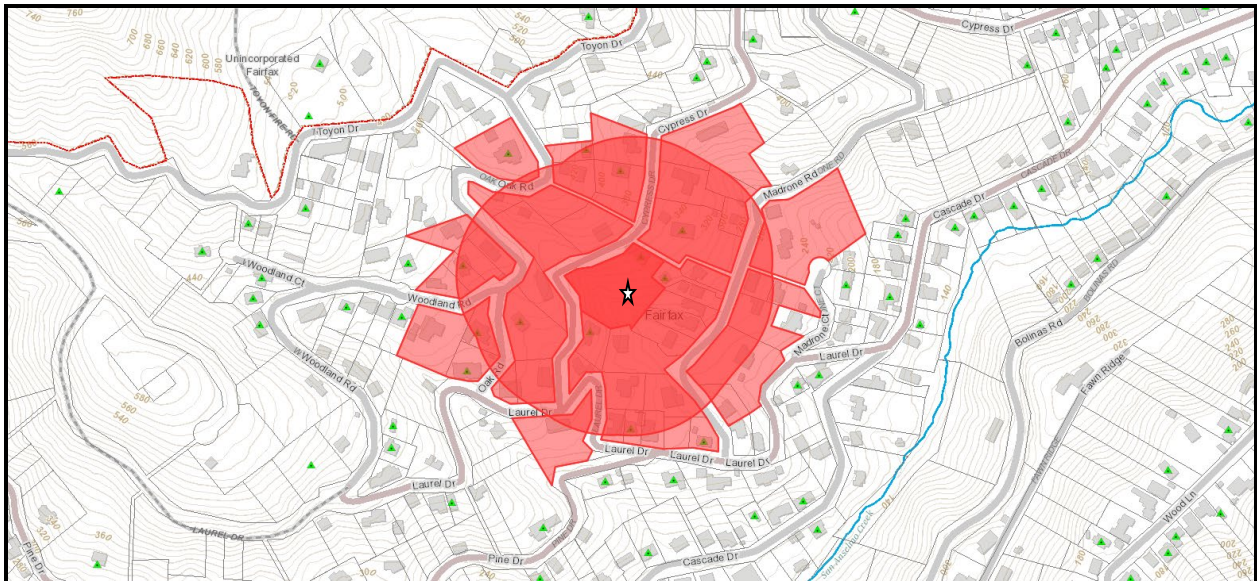


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Planning Commission
DATE: December 14, 2023
FROM: Linda Neal, Principal Planner
LOCATION: 339 Cypress Drive; APN # 003-141-49
ZONING: RS-6 Single-family Residential
PROJECT: Construction of two detached decks adjacent to an existing single-family residence
ACTION: Conditional Use Permit; Application # 23-35
APPLICANT: Bruce McCurdy
OWNER: Tess and Jesse Posner
CEQA STATUS: Categorically exempt, § 15303(e)



**339 CYPRESS DRIVE
APN # 003-131-49**

PROJECT DESCRIPTION

The project includes legalization of two partially constructed, freestanding decks. One of the decks is a square, 144 square-foot, deck and the other is a circular, 113 square foot, deck. The decks begin at grade and reach five feet above grade at their southernmost sides (Attachment B – photos). The deck framing will be pressure treated Douglas fir and the decking and railings will be redwood.

BACKGROUND

The 42,750 square-foot site slopes down from Cypress Drive at an average rate of 57% and it is developed with a 2,265 square-foot, three-bedroom, two-bathroom, single family residence. The residence was built in 1960 as a two-bedroom, one bathroom structure that was expanded in 1984 to include a third bedroom, second bathroom and a family room on the first floor. A parking deck was constructed in 1977 and was replaced with a carport parking structure in 1986.

The Building Official was doing an inspection of the property southwest of the site at 53 Madrone Road on October 24, 2023, when he observed the decks under construction and stopped the job. Staff determined that the decks are accessory structures that require a CUP and since the deck flooring is thirty inches or more above grade, the decks also require building permits. The stop work order advised the contractor to file applications with the Town before proceeding.

