



TOWN OF FAIRFAX

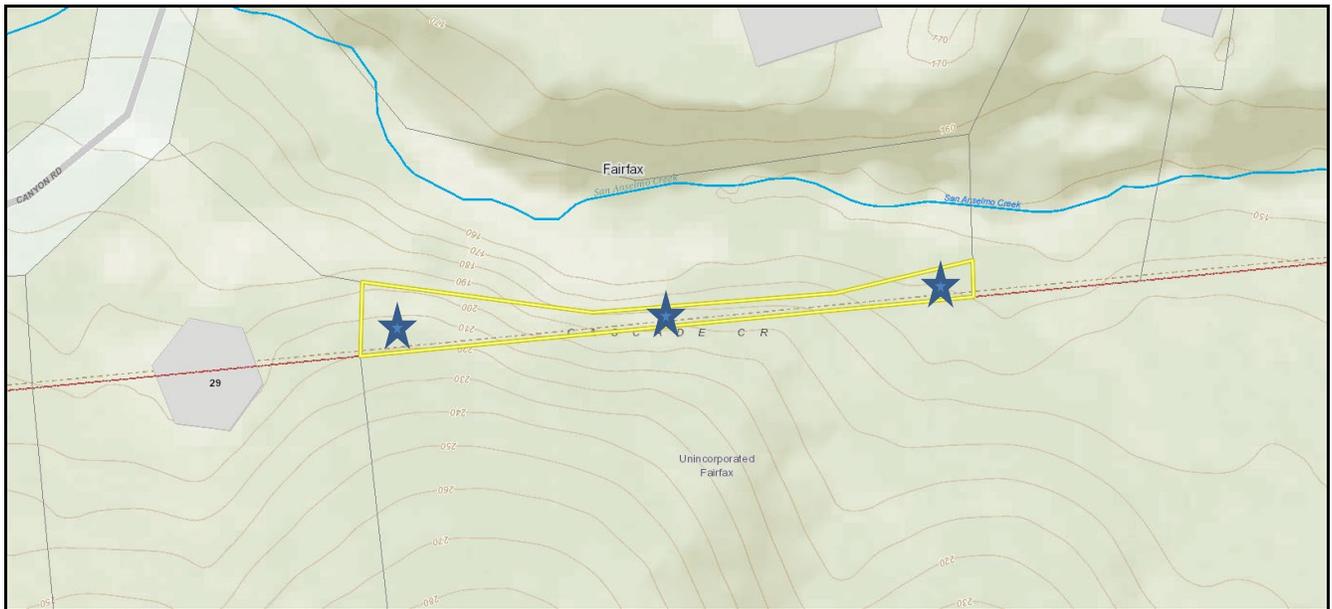
STAFF REPORT

March 1, 2023

TO: Mayor and Town Council

FROM: Linda Neal, Principal Planner
Loren Umbertis, Public Works Director
Miller Pacific Engineering
Fairfax Open Space Committee (FOSC)

SUBJECT: Discussion of an offer of a land donation from the Cresci Family for a property near the Canyon Road bridge; Assessor's Parcel # 003-044-19; RS-6 Residential Single-family Zone.



ASSESSOR'S PARCEL # 003-044-19

RECOMMENDATION

Discuss the pro's and con's of accepting the donation based on Staff's recommendation to not accept the donation vs. Fairfax Open Space Committee's (FOSC) recommendation to accept the donation and direct staff to do one of the following:

1. Advise the owners that we are not interested in accepting the donation.
2. Prepare a resolution for the April Town Council meeting accepting the Cresci Family land donation and authorizing Town Manager to execute property donation agreement and take any other actions necessary to effectuate the donation.

BACKGROUND

The Town was approached by the Cresci Family representative in the fall of 2022 with the donation offer. Fairfax Open Space Committee members and staff visited the donation site in 2022. FOSC initially discussed the donation of the property at their December 6, 2022, meeting where they determined the property had the potential to provide the Town will additional open space benefits so they directed the matter to their Acquisition Subcommittee for further review.

At the January 24, 2023, meeting after hearing a report from the Acquisition Subcommittee, FOSC voted unanimously that the site is a high priority for acquisition for open space protection and to recommend that the Town Council accept the land donation for the following reasons:

1. To preserve another section of the San Anselmo Creek corridor and riparian buffer zone that includes native trees.
2. Expand the Egger Grove Preserve
3. The site has the potential to provide a public accessway from Canyon Road to the Egger Grove Preserve
4. The cost of acquiring the parcel is low and the increased risk, or cost to the Town by owning the Property is low given its distance from any other developed parcel and its natural state.

The complete FOSC report, photographs of the donation site and the FOSC Priority Rating Sheet on the site see Attachment A.

