



# SAN RAFAEL

THE CITY WITH A MISSION

Community Development Department – Planning Division

**Meeting Date:** September 28, 2021  
**Agenda Item:** 2  
**Case Numbers:** LLA18-005, ED18-066, ED20-044, EX19-010  
**Project Planner:** David Hogan  
dave.hogan@cityofsanrafael.org

## REPORT TO PLANNING COMMISSION

**SUBJECT: 52-54 Fremont Road,** – Request for a Lot Line Adjustment to reconfigure two existing parcels, Environmental and Design Review Permit for a new 2,492 square-foot, single-family residence on the newly created Marquard Avenue lot; and an Environmental and Design Review Permit for the modification of an existing residence to partially rebuild the existing residence with Exceptions to reduce the amount of minimum natural state and building setbacks on the new Fremont Road lot; APNs: 012-043-11 and 012-043-12; Single-family Residential (R10) District; CKD Enterprises, Applicant; Private Money Management Group & LLC-Orange Beacon Mkt., owners; File No(s): LLA18-005, ED18-066, ED20-044, and EX19-010.

### EXECUTIVE SUMMARY

The City has received applications for: 1) a Lot Line Adjustment to reorient the boundary line of two legal lots that currently have double frontage on both Fremont Road and Marquard Avenue; 2) an Environmental and Design Review Permit to construct a new 2,492 square foot two-story single-family residence to be accessed from Marquard Avenue (proposed lower lot); 3) an Environmental and Design Review Permit to partially rebuild an existing single family residence on the Fremont Road property (proposed upper lot); and 4) Exceptions to the required front and side yard setbacks as well as for minimum natural state for the proposed upper lot. Lot line Adjustments are normally approved by Community Development Director (SRMC Section 15.05.040), Environmental and Design Review Permits on sloping sites are normally approved by the Planning Commission (SRMC Section 14.25.020), and Exceptions in the Hillside Overlay District require the approval of the City Council (see SRMC Section 14.12.040). Because there are multiple approval authorities involved with this project, all the applications will be considered by the City Council pursuant to SRMC Subsection 14.02.02.J.

The project site is composed of two parcels that have a General Plan Land Use Designation of Low Density Residential (LDR) and are located within the R10 Single-Family Residential Zoning District which allows for single-family residential use by-right. However, because the average slope exceeds 25%, the provisions of Chapters 14.12 (Hillside Development Overlay District) and 14.25 (Environmental and Design Review Permits) of the San Rafael Municipal Code (SRMC) apply to the project and add a discretionary component to the site design.

The key project design issues include the size of the existing lots, steep slopes, limited street access to the upper (Fremont Road) lot, and the removal of existing trees.

The project went before the Design Review Board (DRB) on November 19, 2019. The DRB continued the item off calendar with direction to the applicant to return with a more holistic design approach. The project returned to a DRB subcommittee on October 7, 2020. The Subcommittee recommended approval of the project design to the Planning Commission subject to the standard conditions of approval and a recommendation that the project return for a final review of site and landscaping plan subsequent to the Planning Commission decision (see *Design Review Board Recommendations* section below).

Consistent with the California Environmental Quality Act (CEQA), an Initial Study was prepared to assess the impacts of the project on the environment. Based upon the analysis in the Initial study, any potential impacts can be mitigated to a less than significant level, thus supporting adoption of a mitigated negative declaration. To address public comment, a Revised Initial Study was recirculated for public review and comment.

Staff has evaluated the proposed project and supporting documents to determine consistency with the California Environmental Quality Act (CEQA), City of San Rafael General Plan, Zoning Ordinance, and applicable design guidelines. Based on staff’s review and recommendations provided by the Design Review Board, it is recommended that the Planning Commission make a recommendation to City Council to adopt the Mitigation Negative Declaration and approve the project, subject to conditions and mitigation monitoring program provided herein.

**RECOMMENDATION**

It is recommended that the Planning Commission take the following action:

Adopt a resolution recommending that the City Council adopt a resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project, and adopt another resolution approving the Lot Line Adjustment (LLA18-005), an Environmental and Design Review Permit (ED18-066) for a new approximately 2,492 square foot single-family residence on a hillside lot fronting on Marquard Avenue, and an Environmental and Design Review Permit (ED20-044) to partially rebuild an existing single-family residence, and approve an Exception (EX19-010) for building setbacks and minimum natural state for the proposed lot fronting on Fremont Road. See Exhibit 4 for link to the project plans.

**PROPERTY FACTS**

<b>Address (1):</b>	52 Fremont Road (Marquard)	<b>Parcel Number(s):</b>	012-043-12
<b>Property Size:</b>	6,587 square feet	<b>Neighborhood:</b>	West End
<b>Address (2):</b>	54 Fremont Road (Fremont)	<b>Parcel Number(s):</b>	012-043-11
<b>Property Size:</b>	8,643 square feet	<b>Neighborhood:</b>	West End

**Site Characteristics**

	<b>General Plan Designation</b>	<b>Zoning Designation</b>	<b>Existing Land-Use</b>
<b>Project Site:</b>	Low Density Residential	R10 Zoning District	Single Family Residence and Vacant
<b>North:</b>	Low Density Residential	R5 Zoning District	Single Family Residence
<b>South:</b>	Low Density Residential	R10/R20 Zoning Districts	Single Family Residence and Vacant
<b>East:</b>	Low Density Residential	R5 Zoning District	Single Family Residence
<b>West:</b>	Low Density Residential	R5 Zoning District	Single Family Residence

**Site Description/Setting:**

The project is located between Marquard Avenue and Fremont Road in a single-family hillside area of the West End Neighborhood just south of the intersection of 2<sup>nd</sup> and 4<sup>th</sup> Streets. The project is located on the northern slope of a large hill which projects from the unnamed ridge between San Rafael and Ross. The site is not located within one hundred feet, either vertically or horizontally, of the ridgeline. The site slopes down toward the north toward Second/Fourth Streets. Drainage from uphill of the

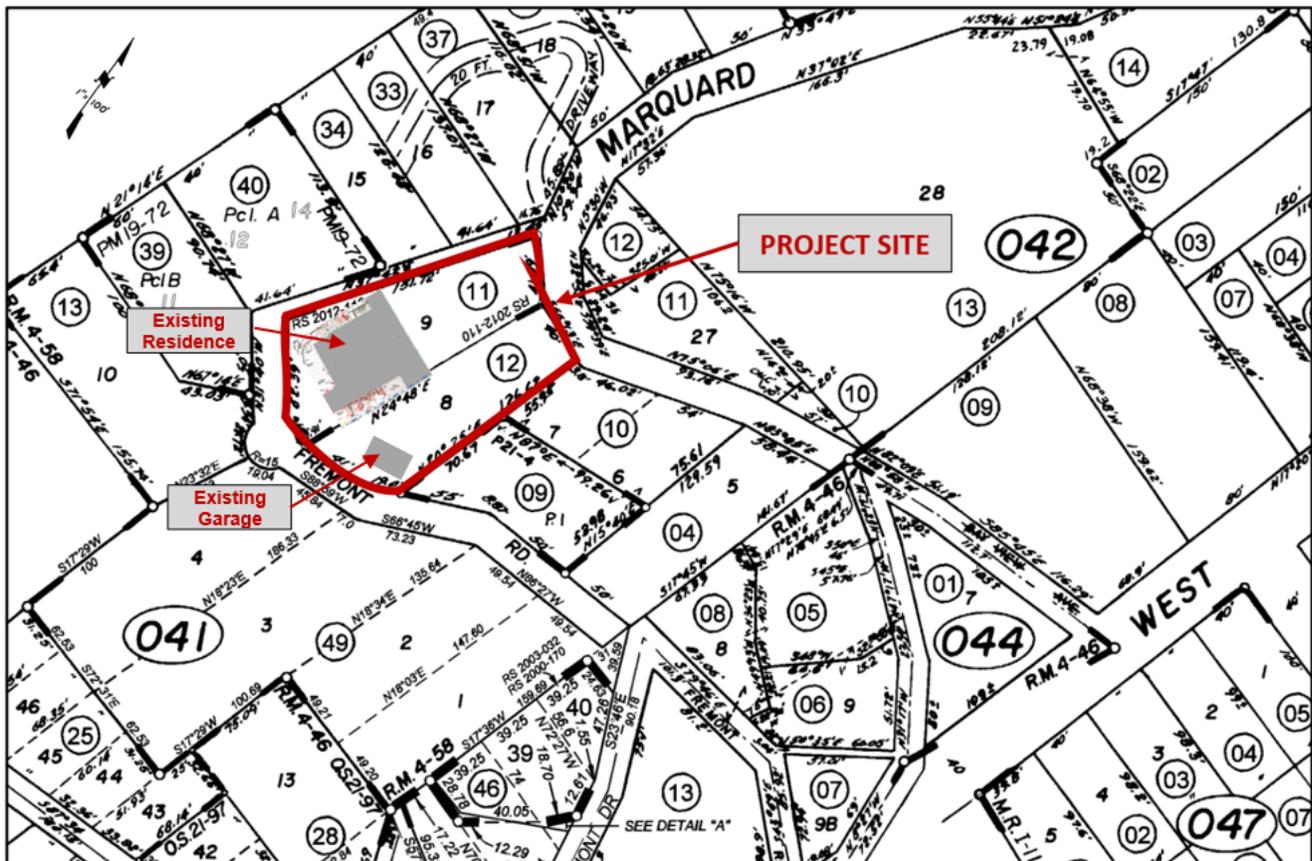
project site flows down onto Fremont Road and either across the site or down the stairs of the pedestrian path along the west side of the property to Marquard Avenue and Second/4th Street.

Access to the site is provided by Marquard Avenue and Fremont Road. Both Marquard Avenue and Fremont Road are narrow winding one-lane roads with limited pull-over opportunities to allow vehicles traveling in opposite directions to get past each other. Access to the existing 54 Fremont Road residence involves either 950 feet or 1250 feet of one-lane roadway (depending on whether the site is accessed from West Street or directly from Second Street). Access to the proposed Marquard lot would involve travel over approximately 350 feet of one-lane roadway.

The site is comprised of two existing lots that are located between Fremont Road on the southwest (referred to as south in this report) and Marquard Avenue on the northeast (referred to as north in this report). The total 15,230 square-foot site has approximately 140-feet of frontage along Fremont Street and 80-feet of frontage along Marquard Avenue with average slopes between 35 and 45 percent. Pursuant to Section 14.12.020(B) of the San Rafael Municipal Code (SRMC), lots with average slopes of 25 percent or greater are subject to the regulations of the Hillside Development Overlay designation contained in Chapter 14.12 SRMC.

The site contains a number of trees of varying sizes and species, some of which would be removed to facilitate construction of the lower residential unit. Existing development in the surrounding area consists of one-, two- and three-story homes with varied architectural styles. The existing lot pattern (from the Marin County Assessor’s Office) in the project vicinity is shown in Figure 1 below.

Figure 1: Vicinity Map/Existing Site Conditions



**BACKGROUND**

The project site consists of two residential lots created in 1913 with the recordation of the Map of West End Addition (RM4-58). A certificate of compliance was recorded in 1982 and verified in 2006

confirming that the lots exist as two separate legal parcels. Both lots have had some development on the southern areas adjacent to Fremont Road. The existing 2,478 square-foot, two-story residence constructed in 1924 is mostly located on the western lot (Assessor Numbered Lot 043-11) though part of the main structure is built across the lot line. The existing one-car garage is located on the eastern lot (Assessor Numbered Lot 043-12) adjacent to Fremont Road. The lower portions of both lots are not developed.

The applicant submitted the project application on July 30, 2018, to reconfigure the lots and construct a new residence on the newly created vacant lot adjacent to Marquard Avenue. These applications were followed by an application for an exception on October 14, 2019, and an application to partially rebuild the existing 54 Fremont residence was submitted on October 8, 2020.

The project was reviewed by the Design Review Board (DRB) in 2019. At the November 19, 2019, DRB meeting, the DRB provided a number of recommendations to improve the design of the project and continued the project off calendar. In February 2020, the applicant submitted revised plans that incorporated the DRB's recommendations. Following staff's review of the resubmitted plans the revised project was reviewed by a subcommittee of the DRB on October 7, 2020. The use of the DRB Subcommittee in-lieu of the full Board, had been implemented by the City Manager's April 1, 2020, policy memorandum regarding the Governor's shelter-in-place order. The DRB subcommittee recommended approval of the project with a recommendation that the project return to them for a final review subsequent to the Planning Commission's action on the project (see Design Review Board Recommendations section for more detail).

## **PROJECT DESCRIPTION**

The project site is composed of two parcels that have a General Plan Land Use Designation of Low Density Residential (LDR) and are located within the R10 Single-Family Residential Zoning District which allows for single-family residential use by-right. However, because the average slope exceeds 25%, the provisions of Chapters 14.12 (Hillside Development Overlay District) and 14.25 (Environmental and Design Review Permits) of the San Rafael Municipal Code (SRMC) apply to the project and add a discretionary component to the project's design.

The project consists of four applications. These are summarized below.

1. Lot Line Adjustment to modify the layout of the existing lots so that instead of two narrow lots with double street frontages, one lot would front on Fremont Road and contain all the existing site improvements (the house and the garage) and the other lot would front on Marquard Avenue.
2. Environmental and Design Review Permit on the lower/northern (Marquard Avenue) lot to construct a new single-family residence with an attached two-car garage and two guest parking spaces. The new 2,492-square foot residence would consist of two floors over the street-level garage. The ground floor includes a two-car garage with an extra storage/parking area. The first floor contains two bedrooms with private bathrooms, and laundry area. The top floor includes a third bedroom along with the kitchen and living/dining area. Access to the backyard patio is provided on the top level. To provide some protection from possible flooding, the plans include a seating wall around the patio to divert flows away from the building interior. The plans include an elevator between the garage and the top level.

Environmental and Design Review Permit for the upper/southern (Fremont Road) lot to partially rebuild the existing single-family residence. The project includes modifications to the building's foundation, modifications to the building's exterior, and the addition of an interior accessory dwelling unit. The proposal includes an Accessory Dwelling Unit (ADU) on the ground floor. State Law requires that ADUs must be considered, approved, and permitted ministerially, without discretionary action. In other words, ADU approval is not subject to Planning Commission or City Council approval.

The primary changes on the main level involve replacing of the large deck on the west side of the structure with a smaller deck and the eliminating the room to the right of the front door. The existing roof on the northside would be replaced by a patio deck for the single-family unit located on the top floor.

On the lower level the changes include eliminating a 7' X 10' foot room addition (labelled as Room 4 on Sheet 2AD-201) to increase the side yard setback and expanding the deck on the east side of the structure in front of the proposed accessory unit's front door.

A summary of the before and after square footages is for the upper units (excluding the existing garage) is provided below.

	<u>Existing</u>	<u>Proposed</u>
Main Floor/Single-Family Residence	1,600 SF	1,554 SF
Lower Level/Accessory Dwelling Unit	<u>1,240 SF</u>	<u>1,104 SF</u>
Total	2,840 SF	2,658 SF

3. Exceptions for the upper (Fremont Road) lot to allow reduced front and side yard setbacks and a reduction in the amount of minimum natural state. The reduced front yard would match the existing setback from Fremont Road which is approximately 11.1 feet. The proposed 5.7-foot side yard setback (adjacent to the existing pedestrian path) is greater than the existing one-foot setback. The increased setback is accomplished by removing an earlier room addition to the existing structure.

**Required Entitlements**

**Lot Line Adjustment.** Pursuant to SRMC Chapter 15.05, adjustments to lot lines and lot consolidations involving four or fewer adjacent lots may be approved ministerially by the Community Development Director. However, pursuant to SRMC Section 14.02.020.J (Multiple Development Permit Applications), when multiple applications are being reviewed and one or more applications require City Council consideration, all applications shall be elevated to the City Council for final action. Consequently, the Planning Commission is the recommending body on the requested applications since Exceptions in Hillside zoned areas require the approval of the City Council.

**Environmental and Design Review.** SRMC Section 14.12.030.I states “Design Review Requirement. An environmental and design review permit may be required, consistent with the requirements of Chapter 14.25, Environmental and Design Review Permits. All applications shall be evaluated for conformity with the Hillside Residential Design Guidelines Manual.” Improvements subject to review are spelled out in SRMC Section 14.25.040. These include major physical improvements, modifications to existing structures, minor physical improvements, and minor site improvements. The project involves a number of minor physical and site improvements identified in the following subsections.

- Subsection 14.25.040.B.1.a. - any new residence or residential additions over 500 square feet in size, or any modification that increases the height of the roofline, when located on residential lots with average slopes of twenty-five percent (25%) or greater require an environmental and design permit.
- Subsection 14.25.040.B.1.e - any new two-story single-family residential structure proposing an upper story level over five hundred square feet in size.
- Subsection 14.25.040.B.2.a – grading activities involving cutting or filling of fifty cubic yards or more.

Pursuant to SRMC Section 14.25.020.B, Minor physical and site improvements require the approval of a Minor Environmental and Design Review Permit subject to approval by the Zoning Administrator. However, pursuant to SRMC section 14.02.020.J (“Multiple Development Permit Applications”), when

multiple applications are being reviewed where one or more applications require City Council consideration, all applications shall be elevated to the City Council for final action.

**Exceptions:** Pursuant to SRMC Section 14.12.040, exceptions in areas regulated by the Hillside Development Overlay District require the approval of the City Council. The project requests approval of three exceptions from the applicable property development standards for the upper Fremont Road lot. The first exception is for the amount of minimum natural state. Given the average slope of the proposed Fremont Road lot the minimum natural state should be 5,678 square feet (65.69% of the size of the 8,643-square foot lot). However, given the size of the lot and the existing structure, only 4,933-square feet of natural state (86.8% of the requirement) would be provided. The other two exceptions are for the front and side yard setbacks. The project applicant is requesting an 11.1-foot front yard setback and a 5.7-foot side yard setback, where the minimum requirements are 20 feet and 10 feet respectively.

The requested setback reductions are in excess of 10% reduction allowed by SRMC Section 14.24.040 but within the allowed reductions SRMC Section 14.12.030. Subsection 14.12.030.B states that structures may encroach into a required yard or setback for a distance of not more than one-half of the required yard or setback. Section 14.12.040 requires City Council approval for exceptions in Hillside areas.

### **Site and Use Description**

**Site Plan.** The project would result in the reconfiguration of two narrow through lots into two lots with abutting rear property lines, one with frontage on Fremont Road and one with frontage on Marquard Avenue) similar in configuration to the lots immediately to the east (at 50 Fremont Road and 11 Marquard Avenue). The existing residence and one-car garage would occupy the Fremont Road lot (on the upper portion of the site). A proposed new single-family residence would be constructed fronting Marquard Avenue (on the lower northern portion of the site). The proposed site plan would reduce the number of parcels with access on Fremont Road. The location of the existing residence on the Fremont Road lot is not changing and, unless additional off-street parking is recommended, no large trees would be removed on this upper lot.

The new residence adjacent to Marquard Avenue would include a street level two-car garage and two on-site parallel parking spaces along Marquard Avenue. Several trees affected by project construction would need to be removed.

**Parking and Circulation.** Chapter 14.18 of the San Rafael Municipal Code requires two off-street parking spaces for single-family residences. In addition, single-family residences on a hillside lot where the street is less than 26 feet wide are required to provide two additional off-street parking spaces for a total of four spaces. Since portions of Marquard Avenue in front of the proposed lower residence are less than 26 feet wide, the project is required to provide a minimum of four off-street parking spaces for the new residence, two covered spaces in the ground floor garage and two uncovered parallel spaces along Marquard Avenue outside of the public right of way. The retaining wall proposed on the west side of the residence is needed to provide the two parallel guest parking spaces.

The existing single-family residence at 54 Fremont Road is legal, non-conforming for parking with one enclosed space in the existing one-car garage and one space in the driveway. Since the existing residence is not being demolished, no additional parking is required. However, the potential for adding off-street parking for the existing upper residence was evaluated during the application review process. The Design Review Board requested that the applicant evaluate the possibility of adding additional off-street parking. As a result, staff worked with the applicant's design team to identify and evaluate the potential for adding off-street parking along Fremont Road.

Three options were presented and reviewed. The first involved a two-car parallel parking spaces between the eastern property line and existing driveway. The other two scenarios involved pull-in

spaces in the vicinity of the existing garage. Staff considered all the different options to be potentially undesirable since they would require the removal of up to three additional trees and the construction of additional retaining walls or a parking deck over the existing garage. As such, no additional parking is required, staff does not recommend additional parking be incorporated into the project design.