DISCUSSION

The project complies with the regulations of the RS6 Single-family Zone as follows:

	Front Setback	Rear Setback	Combined Front/Rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Coverage	Height
Required/ Permitted	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	15 ft. (accessory structures)
Existing	0 ft.	19 ft.	19 ft.	3 ft. & 118 ft.	121 ft.	.05		Approx. 5 ft. (decks)
Proposed	No change	No change	No change	3 ft. & 60 ft.	63 ft.	No change		10 ft. (with railings)

Town Code § 17.080.060(B) limits the height of accessory structures such as these detached decks to fifteen feet and at approximately ten feet above grade, the decks comply with the height requirement. Also, since they are pervious, the decks do not change the lot coverage of the site and do not count as living space, so they do not alter the existing floor area ratio (FAR) of the site. Both the lot coverage and FAR are well below the allowed due to the large 42,750 square-foot size of the property.

The decks also exceed all the required minimum and combined side yard setback requirement in the RS-6 Residential Single-family Zone [Town Code § 17.080.070(B)(1) and (2), Yards].

Many sloped sites throughout the Town's hillside neighborhoods have yard improvements to make portions of the hillside usable for outdoor living space. These types of improvements include grading to create terraces, level pathways and patios and installation of paved/flagstone pathways leading to either graded patio areas or decks where the residents can enjoy views or just being outside. The proposed decks are similar to many of these improved outdoor living yard spaces found throughout the hillsides of Fairfax.

The property is not located within ¼ mile of any know Northern Spotted Owl nesting site as documented on maps prepared by Marin County Parks in conjunction with the Marin Audubon Society.

Construction of the decks did not require the removal of any mature trees subject to the Fairfax Tree Ordinance regulations, Town Code Chapter 8.36.

**Required Discretionary Permits and Required Findings
Conditional Use Permit CUP (Town Code Chapter 17.032)**

"The purpose of the conditional use permit is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the Town or in a zone or only if the uses are designed or laid out on the site in a particular manner. "

To take action approving a CUP the Commission must be able to make the following legal findings (*Staff's suggested findings follow each required finding in bold italicized font*):

CUP Findings [Town Code § 17.032.060(A) through (D)]

The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

The proposed decks maintain setbacks that exceed the required minimum and combined setback requirements, and the deck floors are no more than five feet above grade. The decks simply provide more usable outdoor living space for the residents on this steeply sloping property. Therefore, the approval of the CUP shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

The development and use of property as approved under the use permit shall 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.

The decks are no more than five feet above grade at their tallest and are no more than approximately nine feet above grade with the Uniform Building Code required safety railing. The neighboring properties are well screened by existing plants and trees so that people using the decks do not have views into the neighboring outdoor living spaces or houses. The large setbacks maintained by the decks will minimize noise impacts on neighbors when in use by the residents. Therefore, the approval of the CUP shall not cause excessive or unreasonable detriment to adjoining properties.

Approval of the use 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.

The proposed decks conform to the programs, policies and goals found in the 2010-2030 Fairfax General Plan Land Use Element as follows:

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

Objective LU-7.2: Preserve, maintain, and enhance in a sustainable manner existing design aesthetic, scale, and quality of life in Fairfax's residential neighborhoods.

Policy LU-7.2.1: New and renewed development shall be compatible with the general design and scale of structures in the vicinity.

Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety, or welfare of the community.

The proposed 257 square-feet of decking, just a little bit larger than a one car garage, is minimal considering the large 42,750 square-foot size of the site and is a better way to create usable outdoor living area than excavating level patio areas which disturb the hillside and vegetation. Therefore, the approval of the CUP to allow the two decks is in the public interest and for the protection of the general health, safety, and welfare of the community.

Agency/Department Comments/Conditions

Staff received no comments or conditions from any agencies or departments with jurisdiction in Fairfax. Agency standard conditions have been incorporated into attached Resolution No. 2023-36 and can be viewed in their entirety in Attachment A.

RECOMMENDATION

Move to approve application # 23-35 by adopting Resolution No. 2023-36 setting forth the findings and the conditions for the project approval.

