair costs. All checks or payments issued from the account shall require the approval/signature of the Road Commission Agent and one Participating Owner as designated by a majority of the Participating Owners. The Road Commission Agent shall also prepare and distribute to the Participating Owners an annual income and expense report and a year-end balance sheet, accounting for all funds received and disbursed. Not later than sixty (60) days prior to _____ of each year, the Road Commission Agent shall prepare a budget of the anticipated road maintenance, road improvement and emergency repair contingency funding for the next fiscal year (defined as _____ to _____ months). The Participating Owners shall consider, amend as desired and approve the final budget by a majority vote of all participating owners not later than thirty (30) days prior to the beginning of the next fiscal year.

7. Emergency Repairs. If the Road Commission Agent determines that an

emergency repair to the Roadway Property is necessary, the Road Commission Agent is authorized to make or arrange for the emergency repair provided the costs of the emergency repair do not exceed the amount of the then available emergency repair funds. The Road Commission Agent will thereafter notify the Participating Owners of the emergency repair and the amount due from the Participating Owners to replenish the emergency repair contingency fund.

8. Effective Term. This Agreement shall be perpetual, and shall encumber and run with the land as long as the Roadway Property remains private.

9. Binding Agreement. This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

10. Amendment. This Agreement may be amended only by a two-thirds majority consent of all Participating Users.

11. Enforcement. This Agreement may be enforced by the Road Commission Agent, a majority of Participating Owners, or the Town of Los Altos Hills City Manager. If a court action or lawsuit is necessary to enforce this Agreement, the party commencing such action or lawsuit shall be entitled to reasonable attorney fees and costs, if the party prevails.

12. Disputes. If a dispute arises over any aspect of the improvements, maintenance, or repair, the parties [*shall or may*] engage in binding arbitration to resolve the dispute. The decision of the arbitrator shall be final and binding on all of the Participating Owners. In selecting a third party arbitrator, each Participating Owner shall be entitled to one vote, and the nominee receiving a majority of the votes shall be the arbitrator. All parties shall share in the cost of any arbitration.

13. Notices. Any notice required herein shall be sent to Participating Owners at the address or email address provided to the Road Commission Agent in writing by the

Participating Owner. If an address of a Participating Owner is not known, a certified notice will be mailed to the address to which the Participating Owner's property tax bills are sent.

14. Invalidity. Should any provision in this Agreement be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected and each term and condition shall be valid and enforceable to the extent permitted by law.

15. Other Agreements. This Private Road Maintenance Agreement replaces all previous Private Road Maintenance Agreements regarding the described Private Road.

16. Participating Owners and their agents shall hold harmless and indemnify the Town, its officials, employees, consultants and agents for any failure by the Town to perform its obligations identified herein, and nothing in this Agreement shall be construed as imposing any obligation upon the Town to perform maintenance or improvements to the Roadway Property or to enforce this Agreement.

17. Recording This Document. Original and amended copies of this document , including added signatures, shall be recorded and provided to the City Clerk by the Road Commission Agent.

The parties hereto have executed this Agreement effective as of the date written above.

PARTICIPATING OWNERS: *[All Owners of Property must sign and all signatures must be notarized]*

[name of Participating Owner, address, and APN]

[name of Participating Owner, address, and APN]

[name of Participating Owner, address, and APN]

Exhibit A

[Insert legal description of Roadway Property.]

FAIRFAX TREE COMMITTEE MINUTES

February 25, 2019

In Attendance: Susan Brandborg, Laura Kehrlein, Jane Richardson Mack,
Absent: None

Continued Items:

1. 47 Mountain View Rd.

Approved for removal of (1) Fir or Pine Tree. The tree is a hazard to adjacent properties and sewer connections. The applicant was not present.

Ayes: Brandborg, Kehrlein, Richardson Mack

New Business:

2. 18 Redwood Rd.

Approved for removal of (1) Oak. The tree has advanced sudden oak death. It was also noted that there is an adjacent Bay tree with a large broken limb that needs attention.