**Architecture.** The architecture of the existing residence at 54 Fremont Road is an early example of the Minimal Traditional style. This style involves structures that are generally one-story in height with low-pitched roofs having little or no roof eave overhang. The exteriors usually have very minimal architectural detailing. The architectural style of the existing 54 Fremont Road residence would not be changing with this renovation.

The architecture for the new Marquard Avenue residence is a mountain cabin style that includes shingle siding and exposed rafters giving the building an alpine feel. The roof contains multiple gabled surfaces. The street-level consists of the steps to the front door and the wooden garage door with small windows. The two upper floors are stepped back to reduce the visual mass. Massing is broken up by the front porch which shelters the front door on the left side of the building, and a central stepback created by balcony decks for each floor facing Marquard Avenue.

Since the first floor (the level above the garage) is partially below the ground surface it is less visible to adjacent properties, reducing the need for additional articulation. The second (top) floor is visible from both the sides and the rear. Though the rear elevation would not be visually prominent from Fremont Road since it is located below the surface of the road.

**Landscaping.** Most of proposed landscape proposed shrubs, perennials and vines are either low or medium water use. The landscape plan also calls for the addition of eleven Western Hazelnut trees.

On the lower (Marquard Avenue) lot, the project proposes removal of nine Redwood and one California Bay tree to accommodate the new residence and required off-street parking spaces. The remaining onsite trees, three near the pedestrian path on the west side of the site and a border tree on the eastern side of the site would be retained. The four small invasive Cherry Plum trees would also be removed. Most of the new landscaping on the lower lot would be concentrated along Marquard Avenue. Three Western Hazelnuts would be planted above the two additional off-street parking spaces to create an understory beneath the remaining redwoods. Four Western Hazelnut trees would be planted along the eastern property line to provide additional privacy screening for the existing residence.

On the upper (Fremont Road) lot, none of the larger trees would be removed. Additional landscaping would be planted around the residence in open areas between the existing trees and north of the existing detached garage. Four of the Western Hazelnut trees would be planted in this area.

**Grading/Drainage.** The new Marquard residence proposes a street-level garage and would require export of approximately 600 cubic yards of material from the site. There would also be some additional grading on the upper lot to install the new foundation under the partially rebuilt structure. A standard condition of approval will require the project to obtain City approval for the cut and fill locations as well as the proposed disposal area and haul routes.

The new construction would increase the amount of impervious area by approximately 1,835 square feet, mostly on the lower lot. As proposed, the project would construct two bio-retention basins to collect site and roof runoff to accommodate stormwater onsite in compliance with low impact design criteria requirements on the new residence. The project also includes two bioretention areas for both the existing residence to collect and treat some of the existing roof and patio runoff. Due to the increase in impervious surfaces as compared to existing conditions, the project will be conditioned to submit a Stormwater Control Plan in compliance with Marin County Stormwater Pollution Prevention Program (MCSTOPPP) to comply with the requirements of the C.3 municipal regional stormwater permit.

## ANALYSIS

### **General Plan Consistency:**

The provisions of the 2040 General Plan apply to this project. The site has a General Plan Land Use Designation of Low Density Residential (LDR) which allows for the establishment of residential uses as well as open space areas, parks, schools, and other public/quasi-public uses that support surrounding residential uses. The General Plan includes policies and programs that are relevant to the site and the project. As proposed, the project is consistent with the 2040 General Plan, including policies and programs identified in the following elements: Land Use, Housing, Neighborhoods, Community Design and Preservation, Conservation and Climate Change, and Safety and Resilience.

### ***Land Use Plan and Policies***

The proposed new single-family residence is consistent with the allowable land uses and densities set forth for the Low-Density Residential Land Use Category. Policy LU-1.2 (Development Timing) states that development should occur only when adequate infrastructure is available to support the new development. The new residence on Marquard Avenue is in a location that has the needed infrastructure. In addition, Policy LU-3.2 (New Development in Residential Neighborhoods) calls for the enhancement and preservation of residential character in neighborhoods. The proposed residential uses are consistent with this policy.

### ***Housing Policies***

Policy H-2 (Design that fits into the Neighborhood Context) states that new housing on existing properties can add to the overall value of the neighborhood. As such, new residences and site improvements should be designed to fit in with the established character of the neighborhood. Existing residences in the West End neighborhood and specifically along Marquard Avenue and Fremont Road feature varied architectural styles and building setbacks. Proposed colors and materials are designed to blend with the sites natural wooded setting. The proposed buildings are consistent with hillside development standards and guidelines and fits in with the established character of the neighborhood. The lower residence incorporates varied wall planes and building setbacks which break up the massing of the structure and blend in with the natural grade of the hillside location. The proposed project is consistent with this policy.

Policy H-16 (Second Units) encourages the construction of secondary (accessory) dwelling units. The existing residence fronting Fremont Road proposes to include an ADU on the ground floor. The proposed project is consistent with this policy.

### ***Neighborhoods Policies***

The project site is located within the West End Neighborhood area. West End Neighborhood Policy NH-2.4 (Development on Remaining Vacant Residential Lots) states that adequate provisions for emergency vehicle access and water supply should be verified prior to constructing additional homes. The new Marquard Avenue structure had adequate emergency access and necessary infrastructure service. Project components associated with construction of the new residence include widening portions of Marquard Avenue in front of the new residence to improve access and the provision of the required four off-street vehicular parking spaces. The Fremont Road residence is existing, so this requirement is not applicable. The proposed project is consistent with this policy.

### ***Community Design and Preservation Policies***

Policy CDP-2.3 (Neighborhood Identity and Character) encourages the recognition, preservation and enhancement of the positive qualities that shapes neighborhood identity by maintaining the scale of new development and providing design flexibility. The proposed residential units are consistent in design and character with the surrounding area. The proposed project is consistent with this policy.

Policy CDP-4.4 (Single Family Home Design) encourages the design of new home, additions, and alterations to integrate well into their surroundings. The design of the existing Fremont Road residence maintains its existing architectural character. The proposed Marquard Avenue residence includes

mountain cabin architectural elements. Both structures integrate well into their architecturally diverse surroundings. The proposed project is consistent with this policy.

Policy CDP-4.11 (Lighting) encourages lighting for safety and security while minimizing excessive offsite lighting and glare. The proposed exterior lighting is in conformance with this requirement. The proposed project is consistent with this policy.

#### ***Conservation and Climate Change Policies***

Policy C-1.15 (Landscaping with Appropriate Naturalized Plant Species) encourages the use of native and compatible species. The project proposes native and appropriate under-story species on the site. The project complies with this policy.

#### ***Safety and Resilience Policies***

Policy S-2.2 (Minimize Potential Effects of Landslides) are applicable to the development of this site. To implement these policies, the applicant has submitted a preliminary geotechnical assessment was prepared. The preliminary assessment indicated the presence of shallow soils and evidence of historic soil creep, a form of very slow-moving landslide. The project has been conditioned to provide a building permit process study based for the approved project to identify specific measures needed to comply with the requirements of the building code. The proposed project is consistent with this policy.

Policy S-2.5 (ErosionControl) require the implementation of appropriate control measures to reduce erosion. The project will be required to submit, and receive approval of, an erosion control plans. The proposed project is consistent with this policy.

#### **Zoning Ordinance Consistency:**

The project has been reviewed for consistency with the San Rafael Zoning Ordinance including site development standards, parking, and hillside development design review criteria and findings. An analysis of the project's consistency with applicable regulations is included below.

#### ***Use***

The project proposes to partially rebuild an existing single-family residence, add an ADU, and construct a new single-family residence with a garage on lots zoned for single-family residential uses (R10). Single family residences and ADUs are permitted by right in the R10 Zoning District. As such, the project would comply with this requirement of the SRMC.

#### ***Development Standards***

The project is located in a Hillside Area and, in addition to the general development standards contained in Section 14.04.030, is also required to comply with the provisions of Chapter 14.12. Specific development standards are discussed below.

#### **Building height**

Section 14.04.030 of the SRMC establish a 30-foot height limit in the R10 Zoning District. The height of the existing and proposed residences does not exceed the 30-foot height limit.

#### **Lot Coverage**

Section 14.04.030 of the SRMC establishes a maximum 40 percent lot coverage. The lot coverage would be 35.66% for the Fremont Road and 30.3% for the Marquard Avenue lot. The lot coverage for both sites is below the 40% maximum.

#### **Setbacks**

Table 14.04.030 lists the minimum setbacks for the R-10 Zone. The minimum front yard setback of 20 feet, and the minimum rear and side yard setbacks are 10 feet. The Hillside Guidelines allow residences in these areas to reverse the front and rear setback through the approval of an Environmental and Design Review Permit. With the reversal of the front and rear yard setbacks for the lower (Marquard Avenue) residence, the proposed Marquard Avenue complies with all of the setback requirements. The setbacks for the existing Fremont Road residence do not comply with these required setbacks for the

R-10 Zone and would require the approval of an exception for the front and (west) side setbacks. The requested exception would approve a front yard setback of 11.1 feet which is the existing setback from Fremont Road. The existing side setback adjacent to the pedestrian path is approximately one foot. The applicant is requesting a reduction of this setback from 10 feet to 5.7 feet and would remove a previous room addition from the existing structure. With the approval of the requested Exception, both lots will comply with this requirement.

Stepbacks

Section 14.12.030 establishes that lots subject to the Hillside Development Overlay District shall observe a maximum 20-foot height limit on any downhill slope as measured from existing grade. This section requires that whenever any single wall plane shall not exceed 20 feet in height about the existing grade a five-foot stepback is provided. As proposed, the project provides the required stepbacks to ensure that the different building planes do not exceed 20 feet for more than 25% of each building elevation.

Gross Building Square Footage

Table 14.04.030 lists the maximum permitted gross building square footage of all structures is limited to two thousand five hundred (2,500) square feet plus ten percent (10%) of the lot area. The building square footage on the upper lot includes the existing one car garage. As shown in the table below, both proposed lots comply with this requirement.

Proposed Lot	Maximum Unit Size Calculation	Proposed
54 Fremont Road Upper Lot	2,500 + 864 = 3,364 square feet	3,130 Square feet
Marquard Avenue Lower Lot	2,500 + 659 = 3,159 square feet	2,492 square feet

Minimum Natural State

The project is subject to natural state requirements established by SRMC Section 14.12.030(C). -The minimum required amount of natural state is 25 percent plus the percentage of the average slope (not to exceed 85 percent) of the lot. The resulting total percentage is multiplied by the lot area to determine the minimum natural state requirement. Natural state is defined as all portions of lots that remain undeveloped and undisturbed. Grading, excavating, filling and/or the construction roadways, driveways, parking areas and structures are prohibited. Incidental minor grading for hiking trails, bicycle paths, equestrian trails, picnic areas and planting and landscaping which enhances the natural environment are permitted when approved through an environmental and design review permit. The existing lot containing the 54 Fremont Road residence does not currently meet the minimum natural state requirement.

The calculation for the natural state of each reconfigured lot is shown in the table below. The upper Fremont Road lot does not meet the minimum requirement and would require the approval of an exception.

Proposed Lot	Natural State Calculation	Minimum Required Natural State	Proposed Natural State
54 Fremont Road Upper Lot	25% + 40.69% (lot slope)	5,678 sq. ft. 65.69%.	4,933 sq. ft. 57.07%
Marquard Avenue Lower Lot	25% + 39.42% (lot slope)	4,243 sq. ft. 64.42%.	4,264 sq. ft. 64.70%

Parking

Chapter 14.12 establishes hillside-related parking standards. For street less than 26 feet in width, each new residence is required to provide two additional on-site parking spaces, in addition to the two required parking spaces. The new Marquard Avenue residence is providing two additional parking spaces in addition to the two garage spaces. The Fremont Road residence, because it is an existing

structure that is only being partially rebuilt, is not required to provide additional parking. Changes in State Law to prohibit requiring off-street parking for accessory dwelling units.

#### Street and Driveways

Section 15.07.030 sets the preferred grades for new street and driveway grades at eighteen percent unless an exception has been granted by the hearing body and the design has been recommended by the design review board. The driveway for the Marquard Avenue is less than 10%. The driveway for the Fremont Road residence is not changing. No additional streets are proposed with the project.

#### **Site and Use Regulations:**

The project meets all applicable site and use regulations as provided in Chapter 14.16 of the SRMC as discussed in detail below.

#### Light and Glare

Section 14.16.227 of the SRMC colors, materials, and lighting shall be designed to avoid light and glare impacts on surrounding development. Proposed colors and materials are designed to blend with the natural environment. As conditioned, lighting on the project site would be subject to requirements of this section of the SRMC.

#### Water Efficient Landscaping

Section 14.16.370(C)(1) of the SRMC, project approval is subject to conditions which require the applicant to provide written verification of plan approval from the Marin Municipal Water District (MMWD) prior to the issuance of a building permit or grading permit. As such, the project would comply with this requirement of the SRMC.

#### Geotechnical Evaluation

Section 14.16.170 development applications in areas subject to seismic hazards, landslides and other hazardous soil conditions are required to provide require geotechnical reports. The preliminary geotechnical evaluation submitted as part of the application was peer reviewed and the results of the peer review were provided to the applicant. However, with multiple geotechnical reports on the site, all of which agree that the site is steeply sloping with shallow soils overlaying the rocks of the Franciscan Complex, an additional preliminary geotechnical evaluation was not required prior to approval. A condition of approval (and mitigation measure) requires a final geotechnical report to be prepared for each property as part of the grading and building permit processes for the approved building designs and that the peer review recommendations be addressed in the permitting geotechnical study.

#### Hillside Design Guidelines

The project complies with the applicable design criteria for hillside development. The project minimizes the amount of grading, impacts to existing trees, site design criteria, and complies with the compatibility criteria relating to building bulk, architectural character, site landscaping, and landscaping. The San Rafael Hillside Design Guidelines require tree replacement at a ratio of 3:1 unless the Design Review Board determines that site conditions warrant a different tree replacement ratio (citation). The proposed landscape plan proposes to plant eleven new would require 19 replacement trees onsite. However, given the size of the lot as well as the number of onsite existing trees, this replacement ratio is not practical, and many of trees replanted onsite at this ratio were not likely survive to maturity because of the overcrowding. Given the scale of the project, the criteria for lot configuration, street layout, and building setbacks do not specifically apply to the project.

### **DESIGN REVIEW BOARD RECOMMENDATION**

#### **Design Review Board**

The Design Review Board first evaluated the project on November 19, 2019. At the meeting the Board provided the following comments on the project and a description of how the design of the project has changed. The DRB's comments are italicized below.

- *General design (architecture, colors, and materials) is appropriate.*

- *The visual scale of the retaining walls along frontage should be reduced by breaking the single wall plane into a series of smaller wall planes which step back, add treatment to either clad or color in an earth/woodtone, and add landscaping at the base of the retaining walls and/or above.*

The applicant has reduced the size of the new residential unit and shifted the structure closer to Marquard Avenue reducing the amount of grading and the height of the retaining walls. The current plan includes landscaping about the proposed retaining wall.

- *Landscaping should be all native species with an irregular, more natural planting configuration.*

The proposed landscaping along Marquard Avenue consists of California native varieties in a more natural layout along the street frontage.

- *Replace the proposed California Buckeye tree with a more appropriate alternative.*

The new tree species have been changed to Western Hazelnut.

- *Replace proposed 5-gallon tree sizes with larger container size trees.*

The container size of the new trees is now 15-gallon.

- *Incorporate greater setback along the frontage; the applicant is encouraged to explore pursuing a front setback waiver to help achieve greater setback.*

The design of the new residence has been modified to provide a greater front setback.

- *The applicant is encouraged to investigate and respect the historic drainage pattern on the sites and the potential presence of an underground spring on the sites.*

A review of the site by the applicant's geotechnical consultant has not revealed any underground springs on the project site. In addition, staff has conducted multiple site visits and has also not identified the location of an onsite spring.

- *The Board had difficulty supporting the findings for the proposed Exceptions to both Natural State and Gross Building Square Footage; the applicant is encouraged to reduce the size of the project and/or the configuration of the LLA to eliminate the required Exceptions.*

The project has been modified to reduce the number of exceptions. The current project is proposing exceptions for only the Fremont Road parcel. No exceptions are being requested for the Marquard Avenue parcel.

Since the November 19, 2019, DRB review, the project has changed to include:

- A revision to the lot line which resulted in two parcels matching the area of the existing parcels.
- Modify the interior of the existing single-family residence addressed as 54 Fremont Road to add an accessory dwelling (second) unit and remove part of the structure to increase the setback distance adjacent to the pedestrian path along the western edge of the project and removal of portion of the front of the building.
- Modify the size of the proposed building on the Marquard lot to reduce the gross building square footage to comply with the Hillside standards and eliminate the need for hillside exception on the lower lot.
- Modify the retaining wall along Marquard Avenue to incorporate landscaping to soften the appearance of the wall

A revised project was reviewed by a subcommittee of the Design Review Board October 7, 2020. After reviewing the revised project, the Subcommittee felt that the applicant had adequately addressed the Boards previous comments regarding site plan architecture, retaining walls and landscaping. The Subcommittee noted the following:

- The proposed lot line adjustment is a good solution to the development challenges of the site.

- The proposed site plan demonstrates efficient use of the site.
- The proposed natural state rehabilitation on the 54 Fremont lot through the use of a Natural State Seed Mix and additional plantings around the existing structure enhances the natural environment and should be counted as part of Natural State. However, the landscape plan should include 5-gallon and larger shrubs as partial mitigation for the tree removal on the Marquard Avenue Lot.
- The Subcommittee supported the requested side yard and front yard exceptions for the existing residence.
- The proposed changes to the 54 Fremont residence improve the architectural design of the structure.
- Adding a carport structure in front of the existing garage did not improve the aesthetic value of the project.
- The architectural design of the new Marquard Avenue residence respects and compliments the neighborhood's existing architectural styles.
- The proposed landscape design on the Marquard Avenue lot enhances the natural environment and should therefore be counted as part of Natural State.

Both members of the DRB Subcommittee also recommended the following changes be made to the project or added to the project's conditions of approval. Following the Planning Commission consideration of the project, the project will be presented to the DRB at a noticed meeting.

1. Provide a Tree Protection Plan prior to the issuance of a grading or building permit.
2. Prior to a certificate of occupancy, require a post-construction tree inspection.
3. Additional accent landscaped to the Fremont Road lot. In response, the applicant has provided an expanded landscape plan with additional plantings.
4. Modify the landscape plans to show that the California Nutmeg specie being used should be listed as "correlus cornuta". In response, the Applicant replaced the tree species with a more appropriate under-canopy specie, the Western Hazelnut.
5. Consider providing additional off-street parking adjacent to Fremont Road.

The current project plan set dated November 20, 2020, incorporates the Subcommittee comments. The Planning Commission's recommended project will be presented to the entire Design Review Board at a noticed meeting prior to the City Council's consideration of the project.

## **FINDINGS**

### ***Lot Line Adjustment Findings***

The proposed project is consistent with the required findings set forth in SRMC Section 15.05.040. A detailed analysis of staff findings is contained in the draft resolution set forth in Exhibit 1.

- A. That the lot line adjustment involves adjacent lots.
- B. That the lot line adjustment is consistent with the adopted general plan.
- C. That the lot line adjustment is consistent with the Municipal Code.

### ***Environmental and Design Review Permit Findings***

The proposed project is consistent with the required findings set forth in SRMC Section 14.25.090. A detailed analysis of staff findings is contained in the draft resolution set forth in Exhibit 1.

- A. That the project design is in accord with the general plan, the objectives of the zoning ordinance and the purposes of this Chapter;
- B. That the project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located;
- C. That the project design minimizes adverse environmental impacts; and
- D. That the project design would not be detrimental to the public health, safety, or welfare, nor materially injurious to properties or improvements in the vicinity.

### ***Exception Findings***

The proposed project is consistent with the required findings set forth in SRMC Section 14.24.060. A detailed analysis of staff findings is contained in the draft resolution set forth in Exhibit 1.

- A. That there are special circumstances applicable to the property or land use, including but not limited to the size, shape, topography, location, or surroundings that warrant granting of a minor exception from the strict application of the standards in this title.
- B. That granting the exception would not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

In addition, Section 14.12.040 requires additional findings for exceptions to the property development standards, upon the recommendation of the design review board and the Planning Commission.

- C. The project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting; and
- D. Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.