ATTACHMENTS

A - Resolution No. 2023-36

B - Photographs

Plans/more photos

RESOLUTION NO. 2023-36

A Resolution of the Fairfax Planning Commission Approving an Application for a Conditional Use Permit to Complete Construction on Two Accessory Landscaping Decks Totaling 257 Square-feet at the Rear of the Residence at 339 Cypress Drive

WHEREAS, the Town of Fairfax received an application from Tess and Jesse Posner on November 7, 2023, to complete two accessory decks currently under construction adjacent to the existing single-family residence at 339 Cypress Drive; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on December 14, 2023, at which the Planning Commission determined that the project complies with the Town Code provisions regulating development within the Residential Single-family RS 6 Zone; 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 requested Conditional Use Permit; and

WHEREAS, the Commission has made the following findings:

Conditional Use Permit Findings [Town Code § 17.032.060(A) through (D)]

1. The proposed decks maintain setbacks that exceed the required minimum and combined setback requirements, and the deck floors are no more than five feet above grade. The decks provide more usable outdoor living space for the residents on this steeply sloping property. Therefore, the approval of the CUP shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The decks floors are no more than five feet above grade and the overall structures will be no more than approximately nine feet above grade with the Uniform Building Code required safety railing. The neighboring properties are well screened by existing plants and trees so that people using the decks do not have views into the neighboring outdoor living spaces or houses. The large setbacks maintained by the decks will minimize noise impacts on neighbors when in use by the residents. Therefore, the approval of the CUP shall not cause excessive or unreasonable detriment to adjoining properties.
3. The proposed decks conform to the policies and objectives found in the 2010-2030 Fairfax General Plan Land Use Element and the Town Code, Title 17, Zoning, as follows:

- Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing characteristic of the Town's neighborhoods in their diverse architectural style, size, and mass.
 - Objective LU-7.2: Preserve, maintain, and enhance in a sustainable manner existing design aesthetic, scale, and quality of life in Fairfax's residential neighborhoods.
 - Policy LU-7.2.1: New and renewed development shall be compatible with the general design and scale of structures in the vicinity.
 - The decks comply with the Fairfax Zoning regulations for the RS-6 Zone District where the project site is located exceeding all the minimum and combined setback requirements and maintaining a lot coverage and the floor area ratio well below the permitted maximums.
4. The proposed 257 square-feet of decking, just a little bit larger than a one car garage, is minimal considering the large 42,750 square-foot size of the site and is a better way to create usable outdoor living area than excavating level patio areas which disturb the hillside. Therefore, the approval of the CUP to allow the two decks is in the public interest and for the protection of the general health, safety, and welfare of the community.

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

1. This approval is limited to the development illustrated on the plans prepared by Bruce McCurdy dated received by the Town on November 30, 2023.
2. The applicant shall obtain a building permit from the Fairfax Building Department prior to completing construction of the decks.
3. During the construction process, all construction-related vehicles 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.
4. Any proposed temporary closure 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.
5. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.

6. The Planning Department shall field check the completed project to verify that the construction reflects the plans approved by the Planning Commission and to verify that all planning commission conditions have been complied with.
7. During construction, all construction materials shall be stored on private property, out of the public roadway easement unless an exception to this condition is approved by the Departments of Public Works and Building.
8. During construction, the property owner, and all employees, including contractors and subcontractors must comply with all requirements set forth in Chapter 8.32 of the Town Code entitled, "Urban Runoff and Pollution Prevention."
9. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 23-35 or the approval of the Planning Director if the changes are minor and do not conflict with the intent of conditional use permit approval. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application No.23-35, or without the approval of the Planning Director, will result in the job being immediately stopped and red tagged.
10. The applicants and their 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 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.

Miscellaneous Conditions

- 11. The applicant must comply with any or all conditions listed above unless a specific department waives their conditions in a written letter to the Department of Planning and Building Services.
- 12. The applicant shall comply with all conditions placed upon the project by the Building Official.
- 13. If any new exterior lighting fixtures are installed either on the decks or along the pathways leading to the decks in the future, the fixtures used shall be dark sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or uplight panels) as well as complying with color temperature to minimize blue rich lighting and the lighting plan shall be submitted with the building permit application and be approved by the Planning Department prior to issuance of the project building permit. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.