Ayes: Brandborg, Kehrlein, Richardson Mack

3. APN 001-121-50 Scenic Rd.

The committee has reviewed the proposed tree removal plan. The committee recommends removal of the proposed Bay trees with the condition that an arborist's report be submitted for review by the Planning Commission. The applicant was present to answer questions.

Ayes: Brandborg, Kehrlein, Richardson Mack

4. APN 003-161-01, 03-171-01-08 Toyon Rd.

The committee has reviewed the tree preservation/ protection plan prepared by Urban Forestry Associates. The committee recommends removal of the proposed trees in accordance with the recommendations in the arborist's report. The committee noted that there may be additional trees that are in poor health that are not proposed to be removed at this time.

Ayes: Brandborg, Kehrlein, Richardson Mack

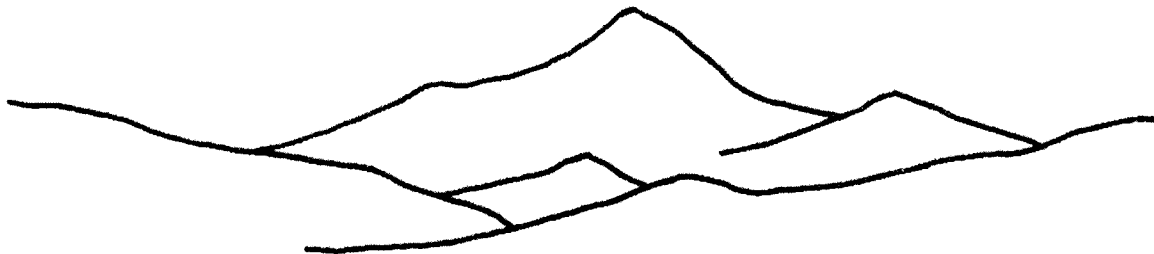
5. 26 Scenic Rd.

Approved for removal of (1) Hawthorne #1 and (1) Coast Live Oak #3. In order to approve removal of the Coast Live Oak #2 in the rear yard an arborist report is needed. If the arborist's report states that this tree is an immediate danger, it may be removed on an emergency basis. The applicant was present to answer questions.

Ayes: Brandborg, Kehrlein, Richardson Mack

Tree Committee Comments:

The tree committee is disappointed that the trees in the Parkade did not come before us prior to their removal. A replacement tree species for the Liquid Amber that are becoming a nuisance was discussed by this committee for the addresses at 141 and 145 Bolinas Road at a prior meeting.



**TOWN OF FAIRFAX
FAIRFAX OPEN SPACE COMMITTEE**

MEMORANDUM

To: Town of Fairfax, Planning and Building Services Department
Copy to: 200 Toyon Development, Planning and Permitting File
From: Fairfax Open Space Committee
Date: March 14, 2019
Re: Review and Comments on 2019 Proposed Development of 200 Toyon Drive

Introduction: Role of the OS Committee and the Public Process

The Fairfax Open Space Committee (the Committee) was established by Resolution of the Town (Resolution No. 2334, as subsequently amended) in 2004. Under that resolution the purposes of the Committee include advising the Town on matters affecting open space lands which are environmentally sensitive and which have aesthetic qualities. In addition, the Committee was given the responsibility to participate as an advisory body and to “review planning and development matters in order to formulate policies that it may deem appropriate to advocate”.

Consistent with these purposes, the Town General Plan, adopted in 2012, specifically identifies the Committee as having the responsibility to review each application for development of any undeveloped and underdeveloped properties that have been identified in the General Plan open space “inventory”, as important open space within the Town. See General Plan Policy OS-1.4.1, Program OS-1.4.1.2.