## **ENVIRONMENTAL DETERMINATION**

The proposed applications represent a project under the California Environmental Quality Act (CEQA). As a result, staff prepared an Initial Study (IS) to evaluate the project's impacts. The Initial Study concluded that the proposed project could result in potentially significant impacts related to Cultural Resources, and Geology and Soils. However, project impacts would be mitigated to a less-than-significant level through implementation of recommended mitigation measures or through compliance with existing Municipal Code requirements or City standards. The Initial Study was available for public review for a 20-day public review period began on October 30, 2020 and ended on November 23, 2020.

Two commenters raised concerns with aesthetics, biologic resources, geology and soils, hazards, hydrology and water quality, construction noise, transportation, and wildfires. The 2020 Initial Study and the Response to Comments documents are located on the City's project webpage: <https://www.cityofsanrafael.org/52-54-fremont/>.

As a result of the issues raised by the public, a Revised Initial Study was prepared and circulated for public review and comment between August 14, 2021, and September 3, 2021. The Recirculated Initial Study includes additional information or analysis related to previous applications on the project site, aesthetics, biologic resources, cultural resources, geology and soils, greenhouse gas emissions, hazards, hydrology, public services, and transportation. The following mitigation measures are included in the Revised Initial Study and Mitigation Monitoring and Reporting Program (MMRP).

- BIO-1: Protection of the Northern Spotted Owl and Other Avian Specie Nesting.

- CUL-1: Protect Archeologic Resources Identified During Construction.
- CUL-2 Protect Human Remains Identified During Construction.
- GE0-1: Design Level Geotechnical Investigation.
- HAZ-1: Preparation of a Construction Management Plan.

Based upon the information and analysis in the Revised Initial Study, the project as designed and mitigated would not have a significant impact on the environment. As a result, staff is recommending that a Mitigated Negative Declaration be adopted for the Project.

During the public review and comment period, one public comment was received. The commenter focused on errors to background information or provided alternative suggestions on adopted City policies. There were no comments on the analyses or mitigation measures. The Final Initial Study includes minor changes to the recirculated 2021 IS/MND: The Final Recirculated Initial Study/Mitigated Negative Declaration is included as Exhibit 2. A detailed response to the received comments is included in Exhibit 3.

## NEIGHBORHOOD MEETING / CORRESPONDENCE

Notice of hearing for the project was conducted in accordance with noticing requirements contained in Chapter 14.29 of the San Rafael Municipal Code. A Notice of Public Hearing was mailed to all property owners and occupants within a 300-foot radius of the subject site and all other interested parties, at least 15 calendar days prior to the date of all meetings, including this hearing. Public notice was also posted on the subject site 15 calendar days prior to the date of all meetings, including this hearing. Comments on the Revised 2021 Initial Study and the project (since November 2020) are included in Exhibit 5.

## OPTIONS

The Planning Commission has the following options:

1. Recommend approval of the applications as presented, subject to conditions of approval (*staff recommendation*).
2. Recommend approval of the applications with project modifications or additional conditions of approval.
3. Continue the applications to allow the applicant to address specific Commission concerns.
4. Recommend denial of the project and direct staff to return with a Resolution Recommending Denial.

## EXHIBITS

1. Draft Planning Commission Resolution
2. Final Recirculated 2021 Initial Study/Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program, dated September 22, 2021 available via:  
<https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2021/09/FINAL-Recirculated-Initial-Study-9-22-21.pdf>
3. Response to Comments on Revised 2021 Initial Study, dated September 22, 2021, available via:  
<https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2021/09/Response-to-Revised-CEQA-Comments-9-22-21.pdf>
4. Project Plans dated November 20, 2020, available via:  
[https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2021/09/Planning-Submittal\\_11\\_2020-002.pdf](https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2021/09/Planning-Submittal_11_2020-002.pdf)
5. Public Comment

**RESOLUTION NO. \_\_\_\_\_****RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL ADOPT AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION, APPROVE A MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVE APPLICATIONS FOR A LOT LINE ADJUSTMENT (LLA18-005), ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED20-066), ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED20-044) WITH EXCEPTION (EX19-010) ON TWO PARCELS LOCATED AT 52 AND 54 FREMONT ROAD (APNS: 012-043-11 AND 012-043-12)**

**WHEREAS**, on July 30, 2018, the applicants submitted applications for a Lot Line Adjustment (LLA18-005), Environmental and Design Review Permit (ED18-006) to allow a new single-family residence fronting on Marquard Avenue; and

**WHEREAS**, on October 14, 2019, the applicants submitted an application for an Exception (EX19-010) for setback encroachments and deviations from minimum natural state for the 54 Fremont Road lot; and

**WHEREAS**, on November 19, 2019, the project was considered by the Design Review Board (DRB) which provided direction on the project design and continued the project off calendar; and

**WHEREAS**, based upon the comments provided by the Design Review Board the applicants revised the proposed project and resubmitted project plans on March 5, 2020; and

**WHEREAS**, in response to Shelter in Place Orders issued by the State of California and Marin County associated with COVID-19, the City Manager authorized an interim review process for projects subject to review by the City of San Rafael Design Review Board through issuance of a Policy Statement, signed on April 1, 2020; and

**WHEREAS**, on October 7, 2020, the project received Design Review by a subcommittee of the City of San Rafael Design Review Board consistent with the Policy Statement described above and the subcommittee unanimously recommended approval of the lot line adjustment by the Planning Commission, and requested that the applicant provide additional landscaping on the proposed upper lot and evaluate whether or not providing additional parking on Fremont Road was feasible, and recommended the project come back for review by the DRB after approval by the Planning Commission; and

**WHEREAS**, on October 8, 2020, the applicants submitted an application for an Environmental and Design Review Permit (ED20-044) to allow for the partial rebuilding the existing single-family residence at 54 Fremont Road; and

**WHEREAS**, as required by the California Environmental Quality Act (CEQA) Guidelines, staff determined that the applications for a lot line adjustment, environmental and design review permits, and exception are a 'project,' making it subject to environmental review. Pursuant to CEQA Guidelines Section 15063, an Initial Study/Mitigated Negative Declaration (IS/MND) was prepared to determine the potential environmental impacts of the project and along with the Mitigated Negative Declaration was circulated for public review and comment between October 30, 2020, and November 20, 2020; and

**WHEREAS**, on October 29, 2020, the subject site was posted with a public notice regarding the Mitigated Negative Declaration prepared for this project and notices were published in a local newspaper of general circulation in the area and mailed to surrounding property owners within 300 feet, pertinent agencies (including responsible and trustee agencies), organizations and special interest groups in conformance with the CEQA Guidelines; and

**WHEREAS**, based upon the public comments that were received on the October 2020 IS/MND, a Revised IS/MND was prepared and recirculated to pertinent agencies and interested members of the public for a 20-day review period, commencing on August 14, 2021 and concluding on September 3, 2021; and

**WHEREAS**, on August 13, 2021 the subject site was posted with a public notice regarding the Mitigated Negative Declaration prepared for this project and notices were published in a local newspaper of general circulation in the area on August 14, 2021, and mailed to surrounding property owners within 300 feet, pertinent agencies (including responsible and trustee agencies), organizations and special interest groups in conformance with the CEQA Guidelines; and

**WHEREAS**, as demonstrated in the preparation of a Revised Initial Study/Mitigated Negative Declaration (IS/MND), all potentially significant effects on the environment identified in the IS/MND can be mitigated to less-than-significant levels with implementation of the recommended mitigation measures; including impacts to biologic resources, cultural and tribal resources, geology and soils, and hazards consistent with CEQA Guidelines; and

**WHEREAS**, a Mitigation Monitoring and Reporting Program (MMRP) has been prepared to ensure implementation of, and compliance with, all conditions required to mitigate any environmental impact to a level of less than significant. All the identified mitigation measures have also been included as conditions of project approval; and

**WHEREAS**, On August 13, 2021, the subject site was posted with a public notice regarding the Planning Commission meeting; and

**WHEREAS**, on August 14, 2021, notices were published in a local newspaper of general circulation in the area and mailed to surrounding property owners within 300 feet, consistent with the requirements of the San Rafael Municipal Code; and

**WHEREAS**, on September 14, 2021, the Planning Commission held a public hearing on the proposed project, the IS/MND, and MMRP, Lot Line Adjustment, Environmental Design Review Permits, and Exception, accepting all oral and written public testimony and the written report of the Department of Community Development. The Planning Commission considered all oral and written public testimony and the written report of the Community Development Department, as well as the comments received by public agencies, utilities, organizations, special interest groups and persons who have reviewed the IS/MND and MMRP; and

**WHEREAS**, the Planning Commission exercised its independent judgment in evaluating the project applications and the Revised IS/MND in conjunction with comments received during the public review period and at the Planning Commission hearing; and

**WHEREAS**, the Planning Commission determined that: (1) there is no substantial evidence that the project will have a significant impact on the environment; and (2) revisions have been made to the project and have been included in the project as mitigation measures which reduce the potential impacts to a less-than-significant level; and

**WHEREAS**, the Planning Commission determined that project is in conformance with the provisions of the adopted General Plan and that the project is in compliance with the requirements of the City Zoning Code; and

**WHEREAS**, the Planning Commission determined that the findings required to approve the abovementioned applications can be made; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of San Rafael does hereby recommend that the City Council adopt the IS/MND for the project and approve Lot Line adjustment (LLA18-005), Environmental and Design Review Permits (ED18-066 and ED20-044), and Exception (EX19-010)

based on the findings and subject to the MMRP and conditions of approval substantially in the form set forth in Attachments A and B.

The foregoing Resolution was adopted at the regular meeting of the City of San Rafael Planning Commission held on the 28<sup>th</sup> day of September 2021.

Moved by Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

SAN RAFAEL PLANNING COMMISSION

ATTEST: \_\_\_\_\_  
Leslie Mendez, Secretary

BY: \_\_\_\_\_  
Shingai Samudzi, Chair

Attachment A Mitigation Monitoring and Reporting Program  
Attachment B Findings and Conditions of Approval

**Attachment A**

**MITIGATION MONITORING AND REPORTING PROGRAM**

**Project Name: Fremont/Marquard Residential**

Mitigation Measure	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Timing	Non-Compliance Sanction/Activity	Monitoring Compliance Record (Name/Date)
<b>IV. BIOLOGIC RESOURCES</b>					
<p><b>Mitigation Measure BIO -1: Protection of Northern Spotted Owl and Other Avian Specie Nesting.</b> To avoid impacts to nesting birds, all tree removal within the Study Area shall be conducted outside of the nesting bird season, between September 1 and January 31, to the extent feasible. If tree removal occurs within the nesting season, between February 1 and August 31, a qualified biologist will conduct a nesting bird survey no sooner than 14 days prior to the start of work; and if no active nests are found, work may begin. If active nests are found during the survey, the qualified biologist shall establish a protective buffer zone around the nest within which no work will be allowed. The buffer shall be clearly marked. The buffer shall be maintained until the young have fledged the nest or the nest becomes inactive (e.g., due to predation). If tree removal ceases for longer than 14 days, another nesting bird survey shall be conducted. If active nests are found during the survey, the qualified biologist shall establish a protective buffer zone around the nest within which no work will be allowed.</p>	Require as a condition of approval	Planning Division	Incorporate as condition of project approval	Deny project	
		Planning Division	Planning Division to verify appropriate evaluate prior issuance of a grading permit	Deny issuance of building or grading permit	

**Attachment A**

Mitigation Measure	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Timing	Non-Compliance Sanction/Activity	Monitoring Compliance Record (Name/Date)
<b>V. CULTURAL RESOURCES</b>					
<p><b>Mitigation Measure CUL-1: Protect Archaeological Resources Identified during Construction:</b> The project sponsor shall ensure that construction crews stop all work within 100 feet of the discovery until a qualified archaeologist can assess the previously unrecorded discovery and provide recommendations. Resources could include subsurface historic features such as artifact-filled privies, wells, and refuse pits, and artifact deposits, along with concentrations of adobe, stone, or concrete walls or foundations, and concentrations of ceramic, glass, or metal materials. Native American archaeological materials could include obsidian and chert flaked stone tools (such as projectile points), midden (culturally derived darkened soil containing heat-affected rock, artifacts, animal bones, and/or shellfish remains), and/or groundstone implements (such as mortars and pestles).</p>	<p>Require as a condition of approval</p> <p>Project sponsor to designate qualified professional (pursuant to NAHC requirements and obtains approvals from appropriate agencies) prior to issuance of building permits</p>	<p>Planning Division</p> <p>Planning /Building Division</p>	<p>Incorporated as condition of project approval</p> <p>Planning / Building Divisions to verify appropriate professional prior issuance of building permit</p> <p>If Cultural Resources are identified the Project sponsor halts work immediately</p>	<p>Deny project</p> <p>Deny issuance of building or grading permit</p> <p>Stop Work Order or revocation of permit</p>	
<p><b>Mitigation Measure CUL-2: Protect Human Remains Identified During Construction:</b> The Project proponent shall treat any human remains and associated or unassociated funerary objects discovered during soil-disturbing activities according to applicable State laws. Such treatment includes work stoppage and immediate notification of the Marin County Coroner and qualified archaeologist. If the Coroner's determination that the human remains are probably Native American, the Native American Heritage Commission (NAHC) shall be notified in accordance with the requirements in PRC Section 5097.98. A qualified archaeologist, the Project proponent, a representative from the City of San Rafael, and the NAHC-designated Most Likely Descendent shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and</p>	<p>Require as a condition of approval</p> <p>Include this requirement in building and grading plan sets as a requirement for permit issuance</p>	<p>Planning Division</p> <p>Planning Division</p>	<p>Incorporated as condition of project approval</p> <p>Planning Division to verify that the requirement is included on plan set(s)</p> <p>Project sponsor to halt work immediately upon discovery of human remains</p>	<p>Deny project</p> <p>Deny issuance of building or grading permit</p> <p>Stop Work Order or revocation of permit</p>	

## Attachment A

Mitigation Measure	Implementation Procedure	Monitoring Responsibility	Monitoring / Reporting Action & Timing	Non-Compliance Sanction/Activity	Monitoring Compliance Record (Name/Date)
<p>associated or unassociated funerary objects. The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters.</p>					
<b>VII. GEOLOGY AND SOILS</b>					
<p><b>Mitigation Measure GE0-1: Design Level Geotechnical Investigation.</b> Prior to a grading or building permit submittal, the project sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer based upon the approved project. The geotechnical investigation shall incorporate the recommendations and requirements identified in the Peer Review conducted by Miller Pacific Engineering Group dated January 21, 2021. Minimum mitigation includes design of new structures in accordance with the provisions of the current California Building Code or subsequent codes in effect when final design occurs..</p>	Require as a condition of approval	Planning Division	Incorporated as condition of project approval	Deny project	
	Project sponsors shall submit a design-level geotechnical investigation based upon the approved project that is prepared by a qualified and licensed geotechnical engineer and submit the report to the City Engineer and Building Divisions	Public Works / Building Divisions	Public Works / Building Division verifies appropriate design-level report prior to issuance of building permit	Deny issuance of building or grading permit	
<b>IX. HAZARDS</b>					
<p><b>Mitigation Measure HAZ-1: Preparation of a Construction Management Plan.</b> Prior to issuance of a grading or demolition permit the applicant shall submit a construction management plan which includes the name and contact information of the construction site project manager, construction and concrete delivery schedule, staging plan, and emergency access plan and construction schedule. All staging shall be kept onsite. Due to site conditions and roadway width, additional coordination and notification shall be required to maintain access to adjacent properties and emergency vehicle access.</p>	Require as a condition of approval	Planning Division	Incorporated as condition of project approval	Deny project	
	Project sponsor prepares a construction management plan and submit the report to the City Engineers	Public Works / Building Divisions	Public Works verifies appropriate design-level report prior to issuance of building permit	Deny issuance of building or grading permit	

## Attachment B

### FINDINGS AND CONDITIONS OF APPROVAL

#### LOT LINE ADJUSTMENT FINDINGS (LLA18-005)

**A. That the lot line adjustment involves adjacent lots.**

The proposed lot line adjustment is between two existing legally created lots that share a common lot line. After the lot lines are adjusted, the two lot will continue to share a common lot line.

**B. That the lot line adjustment is consistent with the adopted general plan.**

The intended use of the lots created by the lot line adjustment complies with the residential land use designations and the density criteria described in the General Plan (2 to 6.5 units per acre).

**C. That the lot line adjustment is consistent with the Municipal Code.**

The lots created by the lot line adjustment comply with the applicable zoning regulations, except the lot size requirement. However, the sizes of the proposed lots will be the same as the sizes of the existing subdivision lots. The proposed lot line adjustment also creates more development building sites by creating wider lots. The Municipal Code requirements for the R10-H Zoning District indicated that the minimum lot width of 75'. The average width of the existing lots are approximately 40' and 60 feet. The proposed lot line adjustment would create lots that exceed the minimum 75' lot width. Consequently, the lot line adjustment would create more developable building sites on each lot.

#### ENVIRONMENTAL AND DESIGN REVIEW PERMIT ED18-066 FINDINGS (Marquard Avenue Lot)

**A. That the project design is in accord with the general plan, the objectives of the zoning ordinance and the purposes of this chapter:**

The project site is designated as Low Density Residential (LDR) on the General Plan 2020 Land Use Map and is within the Single Family Residential (R10) Zoning District with a Hillside Development Overlay. Single family residences are permitted by-right in the R10 Zoning District. The project is consistent with the following design-related General Plan polices:

**Housing Element Policy H-2 (Neighborhood Context)** states that new housing on existing properties can add to the overall value of the neighborhood. As such, new residences and site improvements should be designed to fit in with the established character of the neighborhood. The project incorporates decks, varied rooflines, and building setbacks which break up the massing of the structure and blend in with the natural grade of the hillside. Existing residences in the area contain a variety of architectural styles and building setbacks. Proposed colors and materials are designed to blend with the sites natural wooded setting. The entry to the building is provided by well-defined stair access and features windows and decks that provide visibility to the street on all sides. The proposed building is consistent with hillside development standards and guidelines and fits in with the established character of the neighborhood. As such, the project is consistent with this General Plan policy.

**Neighborhoods Policy NH-2 (New Development in Residential Neighborhoods)** seeks to the preserve, enhance, and maintain the character of existing residential neighborhoods. Policy NH-2 further articulates that new development should enhance neighborhood image and quality of life by incorporating height and setback transitions that respect adjacent development, respect existing natural features, maintain or enhance infrastructure service needs, and provide adequate parking.

The project is located in an area containing a diverse collection of residential structures containing a wide range of architectural styles. The project also involves the construction of a new two-story single-family residence adjacent to Marquard Avenue. The architecture of the building involves wood shingled exterior walls (above the concrete foundation) with exposed rafters. The effect of the design is of a home located in a rural mountain environment. The new residence will provide two off-street parking spaces. As such, the project is consistent with this General Plan policy as it is designed to enhance neighborhood image and provides adequate parking.

As such, the project is consistent with this General Plan policy as it is designed to enhance neighborhood image and quality of life by incorporating height and setback transitions that respect adjacent development, maintain or enhance infrastructure service needs, and provide adequate parking.

**Neighborhoods Policy NH-4b (Design Review Conditions of Approval)** requires that approval of a design review permit include language requiring owners maintain landscaping in good condition. The City imposes standard conditions of approval related to maintaining landscaping, and as such, the project as conditioned is consistent with this General Plan policy.

**Community Design Policy CD-1c (Landscape Improvement)** recognizes that landscaping is a critical design component of new developments and encourages maximum use of available landscape area to create visual interest and foster a sense of the natural environment. The site currently contains multiple mature trees, the majority of which will be retained onsite. The San Rafael Hillside Design Guidelines require tree replacement at a ratio of 3:1, unless an exception is allowed by the Design Review Board when site conditions warrant.

The project proposes to remove eight significant trees, which would require 24 replacement trees onsite, replant three trees in location to provide additional privacy to adjacent residences. However, given the small size of the lot, this replacement ratio is not practical. In prior reviews for hillside design projects the Design Review Board has urged the installation of quality trees versus strict compliance with replacement ratios for this reason, when appropriate. As conditioned, the project will include three (3) new replacement trees onsite and provide an in-lieu payment for the other trees. As such, the project is consistent with this General Plan policy.

**Community Design Policy CD-3 (Neighborhoods)** seeks to recognize, preserve, and enhance the positive qualities that give neighborhoods their unique identities, while also allowing flexibility for innovative design.

The proposed project is located on a hillside lot that is highly constrained due to topography, existing structures, and onsite trees. The existing residence will be rehabilitated and modified to include an accessory dwelling unit. The footprint of this structure is not substantially changing. The proposed new residence is designed to blend in with existing natural features and is architecturally compatible with the diversity found in the surrounding residences. As such, the project is consistent with this General Plan policy.