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

The approval of the Conditional Use Permit can occur without causing significant impacts on neighboring residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 14th day of December 2023, by the following vote:

AYES:

NOES:

RECUSED:

ABSENT:

Chair Cindy Swift

Attest:

Jeffrey Beiswenger, Director of Planning and Building Services



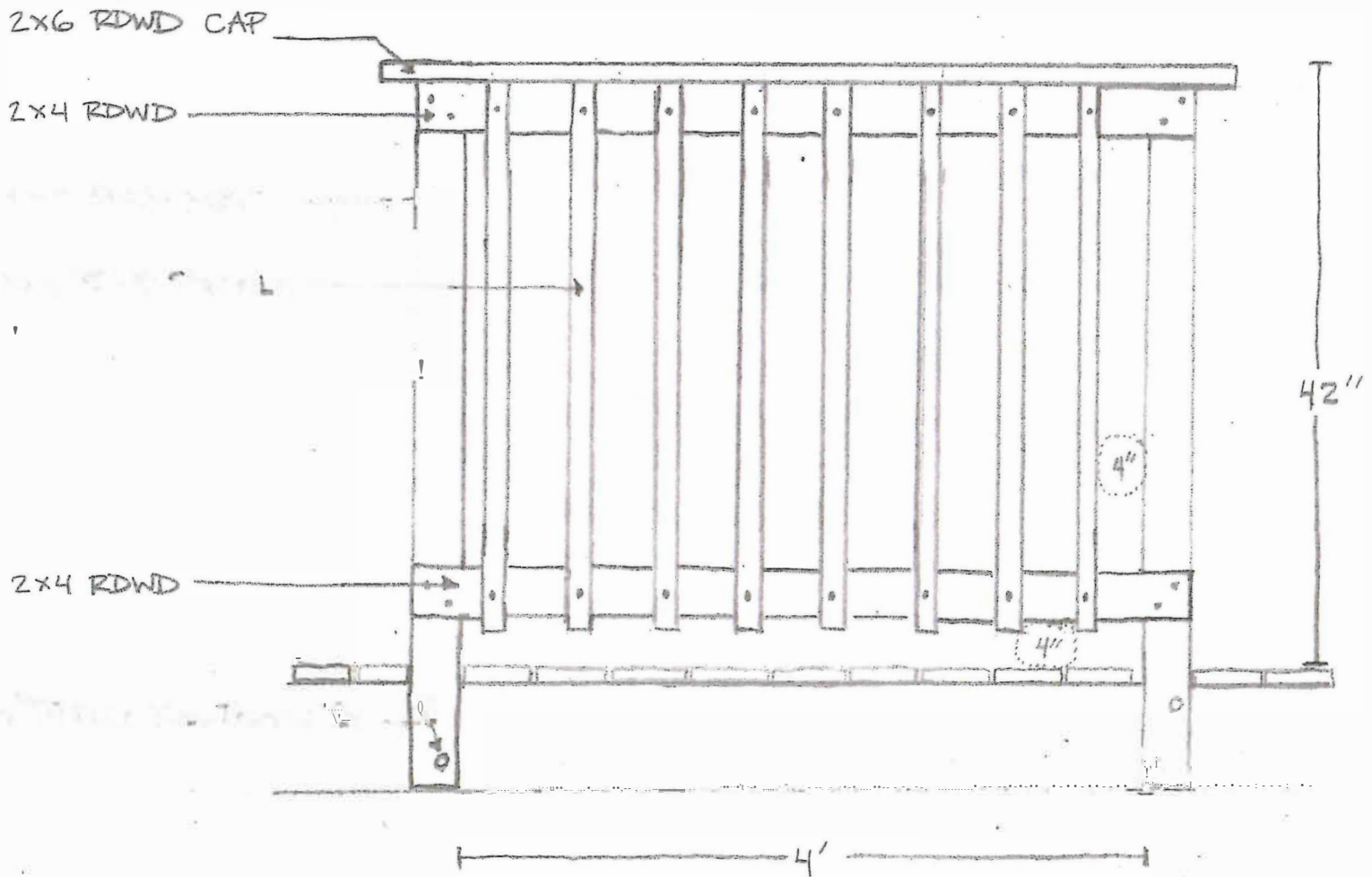
ATTACHMENT B







GUARDRAIL DETAILS - 339 CYPRESS AVE

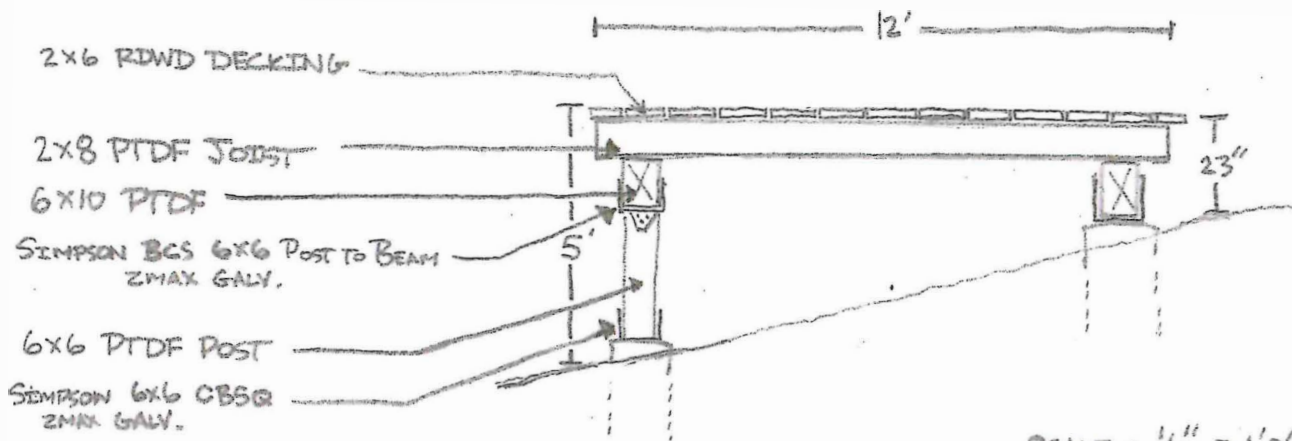


SCALE: 1/4" = 1'