DISCUSSION

The approximately 3,560 square-foot site, immediately adjacent to the Egger Grove preserve already owned by the Town. The site is landlocked with a 40 ft. wide right-of-way easement for access and utilities that leads from Canyon Road, across the front of the property at 29 Canyon Road where the owner has constructed a deck blocking a portion of the easement [Attachment B – photo from Canyon Road contained in the FOSC attachment]. The easement currently connects to a large, very steep creek bank approximately 50 feet tall and possibly includes a small narrow section of slope above the bank. Construction of an access driveway to the donation site does not seem possible since it would have to be either excavated and built into the very steep bank, or constructed within the existing creek bed which is prohibited by Town and Department of Fish and Wildlife creek setback regulations. Therefore, the future development potential of the site is minimal/does not exist.

It has been suggested that the donation site could provide public pedestrian access to the Egger Preserve (Attachment B – FOSC report and rating document). The ability of the site to provide pedestrian access is questionable due to the steepness and instability of the portion of the donation site the easement dead-ends into once you cross 29 Canyon Road. Construction of a stairway leading up the steep bank to the preserve would be expensive. Additionally, the public would have to access the stairway by using the private driveway for 29 Canyon Road and then walk between the private residence and a private deck to reach the start of any access pathway to the stairway on the donation site. The access pathway would have to be engineered as the area where it would be located is currently unstable.

Future failure of the steep portions of the site could direct creek flow towards the developed residential properties that front on Cascade Drive and cause damage.

The Planning Department, Town Engineer and Public Works Departments have the following concerns about the donation site:

The Town Engineer advised that the “Geologic conditions of the site vary from fractured, harder bedrock at the base of the creek bank, to weathered, weaker rock in the middle, to colluvial soils in the upper part of the creek bank and slope above. During our site inspection we noted several recent sloughs/shallow landslides in the creek bank. There are also overhanging soil areas along the top of the bank that appear highly susceptible to future movement/landsliding. The creek bank is fairly tall at the western end (est. 50 feet) and reduces in height to about 10-15 feet towards the eastern end of the subject parcel. Overall, the geologic conditions of the donation parcel are poor and highly susceptible to future erosion and land sliding”.

He also stated that providing pedestrian access would geotechnically be very expensive and difficult to maintain.

Due to the access constraints to development, the steep slope of the site, the instability of the soils of the site, and potential maintenance/slide repair/clean-up costs, Planning and Public Works do not see a compelling reason to accept the property.

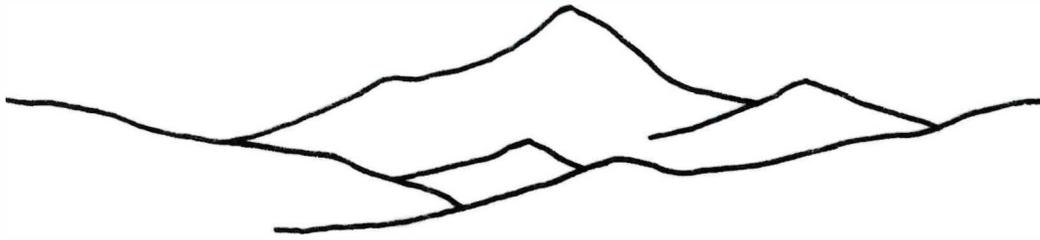
Note: The Town Council should also take into consideration the proximity of the site to several known Northern Spotted Owl Nesting Sites and the fact that Cascade Canyon is within an area recognized by the ABAG executive board and by resolution of the Fairfax town Council as a “Priority Conservation Area” under the One Bay Area program.

FISCAL IMPACT

- Reduction in annual property taxes by \$1,290 (taxes delinquent from 2020).
- Costs to the Town to accept the property will include paying the past due taxes and the legal costs to prepare the required documents to facilitate the property transfer.
- Ongoing maintenance costs and potential future slide damage repair costs.

ATTACHMENT

- A. FOSC Report, Site Photos and Priority Rating Sheet
- B. Photos of site from Cascade creek



**TOWN OF FAIRFAX
FAIRFAX OPEN SPACE COMMITTEE**

TO: Town Council

FROM: Fairfax Open Space Committee

DATE: February 10, 2023

Subject: Donation to Town of Cresci family property near Canyon Road bridge
APN 003-044-19

The Town created the Fairfax Open Space Committee (FOSC) by resolution in 2004. Under that resolution, FOSC is charged with the responsibility “to determine the availability of unique, threatened, or environmentally sensitive land parcels that may be appropriate to acquire to hold in perpetuity as dedicated open space for the public”.