**Community Design Policy CD-6a (Hillside Design Guidelines)** requires implementation of hillside design guidelines through the design review process.

The project has been reviewed by the Design Review Board for consistency with applicable hillside design guidelines and found to be consistent with those requirements. As such, the project is consistent with this General Plan policy.

**B. That the project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located:**

The Design Review Board (Board) evaluated the design of the project on December 8, 2018, as part of conceptual design review and on October 7, 2020 as part of a formal design review. The Design Review Board Subcommittee (Members Summers and Kent) unanimously found that the project was appropriate in

design (2-0) and recommended approval of the project design to the Planning Commission, subject to conditions of approval.

**C. That the project design minimizes adverse environmental impacts:**

The proposed design of project minimizes its adverse environmental impacts smaller than originally proposed and removes fewer significant trees. The project also provides both on-site and off-street parking. In addition, staff conducted a review of the project applications and prepared an Initial Study pursuant to the provisions of Section 15063 of the CEQA Guidelines. The Initial Study identified potentially significant impacts that can be mitigated to a less than significant level for Cultural Resources, Geology & Soils, and Construction Noise. The mitigation measures are included in the Mitigation Monitoring and Reporting Program.

**D. That the project design will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity.**

The project has been reviewed by the appropriate agencies and conditions of approval have been incorporated to ensure the project will not be detrimental to the public health, safety, or welfare, nor materially injurious to properties or improvements in the project vicinity.

**ENVIRONMENTAL AND DESIGN REVIEW PERMIT ED20-044 FINDINGS  
(54 Fremont Road Lot)**

**A. That the project design is in accord with the general plan, the objectives of the zoning ordinance and the purposes of this chapter:**

The project site is designated as Low Density Residential (LDR) on the General Plan 2020 Land Use Map and is within the Single Family Residential (R10) Zoning District with a Hillside Development Overlay. Single family residences and accessory dwelling units are permitted by-right in the R10 Zoning District. The project is consistent with the following design-related General Plan polices:

**Housing Element Policy H-2 (Neighborhood Context)** states that new housing on existing properties can add to the overall value of the neighborhood. As such, new residences and site improvements should be designed to fit in with the established character of the neighborhood. Existing residences in the project vicinity contain a variety of architectural styles and building setbacks. The existing structure will retain its current architectural style, mass, exterior materials, and roofline. The building is consistent with hillside development standards and guidelines and fits in with the established character of the neighborhood. As such, the project is consistent with this General Plan policy.

**Housing Element Policy H-16 (Second Units) and Housing Program H-16a (New Second Units)** encourage the construction of second (accessory dwelling) units. The proposed project includes the construction of a new second unit within the structure of the existing single-family residence. As such, the project is consistent with this General Plan policy. However access to the site is limited to a one lane road with sharp turns and limited corner visibility that restrict vehicular access to and from the site during normal times. Access during an emergency or during an evacuation would be greatly impaired.

**Neighborhoods Policy NH-4b (Design Review Conditions of Approval)** requires that approval of a design review permit include language requiring owners maintain landscaping in good condition. The City imposes standard conditions of approval related to maintaining landscaping, and as such, the project as conditioned is consistent with this General Plan policy.

**Community Design Policy CD-1c (Landscape Improvement)** recognizes that landscaping is a critical design component of new developments and encourages maximum use of available landscape area to create visual interest and foster a sense of the natural environment. The site currently contains multiple mature trees

that are all being maintained onsite. The project includes California native accent landscaping between the existing residence and Fremont Road. As such, the project is consistent with this General Plan policy.

**Community Design Policy CD-6a (Hillside Design Guidelines)** requires implementation of hillside design guidelines through the design review process. The project has been reviewed by the Design Review Board for consistency with applicable hillside design guidelines and found to be consistent with those requirements. As such, the project is consistent with this General Plan policy.

**B. That the project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located:**

The Design Review Board (Board) evaluated the design of the project on November 19, 2019, and on October 7, 2020 as part of a formal design review by the DRB subcommittee. The Design Review Board Subcommittee (Members Summers and Kent) unanimously found that the project was appropriate in design (2-0) and recommended approval of the project design to the Planning Commission, with the requirements that the added landscaping and any approved off-street parking along Fremont Road be reviewed by the Board following the approval of the project, subject to conditions of approval.

**C. That the project design minimizes adverse environmental impacts:**

The proposed design of project minimizes its adverse environmental impacts since the size of the existing building is not being increased and the location will not change. In addition, staff conducted a review of the project applications and prepared an Initial Study pursuant to the provisions of Section 15063 of the CEQA Guidelines. The Initial Study identified potentially significant impacts that can be mitigated to a less than significant level for Biologic Resources, Cultural Resources, Geology & Soils, Hazards, and Construction Noise. The mitigation measures are included in the Mitigation Monitoring and Reporting Program as well as being included in the conditions of approval.

**D. That the project design will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity.**

The project has been reviewed by the appropriate agencies and conditions of approval have been incorporated to ensure the project will not be detrimental to the public health, safety, or welfare, nor materially injurious to properties or improvements in the project vicinity.

**EXCEPTION EX19-010 FINDINGS  
(54 Fremont Road lot)**

**A. That there are special circumstances applicable to the property or land use, including but not limited to the size, shape, topography, location or surroundings that warrant granting of a minor exception from the strict application of the standards in this title.**

The unusual and special circumstance for the project related to existing site conditions. The project site consists of two subdivision lots from the early 1900's. Each lot is smaller than the current zoning district standards require. Both lots are long and narrow in their current configuration and are located on relatively steep slopes. The existing single-family residence occupies portions of both lots. The proposed change to the lot configuration would put the existing single-family residence and garage onto a single parcel. The proposed parcel configuration means that development on the lower lot will be able to comply with the provisions of the zoning code and would eliminate the need for any exceptions on the lower Marquard Avenue lot. The lot line adjustment would create more developable building sites on each lot.

### Minimum Natural State

The special circumstances relate to the existing site conditions and the amount of existing development on what will be the reconfigured upper Fremont Road parcel including the size and location of the existing single-family residence and detached one-car garage. The small size of the lot combined with the existing slope conditions create a situation where the existing structure and site improvements reduce the potential natural state area below the minimum. The proposed project would remove portions of the existing structure and would result in an increase in the amount of natural state. The current natural state for the existing lot is 56.4%, the natural state for the proposed reconfigured lot is 57.07% requirement. The existing condition warrants the granting of the minor exception for minimum natural state from 65.69% to approximately 57.07%.

### Setbacks/Required Yards

The special circumstances relate to the location of the existing residence. The exception for the front yard setback is from 20 feet to 11.1 feet and conforms to the current setback distance from Fremont Road for the existing residence. The exception for the side yard setback is from 10 feet to 5.7 feet. This setback exceeds the current setback by over 4 feet. The current setback is less than 1 foot from the pedestrian path. This increase in the side yard setback is being achieved by eliminating part of the existing structure. The existing condition warrants the granting of a minor exception for building setbacks.

### **B. That granting the exception will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare.**

The exceptions do not alter the existing conditions on the area of the proposed upper lot. The existing residence was constructed prior many of the other structures in the vicinity. In addition, the configuration of the narrow access road is not changing. As a result, the exception is not altering the existing conditions and is not detrimental or injurious to the public health, safety, or general welfare.

### **C. Exceptions to property development standards in hillside areas can be approved when the Applicant has demonstrated that the project design meets the stated objectives of the hillside design guidelines. These objectives include preserving the inherent characteristics of hillside sites, displaying sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, maintaining a strong relationship to the natural setting; and minimizing grading, retaining more of the project site in its natural state, minimizing visual impacts, protecting significant trees or protect natural resources result by demonstrating superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.**

The Project has evolved since it was first submitted to the City. The current project is more respectful of the hill side conditions through a reduction in the sites of the proposed structures. The project complies with the hillside exceptions findings as follows.

- Preserve the inherent characteristics of hillside sites. The location and design of the Fremont Road residence is not changing, The siting and scale of the proposed Marquard Avenue has been reduced to appropriate fit on the site. The project is also not altering the overall configuration of the current hillside.
- Display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods. The project is maintaining open space areas southeast of the existing Fremont Road residence and northwest of the proposed Marquard Avenue residence. The overall lot coverage is approximately 33% which is less than the maximum lot coverage requirement of 40%. Additional landscaping is proposed on both lots and includes a variety of native plant species common to northern California.

- Maintain a strong relationship to the natural setting; and minimizing grading, retaining more of the project site in its natural state, minimizing visual impacts, protecting significant trees or protect natural resources result by demonstrating superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures. The design of the two residences is consistent with other development in the surrounding area which includes a variety of one-, two- and three-story structures on relatively small lots. The design of the project avoids the unnecessary removal of significant trees and excess grading. Most of the grading on the upper Fremont Road lot will be to accommodate a new foundation. The grading on the lower Marquard Avenue lot is related to the basement parking for the proposed unit and to accommodate the two off-street parking areas. Tree removal is limited to those that are directly affected by construction and is not being cleared of all vegetation.

## **CONDITIONS OF APPROVAL**

### **LOT LINE ADJUSTMENT (LLA18-005) CONDITIONS OF APPROVAL**

1. This approval is granted for a lot line adjustment between APNs 012-043-11 and 012-043-12. This approval shall be valid for a period of three years from the date of approval. Within this 3-year period, the applicant shall record the Lot Line Adjustment with the County Recorder's office through the recordation of grant deeds. Failure to record the lot line adjustment within this time period shall make this approval null and void.
2. Prior to the recordation of the lot line adjustment with the County Recorder's Office, the owner shall submit to the Public Works Department for review and approval, three (3) copies of new grant deeds accompanied by a plat map with easements and legal descriptions, prepared, stamped, and signed by a licensed surveyor/engineer. This submittal shall be accompanied by a recent copy of a preliminary title report for the subject properties.
3. The new grant deeds shall include the following statement: "This Lot Line Adjustment is approved by the City of San Rafael, File Number LL18-005, on (approval date), pursuant to Government Code Section 66412(d)."
4. Following recordation of the approved grant deeds, the applicant shall submit two (2) copies of the recorded grant deeds to the Community Development Department. No final inspections on any resulting residences shall be allowed until this requirement is satisfied.

### **MARQUARD AVENUE LOT (52 FREMONT ROAD) ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED18-066) CONDITIONS OF APPROVAL**

1. This Environmental and Design Review Permit approves a two-story approximately 2,492 square foot single family residence with below grade level garage/storage on a vacant lot located within the Single Family Residential (R10) Zoning District with a Hillside Development Overlay designation. Plans submitted for building permit shall be in substantial conformance to the plans approved at the Design Review Board Meeting on December 8, 2020 with regard to building techniques, materials, elevations, and overall project appearance except as modified by these conditions of approval (plans dated November 20, 2020).
2. This Environmental and Design Review Permit shall be valid for **two (2) years** from approval and shall be null and void if a building permit is not issued or a time extension granted prior to the expiration date.

3. Prior to issuance of a grading or building permit, the applicant shall submit an updated geotechnical investigation report that complies with the requirements of the City of San Rafael General Plan 2020 Appendix F. More specifically, to review the engineering aspects of the proposed site including size and type of structures and magnitude and extent of grading. The discussion shall address foundation types for proposed structures, retaining systems, grading considerations, stability of cut slopes and constructed embankments, settlement of the site and adjacent sites due to existing conditions, proposed construction, and proposed surface and subsurface drainage facilities. The geotechnical report shall be peer reviewed by a City retained Geotechnical consultant, at the owner's expense. (Mitigation Measure GEO-1)
4. Prior to issuance of a building permit for the Marquard Avenue property, the applicant shall submit for and receive a building permit for the rehabilitation work and receive a City inspection approving the newly constructed foundation for the residence located at 54 Fremont Road.
5. Prior to issuance of a grading or building permit for either the Marquard Avenue Lot (52 Fremont Road) or 54 Fremont Road, the applicant shall submit a grading and drainage plan for both lots to the DPW and obtain approval. The grading permit shall include Bioretention sizing calculations. The applicant shall create and provide the appropriate drainage easement(s) prior to occupancy of either project.
6. Prior to issuance of a grading or building permit for either the Marquard Avenue Lot (52 Fremont Road) or 54 Fremont Road, the applicant shall submit frontage improvement plans for both lots to the DPW and obtain approval. These frontage improvements will include repair and replacement of the stairs and drainage piping on the 10' right of way north and adjacent to each project. The applicant shall complete these improvements prior to occupancy of either project.
7. Prior to issuance of building permit, the applicant shall pay the required sewer connection fees.
8. Prior to issuance of building permit, the applicant shall demonstrate compliance with requirements of the San Rafael Sanitation District. The following shall be required:
  - a. All sewer related work shall be performed in accordance with San Rafael Sanitation District Standards.
  - b. Plans shall demonstrate that no permanent structures will be constructed over the Sanitary Sewer Easement.
  - c. The applicant shall be responsible for relocating any existing sewer lines located on the property to the satisfaction of the San Rafael Sanitation District.
9. Prior to commencement of grading activities, notification shall be provided to property owners and occupants within 300 feet of the site.
10. The applicant shall be subject to a 90-day post construction lighting inspection.
11. Prior to issuance of a building permit, a construction management plan shall be submitted to the City of San Rafael for review and approval by the Planning Division and Department of Public Works. The construction management plan should, at a minimum, outline parking areas for tradesmen, location of temporary power poles, loading/unloading areas, site storage, dumpsters, and toilets during construction. Should there be any anticipated road closures the scope of work causing the closure should be identified. The construction management plan shall include a provision and schedule for notifying the neighbors in advance of project construction. A monthly update shall be provided to the adjacent neighbors within 300 feet and all properties past the site with access from Upper Fremont Dr (even if outside 300 feet), and the Neighborhood Association, once the building permit has been issued and the City of San Rafael Community Development Department and Public Works Department.
12. The requirements contained in the mitigation measures contained in the Mitigation Monitoring and Reporting Program shall be complied with.

13. If tree removal occurs within the nesting season, between February 1 and August 31, a qualified biologist will conduct a nesting bird survey no sooner than 14 days prior to the start of work; and if no active nests are found, work may begin. If active nests are found during the survey, the qualified biologist shall establish a protective buffer zone around the nest within which no work will be allowed. The buffer shall be clearly marked. The buffer shall be maintained until the young have fledged the nest or the nest becomes inactive (e.g., due to predation). If tree removal ceases for longer than 14 days, another nesting bird survey shall be conducted. If active nests are found during the survey, the qualified biologist shall establish a protective buffer zone around the nest within which no work will be allowed. (Mitigation Measure BIO-1)
14. In the event that any archaeological features, such as concentrations of artifacts or culturally modified soil deposits including trash pits older than fifty years of age, are discovered at any time during grading, scraping, or excavation within the property, all work shall be halted in the vicinity of the find, the Planning Division shall be notified, and a qualified archaeologist shall be contacted immediately to make an evaluation. If warranted by the concentration of artifacts or soils deposits, an archaeologist shall monitor further work in the discovery area. (Mitigation Measure CUL-1)
15. If human remains are encountered during grading and construction, all work shall stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist shall be notified immediately so that an evaluation can be performed. The Coroner shall contact the Native American Heritage Commission, if the remains are deemed to be Native American and prehistoric, so the "most likely descendant" can be designated. (Mitigation Measure CUL-2)
16. Prior to issuance of a building or grading permit, whichever occurs first, the applicant shall pay any outstanding planning application processing fees.
17. The applicant agrees to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnities"), the purpose of which is to attack, set aside, void or annul the approval of this application or the adoption of any environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the indemnities, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnities.
18. In the event that any claim, action or proceeding as described above is brought, the City shall promptly notify the applicant of any such claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. In the event the applicant is required to defend the City in connection with any said claim, action or proceeding, the City shall retain the right to: (1) approve the counsel to so defend the City; (2) approve all significant decisions concerning the manner in which the defense is conducted; and (3) approve any and all settlements, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, provided that if the City chooses to have counsel of its own to defend any claim, action or proceeding where applicant already has retained counsel to defend the City in such matters, the fees and the expenses of the counsel selected by the City shall be paid by the City.
19. As a condition of this application, applicant agrees to be responsible for the payment of all City Attorney expenses and costs, both for City staff attorneys and outside attorney consultants retained by the City, associated with the reviewing, process and implementing of the land use approval and related conditions of such approval. City Attorney expenses shall be based on the rates established from time to time by the City Finance Director to cover staff attorney salaries, benefits, and overhead, plus the actual fees and expenses of any attorney consultants retained by the City. Applicant shall reimburse City for City Attorney expenses and costs within 30 days following billing of same by the City.

## **DEPARTMENT OF PUBLIC WORKS CONDITIONS**

20. Prior to issuance of a building permit, the supplemental investigation and analysis recommended by the third-party geotechnical peer reviewer (Miller Pacific Engineering Group) should be performed, and the results incorporated into the final design documents. Miller Pacific's recommendations were provided in a letter dated 25 January 2021.
21. Upon submittal of a building permit, the applicant shall submit a lighting analysis for the property frontage to determine lighting deficiencies. Based on review of the lighting analysis, modified street lighting may be required along the property frontage.
22. New electrical service installed by the project shall be underground.
23. Prior to issuance of building permit, the applicant shall pay applicable traffic mitigation fees. Please note that fees will be assessed at the time of building permit issuance.
24. Prior to issuance of a building permit, the applicant shall pay the applicable construction vehicle impact fee, which is calculated at one percent of the project valuation, with the first \$10,000 of valuation exempt.
25. Prior to issuance of a building permit, the applicant shall demonstrate compliance with Marin Municipal Water District water conservation measures.
26. Prior to Issuance of Building Permit, the applicant shall submit the stormwater control plan, which includes a written document, in addition to the erosion control plan shown on the plan set. Details of the stormwater system including overflow dissipation shall be reviewed by the Department of Public Works with plans submitted for building/grading. More specific information is available from MCSTOPPP, hosted on the Marin County Website. See tools and guidance, and post construction requirements at the following address:  
<http://www.marincounty.org/depts/pw/divisions/mcstoppp/development/new-and-redevelopment-projects>
27. Plans submitted for grading permit shall include cut and fill calculations for the project. A grading permit shall be required from the Department of Public Works, located at 111 Morphew St. for project proposing 50 cubic yards or more of earthwork.
28. Prior to issuance of a grading permit the applicant shall submit a construction management plan which includes the name and contact information of the construction site project manager, construction and concrete delivery schedule, staging plan, and emergency access plan and construction schedule. All staging shall be kept onsite. Due to site conditions and roadway width, additional coordination and notification shall be required to maintain access to adjacent properties and emergency vehicle access. (Mitigation Measure HAZ-1)
29. Prior to issuance of a building or grading permit, an erosion and sediment control plan shall be submitted to the City.
30. Prior to commencing work within the right-of-way, the applicant shall obtain an encroachment from the Department of Public Works located at 111 Morphew St.
31. Prior to issuance of building permits, the applicant shall submit Civil and Utility plans in accordance with the San Rafael Sanitation District Standards for review.

## **BUILDING DEPARTMENT CONDITIONS**

32. The design and construction of all site alterations shall comply with the 2016 California Residential Code (CRC), 2016 California Building Code (CBC), 2016 California Plumbing Code (CPC), 2016 California

Electrical Code (CEC), 2016 California Mechanical Code CCMC), 2016 California Fire Code (CFC), 2016 California Energy Code, 2016 California Green Building Standards Code and City of San Rafael Ordinances and Amendments.