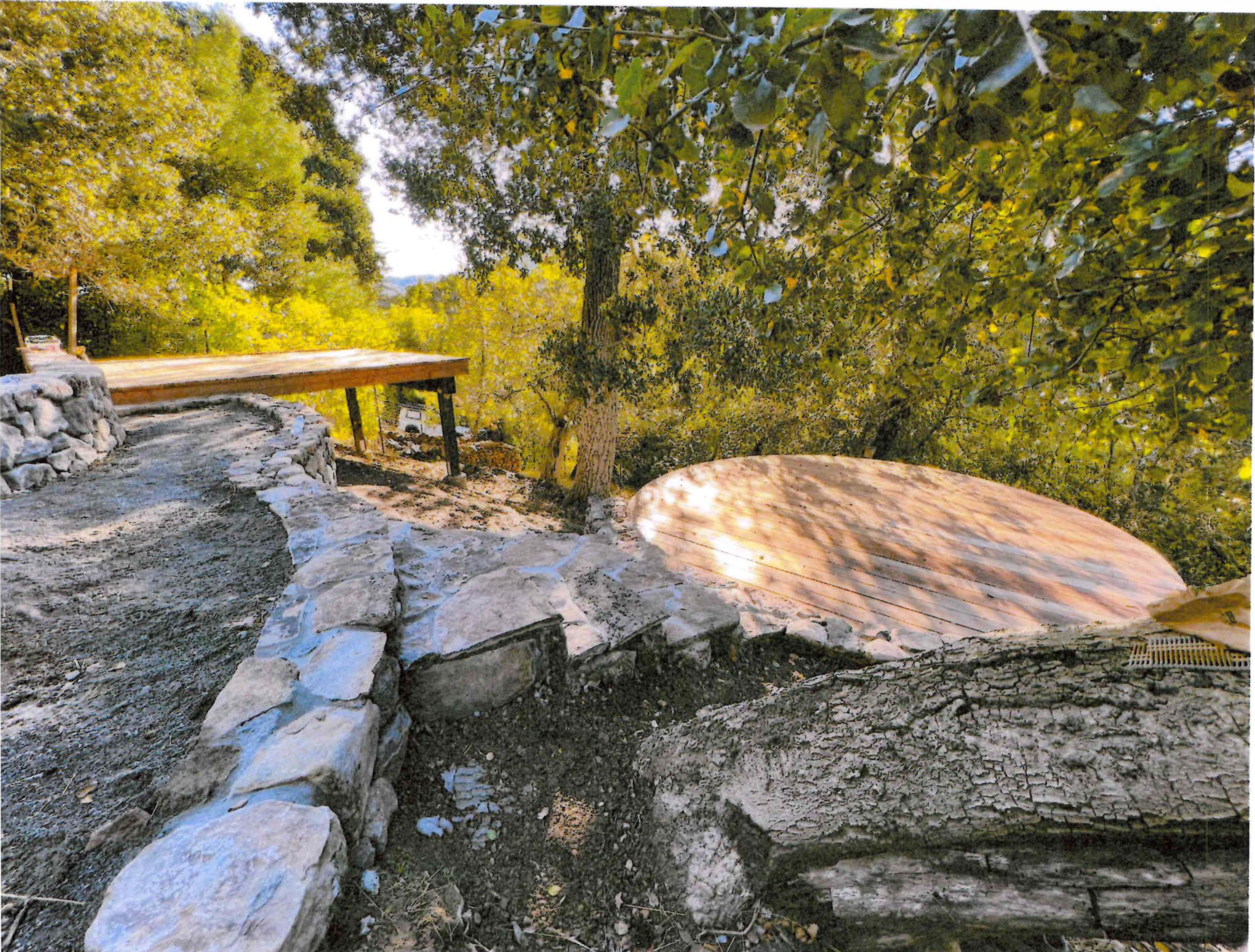
TOWN OF FAIRFAX

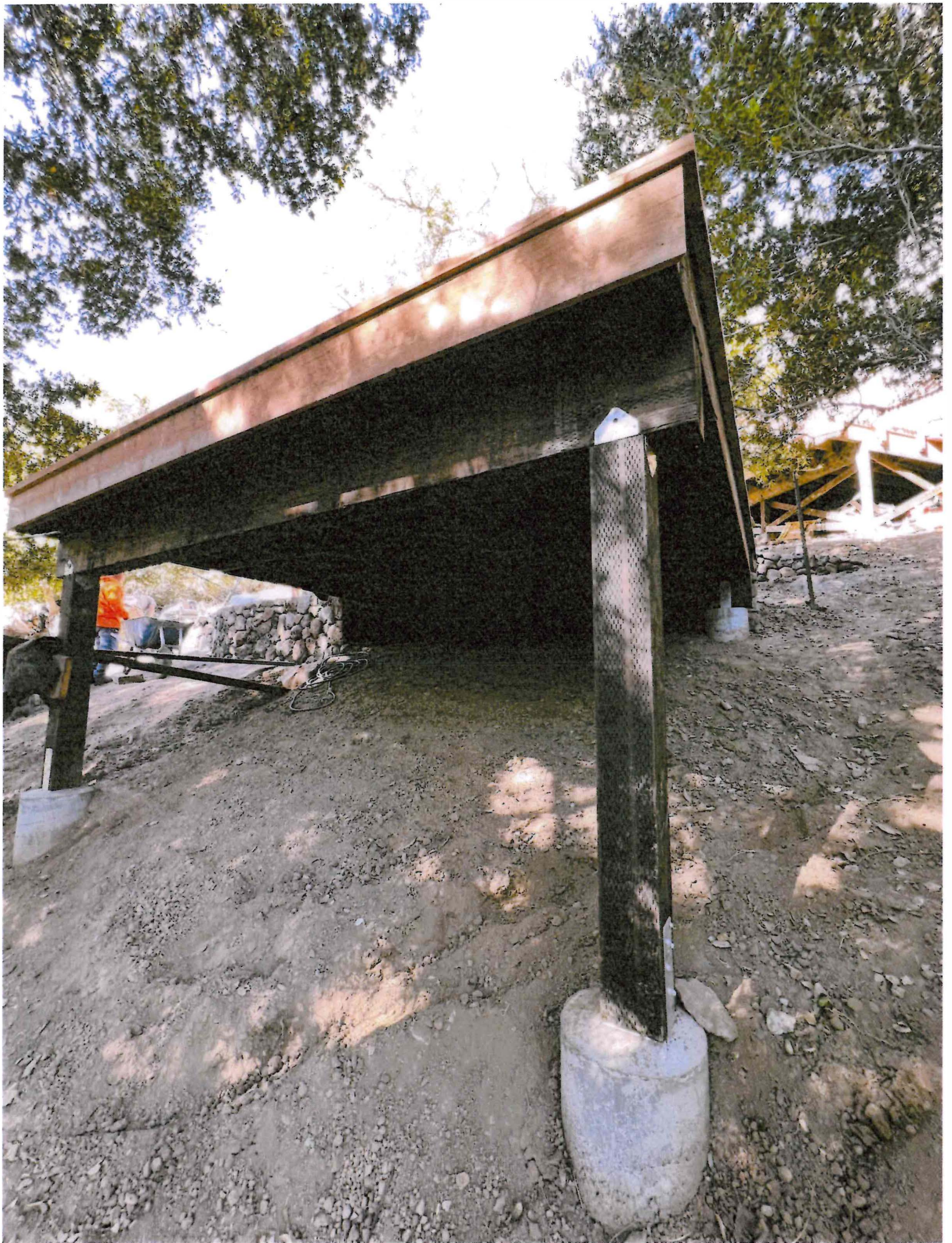
ATTACHMENT C

339 CYPRESS AVE