The 200 Toyon Property (the Property), has been included on the General Plan open space “inventory” since the adoption of the General Plan in 2012. Moreover, in 2015

that property was identified and acknowledged as a Priority Conservation Area (PCA) by the Town and by the Association of Bay Area Governments, through the "One Bay Area" process. In particular, under the PCA designation process the Property was deemed to be located within an area that had significant and exceptional open space values, including recreational opportunities, visual qualities, and plant and animal ecosystems. Notably, the Property was located in or immediately adjacent to mapped Northern Spotted Owl Habitat. In addition, past surveys and a more recent 2017 survey have found Napa False Indigo, a plant species that is identified as rare by the California Native Plant Society, on the Property. It is located within 100 feet of the footprint of the proposed development.

This memorandum serves to provide the Town, through the Department of Planning and Building Services, with the concerns and conclusions that the Committee has reached concerning the proposed development following a review process.

Broad Description of the Development

This is the third time a development has been proposed on the Property. While the current proposal is scaled down, with a reduced access roadway and smaller home, it still is an imposing development. The proposed development now consists of the construction of a 2700 square foot home, near the top end of the size range of existing homes in the area, with a large-scaled garage (almost 600 square feet), deck (1724 square feet) and roadway access and parking with extensive retaining walls. The development will occur on an existing legal parcel of almost 11 acres.

The Property is currently undeveloped, except for an existing trail which has been used by the public for many decades for hiking and access to the adjacent Marin County Open Space lands immediately to the southeast. The Property has many trees, including native and heritage trees. Wildlife is plentiful and found throughout the Property. In conjunction with other adjacent undeveloped lands, wildlife can use the Property as a wildlife corridor to connect with a broad range of existing open space to the north, east and west. Likewise, the recreational trail on the Property joins a system of trails on the Open Space lands and public lands adjacent to it that connect to a number of other publicly owned or used lands and trails in every direction.

Organization of this Memo

This memo will review the Development and provide the Committee's concerns and conclusions based on its review of the proposed development at its February 2019

meeting at which the public provided testimony and the Committee considered the proposed development. The recommendations of the Committee for this proposed development are reiterated at the end of this memorandum, commencing at page 12.

The framework for the memorandum will mirror the four primary “Goals” of the Open Space Element of the General Plan and the underlying policies and objectives. The four Goals are:

Goal 1: Protect and preserve open space lands and native biotic resources within the Fairfax Planning Area;

Goal 2: Manage, enhance, and restore open space to ensure long-term vitality and viability;

Goal 3: Preserve the sensory qualities of open space for recreational, cultural, educational, and spiritual experiences.

Goal 4: Balance the interests of public health and safety with the preservation of open space.

Goal 1: Protect and preserve open space lands and native biotic resources within the Fairfax Planning Area.

According to General Plan, Goal OS-1, there are three important factors which establish the Property as critical in terms of environmental sensitivity and prioritizing this land and its biotic resources for the highest level of protection and preservation. These are A) its function as natural open space with contiguity to other wildlands and dedicated open spaces, B) its native biotic resources of flora and fauna, and C) the presence of biotically significant hydrological systems in this area. Under Goal OS-1 the Development is evaluated in regards to these three factors.

A. Open Space Function and Contiguity

For years, the Property has existed as a private, undeveloped, albeit non-dedicated open space. It acts as a wildlife corridor and connects undeveloped private as well as publicly dedicated open spaces. There are large undeveloped lands to the north, east and west, including the immediately adjacent County Open Space District lands. Per Policy OS-1.2.1, Program OS-1.2.1.1, this significant degree of connection gives it priority as land to protect and preserve as a living, integral part of the Fairfax Planning Area's larger ecosystem and open spaces; what happens here will impact the whole.

The proposed development consists of a large footprint for one house with large-sized decks, driveway, parking areas and associated retaining walls. The proposed development would effectively cut into and disrupt not only wildlife corridors, but also the connection between the contiguous open space and natural lands, consequently impacting the biotic viability of surrounding open space. The spatial intrusion of the Development would further cause habitat fragmentation and loss, effectively threatening flora and fauna in the entire area. The proposed development remains large in scale, and, we believe, it should be pared down further yet, including a reduction in the deck area which is extremely large – the equivalent of an approximately 50 foot by 35 foot deck.