In fall of 2022, staff informed the Fairfax Open Space Committee (FOSC) that the Cresci family had contacted staff and offered to donate to the Town a vacant lot (APN 003-044-19, the Property) located on south side San Anselmo Creek just to the east of the Canyon Road Bridge

The Property is a narrow strip of land approximately 3,560 square feet in size, ranging in width from 7-feet to 30-feet and 1,144 feet long. The Property lies one parcel to the east of the Canyon Road bridge, on the southern stream corridor of San Anselmo Creek. The western boundary of the Property is adjacent to 29 Canyon Road and its southern boundary is adjacent to the Egger Grove Preserve. See the map identifying 29 Canyon Road, the Donation Property and Egger Grove Preserves, which accompanies this memorandum. The Property carries with it a large access easement which crosses 29 Canyon Road and which provides access to the Property at the corner at which the Property meets the shared boundary with the Egger Grove Preserve. (See the accompanying survey with the easement highlighted in yellow and a potential accessway across that easement highlighted in red). Currently there is no developed public access to the Egger Grove Preserve. The only accessway is from Meadow Way and that access is limited to Town staff and is not available to the public generally.

The Property is undeveloped, contains riparian vegetation and, to the extent that the land is located outside the stream corridor and on the bank or upslope of San Anselmo Creek, it has native forest vegetation, including oaks, redwoods and bay laurel trees.

FOSC members and Town staff visited the property several times in 2022 in order to assess its value as an open space acquisition. At its October 2022 meeting, FOSC concluded that the Property had potentially significant open space traits and values and directed its Acquisition Subcommittee to assess the Property for acquisition priority under the “Criteria for Priority for Protecting Open Space” (Criteria). The Criteria was adopted by the Town Council on September 7, 2011 as a tool for use by FOSC and the Town in determining the relative priority for protecting undeveloped land within the Town Planning Area.

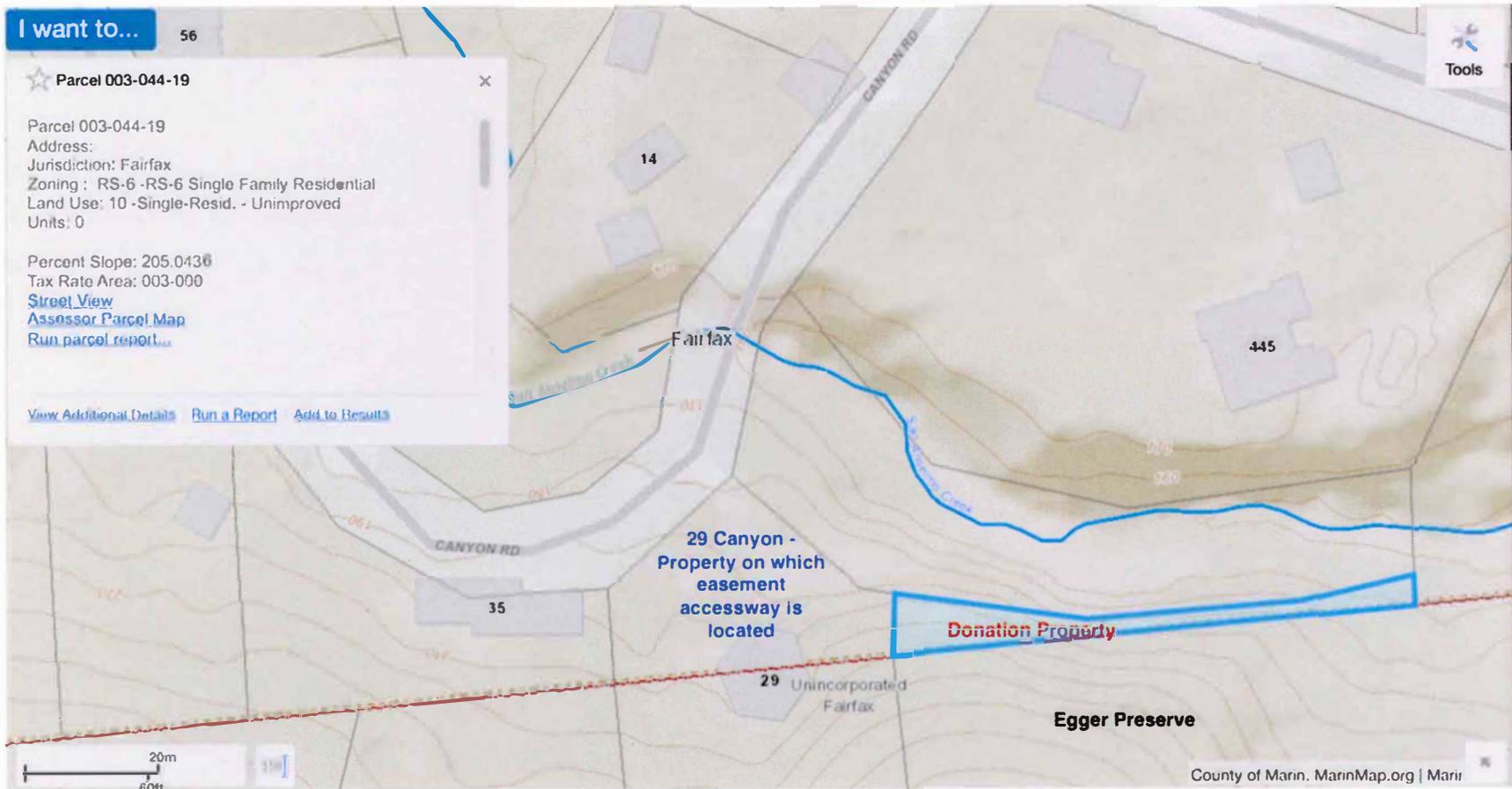
Members of the Acquisition Subcommittee visited the Property, documented its condition and, utilizing the Criteria, assessed its relative priority for acquisition by the Town through donation, thereby protecting the lot as open space. Based on its investigation the Acquisition Committee determined that the property was of high priority for preservation for the following reasons. (See the attached “**Criteria for Priority for Protecting Open Space, Fairfax Open Space Committee**”, the “Property” portion of which was filled out by Town staff and the _____ portion of which was filled out by FOSC. Also see the accompanying photos and Survey:

1. The Property itself is small and consists of mostly or all stream corridor land adjacent to Egger Grove Preserve. Nonetheless, the acceptance of the donation would protect and preserve the San Anselmo stream corridor.
2. The property contains riparian vegetation and habitat and the acquisition would likewise protect that as open space. In addition, to the extent that the property extends out of the stream corridor and onto the bank or upslope of the creek, it would also protect and preserve additional forested land, which contains native trees.
3. The acquisition would also add a small amount of land to the existing open space area, Egger Grove Preserve, and increase the size of the Preserve.
4. The most pressing reason for acceptance of the donation is that the Property, through the easement which accompanies it, provides the potential to develop a public accessway from Canyon Rd to the Egger Grove Preserve in the future. The route of such an accessway is shown in red on the accompanying Survey. The photographs provided with this memo provide views of two segments of that route: a view of the possible start of that route from Canyon Road and across 29 Canyon Road; and a view from the Egger Grove, which is elevated, looking down on the 29 Canyon Road easement and the edge of the donation Property. That latter segment would likely have to be developed as a stairway in the same manner as a number of public accessways in Town, such as the Forrest Terrace stairway. FOSC recognizes that such development is a future possible endeavor which will take time, money and a great deal of communication and cooperation with the owner of 29 Canyon at the time any development is proposed. Nonetheless, FOSC concludes that it would be wise

to preserve the potential for creating a future accessway by accepting the donation.

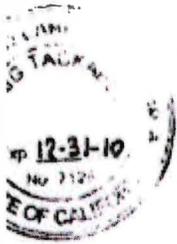
5. While the threat of development of the Property is very low, so too the cost of acquisition is low, limited to possible transactional costs (title report, staff time . . . etc.), since the Property is being donated. The increased risk or cost to the Town by owning the Property is also low, given its distance from any other developed parcel and its natural state.

Based on these attributes and characteristics, FOSC concluded at its December 5, 2022 meeting by unanimous vote that the Property is a high priority for acquisition for open space protection and recommends that the Town Council authorize the Town acceptance of donation of title to the Property.