33. A building permit is required for the proposed work. Applications for a building permit shall be accompanied by four (4) complete sets of construction drawings to include:
  - a. Architectural plans
  - b. Structural plans
  - c. Electrical plans
  - d. Plumbing plans
  - e. Mechanical plans
  - f. Site/civil plans (clearly identifying grade plane and height of the building)
  - g. Structural Calculations
  - h. Truss Calculations
  - i. Geotech/Soils reports
  - j. Green Building documentation
  - k. Title-24 energy documentation
34. School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them prior to issuance of the building permit.
35. The applicant shall apply for a new address for this building from the Building Division.
36. Each building must have address identification placed in a position that is plainly legible and visible from the street or road fronting the property. Numbers painted on the curb do not satisfy this requirement. In new construction and substantial remodels, the address must be internally or externally illuminated and remain illuminated at all hours of darkness. Numbers must be a minimum 4 inches in height with ½ inch stroke for residential occupancies and a minimum 6 inches in height with ½ inch stroke for commercial applications. The address must be contrasting in color to their background SMC 12.12.20.
37. Prior to building permit issuance for the construction of each building, geotechnical and civil pad certifications are to be submitted.
38. This project is subject to the City of San Rafael Green Building Ordinance. A sliding scale is applied based on the total square footage of new single family and duplex dwelling projects. New dwellings must comply with the “Green Building Rating System” by showing a minimum compliance threshold between 75 and 200 points. Additionally, the energy budget must also be below Title 24 Energy Efficiency Standards a minimum 15% up to net zero energy (sliding scale based on square footage).
39. All new construction, additions or remodels must comply with the Wood-Burning Appliance Ordinance. New wood burning fireplaces and non-EPA certified wood stoves are prohibited. Non-EPA Phase II-certified wood stoves must be removed in remodels and additions which: exceed 50% of the existing floor area and include the room the stove is located in.
40. This new building is in a Wildland-Urban Interface Area. The building materials, systems and/or assemblies used in the exterior design and construction must comply with CBC Chapter 7A. All under floor areas enclosed to the grade with exterior walls in accordance with CBC section 704A.3. The underside of cantilevered and overhanging appendages and floor projections shall maintain the ignition-resistant integrity of exterior walls (CBC 7A.3), or the projection shall be enclosed to the grade.

#### **FIRE DEPARTMENT CONDITIONS**

41. The design and construction of all site alterations shall comply with the 2016 California Fire Code (CFC) and City of San Rafael Ordinances and Amendments.

42. The design and construction of all site alterations shall comply with the 2019 California Fire Code, current NFPA Standards, and all applicable City of San Rafael Ordinances and Amendments.
43. Deferred Submittals for the following fire protection systems shall be submitted to the Fire Prevention Bureau for approval and permitting prior to installation of the systems.
44. Fire Sprinkler plans meeting NFPA 13D (Deferred Submittal to the Fire Prevention Bureau)
45. Provide address numbers plainly visible from the street or road fronting the property. Numbers painted on the curb do not qualify as meeting this requirement. Numbers shall contrast with the background and shall be Arabic numbers or letters. Numbers shall be internally or externally illuminated in all new construction or substantial remodels. Number sizes are as follows: For residential—4” tall with ½” stroke.
46. This property is in a Wildland-Urban Interface (WUI) area. Provide a written Vegetation Management Plan (VMP) submitted to the San Rafael Fire Department. This VMP must be completed and verified prior to final approval. Additionally, the approved VMP is to be incorporated into the final set of building plans. Refer to City of San Rafael Ordinance 1856 that may be viewed at <https://www.cityofsanrafael.org/vmp-san-rafael-fd/> or you may contact the Fire Department at (415) 485-3304 to schedule a time to meet with a vegetation management inspector. Continued compliance with the VMP shall be recorded in the Deed and Title document for the property.

#### **MARIN MUNICIPAL WATER DISTRICT CONDITIONS**

47. Complete a High Pressure Water Service Application.
  - a. Submit a copy of the building permit.
  - b. Pay appropriate fees and charges.
  - c. Complete the structure's foundation within 120 days of the date of application.
  - d. Comply with the District's rules and regulations in effect at the time service is requested.
48. Comply with all indoor and outdoor requirements of District Code Title 13 - Water Conservation. This may include verification of specific indoor fixture efficiency compliance.
49. If the applicant is pursuing a landscaping project subject to review by the local planning department and /or subject to a city permit, please contact the district water conservation department at 415-945-1497 or email to [planchek@marinwater.org](mailto:planchek@marinwater.org). More information about district water conservation requirements can be found on line at [www.marinwater.org](http://www.marinwater.org)
50. Comply with the backflow prevention requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1558.
51. Comply with Ordinance No. 429 requiring the installation of a gray water recycling system when practicable for all projects required to install new water service and existing structures undergoing "substantial remodel" that necessitates an enlarged water service.

**54 FREMONT ROAD  
ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED20-044)  
AND EXCEPTION (EX19-10)  
CONDITIONS OF APPROVAL**

1. This Environmental and Design Review Permit approves the modification to an existing two-story single family residence into an approximately 1,554 square foot single family residence and a 1,104 square foot accessory dwelling units within the Single Family Residential (R10) Zoning District with a Hillside

Development Overlay designation. The scope requires site improvements including grading, drainage, decking, stairs and replacement of several site walls. Plans submitted for building permit shall be in substantial conformance to the plans approved at the Design Review Board Meeting on December 8, 2020 with regard to building techniques, materials, elevations, and overall project appearance except as modified by these conditions of approval (plans dated November 20, 2020).

2. This Environmental and Design Review Permit shall be valid for **two (2) years** from approval and shall be null and void if a building permit is not issued or a time extension granted prior to the expiration date.
3. Prior to issuance of a grading or building permit, the applicant shall submit an updated geotechnical investigation report that complies with the requirements of the City of San Rafael General Plan 2020 Appendix F. More specifically, to review the engineering aspects of the proposed site including size and type of structures and magnitude and extent of grading. The discussion shall address foundation types for proposed structures, retaining systems, grading considerations, stability of cut slopes and constructed embankments, settlement of the site and adjacent sites due to existing conditions, proposed construction, and proposed surface and subsurface drainage facilities. The geotechnical report shall be peer reviewed by a City retained Geotechnical consultant, at the owner's expense. (Mitigation Measure GEO-1)
4. Prior to issuance of building permit, the applicant shall file for and receive approval for and record the lot line adjustment for the two lots associated with this project.
5. Prior to issuance of a grading or building permit for either the Marquard Avenue Lot (52 Fremont Road) or 54 Fremont Road, the applicant shall submit a grading and drainage plan for both lots to the DPW and obtain approval. The grading permit shall include Bioretention sizing calculations. The applicant shall create and provide the appropriate drainage easement(s) prior to occupancy of either project.
6. Prior to issuance of a grading or building permit for either the Marquard Avenue Lot (52 Fremont Road) or 54 Fremont Road, the applicant shall submit frontage improvement plans for both lots to the DPW and obtain approval. These frontage improvements will include repair and replacement of the stairs and drainage piping on the 10' right of way north and adjacent to each project. The applicant shall complete these improvements prior to occupancy of either project.
7. Prior to issuance of building permit, the applicant shall pay the required sewer connection fees.
8. Prior to issuance of building permit, the applicant shall demonstrate compliance with requirements of the San Rafael Sanitation District. The following shall be required:
  - a. All sewer related work shall be performed in accordance with San Rafael Sanitation District Standards.
  - b. Plans shall demonstrate that no permanent structures will be constructed over the Sanitary Sewer Easement.
  - c. The applicant shall be responsible for relocating any existing sewer lines located on the property to the satisfaction of the San Rafael Sanitation District.
9. Prior to commencement of grading activities, notification shall be provided to property owners and occupants within 300 feet of the site.
10. The applicant shall be subject to a 90-day post construction lighting inspection.
11. Prior to issuance of a building permit, a construction management plan shall be submitted to the City of San Rafael for review and approval by the Planning Division and Department of Public Works. The construction management plan should, at a minimum, outline parking areas for tradesmen, location of temporary power poles, loading/unloading areas, site storage, dumpsters, and toilets during construction. Should there be any

anticipated road closures the scope of work causing the closure needs to be identified. The construction management plan shall include a provision and schedule for notifying the neighbors in advance of project construction. A monthly update shall be provided to the adjacent neighbors within 300 feet of the site and the Neighborhood Association, once the building permits have been issued, and the City of San Rafael Community Development Department and Public Works Department.

12. The requirements contained in the mitigation measures contained in the Mitigation Monitoring and Reporting Program shall be complied with.
13. If tree removal occurs within the nesting season, between February 1 and August 31, a qualified biologist will conduct a nesting bird survey no sooner than 14 days prior to the start of work; and if no active nests are found, work may begin. If active nests are found during the survey, the qualified biologist shall establish a protective buffer zone around the nest within which no work will be allowed. The buffer shall be clearly marked. The buffer shall be maintained until the young have fledged the nest or the nest becomes inactive (e.g., due to predation). If tree removal ceases for longer than 14 days, another nesting bird survey shall be conducted. If active nests are found during the survey, the qualified biologist shall establish a protective buffer zone around the nest within which no work will be allowed. (Mitigation Measure BIO-1)
14. In the event that any archaeological features, such as concentrations of artifacts or culturally modified soil deposits including trash pits older than fifty years of age, are discovered at any time during grading, scraping, or excavation within the property, all work shall be halted in the vicinity of the find, the Planning Division shall be notified, and a qualified archaeologist shall be contacted immediately to make an evaluation. If warranted by the concentration of artifacts or soils deposits, an archaeologist shall monitor further work in the discovery area. (Mitigation Measure CUL-1)
15. If human remains are encountered during grading and construction, all work shall stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist shall be notified immediately so that an evaluation can be performed. The Coroner shall contact the Native American Heritage Commission, if the remains are deemed to be Native American and prehistoric, so the "most likely descendant" can be designated. (Mitigation Measure CUL-2)
16. Prior to issuance of a building or grading permit, whichever occurs first, the applicant shall pay any outstanding planning application processing fees.
17. The applicant agrees to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnities"), the purpose of which is to attack, set aside, void or annul the approval of this application or the adoption of any environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the indemnities, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnities.
18. In the event that any claim, action or proceeding as described above is brought, the City shall promptly notify the applicant of any such claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. In the event the applicant is required to defend the City in connection with any said claim, action or proceeding, the City shall retain the right to: (1) approve the counsel to so defend the City; (2) approve all significant decisions concerning the manner in which the defense is conducted; and (3) approve any and all settlements, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, provided that if the City chooses to have counsel of its own to defend any claim, action or proceeding where applicant already has retained counsel to defend the City in such matters, the fees and the expenses of the counsel selected by the City shall be paid by the City.

19. As a condition of this application, applicant agrees to be responsible for the payment of all City Attorney expenses and costs, both for City staff attorneys and outside attorney consultants retained by the City, associated with the reviewing, process and implementing of the land use approval and related conditions of such approval. City Attorney expenses shall be based on the rates established from time to time by the City Finance Director to cover staff attorney salaries, benefits, and overhead, plus the actual fees and expenses of any attorney consultants retained by the City. Applicant shall reimburse City for City Attorney expenses and costs within 30 days following billing of same by the City.

#### **DEPARTMENT OF PUBLIC WORKS CONDITIONS**

20. Prior to issuance of a building permit, a design-level geotechnical investigation report that addresses the proposed improvements at the 54 Fremont Road property should be submitted to the DPW for review. The report may be subject to a third-party geotechnical peer review.
21. Upon submittal of a building permit, the applicant shall submit a lighting analysis for the property frontage to determine lighting deficiencies. Based on review of the lighting analysis, modified street lighting may be required along the property frontage.
22. Prior to issuance of building permit, the applicant shall pay applicable traffic mitigation fees. Please note that fees will be assessed at the time of building permit issuance.
23. Prior to issuance of a building permit, the applicant shall pay the applicable construction vehicle impact fee, which is calculated at one percent of the project valuation, with the first \$10,000 of valuation exempt.
24. Prior to issuance of a building permit, the applicant shall demonstrate compliance with Marin Municipal Water District water conservation measures.
25. Prior to Issuance of Building Permit, the applicant shall submit the stormwater control plan, which includes a written document, in addition to the erosion control plan shown on the plan set. Details of the stormwater system including overflow dissipation shall be reviewed by the Department of Public Works with plans submitted for building/grading. More specific information is available from MCSTOPPP, hosted on the Marin County Website. See tools and guidance, and post construction requirements at the following address:  
<http://www.marincounty.org/depts/pw/divisions/mcstoppp/development/new-and-redevelopment-projects>
26. Plans submitted for grading permit shall include cut and fill calculations for the project. A grading permit shall be required from the Department of Public Works, located at 111 Morphew St. for project proposing 50 cubic yards or more of earthwork.
27. Prior to issuance of a grading permit the applicant shall submit a construction management plan which includes the name and contact information of the construction site project manager, construction and concrete delivery schedule, staging plan, and emergency access plan and construction schedule. All staging shall be kept onsite. Due to site conditions and roadway width, additional coordination and notification shall be required to maintain access to adjacent properties and emergency vehicle access. (Mitigation Measure HAZ-1)
28. Prior to issuance of a building or grading permit, an erosion and sediment control plan shall be submitted to the City.
29. Prior to commencing work within the right-of-way, the applicant shall obtain an encroachment from the Department of Public Works located at 111 Morphew St.

30. Prior to issuance of building permits, the applicant shall submit Civil and Utility plans in accordance with the San Rafael Sanitation District Standards for review.

### **BUILDING DEPARTMENT CONDITIONS**

31. The design and construction of all site alterations shall comply with the 2016 California Residential Code (CRC), 2016 California Building Code (CBC), 2016 California Plumbing Code (CPC), 2016 California Electrical Code (CEC), 2016 California Mechanical Code (CMC), 2016 California Fire Code (CFC), 2016 California Energy Code, 2016 California Green Building Standards Code and City of San Rafael Ordinances and Amendments.

32. A building permit is required for the proposed work. Applications for a building permit shall be accompanied by four (4) complete sets of construction drawings to include:

- a. Architectural plans
- b. Structural plans
- c. Electrical plans
- d. Plumbing plans
- e. Mechanical plans
- f. Site/civil plans (clearly identifying grade plane and height of the building)
- g. Structural Calculations
- h. Truss Calculations
- i. Geotech/Soils reports
- j. Green Building documentation
- k. Title-24 energy documentation

33. School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them prior to issuance of the building permit.

34. The applicant shall apply for a new address for this building from the Building Division.

35. Each building must have address identification placed in a position that is plainly legible and visible from the street or road fronting the property. Numbers painted on the curb do not satisfy this requirement. In new construction and substantial remodels, the address must be internally or externally illuminated and remain illuminated at all hours of darkness. Numbers must be a minimum 4 inches in height with ½ inch stroke for residential occupancies and a minimum 6 inches in height with ½ inch stroke for commercial applications. The address must be contrasting in color to their background SMC 12.12.20.

36. Regarding any grading or site remediation, soils export, import and placement; provide a detailed soils report prepared by a qualified engineer to address these procedures. The report should address the import and placement and compaction of soils at future building pad locations and should be based on an assumed foundation design. This information should be provided to Building Division and Department of Public Works for review and comments prior to any such activities taking place.

37. Prior to building permit issuance for the construction of each building, geotechnical and civil pad certifications are to be submitted.

38. This project is subject to the City of San Rafael Green Building Ordinance. A sliding scale is applied based on the total square footage of new single family and duplex dwelling projects. New dwellings must comply with the "Green Building Rating System" by showing a minimum compliance threshold between 75 and 200 points. Additionally, the energy budget must also be below Title 24 Energy Efficiency Standards a minimum 15% up to net zero energy (sliding scale based on square footage).

39. All new construction, additions or remodels must comply with the Wood-Burning Appliance Ordinance. New wood burning fireplaces and non-EPA certified wood stoves are prohibited. Non-EPA Phase II-certified

wood stoves must be removed in remodels and additions which: exceed 50% of the existing floor area and include the room the stove is located in.

40. This new building is in a Wildland-Urban Interface Area. The building materials, systems and/or assemblies used in the exterior design and construction must comply with CBC Chapter 7A. All under floor areas enclosed to the grade with exterior walls in accordance with CBC section 704A.3. The underside of cantilevered and overhanging appendages and floor projections shall maintain the ignition-resistant integrity of exterior walls (CBC 7A.3), or the projection shall be enclosed to the grade.
41. The design and construction of all site alterations shall comply with the 2016 California Fire Code (CFC) and City of San Rafael Ordinances and Amendments.

#### **FIRE DEPARTMENT CONDITIONS**

42. The design and construction of all site alterations shall comply with the 2019 California Fire Code, current NFPA Standards, and all applicable City of San Rafael Ordinances and Amendments.
43. The project location is located on a roadway that does not conform to California Fire Code provisions for emergency vehicle access and turnaround. (Reference: CA Fire Code section 503 and Appendix D). This could result in emergency response delays. Alternate Materials and Methods (CFC section 109) can be considered. An NFPA 13R fire sprinkler system will be considered under Alternate Materials and Methods.
44. During review of the building permit, deferred submittal for the following fire protection systems shall be submitted to the Fire Prevention Bureau for approval and permitting prior to installation of the system:
  - a. Fire Sprinkler plans conforming to NFPA 13R for home and ADU Deferred Submittal to the Fire Prevention Bureau).
45. Provide address numbers plainly visible from the street or road fronting the property. Numbers painted on the curb do not qualify as meeting this requirement. Numbers shall contrast with the background and shall be Arabic numbers or letters. Numbers shall be internally or externally illuminated in all new construction or substantial remodels. Number sizes are as follows: For residential—4” tall with ½” stroke.
46. Note: Based on substandard roadway design, there is no on-street parking available at this location.
47. This property is in a Wildland-Urban Interface (WUI) area. Provide a written Vegetation Management Plan (VMP) submitted to the San Rafael Fire Department. This VMP must be completed and verified prior to issuance of building permits. The VMP Refer to City of San Rafael Ordinance 1856 that may be viewed at <https://www.cityofsanrafael.org/vmp-san-rafael-fd/> or you may contact the Fire Department at (415) 485-3304 to schedule a time to meet with a vegetation management inspector. Continued compliance with the VMP shall be recorded in the Deed and Title document for the property.

#### **MARIN MUNICIPAL WATER DISTRICT CONDITIONS**

48. Complete a High Pressure Water Service Application.
  - a. Submit a copy of the building permit.
  - b. Pay appropriate fees and charges.
  - c. Complete the structure's foundation within 120 days of the date of application.
  - d. Comply with the District's rules and regulations in effect at the time service is requested.
49. Comply with all indoor and outdoor requirements of District Code Title 13 - Water Conservation. This may include verification of specific indoor fixture efficiency compliance.
50. If the applicant is pursuing a landscaping project subject to review by the local planning department and /or subject to a city permit, please contact the district water conservation department at 415-945-1497 or email to

[plancheck@marinwater.org](mailto:plancheck@marinwater.org). More information about district water conservation requirements can be found on line at [www.marinwater.org](http://www.marinwater.org)

51. Comply with the backflow prevention requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1558.
52. Comply with Ordinance No. 429 requiring the installation of a gray water recycling system when practicable for all projects required to install new water service and existing structures undergoing "substantial remodel" that necessitates an enlarged water service.



September 10, 2019, *resubmitted May 15, 2020, with attached 4-page Addendum (10-pages total)*

Alicia Giudice, Senior Planner  
City of San Rafael Community Development Dept.  
1400 Fifth Ave.  
San Rafael, CA. 94901

**RE: File No. ED18-066/LLA18-005,  
Parcel Nos. 012-043-11 and 012-043-12,  
Revised Plans for 52-54 Fremont Rd.**

***Note: These comments are in response to the set of plans date-stamped August 19, 2019, by the Planning Department. This is the Fifth (5<sup>th</sup>) set of plans we have reviewed and commented on for this application.***

This formal application for 52-54 Fremont Road, includes the revised plans for a lot line adjustment to change the property line between two contiguous lots from a north/south direction to an east/west direction, creating one lot that fronts Fremont Road and one lot that fronts Marquard Avenue,. In addition, the applicant is submitting plans for a new home to be built on the lot facing Marquard, with no modifications to the existing house and 1-car garage on the lot fronting Fremont Rd.

We have the following comments about this application:

1. Lot Line Adjustment (LLA):

The City can impose conditions on it's approval of a lot line adjustment if the resulting parcels do not conform to the general plan, zoning and/or building ordinances. (per California Government Code, Sect. 66412(d)). The City has the right and responsibility to do what is best for the neighborhood and the City.

So the question is, where to redraw the lot line. These lots were created in 1913 and do not comply with current zoning regulations which requires a minimum of 10,000 square feet per lot for R10 zoning. Since the existing lots do not comply with the zoning ordinance minimum size requirement and the proposed lots will not comply either, should the new lots have more equal square footage or similar square footage to their original size. Do you take into consideration the new slope calculation of each lot before determining where the new lot line will be located. Or do you let the natural state requirement drive your decision. What criteria do you use to calculate the division and provide equal development opportunities to both lots. **The applicant needs to explain their reasoning for how the location and allocation of land was decided for the proposed lot line adjustment.**

2. Proposed new home on Marquard

The applicant has created a grid on page AS-100 comparing the existing lots to the proposed lots after the LLA. One calculation missing from this grid is the maximum lot coverage allowed which includes the building footprint, driveways, parking areas, patios, and anything that was disturbed by grading, excavating, or filling. Taking the natural state requirement of 4,593 sq' (64.42% x 7130) and subtracting it from the lot size, we get the maximum lot coverage of 2,537 sq' (7,130 – 4,593). Applicant shows a proposed natural state of 4,503 which translates into 2,627 square feet of coverage or 90 square feet more than allowed.