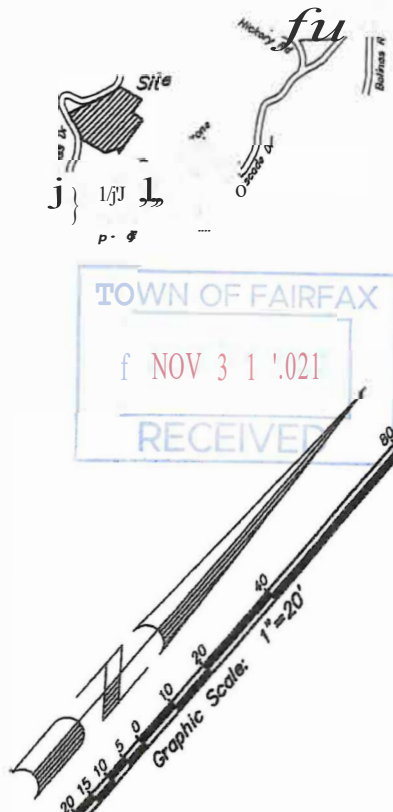
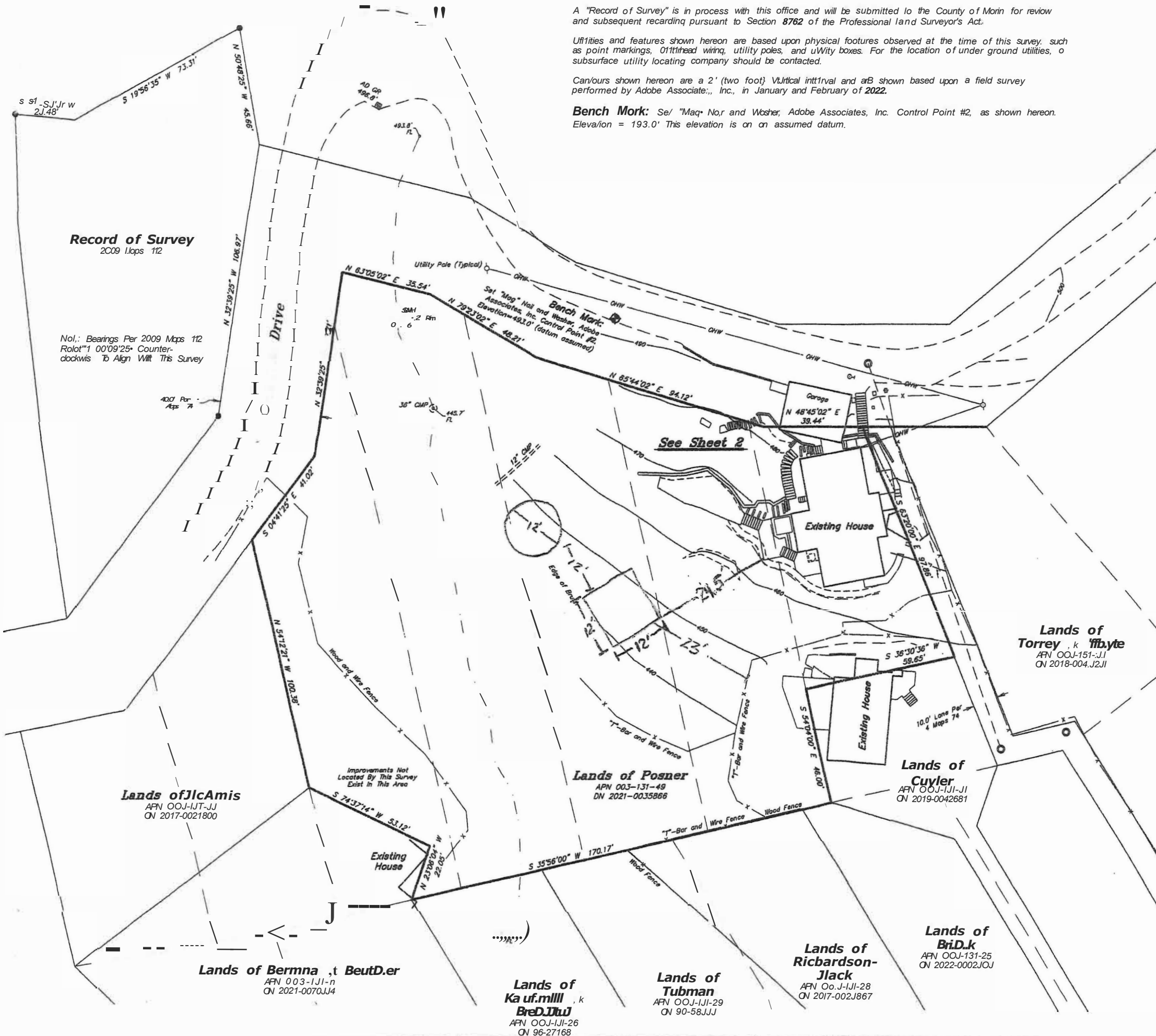
and oetinareo rom mar map tJleO Map No. 1 of The Cascades recorded in Book 4 of Maps at Page 74, Morin County Record. A field surtity was ptformed by Adobe Assocof-s, Inc. in January and F-bruary of 2022.