SURVEYOR'S STATEMENT

BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF
 ONAL LAND SURVEYORS' ACT THIS 10TH DAY OF MAY,



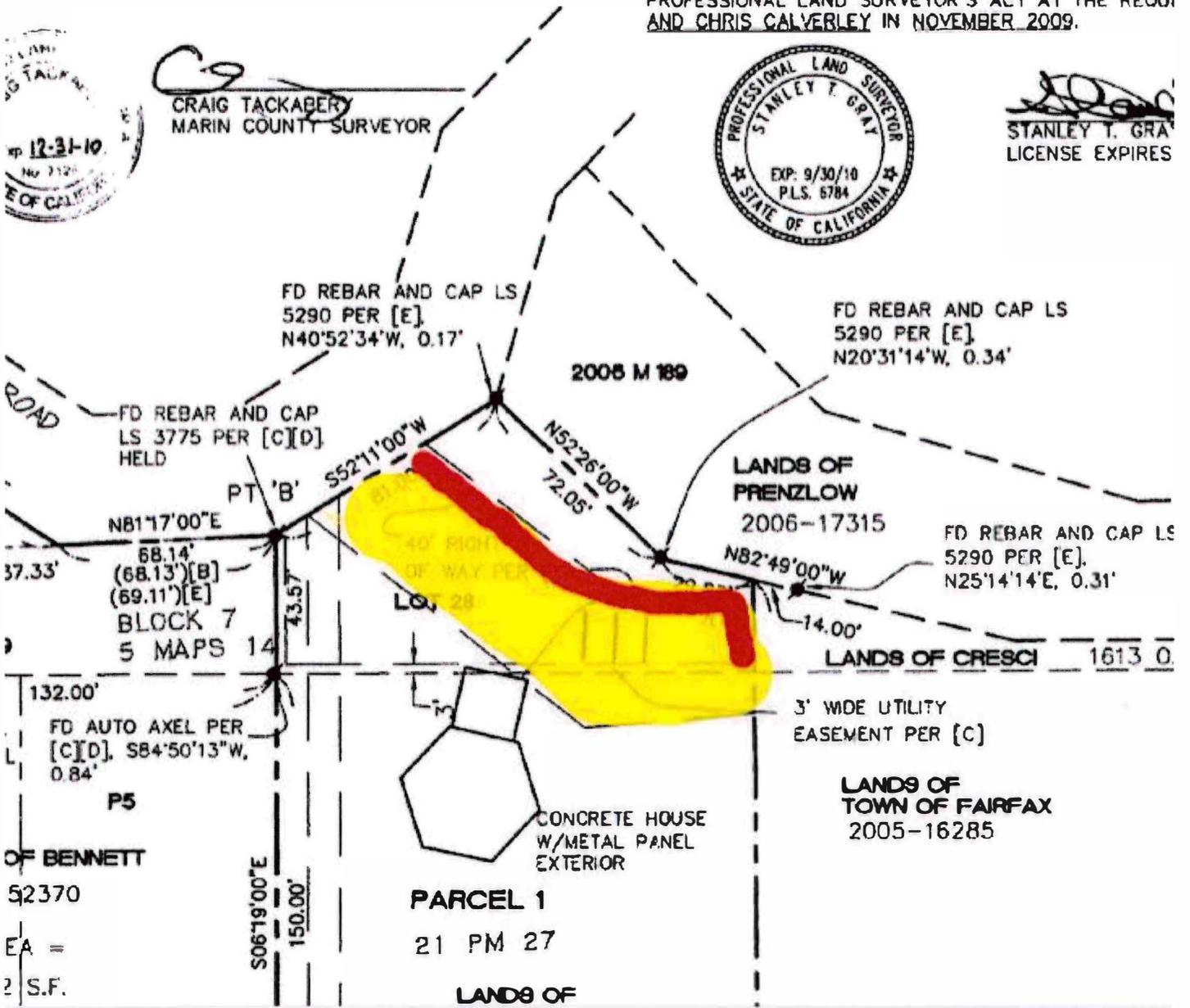
C9
CRAIG TACKABERY
 MARIN COUNTY SURVEYOR

SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE
 DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS
 PROFESSIONAL LAND SURVEYOR'S ACT AT THE REQUEST OF
 AND CHRIS CALVERLEY IN NOVEMBER 2009.