On page C-1, under Lot Calculations, it says the disturbed area is equal to 3,518 sq'. Using this calculation, the proposed plans exceed the allowed disturbed area by 981 sq' (3,518 – 2,537). As Ali Giudice stated in her letter to the applicant, dated August 31, 2017, "In addition, because the lots were historically developed as one development which appears to currently comply with the natural state requirement, the proposed lot line adjustment can only be approved if you can demonstrate that both lots will meet the natural state requirement." As proposed, the house on Marquard does not currently meet the natural state requirement.

Driveway and parking design must show how vehicles will safely enter and exit the property on this curved street with compromised visibility. Drawings appear to show vehicles entering from the east side. Realistically, most vehicles will probably enter/exit from the west side, driving up Marquard from the West End Ave/2nd Street intersection. Driveway and guest parking spaces should be designed with this in mind. Per San Rafael Municipal Code 14.12.030 (F.), vehicles should not be allowed to back out into a street that is less than 26' wide.

The traffic engineer should review the safety of this blind curve on Marquard and recommend safety improvements given the addition of cars maneuvering at this curve, where visibility is limited and there have been near head-on collisions. As part of this development, the road should be widened where possible.

We question whether the proposed guest parking spaces are encroaching onto the driveway apron. The height of the concrete wall in front of the guest parking spaces is difficult to determine from the plans but may be around twelve (12) feet high and requires removal of a mature redwood tree (#11). The view driving up Marquard will change from a grove of redwood trees to a large cement wall. Has the applicant considered working with Public Works to widen the road and design guest parking spaces that are parallel to the road, reducing the bulk of the concrete retaining walls and saving the large redwood tree which has a 35" diameter?

The drawings should comply with the 20' stepback in order to reduce bulk. All setbacks, stepbacks and height limitations should be complied with.

The plans propose removing fifteen (15) trees with only 5 new trees being planted. Hillside Guidelines require 3 trees planted for each tree removed. Nine (9) of the trees proposed to be removed are Sequoia

sempervirens (Coast Redwoods) with eight (8) of those being significant trees (over 12” in diameter) and one significant tree having a diameter over 37”. Only one (1) mature redwood tree is being saved. The five (5) replacement trees are all California Buckeye which lose their leaves in the winter and will provide no screening for neighbors adjacent to the site.

The applicant describes the proposed landscape plan as a traditional suburban design which is totally inappropriate for this area. In fact, the plans describe this area as an old redwood forest (page VMP-1). How do you equate a Redwood forest to a modern suburban landscape? Even the drawing of the proposed house on the first page (G-000) shows what appears to be Redwood trees surrounding the house. The plans also describe the Sequoia sempervirens (Coast Redwood) as an undesirable tree on page G001 under Tree Protection Notes, #8. I am unaware of San Rafael having a tree ordinance or a list of undesirable trees. The architect must have copied that information from another jurisdiction (ie. Sausalito).

In fact, the Sequoia Sempervirens (Coast Redwood) is listed in Appendix B, Plant Selection Guide, in the Hillside Design Guidelines. The Coast Redwood is described as providing screening, slope/erosion control, deer resistance and good for drainage/ravines. Redwood trees can absorb water runoff on this site and provide a natural drainage solution. This site receives an inordinate amount of water during the winter months, being on the receiving end of a spring that runs year-round. Redwood trees are also fire and pest resistant. This neighborhood is not a traditional suburban neighborhood and the proposed ornamental landscape is not compatible with the surrounding area. Redwood trees removed should be replaced with redwood trees.

The upper/back yard needs to be landscaped to control erosion. The back windows appear very close to the dirt and soil. Mud in the winter months could easily move downhill and pile up against these windows. On this steep slope, rocks can easily become dislodged and come rolling down the hill smashing through the windows; clearly a safety hazard. Water also needs to be diverted in order to prevent water pooling against the uphill side of this house and possibly leaking through the windows. Don't forget, this site is the recipient of part of a larger system of water flowing down the hillside and during heavy rains in the winter, a lot of water comes down this hill.

No door is shown on the plans for bathroom #2.

We have reconsidered the extended roof overhang from previous drawings and realize that this design is a more current design and may provide greater privacy from the properties uphill and protection from falling debris; we think it can provide an attractive design element to the home so the applicant may reconsider this design.

### 3. Existing House/garage after LLA

The applicant must show how both lots conform with the current general plan, zoning and building ordinances, per California Government Code Sect. 66412(d). Ali Giudice has stated that the existing house and garage must comply with the natural state requirement after the LLA. The applicant has not shown how the existing property fronting Fremont Road is in compliance or how it will be brought into compliance except for removing the concrete slab in front of the house and reverting it to a natural state. Applicant needs to provide a detailed calculation of lot coverage/disturbed area for this lot. It is unclear whether the existing driveway and garage were included in the calculation for lot coverage; uncertain if removing the concrete slab in front of the house is enough to bring the house into

compliance with the natural state. A landscape plan needs to be included for the area where the concrete slab is removed, not just allowed to revert to dirt. Perhaps some trees would add some needed greenery at the end of the street. The applicant may need to improve drainage along the front of the house since removing the concrete slab will allow rainwater to soak into the soil and could create pressure on the foundation.

There is a discrepancy between what the applicant states as the gross square footage of the existing house, 2,370 sq' (page AS-100), and what Ali Giudice states as the gross square footage, 2,904 sq', in her letter to the applicant dated August 31, 2017. The applicant also states that the proposed square footage for the Fremont property is 2,601 (page AS-100) but it is written very clearly on the plans that "NO WORK" is being done on the existing house. These discrepancies need to be resolved.

On page AS-100, the applicant erroneously describes the existing garage for 52 Fremont as having 2 covered parking spaces. This is incorrect. The existing garage is a one-car garage, per visual inspection and 220 sq' per County Assessor records. Furthermore, the driveway is primarily dirt, with some broken concrete and asphalt. This property has a history of cars sliding off the broken edge of the driveway or getting stuck "in the mud" in winter months. As a condition of approval, the parking for the existing house should be required to comply with current codes and provide functional and safe off-street parking, adequate for this size home (especially given there is NO street parking on Fremont Rd.).

The existing home and garage on this property have not been maintained and are in a state of disrepair, being unsafe and, we believe, uninhabitable. The Report of Residential Building Record (RBR) issued on February 22, 2012, cited multiple violations, including substandard electrical circuits. There have been no permanent residents living there for at least 10 years, only a caretaker. The house is structurally unsound from past slides and earth movement. The Sanitation District has received odor complaints from neighbors, has issued two "Notices of Deficiencies" and requires the sewer lateral be repaired/replaced BEFORE approval of the LLA. There was a fire in this house the last time it was tenant occupied. We think this house is in poor condition and needs extensive repairs or should be demolished and replaced. Prior plans have been submitted to repair this property, including removal of the western portion that is located within the setback. In it's current condition, it poses a serious fire and health hazard to the neighborhood. Absent a new home application for this site by the applicant, this house needs to be thoroughly inspected and brought into compliance with all building and zoning ordinances BEFORE the LLA is approved.

We assume the existing house and garage will be replaced at some point because of their dilapidated condition. We want some reassurance that a new home could be built on the upper lot that would meet current zoning and hillside guidelines and that the proposed LLA doesn't make it more difficult to develop this lot.

#### 4. Natural State/slope calculation:

*The current plans show the corrected slope and the resulting calculation of the natural state for both lots after the proposed LLA. We believe this change was a result of the comment we made in our previous letter concerning the accuracy of the slope calculation.*

The applicant has increased the slope for each property shown on the grid at the top of page AS-100 to agree with the slope calculations prepared by Michael Ford Land Surveyors for the applicant in 2017.

5. Hydrology/Geo-technical Reports:

A previous geotechnical survey indicates deep drilling is necessary to reach bedrock on this property because of all the uphill soil slough off that has settled in this gully. We think the City should require a hydrology and hydraulic analysis report prepared by a California registered Civil Engineer who can identify natural drainage courses, below ground springs and areas of debris. This report would identify the hazardous and unstable parts of the site and include an analysis of how development will affect any underground waterways.

6. Construction Management Plan(CMP) and Staging Area:

Applicants need to meet with residents to create a Construction Management Plan (CMP) BEFORE a building permit is issued. This plan would include hours of construction, staging plan, parking plan for workers, delivery notification, emergency access during construction, contact numbers, resident notifications, etc. The CMP cannot be finalized until the applicant holds a meeting with the residents and addresses concerns raised during the meeting.

The condition of city streets used during construction should be documented and repaired for damage caused by construction.

Along with the Fire Department and Public Works, the applicant should outline a Staging Plan intended to reduce the negative impact of construction activities on the surrounding neighborhood by reducing, noise, dust, traffic, and other health hazards. Require a traffic circulation plan for dump trucks, deliveries, parking for construction workers, etc..

7. Misc. comments/inconsistencies

a. There are different owners of record for each lot. Both owners are lenders that acquired these properties through the foreclosure process and are subject to significant tax liens and a defaulted deed of trust (per Title company report dated July 30, 2018). Mark Hanf, Pacific Private Money Fund, is listed as the owner on the plans. However, Orange Beacon Marketing is the owner of lot #012-043-11 where the house is situated and Mark Hanf is the owner of lot #012-043-12 where the garage is. Don't both owners need to apply for the lot line adjustment?

8. History of the site:

In 1924, a house and garage were built on the combined parcels with the house occupying mostly one parcel and the garage on the other. These parcels were created in 1913, over 100 years ago, when the roads were dirt and San Francisco residents built summer cabins in the area. In 1982, a general contractor acquired the property and began pressing the city to build 2 homes. His requests were continually denied because the size of the individual lots did not comply with the slope ordinance in effect at that time. By today's standards, both lots are substandard under current zoning regulations and would not be approved today.

However, in 2006, with an attorney's help, he again pressured the City to allow development for a 2<sup>nd</sup> house and the City issued a Certificate of Compliance (COC) for the lot with the garage with the "promise" that the owner would demolish the decrepit house and garage at that time. Had the City realized he was not going to demolish the house, they may have required that parking be added to the lot with the house before approving the COC since the garage/driveway was now considered a separate lot and under separate ownership (an LLC formed by the owner). That was thirteen years ago. The house and garage remain on the property.

For the past 10 years, both lots have cycled thru various LLC ownerhips and foreclosures. The current owners are both lenders that acquired the properties through foreclosures. In addition, this property has a history of slide activity originating from the 400 foot swale upslope. In 1967, the house filled with mud from a landslide that resulted in a lawsuit. More recently, in 2017, the street filled with mud (1' deep) from an uphill slide and the resulting waterfall was diverted with sand bags placed in front of 54 Fremont and directed down the public stairs.

The existing culvert located on Fremont Road directly above 54 Fremont is failing to handle the volume of water from winter storms in recent years resulting in water and mud flowing onto the street and neighboring properties, including 54 Fremont. The culvert may be failing because of soil erosion or inadequate capacity. It needs to be re-engineered and upgraded to handle a greater capacity of water run-off. At the same time, the street turn-around, adjacent to the culvert, should be enlarged to current standards.

In summary, given all the challenges with developing this property, we think the easiest and best way to comply with current zoning ordinances and hillside guidelines is to combine the two lots and build one home with adequate parking and emergency access. However, if a second home is built, creating access from Marquard is preferable to Fremont road which is a narrow, one-lane (two-way) road with difficult access. Yet, the owners are not required to do a lot line adjustment and could potentially try to build on the separate lots, as currently configured. If the City approves a LLA, there should be conditions attached to ensure compliance of both lots with the local zoning and building regulations as the law allows.

Thank you for the opportunity to comment on this project.

Respectfully submitted,

Greg Reel  
[REDACTED]

Victoria DeWitt  
[REDACTED]

cc: Paul Jensen, Director Community Development, [paul.jensen@cityofsanrafael.org](mailto:paul.jensen@cityofsanrafael.org)  
San Rafael Public Works Dept. - [josh.minshall@cityofsanrafael.org](mailto:josh.minshall@cityofsanrafael.org)

*ADDENDUM for: File No. ED18-066/LLA18-005,  
Parcel Nos. 012-043-11 and 012-043-12 (52/54 Fremont Rd.)*

*May 15, 2020*

1. Lot Line Adjustment (LLA) request:

The applicant has changed the proposed lot line adjustment to provide the same square footage for each lot as currently exists. This method works well for flat land. But this land is steeply sloped and moving the lot line changes the average slope calculation for each lot. In this and previous applications the proposed LLA has favored the Marquard lot by reducing the average slope but increasing it for the Fremont lot. On a hillside, the development potential is based on the slope of the parcel as well as square footage; both of which are used to calculate the natural state requirement which is a key calculation when determining development potential of a hillside lot.

Ali Giudice has stated that the natural state calculation will be the determining factor in approving the LLA. As Ali Giudice stated in her letter to the applicant, dated August 31, 2017:

***“In addition, because the lots were historically developed as one development which appears to currently comply with the natural state requirement, the proposed lot line adjustment can only be approved if you can demonstrate that both lots will meet the natural state requirement.”***

Moving the lot line, as proposed, causes the slope of 54 Fremont to increase and the slope for the Marquard home to decrease making it easier for the proposed home on Marquard to comply with the natural state requirement and causing 54 Fremont to fall into non-compliance. As Ali stated, *BOTH LOTS* must comply with the natural state requirement in order to be approved and the applicant has not met that requirement with this application.

2. Proposed new home on Marquard:

The applicant has made design improvements to the Marquard property. Even though this new design reduces the size of the house, the applicant still proposes removing 9 Coastal Redwood trees (*Sequoia Sempervirens*); it would be desirable to save tree #11 (35”) and #5 (37”), both mature trees that could be saved with minimal design modifications. It’s a shame to bring down these “gentle giants” when there are many design options that would respect their footprint. Costs to protect these trees during construction should *NOT* be a reason to bring them down. Whatever coastal redwood trees remain on the property *MUST* be protected during construction and monitored for a reasonable period of time post construction to ensure their continued health and survival.

The current plans propose removing 14 trees and replacing with 3 California nutmeg trees. That doesn’t meet the 3 new trees for each tree removed criteria for Hillside development. According to FEIS (Fire Effects Information System), the “California nutmeg is sometimes planted as an ornamental, but the disagreeable odor of the needles detracts from its desirability.” One of the trees is proposed

very close to the neighboring property at 11 Marquard; would the disagreeable odor affect the enjoyment of this neighboring property? The applicant has not recommended any plantings on the uphill side or backyard side of the house with no plan for erosion control.

As part of the story pole plan, we request the applicant identify the 9 trees that are proposed for removal, ie. tying orange tape around the trunk or some other non-invasive way to easily identify the trees which can be seen from the street. Instruct the applicant to remove the boards which are currently nailed to the redwood trees and to refrain from nailing boards/story poles to any of the trees on the property. As a condition of approval, prepare a Tree Protection Plan with procedural guidelines for protecting the remaining trees during construction and post construction.

The existing story poles are very close to 11 Marquard. We request the applicant prepare drawings, drawn to scale, including an elevation drawing showing the relationship between the proposed new home on Marquard and the existing residence at 11 Marquard. The drawing should indicate the distance between the structures, location of the property line, as well as window placements for the proposed house in relationship to the large windows on 11 Marquard that face the new home. Identify privacy issues with all window and door placements, front deck, and back patio of the proposed home and how the applicant will protect the privacy of the neighbor at 11 Marquard. Prepare a sun/shade diagram to identify the shading/blocking of natural light to the large windows on the western side of 11 Marquard from the proposed new home.

In addition, we request that the applicant show where the property line is located *ON-SITE*, using visible markers, ie stakes with flags, in order to relate the drawings to the actual site.

3. Existing House/garage after LLA (aka 54 Fremont)

Ali Giudice described what criteria is going to be used to approve the LLA for this property and it is not the square footage but the natural state calculation that will decide the final approval. As Ali Giudice stated in her letter to the applicant, dated August 31, 2017:

***“In addition, because the lots were historically developed as one development which appears to currently comply with the natural state requirement, the proposed lot line adjustment can only be approved if you can demonstrate that both lots will meet the natural state requirement.”***

As Ali stated, this application will not be approved unless 54 Fremont meets the natural state requirement which it currently does not. The applicant needs to modify the current plans to comply with the natural state requirement for both lots.

In addition to noncompliance with the natural state requirement, the applicant now proposes an 1,100 sq’ 2 bedroom ADU in addition to the reconfigured 3 bedroom house. This congested dead-end contains 2 neighboring homes, both small in size, 57 Fremont has 1,365 sq’ and 59 Fremont has 1,217 sq’. It would be better to demolish the existing poorly constructed house and build a smaller compatible home with adequate parking that meets the natural state requirement. It appears that only a few scant sections of wall are being saved. Everything else is being replaced and everything needs to be replaced. This house is a “tear down”. It was originally a summer cabin that was added onto at various points. It used to have a mature redwood tree growing through the house and through the roof! At what point is this “remodel” really a new build?

State law allows the City to deny an ADU for health and safety reasons. Fremont Road is an extremely substandard street, being as narrow as 9 feet in some places and about 12' wide at the widest sections and includes a hairpin turn. The City of San Rafael defines the minimum width for a public street as 25 feet and Fremont Road is a public street, owned and maintained by the City of San Rafael. There is no legal parking on Fremont Road because the road is too narrow and cannot maintain a 12 foot clearance which is the minimum width necessary for emergency vehicles.

On January 4, 2016, there was a house fire at 55 Fremont (aka 55 Upper Fremont) which resulted in the house being totaled and fire fighting equipment getting "stuck" on the hill and unable to get to the site because of "access issues." Firefighters carried equipment 800 feet UP the hill from the truck left behind on Fremont, parked downhill from the hairpin turn. The rest of the neighborhood was saved by the rain. This is exactly why the Fire Department doesn't want the access for the second home on this site to be Fremont Road and prefers having access from Marquard. Now, the applicant wants to place a second living unit on Fremont Road, in addition to the second home facing Marquard. The health and safety issues do not warrant the addition of an ADU on this site.

According to the Fire Department, in a statement made for another application on the hill:

***"The Fire Department is unable to provide emergency fire or EMS services that meets NFPA Standard 1710 response time criteria because the existing public roadway does not accommodate fire apparatus vehicles and does not meet CFC provisions for Fire Apparatus Access Roads. San Rafael Fire vehicles are unable to maneuver to this property due to unusual topographical conditions, substandard roadway width, and hairpin type curves that do not meet CFC turning radius provisions. Additionally, there is no existing provision on Upper Fremont Drive to accommodate the turning around of fire apparatus as required by CFC Appendix D."***

Additionally, there is no provision on Fremont Road for fire apparatus to turn around. Fremont Road is a dead end street and ends at the garage entrance for 59 Fremont. It is very difficult for a car to turn around let alone a Fire Engine.

The proposed "carport" appears to be a "canopy" built over the existing driveway so it does not ADD parking and appears to provide cover for one car only. It is unclear whether there is a concrete pad under the "canopy" and what % slope it will be and whether the entire driveway will be paved. Does the "carport canopy" comply with setback requirements; is it in conflict with Hillside Design Guidelines that recommend "hugging" the hillside and not "portruding" out of the hill. There needs to be an improvement in the parking capacity and functionality but this design does not accomplish that. Again, there is so much improvement that is needed at this property that it makes more sense to create a thoughtful and comprehensive design for the site that will comply with all zoning requirements and avoid negative impacts on it's close neighbors. It is unclear whether the existing garage is functional as a garage and is only used for storage; it may have a dirt floor.

#### 4. Conditions of Approval:

The following conditions of approval should be included with final approval of this application:

Condition #1: The final approval and recording of the lot line adjustment should be conditioned upon the completion of work promised to be performed at 54 Fremont Rd. This would include the upgrading, remodeling, and/or replacement of 54 Fremont and all compliance issues with regard to 54

Fremont that are approved as part of this project. We fear that once the LLA is approved, no work will be done on 54 Fremont and this property will remain a public health nuisance to the neighborhood with it's leaky sewer line and crumbling brick fireplace.

Before the City issued a Certificate of Compliance (COC) for this property in 2006, the former owner represented to the City that the house and garage at 54 Fremont would be demolished. The buildings were never demolished and remain standing. This has created problems for the separate property owners subsequent to the COC because the garage has been separated from the house and the house straddles the property line. Had the demolition of 54 Fremont been a condition of the Certificate of Compliance issued in 2006, we wouldn't have to keep revisiting this issue. Now is the time to condition approval of the LLA on the improvement of this dilapidated property and stop burdening city agencies with this public nuisance.

