



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**September 19, 2007**  
**5:00 P.M.**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

**5:00 P.M.     ROLL CALL             Janz, J. Carlson, Marsala, A. Carlson, McKeithen**

**5:02 P.M.     PUBLIC COMMENTS**

**5:05 P.M.     CLOSED SESSION**

**A.     CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

**Lamb vs. Town of Atherton, et al.**

**Superior Court of California, San Mateo County, CIV 461630**

**Town of Atherton vs. Sequoia Union High School District, et al.**

**Superior Court of California, San Mateo County, CIV 458899**

**Charles W. King III and Leslie King v. Town of Atherton, et al.**

**Superior Court of California, San Mateo County, CIV 461513**

**B.     CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

**Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**

**One (1) potential case**

Agendas and staff reports may be accessed on the Town website at: [www.ci.atherton.ca.us](http://www.ci.atherton.ca.us)

☛ *Please contact the City Clerk's Office at 650.752.0500 with any questions.*

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**SEPTEMBER 19, 2007**

**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

- 7:00 P.M.**     **1.     PLEDGE OF ALLEGIANCE**
- 7:03 P.M.**     **2.     ROLL CALL     Janz, J. Carlson, Marsala, A. Carlson, McKeithen**
- 7:05 P.M.**     **3.     PRESENTATIONS**
- A.     **Certificates of Appreciation for Outgoing Members of the Park and Recreation Commission**
- B.     **SBWMA –Presentation by Kevin McCarthy – Draft Request for Proposals for Collection Services**
- 7:35 P.M.**     **4.     PUBLIC COMMENTS (only for items which are not on the agenda – limit of three minutes per person)**
- 7:50 P.M.**     **5.     STAFF REPORTS**
- 8:00 P.M.**     **6.     COMMUNITY ORGANIZATION ROUNDTABLE REPORT (Directed by Resolution No. 99-6)**
- A.     **Holbrook-Palmer Park Foundation**
- B.     **Atherton Dames**
- 8:15 P.M.**     **CONSENT CALENDAR (Items 7–25)**
- 7.     APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR CITY COUNCIL MEETING OF JULY 18, 2007, AND THE SPECIAL CITY COUNCIL CLOSED SESSION OF JULY 26, 2007**
- 8.     APPROVAL OF BILLS AND CLAIMS FOR JULY 2007 IN THE AMOUNT OF \$1,197,141; APPROVAL OF BILLS AND CLAIMS FOR AUGUST 2007 IN THE AMOUNT OF \$ 1,250,880**

9. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JULY**  
*(Attachments for this report will be provided in October.)*
10. **ACCEPTANCE OF QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2007** *(Attachments for this report will be provided in October.)*
11. **AWARD OF CONTRACT TO INFINITI ENGINEERING FOR THE HOLBROOK PALMER PARK WALKING PATH PROJECT NUMBER 07-001**

**Recommendation:** Award the contract for the Holbrook Palmer Park Walking Path Project, Project No. 07-001 to Infiniti Engineering, the low bidder on the September 13, 2007 bids, for \$35,502.50, with a 10% construction contingency of \$3,570.25, for a total authorization of \$39,272.75; and to authorize the Mayor to sign the contract on behalf of the Town.

12. **SECOND READING AND ADOPTION OF AN ORDINANCE RATIFYING ORDINANCE NO. 29 OF THE MENLO PARK FIRE PROTECTION DISTRICT AMENDING DISTRICT FIRE PREVENTION CODE PERTAINING TO AUTOMATIC FIRE SPRINKLER SYSTEM REQUIREMENTS IN THE TOWN OF ATHERTON**

**Recommendation:** Staff recommends that the City Council adopt the attached Ordinance.

13. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MARK THOMAS & COMPANY, INC. FOR SURVEYING SERVICES FOR THE STREET RECONSTRUCTION PHASE 4 PROJECT**

**Recommendation:** Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with Mark Thomas & Company, Inc. to provide Surveying services for the Street Reconstruction Phase 4 Project in an amount not exceed \$28,880, plus a 10% contingency of \$2,888, for a total authorization of \$31,768.

14. **RESPONSE TO THE GRAND JURY RE: ELECTRONIC COMMUNICATION AMONG CITY OFFICIALS**

**Recommendation:** Note and receive response to Grand Jury report on the subject of electronic mail.

15. **RESPONSE TO THE GRAND JURY RE: REFORMS IN THE ATHERTON BUILDING DEPARTMENT**

**Recommendation: Consider response to Grand Jury report and provide direction regarding any additions or revisions.**

**16. APPROVAL TO EXTEND THE TENTATIVE PARCEL MAP FOR 64 MOULTON DRIVE**

**Recommendation: Staff recommends that the City Council extend the time for filing the Final Parcel Map for the division of one parcel into two parcels at 64 Moulton Avenue.**

**17. APPROVAL OF THE FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF ATHERTON AND MARC G. HYNES**

**Recommendation: Approve Fourth Amendment to City Attorney's Agreement between the Town of Atherton and Marc G. Hynes of Atkinson-Farasyn, LLP.**

**18. ADOPTION OF A RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF ATHERTON AND WENDÉ PROTZMAN, INTERIM CITY MANAGER**

**Recommendation: Adopt the resolution approving Employee Agreement and authorizing the Mayor to execute the employment agreement between the town and Wendé Protzman, Interim City Manager.**

**19. ADOPTION OF A RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF ATHERTON AND JAMES H. ROBINSON, CONSULTANT**

**Recommendation: Adopt Resolution approving amendment to Employment Agreement and authorizing Mayor to execute a fourth amendment to the employment agreement between the Town and James H. Robinson, "City Manager."**

**20. ADOPTION OF A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER AND THE MAYOR TO INITIATE TRANSACTIONS WITH THE STATE OF CALIFORNIA LOCAL AGENCY INVESTMENT FUND**

**Recommendation: Adopt a resolution regarding investment transactions with the State of California Local Agency Investment Fund.**

**21. AWARD OF CONTRACT TO G. BORTOLOTTO & CO. FOR THE STREET PATCHING CONTRACT PROJECT, PROJECT NO. 07-005**

**Recommendation: Award the contract for the Street Patching Project, Project No. 07-005, to G. Bortolotto & Co., the low bidder on the 12<sup>th</sup> of**

September, 2007 bids, for \$53,154.55, with a 10% construction contingency of \$5,315.45, for a total authorization of \$58,470.00, and to authorize the Mayor to execute the contract on behalf of the Town.

**22. ADOPTION OF A RESOLUTION FOR ACCEPTANCE OF ASSIGNMENT OF DRAINAGE EASEMENT FOR ORCHARD HILLS SUBDIVISION**

**Recommendation:** Adopt the attached resolution to accept an assignment of a drainage easement serving the Orchard Hills subdivision for public use.

**23. REQUEST FROM THE GENERAL PLAN COMMITTEE**

**Recommendation:** Authorize the General Plan Committee to act as the lead Committee to review and provide recommendations relating to Green Building.

**24. ADOPTION OF RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING SBWMA AGREEMENTS AND REQUESTS FOR PROPOSALS REGARDING SOLID WASTE MANAGEMENT** *(Due to the length of some attachments, they will be available for review at the library and/or Town Hall.)*

**Recommendation:** Adopt a resolution approving the solid waste, recyclable materials, and organic materials collection services; Approve the contract terms detailed in the SBWMA's August 2, 2007, draft Uniform Franchise Agreement; Approve the scope of services in the SBWMA's August 2, 2007, draft Request for Proposals (RFP); and Approve the contract terms in the SBWMA's August 2, 2007, draft Agreement.

**25. ADOPTION OF A RESOLUTION REGARDING AMERICA SUPPORTING AMERICANS**

**Recommendation:** Adopt the attached resolution thereby adopting the United States Army 2d Battalion, 327<sup>th</sup> Infantry, 1<sup>st</sup> Brigade, 101<sup>st</sup> Airborne Division.

**PUBLIC HEARINGS** (Items 26-29)

- 8:20 P.M. 26. **APPEAL REGARDING 55 BELBROOK WAY** (Continued from June 20, 2007)

**The item has been resolved; therefore, it will not be heard.**

- 8:21 P.M. 27. A. **APPEAL OF THE PLANNING COMMISSION DECISION DENYING A CONDITIONAL USE PERMIT FOR 94 TALLWOOD**

**Recommendation:** Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Planning Commission to deny the conditional use permit for the reasons outlined in this report.

- B. **APPEAL REGARDING 94 TALLWOOD** (Continued from June 20, 2007)

**Recommendation:** Conduct the public hearing on the appeal of a Notice of Nuisance and Abatement Order dated March 9, 2007. The Council can uphold

- 9:00 P.M. 28. **APPEAL OF THE PLANNING COMMISSION DECISION DENYING APPLICATION FOR HERITAGE TREE REMOVAL AT 44 TUSCALOOSA**

**Recommendation:** Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Planning Commission to deny the heritage tree removal permit for the reasons outlined in this report.

- 9:20 P.M. 29. **INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8 OF THE ATHERTON MUNICIPAL CODE REGULATING DRAINAGE**

**Recommendation:** The City Council introduce the attached Ordinance based on the fact that the proposed amendment is required to adopt Drainage Criteria in order to achieve the objectives of the City Council to update the Town's drainage criteria for development projects.

**REGULAR AGENDA** (Items 30-36)

- 10:00 P.M. 30. **REQUEST FROM MENLO-ATHERTON LITTLE LEAGUE TO LEAVE THE HOLBRROK-PALMER PARK LITTLE LEAGUE FIELD BACKSTOP IN PLACE**

**Recommendation:** The Park and Recreation Commission recommends that the request be denied.

10:15 P.M. 31. **AUDIT COMMITTEE DISCUSSION REGARDING ITS CHARTER**

**Recommendation: Approve revisions to the Audit Committee's Charter to be consistent with the recommendations of the Government Finance Officer's Association.**

10:30 P.M. 32. **APPROVAL TO EXTEND THE LEASE FOR CINGULAR'S USE OF POLICE COMMUNICATION TOWER**

**Recommendation: Consider request for amendment to lease between the Town of Atherton and New Cingular Wireless PCS, LLC for lease of City Hall property for cellular telephone antenna. If approved, the amendment will extend the lease for an initial period of five (5) years with five options exercisable by Cingular for five years each. A copy of the amendment is attached as Exhibit A.**

10:50 P.M. 33. **CITIZEN REQUEST TO MODIFY TRAFFIC PROGRAM TO ALLOW SPEED HUMPS**

**Recommendation: The City Council determine if modification to the Traffic Program is warranted. If the decision is to revise the program, Council can refer the matter to the Transportation Subcommittee to develop revised rules, regulations and procedures.**

11:05 P.M. 34. **COMMENTS ON DRAFT PROGRAM EIR/EIS BAY AREA TO CENTRAL VALLEY HIGH-SPEED TRAIN PROGRAM**

11:20 P.M. 35. **DISCUSSION ON SIGNATURE FOR THE 2007 FINANCIAL AUDIT MANAGEMENT LETTER**

11:30 P.M. 36. **REVIEW OF CALENDAR OF CITY COUNCIL MEETINGS FOR THE REMAINDER OF 2007**

**Recommendation: Review the calendar of City Council Meeting dates for the remainder of 2007, and consider changing the date of the November 21st meeting to November 14, 2007.**

11:35 P.M. 37. **COUNCIL REPORTS**

11:45 P.M. 38. **PUBLIC COMMENTS**

12:00 A.M. 39. **ADJOURNMENT**

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**RethinkWaste.org**

South Bayside Waste Management Authority

# SBWMA RFP Process for Solid Waste and Recycling Collection Services and Shoreway Facility Operations

Atherton Presentation  
September 2007

Presentation by Kevin McCarthy,  
SBWMA Executive Director

# Previous SBWMA Board & Council Action

- Overview of RFP Process provided to Council in May 2006.
- Draft services and contract terms provided to Council in August/September 2006.
- SBWMA Board approved final services and contract terms on October 26, 2006.
- Council approved final services and contract terms on December 13, 2006.
- SBWMA Board approved draft Collection RFP and Agreement and draft Shoreway Operations RFP and Agreement (“RFP Documents”) on June 28, 2007.