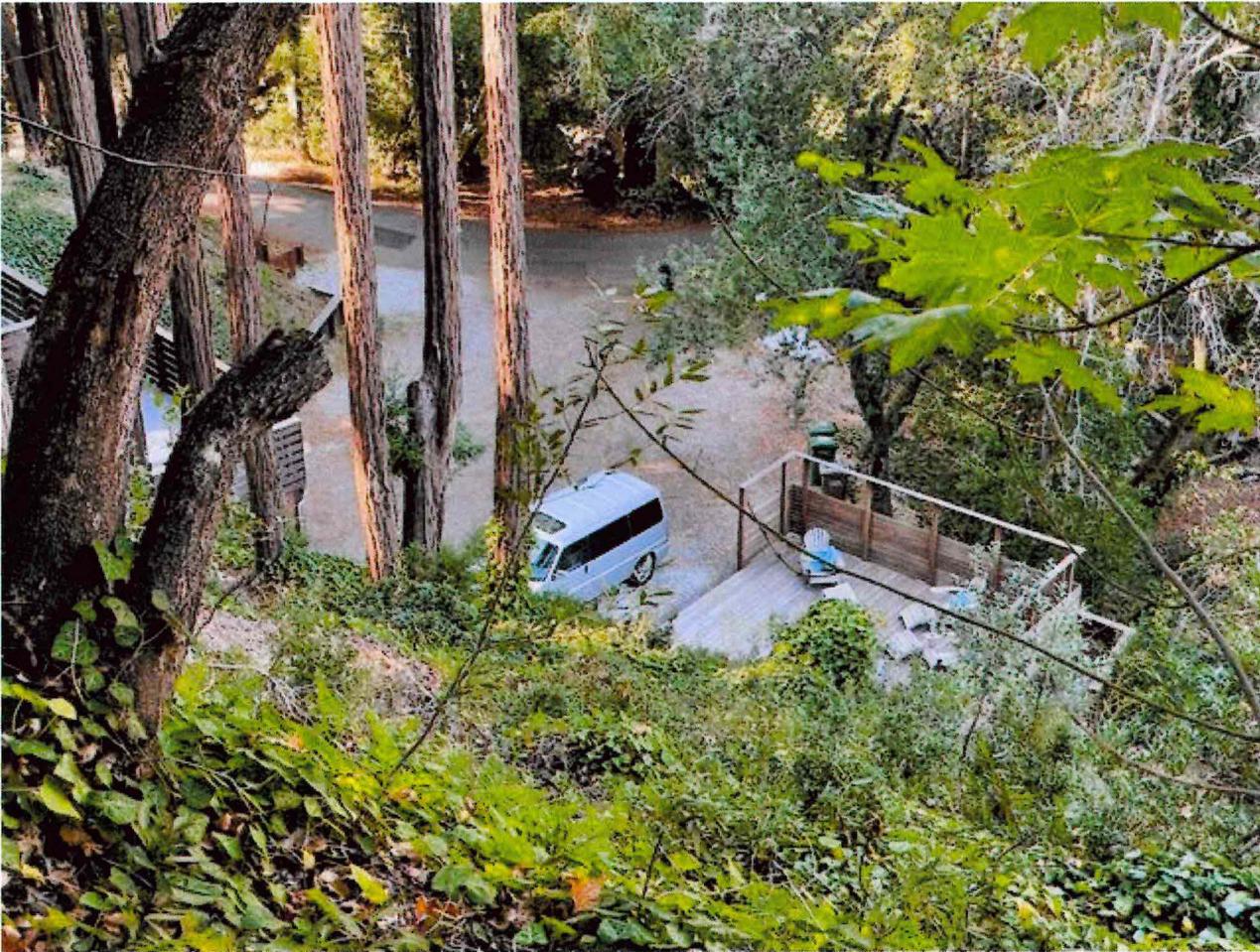


Stanley T. Gray
STANLEY T. GRAY
 LICENSE EXPIRES



17.00 x 11.00 in





Begin forwarded message:

From: Jack Judkins <JunkThird@gmail.com>

Subject: Re: Land Donation - Cresci Property with easment and possible access to Egger Grove

Date: January 17, 2023 at 10:42:29 AM PST

To: Linda Neal <lneal@townoffairfax.org>

Hi Linda

Thanks for your prompt response. Please share the PW and Engineer responses with me as soon as you receive them. I'll be out of Town starting mid February through mid March and would like to have as much time as possible to formulate FOSC's position and bring another member up to speed before I leave so that we can provide an informed presentation at the March meeting.

Thanks.

Jack Judkins
JunkThird@gmail.com

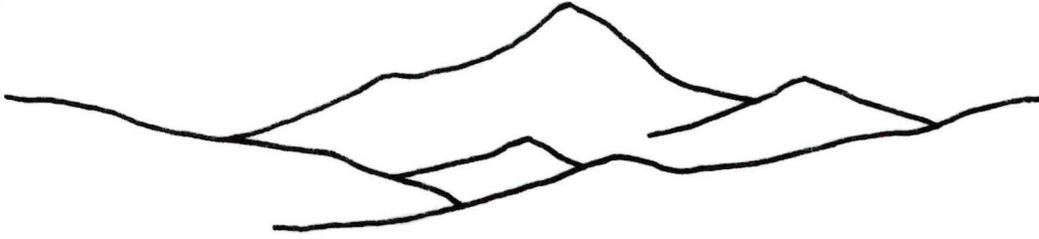


Exhibit A

FAIRFAX OPEN SPACE COMMITTEE

OPEN SPACE COMMITTEE MEMBERS:

Mimi Newton – Chair	
Michael Ardito	Jacob Feickert
Ted Bright	Ruth Horn
Barbara Coler	Jack Judkins
Chelsea Donovan	Linda Novy
Jolie Egert	Ryan O'Neil – Co-Chair

Criteria for Priority for Protecting Open Space

Fairfax Open Space Subcommittee

Adopted by Town Council: September 7, 2011

SUMMARY

Introduction

Periodically, the Fairfax Open Space Committee (FOSC) has been informed or learned of the opportunity to acquire undeveloped land within or adjacent to the Town. In attempting to assess these opportunities for the Town, FOSC concluded that a systematic means of determining whether or not to take advantage of such an opportunity is needed. In addition, in 2010, the Town Council received and accepted the final Draft 2010 General Plan and directed staff to commence CEQA review thereof. The Open Space Element of the Draft General Plan 2010 requires that the Town prepare an “Inventory” of lands within the Town Planning Area that contain open space resources which the Town should endeavor to protect and preserve. It is expected that FOSC will play a major role in creating this “Inventory” for the Town, consistent with its mandate. A systematic and objective set of criteria for ranking open space lands would assist in this task as well. For these reasons, FOSC has developed and the Town Council has approved and adopted the “Criteria for Protecting Open Space” (Criteria), which includes this Summary, and the attached “Property Information”, “Priority Rating Sheet”, and “Priority Rating – Description of Criteria”.