The proposed development does not address the portions of the Property that will remain undeveloped. At a minimum, to avoid future development of undeveloped parts of the property, all undeveloped areas should be protected by a perpetual and enforceable condition or dedication of the property to private open space, prohibiting development and landscaping and disruption of the existing flora and fauna, except under a Town approved plan for non-native plant removal or native plant restoration or other activities reasonably required to protect life or property.

B. Native Biotic Resources of Flora and Fauna

The Property, almost 11 acres, contains a wealth of native biotic resources. Its designation as a Priority Conservation Area by the “One Bay Area” process is based, in part, on the conclusion that there are myriad flora and fauna living in articulating and codependent ecosystems as well as roaming and migratory species dependent upon these wildlands for survival.

At the time of approval by ABAG of the Property as a Priority Conservation Area (PCA), the presence of Napa False Indigo was relied upon as one of many reasons to protect the flora and fauna from development. In a survey done in 2017 for this proposed development the presence of this same rare plant was confirmed and shown to be flourishing within 100 feet of the proposed footprint.

In addition, in the context of the PCA process, the property was shown on a Marin County USFWS map as being within or immediately adjacent to habitat for the Northern Spotted Owl. A copy of the map relied upon in the ABAB PCA process accompanies this memo. More recently, the Committee received information from at least one neighbor that owl calls are occasionally heard.

It is imperative that any consideration for development of this land be planned for and designed in such a way as to create minimal disturbance to these rare and endangered species. Although the Napa False Indigo was found within 100 feet of the footprint, 2 years ago, no further survey has been done. The location of the plant should be confirmed now by a current survey – it may well have spread even closer. Beyond that, even though well within the construction zone associated with the proposed development, no restrictions have been proposed on the construction for protecting the plant or for mitigating for any harm to it. Such restrictions or measures should be considered by an expert and imposed as a condition to development.

Likewise, given the proximity to known Northern Spotted Owl habitat, and in light of the reports of owl calls, a more current survey for that species should be obtained. Moreover, to the extent that major construction activities will occur with this development (significant grading, road building and home construction), consideration should be given by an expert and recommendations made by that expert in order to avoid or reduce any impacts caused by the noise, dust, fumes or other conditions associated with construction, including necessary mitigation proposed to offset any harm caused.

The proposed development would remove 26 native trees. Presumably all of the trees to be removed are heritage trees, which are defined by the Fairfax tree ordinance defines Heritage trees as follows:

significant, locally native tree species that are critical to urban and wildlife forest habitats. (Fairfax Code §8.36.020).

The tree removal would cause extensive damage to existing wildlife forest habitats.

The development would further disturb this area's native biotic resources because of the kind of activity intrinsic to the process of large scale construction. Bulldozing and excavating creates disruption of bio-active soil and mycorrhizal networks foundational to ecosystem structure and functioning as well as destroying fauna, flora, and habitats.

No mitigation for the tree removal is proposed. To offset and avoid these impacts, the Committee recommends that the Town consider the requirement that some or all of the removed trees be replaced with native trees that would improve the habitat and prevent soil degradation.

In addition to creating a broad area of impact, the impact would be continuous and long term, as is necessary for a project of this scale. Continuous noise pollution, the introduction of nocturnal lights, human activity, the use of inorganic and often toxic construction materials, and heavy machinery, are all disruptive and often fatal to wildlife, fauna, and the ecosystems of which they are a part. The bigger the project, the greater, more extensive the destruction. Such impacts should be avoided and minimized by conditions placed on the development

C. Biotically Significant Hydrological Systems

Water flows off this very steep land through watercourses which are present at several parts of the Property. Environmental destruction occurs not only mechanically, but also via fluid dynamics. In this regard, the destruction of so many trees is expected to create another problem; that of water retention. This area is already prone to erratic and at excessive water drainage. With so many trees removed, the area is likely to lose more topsoil and vegetation and, thus, habitats, with erosive rains and slides, further destroying critical biotic resources.