# Shoreway Master Plan

- SBWMA Board on April 26, 2007 approved a Shoreway master plan detailing significant site improvements (e.g., transfer station building retrofits, new MRF building construction, traffic improvements, etc.) required for the new collection services to be rolled out in late 2010/early 2011.
- The recommended facility improvements must be permitted, designed, and constructed in time for the rollout of the new services.
- Funding for the improvements will require approval of issuance of new debt (**expect taxable bonds**). Item to be brought to council in mid to late 2008.

# Shoreway Master Plan

- Conceptual plans and layouts unveiled on July 26, 2007.
- Key proposed community and environmental features to include:
  - New environmental education center with dual use for community meetings
  - ”Green building” features such as solar, maximize use of natural light, native plant and other demonstration gardens, etc.

# Shoreway Master Plan: New Shoreway Environmental Center



# RFP Schedule

<u>Action</u>	<u>Date</u>
Member Agency approval of draft “RFP documents”	August-Sept. 2007
SBWMA approval of final “RFP documents”	October 25, 2007
<b>SBWMA release of final “RFP documents”</b>	November 1, 2007
Proposals due	Feb.-March 2008
Review of proposal, interviews and selection	March-July 2008
SBWMA selection of contractor(s)	Aug.-Sept. 2008
Member Agency selection of Contractor(s)	Oct.-Dec. 2008
SBWMA & Member Agencies complete contract negotiations	Jan.-Mar. 2009
Member Agencies approve Franchise Agreements	April-June 2009
<b>Rollout of new services <u>begins</u></b>	July 1, 2010-Jan. 1, 2011

# Residential Programs

- **Core Collection Services**

Wheeled carts (32-96 gallon sizes); automated collection vehicles

Curbside, back/side yard additional fee

Weekly solid waste collection

Weekly commingled (“single stream”) recyclables collection, includes used oil & oil filters, and battery and cell phones

Weekly organic materials (plant materials and food scraps) collection

Twice annual on-call collection services

Holiday tree collection services

- **Optional Collection Services**

Expanded on call service (HHW, e-waste and universal waste)

Community clean up and e-waste events

# Multi-Family/Commercial Programs

- **Core Collection Services**

Solid waste collection - No change in collection

Recycling service

- Continue at no cost to customer

- Convert to single stream recyclables collection

- Food waste – continue existing program

- Technical assistance

- **Optional Collection Services**

- Roll out of mandatory recycling service to all customers; customers can opt out

- Shared recycling bins/provision of tenant containers

- Drop-off e-waste events

- Wet/dry collection option

# Member Agency Facilities

- **Core Services for Member Agency Facilities**
  - Solid Waste Collection
  - Single Stream and Source Separated Recycling Collection
  - Organics Recycling Collection
  - Public Street Litter, Parks and Parking Lot Solid Waste and Recycling Collection
  - Annual On-Call Collection Service
  - Venues and Events Solid Waste, Recycling and Organics Collection
  - Shared Recycling Bins Downtown
- **Optional Services for Member Agency Facilities**
  - On-Call Bulky Item Collection

# Shoreway Facility Programs

- **Core Services**

Single stream processing equipment

Expanded tipping area for food scraps and plant materials

Expansion of transfer area for greater C&D recovery

Traffic improvements

New public recycling and drop off center

MRF equipment installation and start-up to begin prior to expiration of the existing contract

## Leveling the Playing Field

- Prescribing certain operational assumptions for Collection Services Proposers
  - Standardized cart sizes, use of new collection vehicles, use of new commercial collection containers, labor rates from CBAs, # of accounts, etc.
- Similar approach for Operations Proposers
  - New equipment for rolling stock and transfer vehicles, labor rates from CBAs, tonnage, etc.

# Core Process and Contract Terms

- Board and proposer code of conduct
- Two collection districts option
- Labor based on existing collective bargaining agreements; and includes worker retention policy
- 10 years with term extension negotiated in year 7
- “Fixed Price”; indexed annually; 2008 costs “trued up” in 2010; no detailed annual rate review; no cost reconciliation (except for tons and disposal and processing costs).
- Rate setting
  - Member agencies set customers’ collection rates
  - SBWMA Board sets rates for Shoreway facility
- Liquidated damages “automatically” assessed
- Performance incentive/disincentive options
- Alternative fuel and environmental enhancement options

# Environmental Enhancements: Collection RFP

- RFP documents will ask Contractors to propose:
  - Sustainable business practices such as alternative fuel vehicles, green building, using re-refined oil in vehicles, buying recycled-content products, minimizing impacts on air, water and natural resources associated with collection services.
  - RFP suggests utilizing air quality emissions trading credits to offset or mitigate GHG emissions impacts in the SBWMA service area. Emissions trading may become part of AB 32 implementation by 2012.

## Estimated Rate Impact\*

- Previous estimates ranged from 3.22% to 10.75%, excluding one-time costs associated with rollout of new collection services. One-time costs include items such as development of a new corp. yard (if necessary), delivery of new carts and bins to customers, and public education and outreach.
- New cost estimates for Shoreway improvements will probably add another 2.5-3.0 percentage points to the above estimates.
- Other Bay area communities have seen rate increases of **15-30%** associated with significant program conversions like what is proposed for the SBWMA service area.



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**JULY 18, 2007**  
**5:00 P.M.**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

The meeting was called to order by Mayor Alan Carlson at 5:00 p.m.

**ROLL CALL**

**PRESENT:** James R. Janz  
Jerry Carlson  
Charles E. Marsala  
Alan B. Carlson  
Kathy McKeithen

**PUBLIC COMMENTS**

There were no public comments.

**CLOSED SESSION**

- A. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

**Lamb vs. Town of Atherton, et al.**

**Superior Court of California, San Mateo County, CIV 461630**

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- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

**Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:**

**One (1) potential case**

- C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
**Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**

**One (1) potential case**

- D. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95**

**Claimant: Mavel Guitron**  
**Agency Claimed Against: Town of Atherton**

- E. PUBLIC EMPLOYMENT/PUBLIC PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)**

**Title: City Manager**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)**

**Title: City Attorney**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

**City Attorney Marc Hynes reported out of closed session as follows: There was not reportable action taken on Items A through E.**

**ADJOURN**

**The meeting was adjourned by Mayor Alan Carlson at 6:15 p.m.**

**Respectfully submitted,**

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**Alan B. Carlson**  
**Mayor**

**Minutes Prepared by:**  
**Kathi Hamilton**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**JULY 18, 2007**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Alan Carlson called the meeting to order at 7:00 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

**PRESENT:** James R. Janz  
Jerry Carlson  
Charles E. Marsala  
Alan B. Carlson  
Kathy McKeithen

City Manager Jim Robinson and City Attorney Marc Hynes were also present.

3. **PRESENTATIONS**

- A. **Certificates of Appreciation for Outgoing Members of the General Plan Committee**

Mayor Alan Carlson presented Certificates of Appreciation to outgoing General Plan Committee Members James Ransohoff and Barbara Shoor (not present) and thanked them for their service to the Town.

- B. **Citizens for Clean Air in Atherton**

Vada Lee Jones, represented Citizens for Clean Air in Atherton, and gave a presentation regarding the dangers of wood smoke.

Mayor Alan Carlson referred the matter to the Environmental Programs Committee for review.

- C. **Annual Tree Awards – Atherton Tree Committee**

On behalf of the Tree Committee, Town Arborist Kathy Hughes Anderson presented the Annual Tree Awards to Marylue Timpson, a Live Oak; Rafi Bamdad, Olive trees; and Zach Whitman, Black Walnuts. Tree Committee Members, Denise Kupperman and Marion Oster were also present.

#### 4. PUBLIC COMMENTS

Rosemary Maulbetsch, Atherton, encouraged members of the audience to attend Menlo College's event, [Musice@Menlo](#). She requested Council send a representative to the final concert.

Shirley Carlson, Park and Recreation Commissioner, announced an upcoming fundraiser to be held at Holbrook-Palmer Park, "Swing in the Park" Barbecue, September 9, 2007, at 2 p.m.

Denise Kupperman, Tree Committee Member, said the committee was working on a project, Trees for El Camino. A community surette was scheduled for September 18, 2007, at Holbrook-Palmer Park, at 7 p.m. She encouraged everyone to attend.

Melinda Tevis, Atherton, spoke regarding the most recent Grand Jury report and what the Town's policy was regarding emails between the City Manager and Council Members.

City Attorney Marc Hynes stated one needed to make a public records request for particular records. The Town had an Email Policy and ordinarily emails were not considered records in a traditional sense. Any emails retained by the Town as records would be disclosed.

#### 5. STAFF REPORTS

- City Attorney Marc Hynes reported out of Closed Session that no reportable action was taken on Items A – E.

**A. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

**Lamb vs. Town of Atherton, et al.**

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**B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

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**D. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95**

**Claimant: Mavel Guitron**

**Agency Claimed Against: Town of Atherton**

**E. PUBLIC EMPLOYMENT/PUBLIC PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)**

**Title: City Manager**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)**

**Title: City Attorney**

- **City Manager Jim Robinson noted that the recent accident that occurred on Watkins Avenue and El Camino Real was discussed at the Menlo Park City Council meeting where the item was referred to the Planning Commission for further traffic study. Regarding Item No. 16 on the Consent Calendar, he noted the Screening Committee met to interview an additional candidate after the agenda was posted and requested adding the recommendation that Bob Oster be appointed to the Audit Committee. He announced the South Bayside Waste Management Agency (SBWMA) was holding a reception celebrating its 25<sup>th</sup> Anniversary. He noted that the Town was required to respond to the most recent Civil Grand Jury report by October 1, 2007.**

**6. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

**MID-PENINSULA COMMUNITY MEDIA CENTER**

**Annie Folger, Executive Director, gave an overview of activities at the Mid-Peninsula Community Media Center. The Media Center was a public access organization serving Atherton, Palo Alto, East Palo Alto, and Menlo Park. She introduced Michael DiBattista, the Atherton resident who served on the Board.**

**CONSENT CALENDAR** (Items 7–21)

Council Member Marsala noted a minor correction in the Regular Minutes of June 20, 2007. The word “not” was in error and would be removed from page 7, second paragraph, second sentence of Item No. 25.

Regarding Item No. 10, Council Member McKeithen requested another performance evaluation report in six months. Regarding Item No. 15, she requested the insurance be raised to \$2 million. She requested Item No. 12 be removed for discussion.

Regarding Item No. 17, Vice Mayor Janz clarified that Patrol Car #5 would be retired from patrol service but be utilized for non-patrol activity.

In response to Council Member Jerry Carlson regarding Item No. 15, Code Enforcement Officer Bob Cushing clarified if he were called for service, he would work a full four hours and work less hours on another day.