Purpose of Criteria

The Criteria is intended as a tool for use in determining the relative priority for protecting undeveloped land within the Town of Fairfax Planning Area. “Protection” of undeveloped land may take one of many different forms, which may include but is not limited to: conservation easement or fee title donation or acquisition, development condition, deed restriction, or exchange for other property. The fact that a property may be a high priority for protection as

open space likewise does not require that it be protected, but provides information that will be available and determinable should the opportunity arise to do so.

Use of the Criteria

The Criteria provides a comprehensive set of characteristics that should be considered in determining the priority for protection of undeveloped property. These include attributes of the property (natural and cultural resources, recreational opportunities and connectivity), as well as additional considerations that affect the desirability, urgency and benefit of protecting the property (the extent to which the property is threatened by potential development and relative costs of protecting the property).

Although these characteristics are comprehensive, it is not expected that the initial assessment of (or information about) any property will be exhaustive. Rather, the Criteria provides a tool to make an initial rough assessment of the relative priority of protecting the property with known information, however inexact or incomplete that may be. Once the opportunity to protect the property becomes available, then the Criteria will be applied more rigorously as the full characteristics and information about the property are determined or obtained.

PROPERTY INFORMATION
[Provided by Town Planning Staff]

Address: Vacant property, approximately 3,560 square feet in size. ranging in length from 7-feet to 30-feet and 1,144 feet wide, west of the western spur of Meadow Way through the access gate between 29 and 38 Meadow Way. The site slopes down from the dirt private road at an average rate of 103% to the Cascade Creek.

Parcel No: 003-044-19

Owner/Agent Name and Contact Info:

(707) 696-3540

Kathleen Cresci

Kathleencresci@gmail.com

Size of the parcel: ±3,560square feet (Attachment B)

Zoning, including overlays and special protection areas (setbacks, ridgeline etc):

Residential Single-family RS 6 Zone (no overlay zones apply) but the San Anselmo creek runs through the site, so it is subject to creek setback regulations for structures (see below).

Potential development (houses/other residential or commercial units): one single-family residence, one ADU and one JADU, but only if the Town is able to make findings for a Hill Area Residential Development permit, a Creek Setback Variance and potentially, due to the irregular, narrow, shape of the site and steep slope, other setback variances and a parking variance. The Department of Fish and Wildlife may also have restrictions about building a house on a creek bank.

Preservation assistance available from non-town sources:

The offer by the family is an outright donation – no non-town owned sources of revenue required. Costs to obtain may include appraisal, title report, recordation of new ownership deed, etc.

Parcel has potential for other public uses:

Most of the site seems to be the creek bank which has an average slope of 103% and is not suitable for recreation purposes. Therefore, apart from the potential to create a public accessway to the Town-owned Egger Grove Preserve (see description below), the only public benefit would be to maintain another section of riparian area along the San Anselmo Creek as undeveloped land.

Encumbrances, easements etc. affecting (if available, e.g through Title Report):

A survey of the property to the west at 29 Canyon Road, prepared in September of 1981 and recorded in 1983, calls out a 40-foot-wide easement connecting Canyon Road with the property. Staff has located a description that appears to refer to this easement as "Reserving therefrom a right-of-way for ingress and egress over and along a 40 ft. roadway" and "reserving an easement along said right-of-way for all pipelines, pole lines, conduits, drains, or other instrumentality necessary or convenient to provide water, gas, electricity, sewer or telephone or any other service or services to the property lying easterly" of 29 Canyon Road (Attachment A).

Note that the easement refers to Forrest Drive, the original subdivision map name for what is now Canyon Road. Also referenced in the easement is the "Wynn" property, which staff has verified using the original roadway maps for Fairfax was owned by the Wynne family and is now known as 29 Canyon Road (Attachment B – original subdivision maps for Canyon Road (Forrest Drive) and original town street map identifying the Wynn property – now 29 Canyon Road).

Development Status:

The site is undeveloped, approximately 3,560 square feet in size, 7-feet to 30-feet in length and 263 feet wide. There is no recorded survey for the property, but staff believes most of the site is creek bank along San Anselmo Creek. The 2010-2030 Fairfax General Plan, Conservation Element, Policy CON-3.1.2 requires, "The Town of Fairfax shall protect and restore riparian habitat and ensure natural channel process in the San Anselmo Creek and the Fairfax Creek Watersheds." Town Code § 17.040.040(A) requires "No building, accessory building, structure or swimming pool shall be constructed closer to the top of the streambank of the Fairfax and San Anselmo creeks than 20 feet or two times the depth of the creek, whichever is greater without authorization by variance, except for retaining walls and bulkheads which replace failing structures and which do not increase the height, width, length or configuration of the original structure." Therefore, it would be difficult to obtain approval to build on the site.