A "Record of Survey" is in process with this office and will be submitted to the County of Morin for review and subsequent recording pursuant to Section 8762 of the Professional Land Surveyor's Act.

Utilities and features shown hereon are based upon physical footures observed at the time of this survey, such as point markings, 011thead wiring, utility poles, and uWity boxes. For the location of under ground utilities, o subsurface utility locating company should be contacted.

Can/ours shown hereon are a 2' (two foot) VJrtical inttival and aB shown based upon a field survey performed by Adobe Associate-s, Inc. in January and February of 2022.

Bench Mark: Se/ "Maq No.r and Wbsher, Adobe Associates, Inc. Control Point #2, as shown hereon. Elevation = 193.0' This elevation is on an assumed datum.

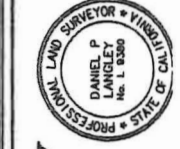


- Legend:**
- A/C Air Condition
 - AD Area Drain
 - OMP Corrugated Metal Pipe
 - Dir Direction
 - EP Edge of Pavement
 - Fig Orange Utility Flogging
 - FS Finished Surface
 - GB Grade Break
 - GU Gas Meter
 - GR Grote
 - Grd AI Grode
 - /CV Inigation Control Valve
 - LW Lower Garage Camer
 - PVC Polyvinyl Chloridtl
 - Boy Boy Tree
 - Lo live Oak Tree
 - Oak Oak Tree
 - Ollifl Olive Tree
 - Palm Palm Tree
 - Rdwd Redwood Title
 - /F Number of Tree Forks
 - SS Sanitary Sewer
 - SDMH Storm Drain Manhole
 - SSI,HH Sanitary Sewer Manhole
 - Sw Southwest
 - WV Top of Wall
 - WM Water Meter
 - Found Monument As Shown
 - x-x- Fence, as noted
 - - - Flowline
 - - - Guy Mre
 - - - Overhead Mres
 - - - Utility Pole
 - o Mailbox
 - o Sanitary Sewer Manhole
 - o Storm Dro,n Manhole
 - o Water Valve
 - CJ Concrete
 - C=i Flaqstone
 - CJ Gravel
 - CJ Pavement

Revisions	Description
No.	Date

adobe associates, inc.
 civil engineering | land surveying | wastewater
 1220 N. Dutton Ave., Santa Rosa, CA 95401
 P: (707) 541-2300 F: (707) 541-2301
 Website: www.adobeinc.com

Preliminary
 Daniel P. Langley, PLS 9380



Topography
 Lands of Posner
 339 Cypress Drive, Fairfax Ca.

Scale: 1" = 20'
 Drawn by: SUM
 Checked by: DPL