Hydrological systems are not only fundamental to biotic life, but require natural ecosystems for ecological well-being. Destroying them undermines the integrity of our waterways. Mudslides suppress oxygen levels in water creating anaerobic stagnation while human activity and construction pollutes. These waters flow into the larger aquifers and beyond. So, preventing damage to these systems is not just a local mandate, but a state mandate as well. Because of the afore-mentioned compounding factors, and because of the scale and location of the development, such damage may be expected. As discussed previously some of the removed trees should be replaced.

Goal 1 - Conclusions

As it stands, the Committee finds the development is not consistent with the General Plan because it will not protect and preserve open space lands and native biotic resources. It would detrimentally impact surrounding wildlands and Open Space, destroy large, critical portions of habitats and ecosystems, and threaten the viability of the greater Ross Valley watershed.

Goal 2: Manage, enhance, and restore open space to ensure long-term vitality and viability.

This goal deals mainly with the management, enhancement, and restoration of designated open space in Fairfax.

The Property is not “designated open space” and is not owned or administered by the Town but is instead owned by a private individual. While the Committee appreciates that there will continue to be open space and public trails on the Property allowing residents to continue to enjoy the views and recreational opportunities of the Property, the Committee has concerns related to the permanence of the retained open space and public access and the maintenance of those areas. How does the developer propose to ensure that the retained open space areas will remain undeveloped and the public parking and accessways on the Property will remain maintained and continue to be available as public accessways into perpetuity? Likewise, what is the plan for long-term maintenance of the open space and public access areas? Will a dedicated source of funding be provided to maintain these areas for their intended use and to address risks, such as landslide or fire hazards? As noted previously, the undeveloped portions of the lands need to be protected in perpetuity through enforceable mechanisms and also need to be properly managed and maintained under an approved plan to preserve and protect the native species present on the Property.

Goal 2 - Conclusions

The Committee supports the retention of designated open space areas on and public access to the Property. The Committee recommends that the Town ensure that appropriate controls and methods are in place to ensure that any future open space areas and public access proposed as part of the Development will be preserved and properly maintained and managed in perpetuity.

Goal 3: Preserve the sensory qualities of open space for recreational, cultural, educational, and spiritual experiences.

This Goal emphasizes that the Town should strive to preserve lands that have significant recreational, visual, cultural, educational and spiritual qualities and should avoid development approaches that unduly impair these qualities. Open space can be valuable not just because it provides species and wild habitat, but also because it is visually appealing and because it offers recreational, cultural and spiritual opportunities. The importance of these qualities of open space to the citizens of the Town of Fairfax is

described in detail in the General Plan. The introduction to the Open Space Element is illustrative:

The location of Fairfax within the Ross Valley, surrounded by undeveloped hillsides and ridges, gives the Town a very distinctive look and feel. Oak and redwood forest, diverse wildlife, streams, a variety of microclimates, and hiking, bicycling and horse trails are all characteristic of the open space in the Planning Area. Residents of the Town of Fairfax deeply value the open space areas within and around the Town, for a wide variety of esthetic, cultural and recreational reasons. General Plan, page OS-1

Fairfax presently conveys an image that is in marked contrast to that of most communities in the Bay Area, where natural barriers between towns have repeatedly been violated by urban inroads. The open spaces between many Marin communities have been developed to the point that natural boundaries no longer exist. Loss of existing open space in the Fairfax Planning Area, whether formally preserved or not, will alter the fundamental and unique character of the Town. General Plan, page OS-3

As detailed below, the Property has recreational, visual, cultural, educational and spiritual qualities in abundance.

A. Visual Qualities

The objectives, policies and programs of the Open Space and Land Use Elements of the General Plan provide specific constraints on development within visually important areas, such as the ridgelines on the Property:

Objective: OS-3.2 Preserve the visual appeal of the natural landscape in the Fairfax Planning Area.