**MOTION** – to approve the Consent Calendar as presented, with the exception of Item No. 12, which was removed from the Consent Calendar and placed at the end of the Regular Agenda for discussion; that the required insurance be raised to \$2 million with respect to Item No. 15; and with respect to Item No. 16, Bob Oster was recommended by the Screening Committee and appointed to the Audit Committee

M/S Janz/J.Carlson

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

7. **APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION OF JUNE 18, 2007; THE SPECIAL CITY COUNCIL MEETING OF JUNE 18, 2007; THE SPECIAL CITY COUNCIL CLOSED SESSION OF JUNE 20, 2007, AND THE REGULAR CITY COUNCIL MEETING OF JUNE 20, 2007**
8. **APPROVED OF BILLS AND CLAIMS FOR JUNE 2007 IN THE AMOUNT OF \$ 939,950**
9. **ACCEPTED MONTHLY FINANCIAL REPORT FOR JUNE 2007**
10. **PERFORMANCE REPORT OF TOWN LANDSCAPING CONTRACT WITH COMMERCIAL ENVIRONMENTAL LANDSCAPE**

Approved that Commercial Environmental Landscape (CEL) is retained to continue performing landscaping duties in various locations in the Town of Atherton. Further, another performance report would be due in six months.

11. **APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE HOLBROOK PALMER PARK WALKING PATH PROJECT, PROJECT NO. 07-001**

Approved the plans and specifications and authorize advertisement for bids for the Holbrook Palmer Park Walking Path Project, Project No. 07-001.

**~~12. APPROVAL OF AN AMENDMENT TO THE AGREEMENT WITH NEAL MARTIN AND ASSOCIATES FOR PLANNING SERVICES~~**

~~Recommendation: Consider request for increase in rates for professional Planning services. If the City Council desires to approve the proposed increase, the existing contract will be amended by replacing existing Exhibit B with new Exhibit B containing the revised rates providing a 5% increase. (Removed and placed at the end of the Regular Agenda for discussion.)~~

**13. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING CHAPTER 17 OF THE ATHERTON MUNICIPAL CODE REGULATING BASEMENTS**

**Adopted Ordinance 571, “ AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING SECTION 17.08.032 and AMENDING SECTIONS 17.08.0020, 17.08.54 and 17.36.190 OF THE ATHERTON MUNICIPAL CODE PLACING LIMITS ON BASEMENTS WITHIN THE TOWN OF ATHERTON.”**

**14. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION, AND APPROVAL OF SPRING MICRO-SURFACING PROJECT, PROJECT NO. 06-003**

**Accepted work, authorized recording of a Notice of Completion, and authorized payment of retainer for a total contract amount of \$68,863.30.**

**15. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF ATHERTON AND CSG CONSULTANTS, INC., FOR CODE ENFORCEMENT SERVICES**

**Approved the attached Agreement for Professional Services with CSG Consultants, Inc., to provide Code Enforcement Services to the Town of Atherton.**

**16. ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE FOR APPOINTMENTS TO THE AUDIT COMMITTEE, THE PARK AND RECREATION COMMISSION, AND THE ENVIRONMENTAL PROGRAMS COMMITTEE**

**Accepted and approved the recommendation of the City Council Screening Committee to appoint members to Town commissions and committees**

**17. POLICE DEPARTMENT PURCHASE OF POLICE VEHICLES FOR FY 2007-08**

**Authorized the Town to “piggy back” on the City and County of San Francisco’s bid in order to purchase two police vehicles (one marked, one unmarked) for the fiscal 2007-2008 budget cycle for a total cost not to exceed \$45,568.00.**

**18. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$173,663.50 FOR THE PROJECT NUMBER 05-003**

**Accepted the work, authorized recording of a Notice of Completion and approved contract change orders in the amount of \$173,663.50 for the Valparaiso Avenue Street Reconstruction Project, Project No.05-003.  
PUBLIC HEARINGS (Items 19-21)**

**19. APPEAL REGARDING 55 BELBROOK WAY (Continued from June 20, 2007)**

**Mayor Carlson noted, at the request of the appellant, the item was continued to the City Council meeting of September 19, 2007.**

**20. APPEAL REGARDING 94 TALLWOOD (Continued from June 20 2007)**

**Mayor Carlson noted, the item was continued to the City Council meeting of September 19, 2007.**

**21. INTRODUCTION OF AN ORDINANCE RATIFYING ORDINANCE NO. 29 OF THE MENLO PARK FIRE PROTECTION DISTRICT AMENDING DISTRICT FIRE PREVENTION CODE PERTAINING TO AUTOMATIC FIRE SPRINKLER SYSTEM REQUIREMENTS IN THE TOWN OF ATHERTON AND ACTION REGARDING MENLO PARK FIRE PROTECTION DISTRICT REVIEW AND APPROVAL OF ACCESS AND WATER SUPPLY**

**City Attorney Marc Hynes presented the staff report. The first item before the Council was the ordinance which would ratify the provisions of Ordinance No. 29 of the Menlo Park Fire Protection District (MPFPD) relative to fire sprinkler requirements, with the clarification in section 2 that sprinkler systems would be required in any new basement constructed regardless of size. If the ordinance was adopted, it would supplant the previous ordinance adopted by the Town. Secondly, the letter delegating authority to the MPFPD relative to approval of access and water supply was in draft form to enable any changes, comments, or revisions. The last paragraph was designed to not only provide what the MPFPD was authorized to do, but also to point out the MPFPD would be responsible for collecting charges, monitoring conditions, and final approval signoffs.**

**Council Member McKeithen clarified that Ordinance 551 would be superseded by the proposed ordinance.**

**Mayor Alan Carlson suggested adding a paragraph to the letter giving authorization to MPFPD for fire apparatus access and water supply that said the authorization was effective until revoked by the Town Council.**

**Council Member Jerry Carlson asked how the fees were set by MPFPD.**



**Council Member Marsala suggested the item be referred to the Park and Recreation Commission.**

**Council Member McKeithen thought if the item were referred to the Park & Recreation Commission, the Commission should verify there were no other costs borne by the Town that were not reimbursed.**

**Shirley Carlson, Park and Recreation Commissioner, had a concern regarding the backstop remaining up throughout the year. She believed the backstop was in poor condition because of the way it was stored. She wanted the item referred to the Commission.**

**Mayor Carlson was not opposed to referring the item to the Park and Recreation Commission; however, pending final action of the Council in September, the backstop could remain.**

**Council Member Jerry Carlson thought it was appropriate to refer the item to the Park and Recreation Commission and that the Commission consider a condition that the backstop be kept in good condition and not become an eyesore.**

**MOTION – to refer the item to the Park and Recreation Commission to consider the request from Menlo-Atherton Little League to maintain the baseball backstop at Holbrook-Palmer Park on a year-round basis, to maintain it in good condition, and to consider whether any cost savings should be remitted to the Town**

**M/S McKeithen/J.Carlson**

**Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**

**23. REPORT REGARDING THE REVIEW OF OPEN BUILDING PERMITS BY MENLO PARK FIRE PROTECTION DISTRICT AND THE TOWN OF ATHERTON BUILDING DEPARTMENT**

**Building Official Mike Wasmann presented the staff report. At its June 20, 2007, Council meeting, Council directed staff to work in cooperation with the Menlo Park Fire Protection District (MPFPD) to review open building permits. He and Bob Blach, MPFPD, reviewed 257 open permits.**

**Bob Blach, MPFPD, indicated that 7 out of the 32 new construction permits Council directed to be reviewed had not been reviewed by the MPFPD, with some of the 7 being pre-sprinkler ordinance enactment. Out of the 257 open permits, there were 21 that warranted further investigation. Of those, some were below the criteria of 50%, some were above, and some were flag lot situations. The 21 permits were looked at by suppression personnel who noted some of the worse conditions were that of existing nonconforming conditions. The MPFPD would use the information to update preplans, i.e. fire suppression personnel would know where problems of access or water flow existed ahead of time in order to change strategies.**

Council Member Jerry Carlson was pleased that the Town and MPFPD worked together to accomplish the task, and the other members of Council commended both staff members.

Council Member McKeithen clarified that the MPFPD would not contact the homeowners of the 21 properties and mandate changes to accommodate the needs. She queried whether the MPFPD would notify the homeowners of the issues.

MPFPD Chief Harold Shapelhouman stated the MPFPD did not intend to notify homeowners currently because Council indicated that any information gathered from the review was to be advisory only. If Council so desired, the MPFPD would notify property owners of any tactical issues.

A discussion ensued regarding the merits of notifying homeowners of access and water flow issues without making any requirements. Building Official Wasmann believed notifying homeowners, especially nonconforming and legally created sites, would be beneficial to those homeowners who were unaware of any problems.

Mayor Carlson was pleased with the new era of cooperation between the Town and MPFPD. He suggested devoting an issue of the *Athertonian* to MPFPD to inform residents of the issues the MPFPD would be concerned about if there were a fire at their home, e.g., “Do you live down a driveway that is more than 20 feet long?” The article could also inform residents they could call the MPFPD/Town if they had concerns and someone would inspect the property.

MPFPD Chief Shapelhouman appreciated the Mayor’s comments. On behalf of the MPFPD, he believed both jurisdictions had come a long way. Additionally, working together with Cal Water regarding areas where water pressure was not good was essential to solving the problems.

Council Member McKeithen requested that Building Official Wasmann work with MPFPD to notify those homeowners what the pitfalls were around their property with regard to water access and water flow.

Council Member Jerry Carlson concurred with Mayor Carlson’s suggestion to use the *Athertonian* to inform residents. Contacting individuals to point out any risk on their properties as a point of information was also appropriate.

Discussion ensued on the appropriateness of notifying residents of issues. The consensus was to only notify those residents identified in the review.