Condition#2:

As a condition of approval, require a Tree Protection Plan with procedural guidelines for protecting the remaining trees during construction, following the recommendations of Gary Balcerak of Balcerak Design as described in the Arborist's Report, dated February 17, 2020. Require post construction inspections of the remaining trees to assess their condition and the need for further inspections and follow recommendations to maintain the continued health and longevity of these trees.

November 30, 2020

Planning Commissioners  
c/o Alicia Giudice  
City of San Rafael  
1400 Fifth Ave  
San Rafael, CA 94901

***PLEASE ATTACH TO THE STAFF REPORT ISSUED FOR 52/54 FREMONT APPLICATION  
AND SCHEDULED FOR PLANNING COMMISSION HEARING ON DECEMBER 8***

Dear Planning Commissioners:

I would like to suggest that you thoroughly look at the property at 52/54 Fremont Road in order for you to understand some of the issues involved in your decision making. When you go to visit the property, I would suggest that you drive by the Marquard frontage first and notice the narrow curve in the road which is where the driveway to the new home will be located. Assess the visibility at this curve and decide whether the City has thoroughly addressed this safety issue. Notice the redwood tree grove and how the view will change if 9 of these gentle giants are removed.

I suggest you continue driving up to 54 Fremont. As you turn onto Fremont Road from Marquard, notice that this is where the Fire Truck parked while Fire fighters hand-carried fire equipment up ~800 feet to a house fire at 55 Upper Fremont on a dark rainy night in January 2016. I assume the strategy was to enable the Fire Truck the ability to quickly back up onto Marquard and head downhill in case the fire spread and required evacuation of residents; the Fire Truck, while parked here, would have blocked the ability of residents to evacuate by car. Luckily, it was raining that night.

As you continue driving up Fremont Road note the hair-pin turn at Trost, a private street; this turn in the road is one reason why the Fire Truck was unable to continue up the hill. Notice how narrow the street is, ~12 on average, in some places ~ 9 feet wide. Notice the absence of public street parking. The only parking is on private property. As you pass Upper Fremont Drive, to the left, note that Fire Fighters carried equipment up this street to the house fire at #55 in 2016, past the site where you recently approved a new house at 38 Upper Fremont. Continue down Fremont Road to the end; # 54 is the grey house and garage on your right, at the end of the street. Stop and get out of your car. Notice the following:

1. Ask yourself where residents and guests of the proposed ADU will park since there is no public street parking. Ask yourself if parked cars could block the road for emergency and fire access. State law allows denial of ADUs for health and safety reasons such as lack of access for emergency vehicles.
2. There was a Fire at 54 Fremont, originating from the furnace, around 2004; I'm not sure of the year but it was some time ago, when the house was permanently occupied. Envision how a Fire Truck could turn around at the end of Fremont Road or whether the truck would have to back up down the road like so many delivery vehicles do. Do you envision the Fire Truck backing uphill at Upper Fremont to turn around or continuing to back up onto Trost, a private street, that sometimes has several parked cars, limiting the amount of space for a large vehicle to back into. If unable to backup onto Trost, do you

envison the Fire Truck being able to backup at the hair-pin turn (at Trost) or is the Truck stuck, like the two Fire apparatus vehicles that were stuck and unable to maneuver off the hill after the fire on Upper Fremont in 2016.

3. Continuing your observation at 54 Fremont, look to your left (between #45 and #57), you will see a culvert at the street level and looking uphill, you will see scars on the earth leading uphill, evidence of earth movement and water flows. The culvert is maintained by the City and frequently overflows in the winter, caused by a massive waterfall originating higher up. Picture the street flooding and water flowing over the edge of the street onto 54 Fremont, as well as water flooding down the public stairs immediately adjacent to 54. See attached photo of water gushing down the public stairs during a recent winter storm.

4. Walk down the public stairs for a few feet and observe the foundation for 54, damaged by sliding in 1987. In 1967, a landslide resulted in the house sliding 15 feet downhill, according to the owner's own recount of the event. Observe the sewer line next to the stairs which leaks and the current owners have refused to repair.

5. Continue walking down the stairs and observe the redwood grove and the number of redwood trees which are proposed to be removed by this project. I have asked the Planning dept to identify the trees for removal by placing a colored ribbon around them.

*Thank you for making time to visit this site.*

Sincerely,

Victoria DeWitt

  
San Rafael, CA 94901

att: Photo of water gushing down public stairs, adjacent to 54 Fremont



## David Hogan

---

**From:** Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>  
**Sent:** Saturday, December 5, 2020 1:08 PM  
**To:** David Hogan; Dan Fitzgerald  
**Cc:** Tiba Chimeh; Rafat Raie; Paul Jensen  
**Subject:** Fw: 54 Fremont geotechnical challenges  
**Attachments:** Fremont stairs flooding.jpg; Fremont waterfall..jpg; Fremont mud spill.mp4; Fremont culvert mudslide.jpg

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you know the content is safe. Be aware that the sending address can be faked or manipulated.

Hi there, I wanted to pass along this information we received from one of the neighbors for 52-54 Fremont.

Thanks  
Ali

---

**From:** Steve Thomson [REDACTED]  
**Sent:** Friday, December 4, 2020 8:26 PM  
**To:** Paul Jensen <Paul.Jensen@cityofsanrafael.org>  
**Cc:** Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>  
**Subject:** 54 Fremont geotechnical challenges

Hi Paul,

I appreciate the call back yesterday, time sure flies fast this time of year!

I've attached a few pictures and a video that shows what happens at the end of Fremont Rd during big storm surges, which nowadays seems almost every year.

The point of the matter, to show compelling evidence of the geotechnical / hydrology challenges that face both lots on Fremont Rd. I'm not so sure that Chris Dluzak has carefully assessed how serious the situation is, given his comments on building a new foundation for 54 Fremont that must meet code. Moreover, from what I understand, the engineers that Chris is counting are not even Certified or Registered geotechnical experts in this specialized field.

And of course, ACCESS to this massive overhaul project will be virtually sealed off if he has his way about building out the new home on 52 Fremont Rd first before laying a hammer on 54 Fremont. As he clearly stated at the on-site meeting Nov. 20th in front of his architect, me, Ali, and Dave Hogan..."I need to make the money on the new house at 52 Fremont first so I can use it to rebuild 54 Fremont". His intent could not be more clear, as Ali and I proposed why he could not do it in reverse -- use the profit from a new home at 54 Fremont to subsidize the build-out at 52 Fremont. Not at all what Chris wanted to hear, but from a practical matter if Chris is SINCERE in rebuilding 54 Fremont, everyone knows that access from Marquard Ave through a new-graded, open lot at 52 Fremont is FAR less impactful to the neighborhood, not to mention more cost effective overall. Unfortunately, all of this brings into question his ultimate motives and integrity.

I believe what's described above to be the pivotal issue on the entire development of both lots. After living up here the past 29 years, I've seen a lot of half-baked attempts to capitalize on this beautiful site that connects the entire neighborhood, which is why the City of SR is experiencing more than usual participation from concerned neighbors. I look forward to helping this process along so everyone can look up and admire how thoughtful people collaborated to bring these lots to their ultimate glory.

I certainly understand Paul that you have many other projects that require your time and expertise, and although this might be small potatoes on the grand scale (OK, it is), it bears repeating how thankful I am that you've taken a personal interest in this one!

Thank you very much,

Steve Thomson









September 2, 2021

Dave Hogan, Project Planner  
City of San Rafael Community Development Dept.  
1400 Fifth Ave  
San Rafael, CA  
via email: [Dave.Hogan@cityofsanrafael.org](mailto:Dave.Hogan@cityofsanrafael.org)

**RE: Re-circulated Initial Study/Mitigated Negative Declaration, dated August 14, 2021, for 52/54 Fremont Road, Fremont/Marquard Residential – comments (2 pages)**

Dear Dave Hogan:

I have the following comments:

Property Description, memo-pg1, second sentence:

~~One lot is currently~~ The property was developed with a single-family residence and detached one-car garage on the combined lots.

Previous City Applications, pg 4:

- The City of San Rafael issued a Certificate of Compliance for lot 8, APN 012-043-12, or what is now referred to as 52 Fremont both lots in 2006. The Certificate of Compliance was signed on June 27, 2006, recorded on August 8, 2006. (document #: 2006-0049887).
- On November 30, 2007, a previous property owner submitted applications for Environmental and Design Review Permits for each lot. The project consisted of a new three bedroom, two and half bath single family residence with a two-car garage on each of the existing lots. Both homes met all zoning requirements, including the natural state, height limit, setbacks, plus 2 off-street guest parking spaces each, and a firetruck turnaround. Both homes were compatible in size to surrounding homes, with 2,205 sq' living space for 54 and 1,532 sq' living space for 52. Both new residences were proposed to be located adjacent to Fremont Road. This project would have removed the existing structures located at 52/54 Fremont Road. These applications were withdrawn by the applicant on March 24, 2009.

Setting and Background, pg 4:

*Note: The property address for the house and garage is 54 Fremont Rd. There has never been a separate address number assigned to the garage. After the certificate of compliance was issued in 2006, the lot with the garage was referred to as 52 to indicate the proposed plans for a new house but the plans were never approved. It is my understanding that only the Building Official can assign house numbers and that isn't done until a house is built. While you can refer to the lot as 52, I think it's incorrect to say an address has been assigned to this lot and, in fact, if these plans are approved as submitted, there will be no number assigned and no such address as 52 Fremont.*

Project Description, pg 5, 3<sup>rd</sup> para, 1<sup>st</sup> sentence:

The new Fremont Road structure will consist of approximately a 1,554 square foot single-family square, a 1,104 square foot accessory dwelling unit located underneath the main unit, ~~and a 240 square foot carport.~~

3<sup>rd</sup> para, last sentence:

The approval of the ADU is ministerial and allowed by right. State law allows jurisdictions to prohibit ADUs based on public safety issues, such as where streets are too narrow (travel lanes <14'), with maneuvering difficulty, excessive turning radius, and/or lack of turnaround for an emergency vehicle as determined by the Fire Chief.

Elevations, pg 9-10

The "carport" for the Fremont Road residence, elevation 1 and 2, should be removed.

## IX. HAZARDS AND HAZARDOUS MATERIALS

f. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

The applicant is proposing adding an 1,100 sq' ADU to the existing house at 54 Fremont, thereby adding a 2<sup>nd</sup> living unit or household, without adding any parking. The width of Fremont Road averages less than 10 feet (not including the street gutter) and is as narrow as 9 feet in some places, and just under 12 in others, with a substandard turnaround between house #45 and #57, which is frequently used for parking. Fremont Road is essentially a one-lane, two-way, city maintained street, which dead-ends at a private single-car garage. As you can imagine, it is difficult to impossible to turn a vehicle around at the end of Fremont, let alone maneuver any Fire Apparatus or Emergency Vehicles.

Adding an additional living unit without added parking on a narrow city street without parking can result in road blockages and delayed emergency access or evacuation when parked cars block access. During a house fire on Upper Fremont, the Fire Truck parked at the bottom of Fremont Road because it couldn't make the hair-pin turn leading uphill, where this ADU is proposed. Adding another living unit where emergency access is difficult puts a family and those around them at increased risk. State law allows Cities to deny ADUs where public health and safety are at risk, such as on Fremont Road.

Misc comments:

The City has recently adopted a new General Plan 2040 which may require updating any references in this document to be compatible with the new General Plan document. Under Source References, the prior General Plan 2020 is referenced and should be updated to the current General Plan 2040.

Thank you for your consideration.

Sincerely,

Victoria DeWitt  
(long-time) Fremont Rd. resident

September 23, 2021

San Rafael Planning Commission  
City of San Rafael Community Development Dept.  
1400 Fifth Ave  
San Rafael, CA  
via email: [Leslie.Mendez@cityofsanrafael.org](mailto:Leslie.Mendez@cityofsanrafael.org), [Lindsay.Lara@cityofsanrafael.org](mailto:Lindsay.Lara@cityofsanrafael.org)

**RE: Revised Plans for 52-54 Fremont Rd. dated 11/20/20,**  
File No. ED18-066/LLA18-005/ED20-044/EX19-010  
Parcel Nos. 012-043-11 and 012-043-12

Dear Planning Commissioners:

I am providing these comments for the project plans dated November 20, 2020, posted on the project website, under Major Planning Projects for the Planning Department, scheduled for your review on September 28, 2021.

1. History of the Property

In 1924, a house and detached single-car garage were developed on lots 8 and 9 as shown on an old map from 1913. The original owners bought the lots because they loved the redwood trees (source: oral history, County library). Like many developments on this hill, smaller lots were frequently combined before being developed. The property address was originally 15 Marquard but was later changed to 54 Fremont Road, probably after the dirt road was paved.

In 1982, after the last member of the original family died, the property was bequeathed to Stanford University to be used as a bird and wildlife sanctuary. Instead, it was sold to the son of the executrix, a building contractor, who occupied the house and garage until moving to the Dominican neighborhood. He subsequently rented out the property for several years; see the attached statement from Dawn Catherine, a long-time tenant, who rented the property for 15 years.

The City did not recognize the potential for an additional building site until 2006, when a Certificate of Compliance was issued for lot 8 (aka 52 Fremont) and the owner/contractor submitted an application to demolish the existing house and garage and build 2 new three bedroom, two and half bath single family residences with a two-car garage and two off-street guest parking spaces for each residence, *PLUS a firetruck turnaround!* On the plans, the proposed second home, where the garage is currently sited, was referred to as #52, even though no address was officially assigned by the building department.

Both proposed homes met all zoning requirements for hillside development, including the natural state, parking requirements, height limit, and setbacks. Both homes were compatible with surrounding homes, being modest in size, with 2,205 sq' living space for #54 and 1,532 sq' living space for #52. Both new residences were proposed to be located adjacent to Fremont Road and only required the removal of one 17" redwood tree. These applications were withdrawn by the applicant on March 24, 2009.

In 2011, the bank foreclosed on the property and thus began the cycle of foreclosure and acquisition by various investment LLCs every few months. The current owners of record acquired the properties in 2015/2016 by means of foreclosure, and recognize the difficulty of separating the existing house from the garage/parking and so propose moving the lot line. The house is in poor condition and has been unoccupied by permanent residents for many years. Currently, the “unhoused” brother of the owner of lot 8 (aka 52) occupies the property as a “caretaker.”

## 2. Design Review

The Design Review Board reviewed this project on November 19, 2019 and the Board voted to continue the item to a date uncertain. Without public notice or participation, a subcommittee of the DRB met on October 7, 2020. There are no minutes for this meeting, only file notes and no record of who attended the meeting.

Normally, a project like this would complete the design review before being heard before the Planning Commission. However, the Planning Department has decided to schedule this project before the Planning Commission before completing design review. I understand this project will go back to the full Design Review Board at a public noticed meeting for their decision *after* the Planning Commission has completed their review.

## 3. Natural State Requirement/Exceptions

54 Fremont (lots 8 and 9) was developed as a single property with a house and one-car garage and was continuously occupied for many years until the property became too dilapidated from deferred maintenance, earth movement and a furnace fire.

The garage was always an integral part of the house because there is no street parking and the garage and driveway were necessary for the occupants of the house to park their cars. It is only appropriate to compare the natural state of any proposed development to the existing development of the property which currently meets the natural state requirement.

Alicia Giudice, the current Community Development Director, stated that the natural state calculation will be the determining factor in approving the LLA, as stated in her letter to the applicant, dated August 31, 2017:

***“In addition, because the lots were historically developed as one development which appears to currently comply with the natural state requirement, the proposed lot line adjustment can only be approved if you can demonstrate that both lots will meet the natural state requirement.”***

In the staff report for the Design Review Board meeting on November 19, 2019, under CONCLUSION, it states:

***“Staff does not support the reduction in natural state nor the increase in gross building square footage given that the design does not demonstrate a sensitivity to the natural hillside setting and does not result in retention of more natural state, protection of trees, or a reduction in visual impacts.”***

The Design Review Board had the following consensus comment regarding proposed Exceptions:

***“The Board has difficulty supporting the findings for the proposed Exceptions to both Natural State and Gross Building Square Footage; the applicant is encouraged to reduce the size of the project and/or the configuration of the LLA to eliminate the required Exceptions.”***

The owner of this property always has the option to build one larger home on the combined lots that complies with all hillside development and zoning requirements. If choosing to develop these old lots individually, it will be more difficult because the lots are both undersized for the R10 zoning but still requires compliance with current zoning and development codes.

However, we know that 2 modest sized homes can be accommodated on the 2 lots and comply with all hillside development standards because of prior plans submitted in 2007 by a prior owner that included 2 new homes, one on each of the existing lots, that complied with the natural state, setbacks, parking and all Hillside development requirements, *including a Firetruck turnaround*, without exceptions or variances. It can be done and the current proposal should be modified to comply with San Rafael’s hillside development standards, including the natural state and required setbacks.

4. Requirement for Exception approval.

Exceptions to the Hillside development standards are generally discouraged which is why City Council approval is required and SRMC 14.12.040 specifies requirements for exceptions, including protecting the natural state and protecting significant trees. Over the years, very few hillside projects have required exceptions and the burden is on the applicant to show why an exception should be approved, as follows:

***SRMC 14.12.040 - Exceptions to property development standards.***

City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council, upon the recommendation of the design review board and the planning commission, when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan based on the following criteria:

A. The project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting; and

B. Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.

5. Redwood Tree removal/Tree replacement/Landscape Plan

The Hillside Design Guidelines (HDG) states that a “Significant Tree” shall mean any tree which is more than 12” in diameter, measured 4 feet-6 inches above the root crown. It further states: “Site development plans should demonstrate that a diligent effort has been made to retain as many significant trees as possible.” (HDG, IV.A2 Preservation of Significant Trees, pg 29) When significant trees must be removed, HDG requires replacement of every tree removed with 3 new trees.

14 trees are proposed for removal, 9 of them Coast Redwoods, 8 of these significant. The plans only show 11 new Western Hazelnut trees planted as replacements. Isn't the Western Hazelnut considered a shrub, not a tree? 42 new trees are required to be planted.

***The applicant has NOT shown a diligent effort to retain as many significant trees as possible and has NOT made a diligent effort to comply with the additional trees required to be planted as a result of the removal of several trees.***

On Sheet G-001 of the plans, Tree Protection Notes, #8: Definition of an Undesirable Tree lists several trees including the Coast Redwood Tree (*Sequoia Sempervirens*). There is no source given for this list of undesirable trees and San Rafael has no such list that I am aware of. The Coast Redwood is an approved tree for Hillside development and is listed in Appendix B of the Hillside Design Guidelines which provides an approved list of 40 trees, including drought tolerant and low fuel volume trees for use in high fire hazard zones. What about planting more Redwood Trees to replace those that are being removed?

The Coast Redwood provides screening, slope/erosion control, deer resistance, is incredibly resilient and a good choice for drainage/ravines. This site is at the bottom of a 400 foot swale that funnels a lot of water off the hill and in "wet" years can produce an impressive waterfall between 45 and 57 Fremont. On a site visit, you can clearly see the land subsidence caused by many years of plummeting water. As water cascades down the hill, it can overflow the culvert and flood the street. In 2017, heavy rains caused a foot of mud and debris to fill Fremont Road.

Many sandbags were needed to prevent flood water from descending onto 54 Fremont. Eventually the water follows the large drainage tube next to the public stairs, sometimes cascading down the public stairs before reaching storm drains on Marquard. This natural spring can continue for many months past the rainy season, although at reduced volume. It's not surprising that Redwood trees have found a home on this site where they absorb water runoff and provide a natural drainage solution. In addition, Redwood trees are also fire and pest resistant.

It would be desirable to save the two largest redwood trees slated for removal, Coast Redwood trees #5 and #11, at 37.3" and 35.3" respectively. These "gentle giants" qualify as heritage trees under Marin County's Tree Ordinance. The trees could be easily saved by a slight reduction in the size of the house on the Marquard frontage.

The proposed house is 2,947 sq' according to the plans (186+1487+1274), not including the garage space of 635 sq'. The house bordering the property on the east is 1,607 sq', the house on the opposite side of street, to the north is 1,840 sq' and 3 homes on the west side, bordering the public stairs, are 1,788 sq', 1,926 sq', and 2,085 sq', per the County Assessor's office. Only one home barely exceeds 2,000 sq'. The size of these homes is typical for much of the neighborhood.