Objective LU-1.2: Limit development on hillside and ridgeline parcels to preserve and enhance the scenic qualities of the Town.

Policy LU-1.2.3: New and renewed development shall be designed and located so as to minimize the visual mass.

During our Committee's process related to the proposed development, the members of the public have expressed concern that the Development would impact the views of the Property from numerous public places, hundreds of adjoining properties and many roads. One of the most significant concerns expressed is that it is entirely impossible to assess the visual impact of the development because the

story poles are hidden from view by existing trees. Those trees that now screen the view of the story poles are likely the ones that will be removed to accommodate the development, being nearest the proposed development. Once those trees are removed the proposed home and improvements may well be very visible from a long distance and from public areas such as roads and the adjacent open space. There are several examples where this has occurred – for example house developed on Fawn Ridge, according to the public, and on Crest, which are acutely visible from far away and from many roads and public places.

In order to accurately assess the visual impact of the proposed development, the Committee recommends that the Town require that the Town retain at the owner's expense a reputable visual resource expert to undertake a virtual visual impact study, which takes into account the trees that will be removed and that the survey assess the impact on views of the property from roads and public spaces, including the adjoining open space lands. In addition, to the extent that trees are to be removed to accommodate parking spaces, the visual impact of that should be assessed and mitigation required if needed to protect the resources.

B. Recreational Opportunities

The Open Space Element and Land Use Element of the General Plan are equally specific as to the importance of preserving recreational opportunities that exist on undeveloped or underdeveloped lands in Fairfax:

Objective OS-3.1: Provide and maintain a system of recreational trails that will create access amongst and between downtown Fairfax, neighborhoods of Fairfax, and open space in the Fairfax Planning Area.

Policy LU-1.1.3: Existing public easements will be utilized to develop a system of pathways as a potential recreational, circulation, and public safety resource.

The Property has been recognized by the Committee since its inception as open space land with high value for recreational opportunities, as well as other open space qualities. There is one existing publicly-used trail across the Property creating a connection to the Open Space lands. The Committee applauds the willingness of the Property owner to identify this trail and to develop it further for public use and to create public parking to allow those using the trail to reach the trailhead by car. However, the Committee recommends that preservation of the public trail and parking spaces on the Property should be ensured through

perpetual and enforceable means, which could include a dedication of the trail for public use by way of a recorded instrument.

C. Other Sensory Qualities

Goal 3 encompasses the concern about the impact of development on other sensory qualities associated with open space. Objective OS-3.3 of the Open Space Element also directs that the Town should strive to “constrain anthropogenic sound levels in and around open space areas so that natural sounds of flora and fauna are audible”. Likewise, the development will create significant human activity (e.g. human voices, equipment usage, vehicle noise), extending well beyond the development. This will impact on the natural sounds of the undeveloped land that adjoin the development.

For these reasons, the Committee and members of the public have expressed concern that the development will have a material effect on the natural qualities of the Property. These should be assessed and mitigated.

Goal 3 - Conclusions

The Committee and the public are deeply concerned that the proposed development as now proposed may alter the existing open space visual resources, recreational opportunities and sensory qualities of the Property, contrary to the principles of the General Plan. The Committee further believes that, consistent with the General Plan and other Town planning requirements, these impacts could be addressed by adequately assessing the impacts and ensuring that the impacts are fully avoided and reduced, as noted above.

Goal 4: Balance the interests of public health and safety with the preservation of open space.

According to Fairfax’s Goal OS-4, there are three major concerns about balancing public health and the preservation of open space. These are

- A) preventing landslides by maintaining areas that are prone to landslides as open space;
- B) mitigating fire risks; and
- C) minimizing the auditory and visual impact of utility structures in open space areas.

A. Landslides

A major objective of Goal 4 is reducing the risk of landslides and flooding by preserving landslide-prone areas as open space.

The Property is very steep and is at a high risk of landslides due to unstable soils.