**MOTION** – to direct staff to cooperate with the MPFPD in devoting an issue of the *Athertonian* to fire prevention, specifically designed to ask/elicit information from homeowners that would be of value to them and the MPFPD; to direct staff to request the MPFPD notify those property owners with fire issues and send a copy of the letters to the Town

M/S A.Carlson/McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

**24. CONSIDERATION OF TOWN PARTICIPATION IN AN AMOUNT UP TO \$100,000 IN THE COST OF INSTALLING A TRAFFIC SIGNAL ON MIDDLEFIELD ROAD AT ENCINAL AVENUE**

**Public Works Director Duncan Jones presented the staff report. In the preliminary findings in the BKF Engineers report indicated that the Encinal intersection was a level of service F. The Menlo Park School District (MPSD, in its preliminary report presented to the Transportation Committee, indicated the Encinal intersection would need a traffic signal with the increase in traffic generated from school improvements; however, the MPSD thought the cost should be borne by all the entities that contributed traffic to the intersections. Ahmad Sheikholeslami, MPSD, was also present to respond to questions.**

**Mayor Alan Carlson said MPSD made a lengthy presentation at the Transportation Committee which included a traffic signal and the parking lot entrance. Because the MPSD needed answers quickly, Mayor Carlson brought the item forward. With respect to the traffic signal, the MPSD had done all its planning to date on the basis that a signal would be installed. Neither entity had the funds to pay for the signal on its own.**

**Public Works Director Jones said the staff recommendation of \$100,000 was intended to be a maximum, with the traffic studies to develop a proportionate share based on the traffic of each entity.**

**Ahmad Sheikholeslami, Facility Planner, MPSD, said the current situation indicated the area warranted a traffic signal and was an important mitigation for increasing the school to K-5. The MPSD wanted to work cooperatively with the Town and the City of Menlo Park to signalize the intersection with a solution that worked for everyone.**

**Discussion ensued regarding proportional costs and how they would be divided, as well as the ongoing traffic study by MPSD and the effects on any intersections being added, school entrances, and other existing intersections.**

**Mayor Carlson said there were two issues before the Council that evening: 1) to accept the fact that the intersection warranted a traffic signal; and 2) whether the Town would financially participate on some degree/basis.**

**Ahmad Sheikholeslami said the MPSD's mission was to educate children. The growth in the community resulted in the need to increase capacity at Encinal School. Laurel School was reconfigured to K-3 with a reduction in enrollment to 400 students. Encinal School was reconfigured to K-5 with an increased enrollment to a peak capacity of 700. Some of the largest growth was occurring in the Lindenwood area. If the traffic signal could not be mitigated, the MPSD's option would be to embark on a full Environmental Impact Report process, which would take longer and cost more.**

**Lou Paponis, Atherton, spoke regarding the Transportation Committee meeting held on July 10, 2007, and the request by the Menlo Park School District for partial funding of a traffic signal. He believed there was a small percentage of Atherton students attending Encinal School; therefore, the Town was not benefiting from the educational opportunity and should not be responsible for the cost of the traffic signal.**

**Vice Mayor Janz said the intersection warranted a signal currently, there was an opportunity to negotiate with all parties, and he wanted to pursue the matter.**

**Council Member Marsala concurred with his colleague and said traffic came from Menlo Park as well and the Town needed to seek help from neighbors to offset costs.**

**Council Member McKeithen had a number of concerns. The preliminary results from the BKF study were not included for review. She traveled Middlefield Road often and believed the problem at Encinal School occurred three times a day for 15 minutes. For the Town to pay \$100,000 for a traffic signal to basically clear up their problem was wrong. She believed the obligation belonged to the City of Menlo Park and the MPSD, first and foremost, to correct any problems. She needed more information as the matter went forward.**

**Mayor Carlson accepted the fact that the study indicated a traffic signal was warranted. The first question was whether the Council would give permission for the installation of a traffic signal. The second question was that installation of the traffic light would be contingent upon a financial plan among the three entities.**

**Council Member Carlson agreed a traffic signal was needed and queried whether there was an opportunity for a grant. He thought the three entities should participate and would all benefit from the installation of a traffic signal.**

**Public Works Director Jones said staff was looking into a new grant that funded traffic signals and was determining when the grant cycle began. Additionally, there was the Hazard Elimination Safety Grant, which was very competitive and staff was considering.**

**MOTION – to agree to the installation of a traffic light at the intersection of Middlefield Road and Encinal Avenue contingent upon acceptable financial participation and agreement among the three jurisdictions, the City of Menlo Park, Menlo Park School District, and the Town of Atherton, with the understanding whatever was resolved with respect to an entrance/exit on Middlefield Road could be done in a safe manner**

**Council Member Carlson clarified the proportional splitting of costs should only apply to the traffic signal.**

**M/S A.Carlson/J.Carlson**

**Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**

**25. CONSIDERATION AND POSSIBLE ACTION TO ALLOW AN ENTRANCE TO MIDDLEFIELD ROAD FROM THE NEW TEACHERS' PARKING LOT AT ENCINAL SCHOOL**

Mayor Alan Carlson said when the Menlo Park School District (MPSD) first began its planning, it came to the Town to talk about the north parking lot. Because the General Plan discouraged adding more entrances to Middlefield Road, Town staff recommended putting the entrance on Prior Lane, which brought the neighbors to the forefront who had concerns with it. The MPSD went back to the drawing board and came back with two plans: 1) Plan A had the entrance on Prior Lane; and 2) Plan B had the entrance on Middlefield. Plan B added four parking spaces to the lot over what would be if the entrance was on Prior Lane. The MPSD indicated the Town should select what was best for the Town; either plan would be acceptable to MPSD.

Public Works Director Duncan Jones said based on the concerns of the Prior Lane residents, the fact the General Plan wanted to limit access to both Middlefield Road and Alameda de las Pulgas for residential entrances, and the fact that MPSD's request was a special case, staff believed the Council could justify approving Plan B as an exception to the General Plan.

Ahmad Sheikholeslami, MPSD, said from MPSD's viewpoint, the benefit of Plan B would be clearing parent/event traffic off of Prior Lane and being a good neighbor.

Council Member McKeithen clarified the north parking lot would only be used by staff during events as well. Other issues regarding possible traffic tie-ups were discussed.

Vice Mayor Janz did not believe there was a problem allowing the access off of Middlefield Road because the General Plan also promoted keeping residential cul-de-sacs quiet and residential, which took precedence over access points off of Middlefield Road.

Herb Burkard, Atherton, thought the MPSD had shown consideration for neighbors and was very cooperative. He favored Plan B.

Council consensus favored the Plan B. Council Member Marsala made the following motion:

**MOTION – that the Council recommend the entrance be off of Middlefield Road as described in Plan B**

Mayor Carlson recommended the following amendment:

**AMENDMENT – to direct staff to withhold an Encroachment Permit with respect to any plan other than the entrance of Middlefield Road**

The maker of the motion accepted the amendment.

AM/S Marsala/Janz

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor Alan Carlson called for a recess at 9:54 p.m. The meeting was reconvened at 10:00 p.m.

**26. CONSIDERATION AND POSSIBLE ACTION REGARDING ESTABLISHING A BUDGET FOR THE ENVIRONMENTAL PROGRAMS COMMITTEE**

Council Member Marsala noted the Environmental Programs Committee (EPC) was allotted \$6,000 in the past fiscal year of which the EPC spent \$3,250. The EPC received in-kind donations of \$9,500 and cash donations of \$4,500, totally \$15,000 in donations for programs. He reviewed some of the activities of the EPC. Valerie Gardner, EPC member, started a Yahoo group on the EPC website where people had begun to ask questions regarding solar alternatives. Additionally, out of the \$13,800 budget request, \$3,800 was needed for Jill Boone to perform the study for a baseline regarding CO2 emissions. The remaining \$10,000 was needed for expenses. He believed the EPC would be very frugal and wise on how to use the funds for outreach.

Council Member McKeithen believed the request for a CO2 emissions study had come before the Council twice, and twice the Council did not wish to consider it. At the past two Finance Committee meetings, the issue of wanting to see what happened regarding Earth Day expenses was raised. Only recently, had warrants been paid and the account had not been closed. The Finance Committee had repeatedly asked to see a budget request and would like to approve a budget for the EPC. She believed the item should go back to the Finance Committee for review.

Mayor Alan Carlson did not agree. He did not believe the Finance Committee had the scope of authority it might believe it had. He did not find the budget request excessive or lacking in detail that would prevent the Council from acting that evening.

Council Member Jerry Carlson experienced some frustration with the lack of response to the Finance Committee's request for information to expedite the budget request process. He thought the \$1,750 that was not needed should be taken out of the total request. He was pleasantly surprised at the level of detail that was presented that evening. He wanted to see a structure, a reasonable charter for the EPC and the Town, the Council could approve.

Vice Mayor Janz said he was not aware that the Council was against CO2 being called a greenhouse gas. In fact, the Council approved joining ICLEI, one of the tasks of which was to measure the Town's greenhouse footprint to develop proposals to find solutions. Additionally, the Council ratified the U.S. Mayors' Climate Protection Agreement which specifically addressed that cities should call on state and federal governments to deal with global warming, etc. He was in favor of approving the budget request.

Council Member Marsala recalled that the request to fund the CO2 emissions study that came before the Council in April had actually been deferred, rather than rejected, until the budget hearing. He explained the difficulties in trying to finalize expenses



**12. APPROVAL OF AN AMENDMENT TO THE AGREEMENT WITH NEAL MARTIN AND ASSOCIATES FOR PLANNING SERVICES**

**Council Member McKeithen said the staff report suggested the 5% increase was included in the budget; however, the budget included a 3% increase. Additionally, Neal Martin and Associates had been providing the Town an Assistant Planner at the rate of \$55.00/hour and she clarified that would be increased as well. She had some reservations of approving an increase in the contract amount given the fact that the Town hired a zoning specialist for work she believed should have been done by Neal Martin and Associates over the years. She queried who oversaw the work.**

**City Manager Jim Robinson clarified a 3% was built into the budget as a placeholder for Town-wide salary adjustments through negotiations or the 70<sup>th</sup> percentile adjustment. He was unaware that a 3% figure was in the budget for the Neal Martin contract, since contract employees were not normally figured in the budget along with percentage increases for regular employees**

**Council Member Jerry Carlson was disappointed in the discrepancy between the 3% and 5%. He suggested the new City Manager review the Planning area. He agreed with Council Member McKeithen that the Town's ordinances were not the quality they should be and too much rework was needed.**

**Council Member Marsala believed Neal Martin and Associates did a great job for the Town. The Council modified many ordinances over the years and created some of the ambiguities itself. He did not think the budget was an issue. He was in favor of the 5% increase.**

**Mayor Carlson believed Professional Services Agreements, whether in the budget or not, ultimately became what the parties agreed upon. He agreed with Council Member Marsala's view that staff presented ordinances in recommended form and Council "tweaked" them into something else. He did not find the request unreasonable, nor was it unreasonable to review the Town Professional Services Agreements from time to time.**

**Council Member McKeithen clarified that Neal Martin and Associates did not receive an increase in 2005. She did not agree with Council Member Marsala's perception that the Town had received good advice; in fact, she believed that some of the advice had put the Town in a litigious position. She and was not in favor of a 5% increase that was essentially a reward.**

**Vice Mayor Janz agreed that the money in the budget was a placeholder and not the contract. He was in favor of the increase.**

**Council Member Jerry Carlson said he would approve the increase although he had reservations.**

**MOTION – to approve an Amendment to the Agreement with Neal Martin and Associates for Planning Services**

**28. COUNCIL REPORTS**

- Council Member Jerry Carlson had received many comments regarding the Atherton Train Station repairs. City Manager Jim Robinson said the Town offered to utilize its own contractor to expedite the process; however, Caltrain was reluctant to do that.
- Vice Mayor Janz said the CETS group was scheduled to meet later in the month.
- Council Member Marsala said 60 people attended the solar night presentation and another presentation was scheduled. He noted in the Town of Woodside, basements on hillside slopes were measured to the ceiling rather than the floor. He queried when the Non-School Event Guidelines would return to Council. City Attorney Marc Hynes noted negotiations with the Sequoia Union High School District might be resolved by September.

**29 PUBLIC COMMENTS**

There were no public comments.

**30. ADJOURNMENT**

Mayor Alan Carlson adjourned the meeting at 11:08 p.m.

Respectfully submitted,

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**Kathi Hamilton**  
**Acting City Clerk**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**THURSDAY, JULY 26, 2007**  
**7:30 AM**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

The meeting was called to order by Mayor Alan Carlson at 7:30 a.m.

**ROLL CALL**

**PRESENT:** James R. Janz  
Jerry Carlson  
Charles E. Marsala  
Alan B. Carlson  
Kathy McKeithen

**PUBLIC COMMENTS**

There were no public comments.