In 2007, a prior owner of this property proposed 2 new modest-sized homes that complied with all hillside development standards and only required the removal of one 17" Redwood tree. The proposed home fronting Marquard could and should be reduced in an effort to save redwood trees #5 and #11.

San Rafael is designated a *TREE CITY USA* and recognizes the value of protecting, maintaining, and expanding our tree canopy. Newly adopted General Plan 2040 tree programs and policies include the

protection and preservation of our trees, especially the California Redwood that was designated the official state tree of California by our state legislature in 1937.

***Policy C-1.16: Urban Forestry.***

*Protect, maintain, and expand San Rafael's tree canopy. Trees create shade, reduce energy costs, absorb runoff, support wildlife, create natural beauty, and absorb carbon, making them an essential and valued part of the city's landscape and strategy to address global climate change. Tree planting and preservation should be coordinated with programs to reduce fire hazards, reduce greenhouse gas emissions, expand solar opportunities, and ensure public safety, resulting in a community that is both green and fire-safe.*

***Program C-1.17A: Tree Preservation.***

*Revise Chapter 11.12 of the Municipal Code (Trees) or add a new Code section that defines protected and heritage trees and establishes permit requirements and procedures for tree protection, removal, and replacement. The regulations should strongly support the protection of California redwoods (*Sequoia sempervirens*) and other native trees.*

A tree management plan should be prepared to provide necessary protection and sufficient monitoring of trees during and after construction:

***Program C-1.17B: Tree Management Plan.***

*Require a tree management plan prior to approval of development with the potential to remove or substantially impact trees. The Plan should be prepared by a licensed arborist using published standards and practices for protecting and monitoring tree health during and after construction.*

When trees are removed, the replacement trees should provide equivalent environmental and biological benefits, as described in the General Plan 2040:

***Program C-1.17C: Mitigation for Tree Removal.***

*Continue to implement mitigation requirements for tree removal in new development. When necessary, this could include planting of trees in locations other than the project site, planting native trees in lieu of non-natives, or reducing the footprint of proposed development. Tree replacement should be based on a value that is equal to or greater than the carbon footprint and ecological benefits of the trees being removed. Ecological benefits include water conservation, absorption of runoff, reduction of air pollution, energy reduction from shade and cooling effects, soil retention, slope stabilization, and wildlife support.*

There are large blank spaces on the landscape plan (sheet VMP 1.0) where trees could be planted. Trees could be planted at the street frontage of the existing house on Fremont. The house currently sits below the street frontage and trees planted in front of the house would soften the view from the house across the street (#57), which has an unattractive view of the roof. There were originally bay trees growing in front of 54 Fremont; it would improve the property to plant trees here again. Many more trees could be planted on both lots.

The Landscaping plan is incomplete. The rear yard of the proposed Marquard home needs to be landscaped in order to stabilize the soil and prevent soil/debris buildup along the back of the house. Mud in the winter months could easily move downhill and pile up against the back windows, which appear close to the ground. On this steep slope, rocks can easily become dislodged and come rolling

down the hill hitting the windows. I have seen oranges on the street in front of my house where someone's groceries have rolled downhill after escaping the grocery bag.

## 6. Lot Line Adjustment

In a memo from Public Works dated February 27, 2019, they recommended that “the lot line configuration follow traditional alignment where practicable, to avoid confusion of ownership and maintenance.”

The proposed lot line should be as straight as possible, similar to neighboring parcels 9 and 10 where a straight LLA was created to separate a house on Fremont from a house on Marquard, despite the uneven street frontage. Fence construction and landscaping is easier to maintain with a straight lot line. There is currently a tall fence on the property line separating these 2 houses and fences on hillsides require frequent maintenance. The owners of both properties have shared in it's maintenance, avoiding the complicated and sometimes contested survey to determine an uneven property line. It happens more often than you'd think; I'm aware of two different properties in the immediate area that have had contested property lines.

The proposed LLA for this project creates an odd triangular corner on the eastern, steeper uphill side for the Marquard property which will result in an unusable and poorly maintained piece of property, resulting in confusion between future owners of the lots and potential expense for a disputed property line and maintenance of a fence with uneven angles. The existing lot line is straight and the proposed LLA should be straight.

## 7. Lot Coverage/Setbacks

This project needs to comply with all setback requirements. According to a survey recorded September 28, 2012, document no. 2012-0060217, the existing house at 54 Fremont touches the property line to the west and extends 1+ foot over the property line to the east (see attached copy of the survey). The proposed LLA will resolve the property line issue to the east but the project needs to comply with setback requirements on the western side.

The location on the site plan for 54 Fremont (AS-100) doesn't match the survey done in 2012 (see attached) or the topographic map prepared by Michael Ford, included with the plans. Evidently, part of the existing building has been removed but it is difficult to determine from the site plan how the building footprint has changed. The site plan doesn't clearly show how the existing building is being modified to stepback sufficiently from the property line.

On the matrix at the top of Sheet AS-100, it says the existing lot coverage for 54 Fremont is 2,368 and the lot coverage after the remodel is 2,899, resulting in an increase of more than 500 sq' lot coverage. If the construction for 54 Fremont increases the footprint of the existing house, wouldn't that be considered a “new build” and not a “remodel” and need to provide required parking, per current code?

The main level appears to cantilever out over the lower level. Hillside Design Guidelines discourage the use of cantilever or overhangs visible from downhill.

## 8. Parking/Circulation

#### 54 Fremont:

Given the substantial new construction on the Fremont Road site, the project should comply with parking requirements, per SRMC 14.18.040, which require 2 covered parking spaces plus 2 on-site guest parking spaces for hillside development. Calling it a remodel doesn't change the fact that the property is being demolished and rebuilt and should comply with all current development standards, including parking requirements.

All parking spaces, including driveways should be paved. When the house was tenant occupied, a car slid off the existing driveway, which is primarily dirt, and rolled downhill toward the house. In the winter, the ground can get saturated and unstable causing shifts in the ground level and loss of traction for maneuvering cars.

#### Marquard lot:

There is no Circulation Plan for the new house showing how cars will maneuver in and out of the garage and guest parking on Marquard. Driveway and parking design must show how vehicles will safely enter and exit the property on this curved street with compromised visibility and frequent near head-on collisions. Marquard is a city maintained street and is only 12 feet wide at the curve. The traffic engineer should review the safety of this blind curve and recommend safety improvements given the additional cars created by the new home.

#### 9. ADU and Emergency access

54 Fremont is located in the Wildland Urban Interface. The street is very narrow and steep with an average width of 10 feet and in places as narrow as 9 feet and no wider than 12 feet. Fremont Road is essentially a one-lane, two-way, city maintained street which dead-ends at a private garage.

A substandard turnaround is located between 45 and 57 Fremont, next to the culvert, but is inadequate for today's vehicles and is frequently used for parking. Hair-pin turns and lack of turn-around capabilities make it difficult to impossible for Fire suppression apparatus or emergency vehicles to maneuver on the hill. In fact, several years ago, a resident living at the end of Fremont passed away. The hearse was unable to make it up Fremont Road so they sat him upright in a taxicab and drove him to the bottom of the hill where the hearse was waiting for him.

More recently, on January 4, 2016 (incident #: 2016-000110), the Fire Department responded to a house fire at 55 Fremont (aka 55 Upper Fremont). The Fire Truck could not maneuver the curve at Fremont/Trost and parked at the base of Fremont Road (at Marquard); fire fighters hand carried equipment about 800 feet uphill, up the steeply sloped windy road, to the fire. According to the incident report, 2 fire vehicles got stuck and were unable to get off the hill. Luck was on our side, it was raining that night and the fire occurred around midnight. Had conditions been different, there could have been a very different outcome.

Since fires frequently travel uphill, if a fire started at 54 Fremont, it could easily move uphill making quick access for Fire apparatus very difficult, if not impossible. If the fire happened during daytime hours, especially with more people working from home, Fremont Road could be jammed with cars traveling downhill, blocking even the Fire Fighters on foot from carrying heavy equipment uphill (since there is no sidewalk, only the narrow roadway to walk and drive on).

Furthermore, General Plan policies and programs restrict development of ADUs where public health and safety are at risk and emergency response time does not meet industry standards:

Program LU-2.12D: Accessory Dwelling Units.

Continue to support the conversion of underutilized residential space into accessory dwelling units (ADUs) and Junior Accessory Dwelling Units (JADUs), as well as the development of new ADUs and JADUs in residential areas, except where access difficulties for fire and emergency vehicles pose risks to public health and safety.

Policy CSI-3.2: Mitigating Development Impacts

Engage the Police and Fire Departments in the review of proposed development and building applications to ensure that public health and safety, fire prevention, and emergency access and response times meet current industry standards.

Program CSI-3.2B: Emergency Response Time.

Use the development review process to identify appropriate measures to reduce fire hazards and ensure emergency response capacity that is consistent with National Fire Protection Association standards.

Policy CSI-4.2: Adequacy of City Infrastructure and Services

As part of the development review process, require applicants to demonstrate that their projects can be adequately served by the City's infrastructure. All new infrastructure shall be planned and designed to meet the engineering and safety standards of the City as well as various local service and utility providers

The Fire Department is unable to provide emergency fire or EMS services that meets NFPA Standard 1710 response time criteria because the existing public roadway does not accommodate fire apparatus vehicles and does not meet CFC provisions for Fire Apparatus Access Roads. San Rafael Fire vehicles are unable to maneuver to this property due to unusual topographical conditions, substandard roadway width, and hairpin type curves that do not meet CFC turning radius provisions. Additionally, there is no existing provision at the dead-end of Fremont Road to accommodate the turning around of fire apparatus as required by CFC Appendix D.

State law allows Cities to restrict the addition of ADUs for public health and safety reasons. For all of the reasons stated, an 1,100 sq' ADU should not be allowed at 54 Fremont Road.

10. Conditions

The City can impose conditions on its approval of a lot line adjustment if the resulting parcels do not conform to the general plan, zoning and/or building ordinances. (per California Government Code, Sect. 66412(d)). Please consider the following conditions:

The leaky sewer lateral needs to be fixed before this project is approved as indicated by the San Rafael Sanitary District. The District has responded to numerous complaints about the odor and leaking pipe without being fixed by the owner which creates a health hazard. Note the attached memo says the sewer lateral shall be repaired/replaced *PRIOR TO APPROVAL* not as a condition of approval. See attached.

Because of access issues, any improvements to the existing house and garage at 54 Fremont need to be done *PRIOR TO* the building of the house fronting Marquard. This allows for an adequate staging site

at the bottom of the hill. Once the lot line adjustment is finalized and the new home on Marquard is built, access to 54 Fremont will be much more difficult.

This can be avoided by either 1) making approval of the LLA contingent on all improvements being completed for 54 Fremont, or 2) making the issuance of a building permit for the new home on Marquard conditioned on all improvements for 54 Fremont being completed first and the LLA being recorded.

Once the LLA is approved for this project, the individual lots can be sold and may be improved by different owners or improvements to 54 Fremont may not be completed and the dilapidated house and garage will continue to pose a fire risk because of the extensive deferred maintenance. A Residential Resale Inspection conducted by the City in 2012 cited multiple violations and unsafe electrical wiring, including substandard electrical circuits.

Require a Tree Protection Plan prepared by a licensed arborist using published standards and practices for protecting and monitoring tree health during and for a reasonable amount of time after construction.

#### 11. Construction Management Plan

In addition to the Construction Management Plan (CMP) outlined on Sheet G-001, a staging plan, parking plan for workers, plan for emergency access during hours of construction, and a plan for advance notification of road blockages needs to be addressed. The condition of Marquard and Fremont Road should be videotaped and documented before construction begins and damages repaired. The CMP must be available for residents to review with comments accepted and addressed before the plan is finalized.

#### 12. Story Poles

Story poles 22, 23 and 24 have not been installed which would indicate the height and location of the expanded front entrance for 54 Fremont. According to the City's information flyer about Story Poles, "The applicant shall install story poles and provide all required information at least 10 days prior to the scheduled hearing date." As of the date of this letter, these story poles have not been installed.

#### 13. Site visit

I welcome all Planning Commissioners to make a site visit. I would suggest that you include a site inspection of both the existing house and garage at the end of Fremont Road as well as an inspection of the story poles marking the location of the proposed home on Marquard. Also, observe the Redwood trees proposed for removal (marked with orange tape). Look at tree #5 and tree #11 to determine if you think the house could be reduced in size in order to save these heritage trees.

I would recommend that you drive up Fremont Road so you can understand the challenges of this city-maintained street or if you feel uncomfortable driving up the hill, walk up Fremont Road, like the firefighters did in 2016. You can see the location of the waterfall in winter on Fremont, above the culvert. Either way, I think it's important that you view this project from both Fremont Road as well as Marquard to understand it's many challenges. I appreciate you taking the time to visit the site and appreciate you volunteering your time to serve on the San Rafael Planning Commission.

Thank you for your consideration.

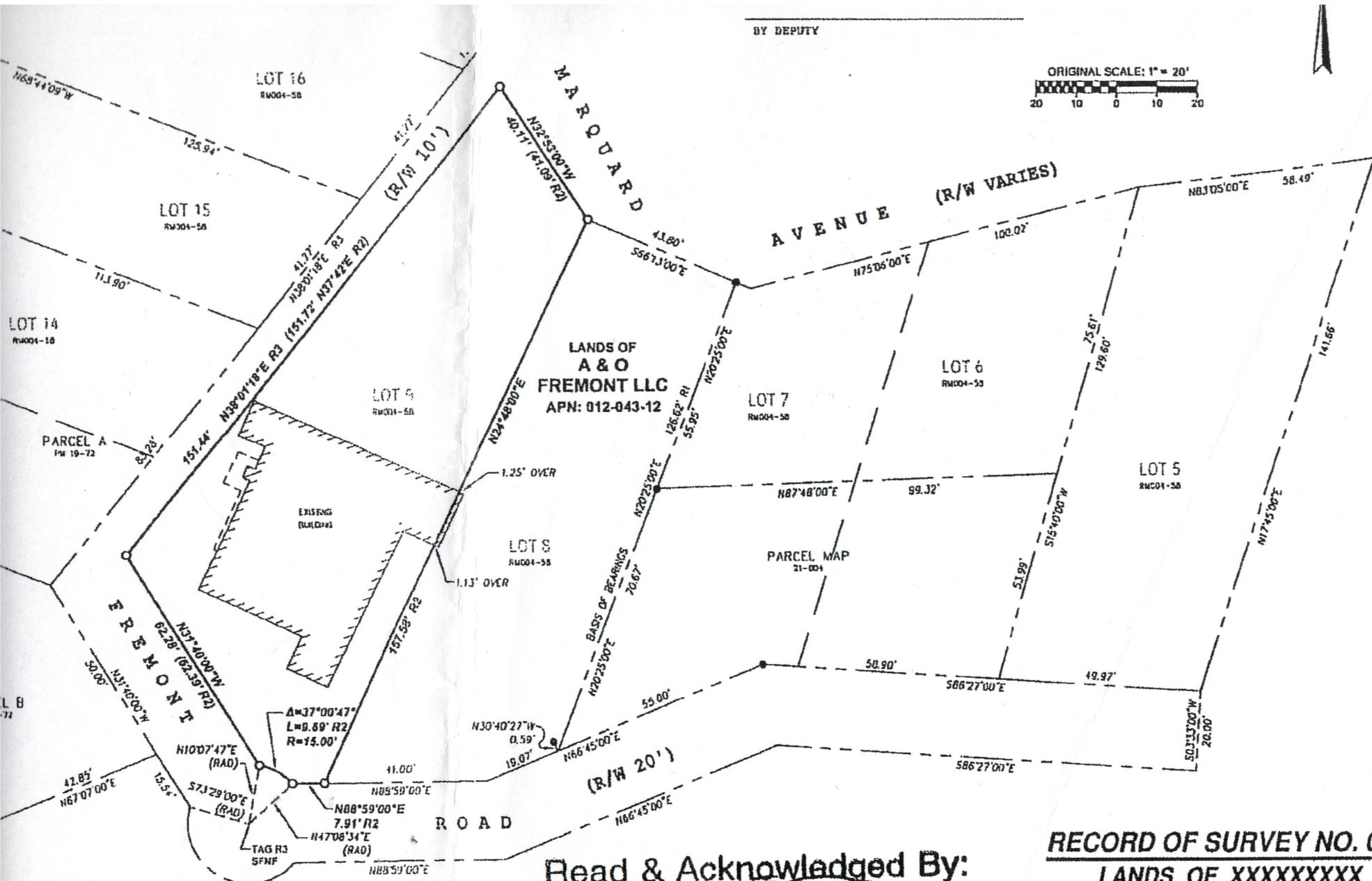
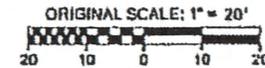
Sincerely,

Victoria DeWitt  
Fremont Road resident

Attachments:

- 1) Recorded Survey 2012-0060217
- 2) San Rafael Sanitation District Memorandum dated August 30, 2018
- 3) Statement from Dawn Catherine, EA

BY DEPUTY



Read & Acknowledged By:

*[Handwritten signature]*

Date

8-14-12  
1 page

**RECORD OF SURVEY NO. 0000**  
**LANDS OF XXXXXXXXX**

AS DESCRIBED IN DEED DOCUMENTS NO. XXXXXXXXX  
BEING LOT 9 OF THE "MAP OF WEST END ADDITION"  
FILED OCTOBER, 1913, IN BOOK 4 OF MAPS, AT PAGE 51,  
MARIN COUNTY OFFICIAL RECORDS.

CITY OF SAN RAFAEL, COUNTY OF MARIN, CALIFORNIA  
SCALE: 1"=20' SHEET 1 OF 1 JULY 2012

AMERICAN LAND SURVEYING INC.  
1390 MARKET ST, #112, SAN FRANCISCO, CA 94102  
PH: (415) 888-8580 FAX: (866) 260-5454

APN: 012-043-11

54 FREMONT ROAD

**KEY NOTES**  
ALL REFERENCED DOCUMENTS PER COUNTY OF MARIN  
OFFICIAL RECORDS, UNLESS NOTED OTHERWISE.  
DISTANCES SHOWN IN FEET AND DECIMALS THEREOF.  
BOUNDARY LINES ARE AT 90° UNLESS SHOWN OTHERWISE.

**SUB BEARINGS**  
BASIS OF THIS SURVEY IS N 20°25'00" E PER PARCEL MAP, BK 23 OF PARCEL MAPS

San Rafael Sanitation District  
Memorandum

**DATE:** August 30, 2018  
**TO:** Ali Giudice, Project Planner  
**FROM:** Karen Chew, Senior Civil Engineer  
**SUBJECT:** Lot Line Adjustment, 54 Fremont Road, Pre-application Review .)  
APN: 012-043-11 & 012-043-12  
File No.: LLA18-005/ED18-065

**Pre-Application request for feedback on a proposed Lot Line Adjustment which will modify the property boundary of two legal lots. In addition, the applicant is seeking input on request for variance to allow for a larger residence.**

---

1. 54 Fremont Road has a history of issues with a compromised sewer lateral. Two "Notices of Deficiencies" have been issued at this property. Also, the San Rafael Sanitation District Maintenance Crews have made numerous visits to this property. We have received odor complaints from neighbors. Prior to approval for subdivision of the lot, the sewer lateral shall be repaired/replaced.
2. A sewer lateral design for the proposed lot shall be submitted to the District for review and approval. The Civil/Utility Plan shall include the alignment of the sewer lateral, the type and size of sewer pipe, and the slope of the pipe. The District is requesting you to connect at the sewer mainline, on Marquard Avenue.
3. A sewer connection fee for the new resident will be required prior to approval of the Building Permit. All sewer related work shall be in accordance with SRSD Standards, including installation of a backflow preventer.

cc: Doris Toy, District Engineer/Manager

Hello Victoria,

You can forward this email on to the project planner:

I, Dawn Catherine, lived at 54 Fremont Road for the 15 years from 1989 to 2004. The home was always shared with other tenants and we all used the driveway at 54 Fremont every day for the 15 years of my occupancy. We regularly parked 3 cars in the driveway (I had 2 cars and the other tenants had at least one car) as we did not have access to the small garage at the bottom of the driveway; it was used to store a classic car belonging to the landlord at that time.

Please let me know if there is any further detail I can offer to help in your efforts to thwart the destruction of the redwood trees that used to protect the deer nests.

Dawn Catherine



**DAWN CATHERINE, EA**

TAXES & ACCOUNTING

---

(707) 773-7345

3020 BRIDGEWAY #216

SAUSALITO, CALIFORNIA 94965