During the public comment at the Committee's February 2019 meeting, a neighbor of the project whose home is immediately adjacent to the Property expressed concern that the grading might reduce the stability of the hillside below his house. In this regard, the Committee encourages the Town to conduct its own investigation into the geology and hydrology of the site rather than relying on the reports commissioned by the owner to address the concerns regarding stability.

B. Fire

Goal 4 also focuses on reducing the risk of fire.

In much of California, and specifically in Fairfax, our residents take advantage of the beautiful views and recreational amenities offered by nature by living near the interface of urban areas and open space, or in the Wildland Urban Interface (WUI). Unfortunately, this places homes in areas that are more prone to wildfires.

The proposed property is very much in the WUI and would pose a great fire risk to homes built on the property and the surrounding neighborhoods. As we become more aware of the effects of climate change, and as wildfires continue to increase in frequency and intensity, communities have the responsibility to concentrate development near already developed areas rather than allowing new structures to be built in the WUI.

Goal 4 - Conclusions

The development is not consistent with Goal 4 of the general plan because it is located in an area that is prone to landslides, floods, and wildfires and those need to be appropriately assessed and reduced or avoided.

RECOMMENDATIONS OF THE COMMITTEE

The proposed development is not consistent with the four primary “Goals” of the Open Space Element of the General Plan and the underlying policies and objectives. In sum, order to address and avoid or reduce adverse impacts, the Committee recommends:

- The proposed development remains large in scale, and, we believe, it should be pared down further yet, including a reduction in the deck area which is extremely large – the equivalent of an approximately 50 foot by 35 foot deck.
- At a minimum, to avoid future development of undeveloped parts of the property, all undeveloped areas should be protected by a perpetual and enforceable condition or dedication of the property to private open space, prohibiting development and landscaping and disruption of the existing flora and fauna, except under a Town approved plan for non-native plant removal or native plant restoration or other activities reasonably required to protect life or property.
- The location of Napa False Indigo should be confirmed now by a current survey – it may well have spread even closer. Beyond that, even though well within the construction zone associated with the proposed development, no restrictions have been proposed on the construction for protecting the plant or for mitigating for any harm to it. Such restrictions or measures should be considered by an expert and imposed as a condition to development.
- Given the proximity to known Northern Spotted Owl habitat, and in light of the reports of owl calls, a more current survey for that species should be obtained. Moreover, to the extent that major construction activities will occur with this development (significant grading, road building and home construction), consideration should be given by an expert and recommendations made by that expert in order to avoid or reduce any impacts caused by the noise, dust, fumes or other conditions associated with construction, including necessary mitigation proposed to offset any harm caused.
- No mitigation for the tree removal is proposed. To offset and avoid these impacts, the Committee recommends that the Town consider the requirement that some or all of the removed trees be replaced will native trees that would improve the habitat and prevent soil degradation.
- Continuous noise pollution, the introduction of nocturnal lights, human activity, the use of inorganic and often toxic construction materials, and heavy machinery,

are all disruptive and often fatal to wildlife, fauna, and the ecosystems of which they are a part. Such impacts should be avoided and minimized by conditions placed on the development

- Preservation of the public trail and parking spaces on the Property should be ensured through perpetual and enforceable means, which could include a dedication of the trail for public use by way of a recorded instrument.
- The undeveloped portions of the Property need to be protected in perpetuity through enforceable mechanisms and also need to be properly managed and maintained under an approved plan to preserve and protect the native species present on the Property.
- The Committee and members of the public have expressed concern that the development will have a material effect on the natural qualities of the Property. These should be assessed and mitigated.
- During the public comment at the Committee's February 2019 meeting, a neighbor of the project whose home is immediately adjacent to the Property expressed concern that the grading might reduce the stability of the hillside below his house.
- In this regard, the Committee encourages the Town to conduct its own investigation into the geology and hydrology of the site rather than relying on the reports commissioned by the owner to address the concerns regarding stability.
- The development is located in an area that is prone to landslides, floods, and wildfires and those need to be appropriately assessed and the risks reduced or avoided.