**CLOSED SESSION**

**PUBLIC EMPLOYEE APPOINTMENT, PUBLIC EMPLOYMENT –  
pursuant to Government Code Section 54957(b)(1)**

**Title: City Manager**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

**City Attorney Marc Hynes reported out of Closed Session as follows:**

**By unanimous vote of the Council, Wendé Protzman, Assistant to the City Manager, was appointed Interim City Manager, effective August 1, 2007, and until the appointment of a new City Manager.**

**By unanimous vote of the Council, Jim Robinson was approved as a consultant to provide city manager services, effective August 1, 2007 through December 31, 2007.**

**ADJOURN**

**The meeting was adjourned by Mayor Alan Carlson at 9:20 a.m.**

**Respectfully submitted,**

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**Alan B. Carlson**  
**Mayor**

**Minutes Prepared by:**  
**Kathi Hamilton**

**TOWN OF ATHERTON**  
**CLAIMS LIST**  
 July, 2007

Payroll Checks	9906 - 10033	\$ 14,772
Electronic Transfers		343,738
A/P Checks	24348 - 24500	838,631
TOTAL		\$1,197,141

I, Wende' Protzman, Interim City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 9906 - 10033 (payroll) and 24348 - 24500 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,197,141; are true and correct, and that there are sufficient funds for payment.

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Wende' Protzman  
Interim City Manager

The above claims, check numbers 9906 - 10033 (payroll) and 24348 - 24500 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,197,141; are true and correct, and are authorized for payment.

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Alan Carlson  
Mayor, Town of Atherton

**SOURCE OF FUNDS**

<b>101</b>	General Fund	\$769,208
<b>105</b>	Tennis Fund	-
<b>201</b>	Special Parcel Tax	178,450
<b>202</b>	Transportation	-
<b>203</b>	Gas Tax Fund	28,765
<b>210</b>	Road Construction Impact Fees	84,780
<b>211</b>	Park Grants Fund	-
<b>213</b>	Library Special Revenue Fund	1,473
<b>401</b>	General Capital Projects	-
<b>402</b>	Storm Drainage	-
<b>403</b>	Atherton Channel District	2,982
<b>406</b>	Facilities Construction	-
<b>610</b>	Vehicle Replacement	8,397
<b>611</b>	Computer Maint. & Replacement	8,522
<b>612</b>	Administrative Services	114,564
<b>715</b>	Evans Estate	-
<b>740</b>	Tree Committee	-
TOTAL		\$1,197,141.

**TOWN OF ATHERTON**  
**CLAIMS LIST**  
 August, 2007

Payroll Checks	10039 - 10179	\$ 14,791
Electronic Transfers		587,024
A/P Checks	24503 - 24716	649,065
<b>TOTAL</b>		<b>\$1,250,880</b>

I, Wende' Protzman, Interim City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 10039 - 10179 (payroll) and 24503 - 24716 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,088,636; are true and correct, and that there are sufficient funds for payment.

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Wende' Protzman  
Interim City Manager

The above claims, check numbers 9906 - 10033 (payroll) and 24348 - 24500 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,088,636; are true and correct, and are authorized for payment.

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Alan Carlson  
Mayor, Town of Atherton

**SOURCE OF FUNDS**

<b>101</b>	General Fund	\$1,118,823
<b>105</b>	Tennis Fund	473
<b>201</b>	Special Parcel Tax	94,047
<b>202</b>	Transportation	-
<b>203</b>	Gas Tax Fund	-
<b>210</b>	Road Construction Impact Fees	1,065
<b>211</b>	Park Grants Fund	-
<b>213</b>	Library Special Revenue Fund	1,141
<b>401</b>	General Capital Projects	-
<b>402</b>	Storm Drainage	-
<b>403</b>	Atherton Channel District	1,303
<b>406</b>	Facilities Construction	-
<b>411</b>	Park Well	3,700
<b>610</b>	Vehicle Replacement	-
<b>611</b>	Computer Maint. & Replacement	24,642
<b>612</b>	Administrative Services	4,790
<b>715</b>	Evans Estate	896
<b>740</b>	Tree Committee	-
<b>TOTAL</b>		<b>\$1,250,880</b>



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: PAULA PIERCE, ASSISTANT FINANCE DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: MONTHLY FINANCIAL REPORT, JULY 2007**

#### **RECOMMENDATION:**

Receive the Monthly Financial Report for July 2007.

#### **INTRODUCTION:**

The attached schedules show revenues, expenditures and fund balance for all funds as of July 31, 2007.

#### **HIGHLIGHTS**

General Fund expenditures for the month ended July 31, 2007, have amounted to \$1,197,141, or 12% of the \$9,824,194 budgeted for the fiscal year. For the month ended July 31, 2007, General Fund revenues amounted to \$1,878,486, or 19% of the \$9,862,807 estimated for the year.

It should be noted that the revenue expense figures provided within this monthly financial report do not include the effect of yearend adjusting entries and accruals that normally occur as part of the yearend closing process. However, the Finance Department believes that such revenue and

expense totals represent a close approximation of the totals that will appear within the yearend financial statements.

**FISCAL IMPACT:**

None

Prepared by:

Approved by:

*/s/ Paula Pierce*

\_\_\_\_\_  
Paula Pierce  
Assistant Finance Director

\_\_\_\_\_  
Wendé C. Protzman  
Interim City Manager



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: PAULA PIERCE, ASSISTANT FINANCE DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: QUARTERLY INVESTMENT REPORT, FOR THE QUARTER ENDED  
JUNE 30, 2007**

#### **RECOMMENDATION:**

Note, receipt and file.

#### **INTRODUCTION:**

This is the quarterly status report of the Town's investments in the Local Agency Investment Fund (LAIF) and the San Mateo County Investment Pool (SMCIP) for the quarter ending June, 30, 2007.

#### **DISCUSSION**

As of June 30, 2007, the Town had a total investment of **\$15,058,750**. The total interest earning for the quarter ending June 30, 2007, amounted to **\$171,357**. The funds are invested in the San Mateo County Investment Pool (SMCIP) and the Local Agency Investment Fund (LAIF).

For the quarter ended June 30, 2007, interest earnings on funds invested with LAIF amounted to an annual rate of 5.2 percent of the average daily cash balance of funds invested. This compares to an annual interest earnings of 4.64 percent of the average daily cash balance of funds invested with San Mateo County Investment Pool.

The interest income credited to Atherton's investment account by the San Mateo County Treasurer and by the State of California Treasurer includes interest payments on fixed income securities held by these entities as well as any gains or losses realized on securities sold during the reporting interval. Calculations of interest income earned or reported yields do not reflect any changes in the market value of the fixed income securities held by either the San Mateo County Pool or the State of California Local Agency Investment Fund.

**Investment at SMCIP:** San Mateo County Investment Pool is created and managed by the County Treasurer.

As of June 30, 2007, the County's investment pool carried investments with a total value of \$2.7 billion. The Town's investment with the San Mateo County Investment Pool as of June 30, 2007, amounted to \$9,532,711, or 63 percent of the Town's total investment holdings.

**Investment in LAIF:** Local Agency Investment Fund (LAIF) is created and managed by the California State Treasurer as part of the Treasurer's Pooled Money Investment Account (PMIA). According to the State Treasurer, 2,733 local government agencies and special districts participate in LAIF with total investments amounting to approximately \$18.3 billion, or roughly 34 percent of the \$54.5 billion that the State Treasurer manages in the PMIA. (Since LAIF investments are combined with PMIA, the Treasurer does not report the results for LAIF separately.)

The Town's investment with LAIF as of June 30, 2007, amounted to \$5,526,039, or 37 percent of the Town's total investment holdings. The

**FISCAL IMPACT:**

Informational only.

Prepared by:

Approved by:

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Paula Pierce  
Asst. Finance Director

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Wendé C. Protzman  
Interim City Manager



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: AWARD OF CONTRACT TO INFINITI ENGINEERING FOR THE  
HOLBROOK PALMER PARK WALKING PATH PROJECT  
NUMBER 07-001**

#### **RECOMMENDATION:**

Award the contract for the Holbrook Palmer Park Walking Path Project, Project No. 07-001 to Infiniti Engineering, the low bidder on the September 13, 2007 bids, for \$35,702.50, with a 10% construction contingency of \$3,570.25, for a total authorization of \$39,272.75; and to authorize the Mayor to sign the contract on behalf of the Town.

#### **INTRODUCTION:**

The Landscape Master Plan for Holbrook-Palmer Park included an element to complete the walking path behind the Playschool, Carriage House and Corporation Yard so that path users will not need to walk in the roadway in front of these buildings to walk completely around the park.

The plan includes the installation of a new six (6) foot wide walking path that consists of a pavement section of 2" AC with 4" base rock for 475 feet in length on the southeast side of Holbrook-Palmer Park. This will connect to and complete an existing walking path network located within the park. Also, installation of new redwood fences adjacent to the corporation yard and removal of two small trees will be required.

#### **ANALYSIS:**

Eight bids were received for the Holbrook Palmer Park Walking Path Project as follows:

<u>CONTRACTOR</u>	<u>LOCATION</u>	<u>BID</u>
Infiniti Engineering	Oakland	\$35,702.50
American Asphalt	Hayward	\$47,907.50
Jos. J. Albanese, Inc.	Santa Clara	\$51,511.00
Bellicitti & Pellicciotti	Santa Clara	\$59,990.00
O'Grady Paving, Inc.	Mountain View	\$64,600.00
J.A. Gonsalves & Son	Napa	\$68,100.00
Sposeto Enigneering, Inc.	Union City	\$72,430.00
Dryco Construction, Inc.		\$74,630.00

**FISCAL IMPACT:**

Funding from two block grants will be used for the Holbrook Palmer Park Walking Path Project: The remaining balance of the 2002 Bond Act RZH Block Grant amount of \$2,980.00 will be used and no additional match is required for this block grant. The 2000 Bond Act RZH Block grant amount of \$21,910 requires a 30% match of \$9,390, which will be funded from Parcel Tax Funds and private donations.

One-third of the match funds must be from private donations. Based upon the 2000 Bond Act grant amount, a private match amount of \$3,130 will be needed from private donations. These donations have been secured from the Holbrook-Palmer Park Foundation and the Atherton Dames.

Parcel Tax funds in the amount of \$9,960 are budgeted for this project in FY 2007-08. The total funding from these four sources is \$37,980.

Bids were received for the project on September 13, 2007. Infiniti Engineering was the low bidder at \$35,702.50. This bid was 6.8% above the engineer's estimate prepared by staff, the designer of the project, of \$33,440.00. A 10% construction contingency of \$3,570.25 would bring the total authorization to \$39,272.75, which is \$1,292.75(3.4%) above the FY 2007-08 Budget. The additional \$1,292.75 will also be funded from Parcel Tax funds.

Prepared By:

Approved:

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Duncan L. Jones, P.E.  
Public Works Director

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Wendé Protzman  
Interim City Manager

Attachments: Bid Results



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE RATIFYING  
ORDINANCE NO. 29 OF THE MENLO PARK FIRE PROTECTION  
DISTRICT PERTAINING TO AUTOMATIC FIRE SPRINKLER SYSTEM  
REQUIREMENTS IN THE TOWN**

**RECOMMENDATION**

Staff recommends that the City Council adopt the attached ordinance ratifying amendments to the Menlo Park Fire Protection District Code pertaining to fire sprinklers.

**BACKGROUND.**

The City Council has considered the ordinance and introduced it at a first reading at its meeting on July 18, 2007. A majority vote of the whole Council, that is three votes, will be required to adopt the ordinance which will then take effect 30 days from and after its adoption.