There would be future maintenance costs associated with acceptance of the site which include removing downed trees blocking the creek, clearing vegetation to keep the site firesafe, etc. The Town owns APN # 197-070-15, an approximately 6.5-acre site outside the Town limits (known as the Egger Preserve) which shares its northern property line with the donation site and which the Town is already responsible for maintaining. Acceptance of the donation site would slightly expand the Egger preserve area by approximately 3,561 square feet.

F. Cost Related Issues _____ 1 _____ [Score]

Notes: Minimal – see the last paragraph of the “Property Description” above

PRIORITY RATING – DESCRIPTION OF CRITERIA

I. PROPERTY ATTRIBUTES

A. Natural Resources

1. Parcel contains a creek or stream that drains to Fairfax or San Anselmo Creeks, provides a vegetated buffer in a riparian zone, provides a water retention area, or otherwise provides benefits to the watershed.
2. Parcel contains large specimen or old-growth trees, especially natives such as live oak, valley oak, alder, redwood, madrone or other native tree species.
3. Parcel provides a significant area of native plant community habitat area (mixed evergreen forest, riparian, northern coastal scrub, chaparral, oak woodland and oak savannah).
4. Parcel provides smaller, relatively undisturbed areas of native plant communities that are rare.
5. Parcel is *known* to contain plant or animal species listed as threatened, endangered, fully protected or of special concern under the state or federal endangered species acts.
6. Parcel includes potential habitat suitable for plant or animal species that are or may be located within the Fairfax Planning Area in the foreseeable future and that are listed as threatened, endangered, fully protected or of special concern under the state or federal endangered species acts.
7. Parcel contains prime agricultural lands or soils of local significance.
8. Parcel supports a wide diversity of native plant and animal species.

B. Cultural Resources

1. Parcel contains important historic artifacts or structure or is itself an historic cultural site or native American site or resource.
2. Parcel currently used for agriculture or in farm ownership and/or part of larger block of agricultural land.

3. Parcel contains important scenic views or vistas or is located wholly or partially within Town Visually Distinctive Areas or is located wholly or partially within a Ridgeline Scenic Corridor as defined on Town Visual Resources Map No. 9.
4. Parcel contains a special place or a prime natural feature of the landscape that would likely be lost through development.
5. Parcel provides a buffer or greenbelt between developed and undeveloped lands.

C. Recreational Opportunities

1. Parcel provides existing or potential public access for passive recreational activities, such as hiking, biking, birdwatching, or picnicking.
2. Parcel provides a possible link to or significant spur of a Town, regional or State trail system.
3. Parcel contains part of an existing trail identified in the Town inventory or trails within and between open space lands in the Fairfax Planning Area.
4. Parcel contains the location of priority for a future Town, regional or State trail.
5. Parcel presents other appropriate recreational opportunities that are consistent with town open space plans and regulations.

D. Connectivity

1. Parcel is designated for prospective acquisition as open space in the Town “Inventory” of open space lands (see General Plan Open Space Element) or is designated as a priority for acquisition in other Town planning documents.
2. Parcel connects with other open space areas so as to provide a corridor or a segment of a corridor for wildlife
3. Parcel is important link in a planned open space corridor or greenbelt.
4. Parcel will link, extend, or infill existing protected areas.
5. Parcel is accessible to residents.

II. ADDITIONAL CONSIDERATIONS

[High score would significantly increase acquisition priority;
low score would significantly decrease]

E. Level of Threat

1. Parcel is not protected by any existing adopted Town moratorium or other restriction on development
2. There is no need for significant development of access road, utility connections etc. before developing site (i.e. existing infrastructure is already in place).
3. Parcel is a large parcel, which has been legally subdivided and has potential for multiple unit development.
4. Parcel has few or no significant constraints to development, such as poor soils and landslide potential, steep slopes, creek or stream, need to develop utility infrastructure or difficult access.
5. Applicable zoning of the parcel makes development or further subdivision likely or possible.
6. Development of the site, even for a single home, would likely cause extensive disturbance or habitat fragmentation in an important natural area.

F. Cost Related Issues

1. Parcel is relatively free of conditions that may pose risk of cost or liability to Town (potential for litter problems, stream erosion issues, hazardous materials and related issues – old dump site etc., fire clearance and maintenance costs, landslide threat to other properties, tree-fall liability).
2. Purchasing parcel would eliminate Town costs associated with addressing proposed development
3. Cost of acquiring is low in comparison to market value.
4. Substantial funding assistance is available through non-Town sources.
5. Entity other than the Town (nonprofit, Open Space District) is willing to own/manage.



ATTACHMENT B