Prepared By:

Approved By:

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Marc G. Hynes  
City Attorney

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Wendé C. Protzman  
Interim City Manager

Attachment: Proposed Ordinance

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
RATIFYING ORDINANCE NO. 29 OF THE MENLO PARK FIRE PROTECTION  
DISTRICT AMENDING DISTRICT FIRE PREVENTION CODE PERTAINING TO  
AUTOMATIC FIRE SPRINKLER SYSTEM REQUIREMENTS IN THE TOWN OF  
ATHERTON**

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The City Council of the Town of Atherton does ordain as follows:

**SECTION 1:** With the additional requirement set out in Section 2 below, Ordinance No. 29 of the Menlo Park Fire Protection District entitled "An Ordinance Amending District Fire Prevention Code" passed and enacted by the District Board of the Menlo Park Fire Protection District on May 18, 2004, and incorporated by this reference is hereby ratified. Pursuant to the provisions of Section 13869.7 of the California Health & Safety Code, the City Manager or designee is directed to file copies of all applicable findings and amendments to the Menlo Park Fire Protection District Fire Prevention Code with the appropriate State agency.

**SECTION 2:** Automatic fire sprinkler systems as defined and described in Ordinance No. 29 of the Menlo Park Fire Protection District shall be installed in any new basement constructed in the Town regardless of size.

**SECTION 3:** The City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that the provisions of this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**SECTION 4:** This ordinance is exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code (California Environmental Quality Act (CEQA)) pursuant to the State CEQA Guidelines Section 15308 as an action that assures the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

**SECTION 5:** Upon passage and adoption of this ordinance, Town of Atherton Ordinance No. 551, passed and adopted on November 17, 2004, is hereby repealed.

**SECTION 6:** This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this 18th day of July, 2007.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

*Ayes: Council Members*  
*Noes: Council Members*  
*Abstain: Council Members*  
*Absent: Council Members*

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Alan B. Carlson, MAYOR  
Town of Atherton

ATTEST:

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Kathi Hamilton  
Acting City Clerk

APPROVED AS TO FORM:

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Marc G. Hynes  
City Attorney



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MARK THOMAS & COMPANY, INC. FOR SURVEYING SERVICES FOR THE STREET RECONSTRUCTION PHASE 4 PROJECT, IN AN AMOUNT NOT TO EXCEED \$28,880 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$31,768.**

### **RECOMMENDATION:**

Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with Mark Thomas & Company, Inc. to provide Surveying services for the Street Reconstruction Phase 4 Project in an amount not exceed \$28,880, plus a 10% contingency of \$2,888, for a total authorization of \$31,768.

### **BACKGROUND:**

There are four streets to be included in the Street Reconstruction Phase 4 project that have not been surveyed. They are:

Juniper Drive  
Lupin Lane  
Rebecca Lane  
Selby Lane Cul-de-sac (350-380)

Staff developed a Request for Proposals (RFP) to solicit proposals for the work. The RFPs were sent to 17 firms listed as having expertise in surveying work, and an invitation was extended to

these firms to present qualifications and proposals for the Street Reconstruction Phase 4 project. Four consultant firms submitted proposals.

**ANALYSIS:**

Staff evaluated the RFPs and called at least three references for each firm. The selected firm scored best on the evaluation and received good comments from the references.

**FISCAL IMPACT:**

One million dollars in Road Impact (\$780,000), Measure A (\$170,000) and Parcel Tax funds (\$50,000) is budgeted for this project in FY 2007-08. The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$28,880. A 10% contingency of \$2,888 would bring the total authorization to \$31,768, which is within the approved budget.

Prepared by:

Approved by:

---

Duncan L. Jones, P.E.  
Public Works Director

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Wendé C. Protzman  
Interim City Manager

Attachments:



July 19, 2007

Mr. Duncan Jones  
**PUBLIC WORKS DIRECTOR**  
**TOWN OF ATHERTON**  
91 Ashfield Road  
Atherton, CA. 94027

**RE: COST PROPOSAL FOR SURVEYS OF SELBY LANE CUL-DE-SAC,  
REBECCA LANE, JUNIPER DRIVE AND LUPIN DRIVE.**

Dear Mr. Jones:

Mark Thomas & Company, (MTCO) is please to present a cost proposal for providing the surveying and topographic mapping of four street projects scheduled for this year. As stated in our proposal for On-Call Services for Topographic Surveying and Mapping, MTCO will adhere to the Town's survey and mapping requirements for these projects.

### **Project Understanding**

Mark Thomas and Company was selected to provide on-call services for topographic surveying and mapping. The Town has requested a cost proposal for the first task which includes a detailed survey of the above mentioned four streets. The Town will use the survey information as a base map for design purposes in order to prepare the necessary construction bid plans.

### **Scope of Work**

In an effort not to duplicate the detailed scope of work that the Town of Atherton prepared for this project, MTCO has attached a copy of the Town's Scope of Work to this proposal.

### **Cost Estimate**

A cost estimate is provided for each of the street projects. MTCO will assume that the Town will want all of the streets surveyed under this first task in consecutive order.

Selby Lane Cul-de-Sac (350-380) (off of West Selby Lane)

Field Surveys	\$3,240
Office Mapping	<u>3,440</u>
Total Fee	\$6,680

Rebecca Lane

Field Surveys	\$2,700
Office Mapping	<u>2,760</u>
Total Fee	\$5,460

Juniper Drive

Field Surveys	\$4,320
Office Mapping	<u>3,310</u>
Total Fee	\$7,630

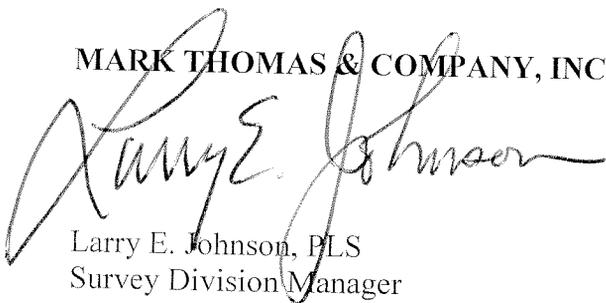
Lupin Drive

Field Surveys	\$5,400
Office Mapping	<u>3,710</u>
Total Fee	\$9,110

Total Task Order 1	\$28,880
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Please call me if you have any questions. I look forward to working with you and your staff.

**MARK THOMAS & COMPANY, INC.**



Larry E. Johnson, PLS  
Survey Division Manager

Enclosure: Scope of Services per RFP

**Task 1** – Establish survey control line beyond limits of work.

**Task 2** – Locate, identify and tie Town of Atherton survey markers found within project areas. Must file a corner report after reconstruction work is completed.

**Task 3** – Locate and verify existing right of way or easements of project street, side streets and private properties by field measurements related to record maps.

**Task 4** – Survey of topography, including at a minimum, the following:

- Scale mapping: 1" = 20'
- Edge of pavement, centerline, bike lanes, gutter lines, top and bottom of curb lines, crown lines and grade break lines. All lines with elevations at 50 feet on-center maximum
- Swales and ditches, - flow-lines and edges sufficient to show shape and location of existing roadside swales and ditches with elevations at 50 feet on-center maximum
- Valley gutter and curb & gutter - location, material type, flow line and top of curb elevations
- Multiple spot elevations within the dirt next to EP elevation to determine back slope for proposed drainage swales with elevations at 50 feet on-center maximum
- Spot elevation text file with sufficient information for drainage, excavation and road section quantities
- Ground elevation at R/W (except for where access blocked by obstacles that are not likely to be removed, such as fences, walls, thick shrubbery, trees, etc. However, the limits of such obstacles should be clearly identified, i.e. location of plants, diameter of tree trunks, etc., with elevations)
- Sufficient elevation information in a cul-de-sac or side street 200 feet beyond an intersection to determine longitudinal slope for drainage
- Culverts (including pipes under driveways) and drainage structures, including material type, pipe sizes and invert, v-notch, grate, bottom and top elevations
- Driveway and sidewalk locations, material type (such as concrete, asphalt, brick/paver blocks, exposed aggregate, etc.) and spot elevations along each driveway (edge and center grades) and hard surface walks (edges grades) from 20 feet within the property to the edge of pavement; identify low points/swales.
- Locations and rim or cover elevations of manholes, clean outs, valve covers, monument covers, water meters, structural footings, etc.
- Location and identification of above ground utility facilities, such as poles, guy wires, boxes and spot elevations of structural footings, etc.
- Pavement marking/stripping locations, layouts and messages
- Sign location and legend
- Trees with location, trunk diameter and drip line labeled and shown to scale.
- All landscape features within the right of way, including shrubs (either individual shrubs or groupings of shrubs such as hedges), planting beds, borders, walkways, curbs, railroad ties, fences, other hardscape, etc.
- Other features which may influence design, such as call boxes, mailboxes, water sprinklers, loop detectors in driveways, etc.

**Accuracy required: Horizontal = +/- 0.05 feet; Vertical = +/- 0.02 feet**

**Task 5** – After field verification of work, engineer/surveyor to furnish the following submittals to the Town:

- Electronic files using either MicroStation V8 or AutoCAD 2004
- Separate layers for different topographic features and for text related to each (refer to list of level names as specified by the Town)
- Point text file of the survey data (\*.txt)

**Mark Thomas & Company  
MTCO Standard Rate Sheet  
Selby Lane**

Job # \_\_\_\_\_ Job Name: \_\_\_\_\_ Start Date: \_\_\_\_\_

**Job Task:**

Job Tasks	Division Manager Rate = \$175		Project Manager Rate = \$150		Project Surveyor Rate = \$130		Surveyor Rate = \$100		Project Assistant Rate = \$70		2-Person Crew Rate = \$270		3-Person Crew Rate = \$360		GPS Rental Cost \$	Dollars Budgeted
	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$		
Meetings/Set up	0	0	1.0	150	1.0	130		0		0		0		0		280
Project Research	0	0	0	0	1.0	130		0		0		0		0		130
Record Mapping	0	0	0	0	1.0	130	4.0	400		0		2.0	540			1,070
Field Packages	0	0	0	0	1.0	130		0		0		0	0			130
Field Surveys	0	0	1.0	150	1.0	130		0		0		10.0	2,700			2,980
Note Reduction	0	0	0	0	1.0	130		0		0		0	0			130
Office Mapping	0	0	0	0	1.0	130	14.0	1,400		0		0	0			1,530
Deliverable	0	0	0	0	1.0	130		0		0		0	0			130
QA/QC	0	0	2.0	300		0		0		0		0	0			300
	0	0	0	0	0	0		0		0		0	0			0
	0	0	0	0	0	0		0		0		0	0			0
	0	0	0	0	0	0		0		0		0	0			0
	0	0	0	0	0	0		0		0		0	0			0
	0	0	0	0	0	0		0		0		0	0			0
	0	0	0	0	0	0		0		0		0	0			0
<b>Cost Totals</b>	0.0	0	4.0	600	8.0	1,040	18.0	1,800	0.0	0	12.0	3,240	0.0	0		6,680

Mileage  
Miscellaneous  
Title Reports (est at \$1200 ea)  
Subconsultant  
Per Diem \$90/day/person  
MTCO' TOTAL FEE

TOTAL LABOR HOURS 54

ASSUMPTIONS:

**Mark Thomas & Company  
MTCO Standard Rate Sheet  
Rebecca Lane**

Job # \_\_\_\_\_ Job Name: \_\_\_\_\_ Start Date: \_\_\_\_\_

**Job Task:**

Job Tasks	Division Manager Rate = \$175		Project Manager Rate = \$150		Project Surveyor Rate = \$130		Surveyor Rate = \$100		Project Assistant Rate = \$70		2-Person Crew Rate = \$270		3-Person Crew Rate = \$360		GPS Rental Cost \$	Dollars Budgeted
	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$		
Meetings/Set up	0	0	1.0	150	1.0	130	0	0	0	0	0	0	0	0	0	280
Project Research	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
Record Mapping	0	0	0	0	1.0	130	2.0	200	0	0	2.0	540	0	0	0	870
Field Packages	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
Field surveys	0	0	1.0	150	0	0	0	0	0	0	8.0	2,160	0	0	0	2,310
Note Reduction	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
Office Mapping	0	0	0	0	1.0	130	12.0	1,200	0	0	0	0	0	0	0	1,330
Deliverable	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
QA/QC	0	0	1.0	150	0	0	0	0	0	0	0	0	0	0	0	150
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Cost Totals</b>	0.0	0	3.0	450	7.0	910	14.0	1,400	0.0	0	10.0	2,700	0.0	0	0	5,460

Mileage  
Miscellaneous  
Title Reports (est at \$1200 ea)  
Subconsultant  
Per Diem \$90/day/person  
MTCO TOTAL FEE

TOTAL LABOR HOURS 44

ASSUMPTIONS:

**Mark Thomas & Company  
MTCO Standard Rate Sheet  
Juniper Drive**

**Job #** \_\_\_\_\_ **Job Name:** \_\_\_\_\_ **Start Date:** \_\_\_\_\_

**Job Task:**

Job Tasks	Division Manager Rate = \$175		Project Manager Rate = \$150		Project Surveyor Rate = \$130		Surveyor Rate = \$100		Project Assistant Rate = \$70		2-Person Crew Rate = \$270		3-Person Crew Rate = \$360		GPS Rental Cost \$	Dollars Budgeted
	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$		
Meetings/Set up	0	0	1.0	150	1.0	130	0	0	0	0	0	0	0	0	0	280
Project Research	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
Record Mapping	0	0	1.0	150	1.0	130	4.0	400	0	0	4.0	1,080	0	0	0	1,760
Field Packages	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
Field surveys	0	0	1.0	150	0	0	0	0	0	0	12.0	3,240	0	0	0	3,390
Note Reduction	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
Office Mapping	0	0	0	0	1.0	130	14.0	1,400	0	0	0	0	0	0	0	1,530
Deliverable	0	0	0	0	1.0	130	0	0	0	0	0	0	0	0	0	130
QA/QC	0	0	1.0	150	0	0	0	0	0	0	0	0	0	0	0	150
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Cost Totals</b>	<b>0.0</b>	<b>0</b>	<b>4.0</b>	<b>600</b>	<b>7.0</b>	<b>910</b>	<b>18.0</b>	<b>1,800</b>	<b>0.0</b>	<b>0</b>	<b>16.0</b>	<b>4,320</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>7,630</b>

Mileage \_\_\_\_\_  
 Miscellaneous \_\_\_\_\_  
 Title Reports (est at \$1200 ea) \_\_\_\_\_  
 Subconsultant \_\_\_\_\_  
 Per Diem \$80/day/person \_\_\_\_\_  
**MTCO TOTAL FEE** \_\_\_\_\_  
**TOTAL LABOR HOURS** 61  
**ASSUMPTIONS:** \_\_\_\_\_





## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: RESPONSE TO GRAND JURY REPORT – ELECTRONIC MAIL**

#### **RECOMMENDATION:**

Note and receive response to Grand Jury report on the subject of electronic mail.

#### **BACKGROUND:**

Attached is the report of the Grand Jury relative to municipalities' use and regulation of electronic communications.

The second attachment is a letter which responds to the report. This letter was due on September 19, 2007, it is provided here for information only as it has been sent.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes  
City Attorney

\_\_\_\_\_  
Wendé C. Protzman  
Interim City Manager



**Superior Court of San Mateo County**

Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

RECEIVED  
TOWN OF ATHERTON

2007 JUN 22 A 9:44

John C. Fitton  
Court Executive Officer  
Clerk & Jury Commissioner

(650) 599-1711  
FAX (650) 363-4698

June 21, 1007

Town Council  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Re: ELECTRONIC COMMUNICATION AMONG CITY OFFICIALS Report

Dear Councilmembers:

The 2006-2007 Grand Jury filed a report on June 21, 2007 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. John L. Grandsaert.

As you are the public agency that has been commented upon by the Grand Jury, your comments are due no later than September 19, 2007 to:

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

For all responses, the responding person or entity shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Additionally, as to each Grand Jury finding, the responding person or entity shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.

2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefor.

**Please submit your responses as follows:**

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
  - Prepare original on letterhead, address and mail to Judge Grandsaert.
2. Responses to be placed at the Grand Jury website.
  - Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
  - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 599-1711.

If you have any questions regarding these procedures, please do not hesitate to contact Thomas F. Casey III, County Counsel, at (650) 363-4756.

Very truly yours,



John C. Fitton  
Court Executive Officer

JCF:mc  
Enclosure

cc: Hon. John L. Grandsaert  
Thomas F. Casey III

Information Copy: Town Manager ✓



RECEIVED  
TOWN OF ATHERTON

2007 JUN 19 A 10:02

## **Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance**

### **Issue**

To what extent do the cities in San Mateo County facilitate, yet moderate, electronic communication among elected and appointed officials without violating the Brown Act or the Public Records Act?

### **Background**

The Brown Act is California's open public meeting law. It was enacted in 1953 as necessary government reform to limit perceived and sometimes real "backroom" deal-making and to make local government decision-making more transparent to the public. The basic provision of the code is: "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." Government Code Section 54953(a)

To an ever-increasing degree, city governments in San Mateo County have found the use of electronic communication (e-mail and attachment documents) to greatly facilitate the dissemination of information. It is much faster and cheaper to move and store large amounts of information electronically. With such ease, however, come pitfalls such as creating duplicate files subject to public disclosure under the Public Records Act and the ease with which an appearance of an illegal serial meeting can be created via email communication between officials.

## Investigation

The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) conducted an investigation to determine the degree to which San Mateo County cities have:

- assigned specific email accounts to elected and appointed officials
- adopted policies for the use of those accounts
- adopted records retention policies to control document proliferation and establish accountability

The Grand Jury conducted selected interviews and requested information from all cities in San Mateo County and received varied responses, many of which indicated considerable effort to be proactive in these areas, particularly the Town of Woodside. It should be noted that the bulk of responses were via email with attachments.

## Findings

**Proposition 59 of 2004**– the right of the people to open meetings and public records is now in the State Constitution, (Cal. Const. Article I Section 3(b)(1)) which reads:

“The people have the right of access to information concerning the conduct of the peoples’ business; therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

### **The Public Records Act**

“Public Records” include any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The public can make requests to inspect or copy public records. Failure to comply with the Public Records Act can subject a public entity to litigation.

### **The Brown Act**

The Brown Act requires legislative bodies or local agencies to conduct the public business in a public meeting, of which proper notice has been given. A meeting is a “...congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction”.

Serial meetings are covered by the Brown Act if the purpose is to develop a concurrence as to action to be taken. A majority of members may not “develop a concurrence as to action” on business through serial meetings, intermediaries, communication, or other subterfuge.

Failure to comply with the Brown Act may subject a public entity to litigation and its members to criminal prosecution.

Most cities and towns were found to have created official email accounts for elected officials but few had done so for appointed officials such as Planning Commissioners.

Several cities and towns had developed record retention policies and one, the Town of Woodside, had developed an email policy for council members.

Most cities and towns have written policies for the use of official email accounts.

Most cities and towns do not have up-to-date policies that address the retention and storage of electronic documents.

## **Conclusions**

All California cities face a complicated set of issues when attempting to balance the benefits of electronic communication and storage against the pitfalls of Brown Act constraints and Public Records Act obligations.

In the case of Brown Act violations, officials who engage in prohibited serial meetings face the possibility of criminal prosecution or other damaging consequences. The point at which a serial meeting becomes illegal, however, is not clear and as case law evolves ongoing legal guidance should be sought.

The California Public Records Act mandates citizen access to records including all communications related to public business “regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper, magnetic or other media”. Government Code Section 6252(e)

The Public Records Act, while praiseworthy in its goals, can constitute a significant burden on staff time (the cost of which is not recoverable), document duplication cost (partially recoverable), and legal costs (not recoverable) to determine which information is public record and whether any Public Record Act exemptions apply. Additionally, litigation discovery trends specifically address the production of electronic documents, including the specific formats in which such document must be produced. This burden is, or should be, a strong motivation for enacting record retention policies that address redundancy issues and establish legally required document retention time periods.

Responding to a Public Records Request usually includes the production of email sent or received relating to the requested subject matter. Consequently, council members or their legal representatives must review their email files to sort out personal communication versus public communication. If the Council member uses his or her personal email account for city matters, such searching is more time consuming and potentially intrusive. While the issuance of official email addresses for City Council members is a rapidly increasing practice, policies for using such accounts are not as common.

Planning commissioners are subject to the Brown Act, and their deliberations could be a problem if care is not taken.

The financial downside to cities faced with burdensome requests and aggressive litigation is substantial and merits focused, proactive attention. Most San Mateo County cities are, generally speaking, moving in the right direction by adopting separate email accounts for elected officials and by developing and adopting electronic records retention policies. Interpretation of the Brown Act is subject to change due to evolving case law, making it difficult to recommend a one-size-fits-all solution for all cities. Each city should monitor legal developments concerning the Brown Act.

Advances in communication using electronic media such as email have made communication among elected officials convenient and efficient. Certain forms of such communication, however, can be considered a prohibited serial meeting (as opposed to an allowable serial meeting) and thus violate the Brown Act. It is important for elected officials to understand the potential pitfalls as well as the benefits of email communication.

## **Recommendations**

The Grand Jury recommends that the Council of every City or Town in San Mateo County:

- 1) Issue official email accounts to its council members.
- 2) Adopt email policies that require council members to use such email accounts for all city or town business.
- 3) Consider providing official email accounts to planning commissioners and applying the policies adopted in #2 above.
- 4) Develop and adopt appropriate record retention policies, including establishing appropriate document retention time periods.
- 5) Include updates on legal developments relating to the Brown Act and the Public Records Act during the ethics training for officials as required under AB 1234 (Ethics Training for Local Officials).



## Town of Atherton

91 Ashfield Road  
Atherton, California 94027  
Phone: (650) 752-0500  
Fax: (650) 688-6528

September 13, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: Electronic Communication Among City Officials Report  
Town of Atherton

Dear Judge Grandsaert:

This letter responds to the letter from John C. Fitton, Court Executive Officer, received June 22, 2007 regarding the Grand Jury Report entitled "Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance."

The Grand Jury made five recommendations in its report. This response addresses each of these as follows:

1. Issue Official E-Mail Accounts to City Councilmembers.

The Town of Atherton has official e-mail accounts for each councilmember.

2. Adopt E-Mail Policies That Require Councilmembers to Use Such E-Mail Accounts for all City or Town Business.

The Town's e-mail internet and on-line service use policy applies to all Town on-line accounts which include those assigned to City Councilmembers. The Town policy makes clear that on-line accounts are to be used for Town business.

3. Consider Providing Official E-Mail Accounts to Planning Commissioners and Applying Policies Adopted in Number 2 above.

The Town has not provided e-mail accounts to its Planning Commissioners. The Town of Atherton Planning Commission meets once per month. The principal business before the Planning Commission involves consideration of permits to remove heritage trees. Additional items involve conditional use permits related to accessory structures and property line setbacks. Two of the Planning Commissioners do not use e-mail at all. In  
Hon. John L. Grandsaert

September 13, 2007

view of the fact that the Town's Planning Commission does not have any design review function as is common in many communities, it is the Town's position that concerns regarding serial meetings relative to Planning Commission actions here do not warrant provision of e-mail accounts to Planning Commissioners and/or requirements for use of these accounts as recommended by the Grand Jury.

4. Develop and Adopt Appropriate Record Retention Policies, Including Establishing Appropriate Document Retention Time Periods.

The Town of Atherton has adopted records retention policies for electronic mail. This was done in December of 2005, and requires that backup copies of e-mails be retained on the network server for at least two years. Thereafter, e-mail messages over two years old which have not been stored electronically or printed as a hard copy may be deleted. This complies with state law requirements regarding retention/destruction of public records.

5. Include Updates on Legal Development Relating to the Brown Act and the Public Records Act During the Ethics Training for Officials as Required Under AB 1234 (Ethics Training) for Local Officials.

The Town fully supports and complies with the training mandated by AB 1234 and will include updates on legal developments relating to the Brown Act and the Public Records Act during such training.

Very truly yours,

MARC G. HYNES  
City Attorney, Town of Atherton

MGH:cwb

C: Mayor and City Councilmembers, Town of Atherton  
John C. Fitton, Court Executive Officer  
[grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org)  
Michael Murphy, Chief Deputy County Counsel  
Acting City Clerk  
Interim City Manager

John C. Fitton, Chief Executive Officer  
Superior Court of San Mateo County  
400 County Center  
Redwood City, CA 94063-1655

Michael P. Murphy, Chief Deputy County Counsel  
County of San Mateo  
Hall of Justice and Records 6<sup>th</sup> Floor  
400 County Center  
Redwood City, CA 94063-1662

NOTES;

Responses to be placed on file with Clerk of the Court

Prepare original on letterhead, address and mail to Judge Grandsaert  
Judge of the Superior Court, Hall of Justice, 400 County Center,  
2<sup>nd</sup> Floor, Redwood City CA 94063-1655

Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org)

Insert agency name if it is not indicated at the top of your response.

Copy John C. Fitton

Court Executive Officer

Superior Court of San Mateo County

Responses to be placed with the clerk of your agency

File a copy of the response directly with the clerk of your agency. Do not send  
this copy to the court.



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: RESPONSE TO GRAND JURY REPORT – BUILDING DEPARTMENT**

#### **RECOMMENDATION:**

Consider response to Grand Jury report and provide direction regarding any additions or revisions.

#### **BACKGROUND:**

Attached is the report of the Grand Jury relative to the Town's Building Departments. It is the first attachment to this report.

The second attachment is a draft letter which responds to the report. At the meeting, the Council may wish to consider additions and/or revisions to the letter. The letter should be sent to the Grand Jury no later than September 21, 2007.

For convenience, I have signed the letter. However, if the City Council prefers, the Mayor may be authorized to sign the letter on behalf of the Town.

Prepared By:

Approved By:

/s/Marc Hynes

Marc G. Hynes  
City Attorney

\_\_\_\_\_  
Wendé Protzman

Interim City Manager



## Superior Court of San Mateo County

Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

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TOWN OF ATHERTON  
2007 JUL -6 P 4:40

John C. Fitton  
Court Executive Officer  
Clerk & Jury Commissioner

(650) 599-1711  
FAX (650) 363-4698

July 3, 2007

Town Council  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Re: REFORMS IN ATHERTON BUILDING DEPARTMENT Report

Dear Councilmembers:

The 2006-2007 Grand Jury filed a report on July 3, 2007 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. John L. Grandsaert.

As you are the public agency that has been commented upon by the Grand Jury, your comments are due no later than October 1, 2007 to:

Hon. John L. Grandsaert  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

For all responses, the responding person or entity shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Additionally, as to each Grand Jury finding, the responding person or entity shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.



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## **Summary of Reforms in Atherton Building Department**

### **Putting the Building Department Back on the Tracks**

#### **Issue**

Determine and evaluate the steps that the Town of Atherton has taken to deal with the deficiencies found in the residential construction permit approval process.

#### **Summary**

In February 2007 the San Mateo County Civil Grand Jury (Grand Jury) issued an Interim Report on some of the deficiencies of the Town of Atherton (Atherton or Town) Building Department building permit review and approval process. While Atherton's 41-page response to the three-page Interim Report was defiant, the Grand Jury observes that the Town is nonetheless working with the Menlo Park Fire Protection District (MPFPD), as recommended in the Interim Report, to define the role of each party and implement procedures to include MPFPD in the building permit review and approval process.

The Grand Jury has continued to monitor events in Atherton, and is pleased to report that substantial progress has been made to correct the deficiencies in the Building Department. The Town has remedied, or is in the process of remedying, many of the deficiencies identified in the several investigations of the Building Department, including: hiring new staff, purchasing a modern computerized permit tracking system, assigning responsibility for reviewing excavation and grading to the Public Works Department, preparing and implementing a Building Department Policy and Procedure Manual and hiring an outside firm to rewrite the zoning ordinance.

Regrettably, the Grand Jury has learned of management communication shortcomings in Atherton not previously reported. The Town Manager and the former Building Official were aware of serious employee misconduct in the Building Department. While the offender was eventually disciplined, some of the incidents might not have occurred had

the responsible managers intervened in a timely manner. In addition, the Grand Jury has evidence that the Town Manager (and another senior Town official) failed to inform the council members of facts pertinent to business before the Town Council.

Many of the problems currently facing the Town of Atherton are a result of ambiguities in the poorly-written zoning ordinance, questionable interpretations of that ordinance by the former Building Official and a lack of supervision of the Building Department by the Town Manager.

The full impact of questionable practices in the Building Department may not be known for years, but the effects are beginning to surface. In the current year the Council has been asked to hear six appeals of Building Department decisions related to zoning ordinance violations. One of those appeals has since morphed into a lawsuit against the Town.

The Grand Jury recommends that the Atherton Town Council require that the Town Manager keep the Council fully informed about significant matters related to the administration and operation of the Town and also re-examine the Town's narrow policy of notifying neighbors of proposed construction only when the project requires a zoning variance. The Grand Jury further recommends that the Atherton Town Council direct the Town Manager to implement a written procedure for documenting and resolving citizen complaints and also to inform the community of measures taken to remediate the problems in the Building Department.



# Reforms in Atherton Building Department

## Putting the Building Department Back on the Tracks

### Issue

Determine and evaluate the steps that the Town of Atherton has taken to deal with the deficiencies found in the residential construction permit approval process.

### Background

The Town of Atherton (Atherton or Town) comprises approximately 2,500 households and 7,200 residents. Construction activity in Atherton has increased in recent years to a current level of approximately 40 new homes per year. In the years 2000 through 2005 the Atherton Building Department (Building Department) issued a total of 3,392 building permits. The value for permitting purposes of these projects amounted to approximately \$686 million.<sup>1</sup>

The Building Department issues building permits for and inspects large projects such as new residences, new ancillary buildings, and alterations to existing buildings. The Building Department also issues a large number of building permits for smaller projects such as the replacement of furnaces, water heaters, windows and roofs. California building departments must be managed by a certified Building Official with the authority to issue building permits and approve all aspects of construction projects. Building Department employees involved in the building permit application review and approval process and in field inspection of construction projects are also certified to perform those duties.

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<sup>1</sup> "Building Permit and Process Audit – Phase I Report", Town of Atherton Finance Department, June 26, 2006.

## **Interim Grand Jury Report**

The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) issued an Interim Report<sup>2</sup> in February 2007 describing some of the deficiencies of the Atherton Building Department building permit review and approval process. The Interim Report noted that Atherton's process did not ensure that the Menlo Park Fire Protection District (MPFPD) was included in the review and approval of all projects for which such approval was prudent or appropriate.

One of the goals of the Interim Report was to motivate the Town and MPFPD to work together to implement changes in the building permit review and approval process to ensure that the fire district is included in that process. Unfortunately, the report was followed by a recriminatory exchange between the Town and MPFPD which was reported in local newspapers. Atherton's response to the Interim Report reflected this antagonism; however, tempers have now cooled and the parties are cooperating to better define the role of MPFPD in the Atherton building permit review and approval process.

The Grand Jury has continued to monitor events in Atherton, and is pleased to report that substantial progress has been made to correct the deficiencies in the Building Department. The Grand Jury commends Atherton for its vigorous efforts to implement improvements in the Building Department, but as reported in the Findings, improvement is needed in Atherton's management communications.

### **Atherton Investigates its Building Department**

A March 2006 letter from the Town's independent accountants noted that the Building Department did not have written policies and procedures governing the permit application, review and approval process or for the calculation of related fees. Based on this letter, the Town initiated a series of six investigations and studies.

The first investigation dealt with Building Department employee conduct and resulted in belated disciplinary measures against two employees. The Grand Jury did not further investigate these personnel matters.

The Atherton Finance Department then initiated a three-phase<sup>3</sup> audit of the Building Department. These audits described deficiencies in the building permit review and approval process, data entry and recordkeeping and the calculation and collection of permit fees. The audits also found that permits had been approved for projects that violated the Town zoning ordinance and that Town employees made errors in assessing fees for excavation permits and gave preferential treatment to some applicants. The matter of incorrect excavation permit fees became moot when the Town rescinded the excavation permit fee and refunded the fees that had been collected.

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<sup>2</sup> [http://www.sanmateocourt.org/grandjury/2006/reports/Atherton\\_Building\\_Dep.pdf](http://www.sanmateocourt.org/grandjury/2006/reports/Atherton_Building_Dep.pdf)

<sup>3</sup> Town of Atherton, Building Permit and Process Audit, Phases I, II, & III, dated June 26, July 26, and October 18, 2006, respectively.

Another study<sup>4</sup>, by a consultant, determined the zoning ordinance enforcement needs for the Town, reviewed the status of existing Building Department programs and discussed staffing. The consultant found deficiencies in existing zoning ordinance enforcement efforts. Finally, a report<sup>5</sup> by the then interim Planning and Building Administrator<sup>6</sup> evaluated Building Department operations and included an extensive set of recommendations for improving the Department.

Each of the problems listed below were identified in two or more of the above reports:

- Permits were issued for construction projects that violated the zoning ordinance
- Building permit fees were assessed incorrectly
- Building Department recordkeeping was inaccurate and incomplete
- There was no requirement that a qualified planning professional certify that a proposed project conformed to the zoning ordinance
- There was no formal review of grading, drainage, and other site development issues
- Zoning ordinance enforcement was handled only on a reactive basis, in response to complaints

## Investigation

The Grand Jury interviewed Atherton officials and employees, surveyed six other San Mateo County cities, interviewed the Building Official of a comparable town, and reviewed many relevant documents, including:

- The six reports commissioned by the Town and described above
- Town of Atherton Administrative Procedures, Zoning Ordinance, employee Code of Conduct, Atherton Building Department procedures, organization charts, etc.
- Confidential reports on personnel matters

## Findings

### Related to the Building Department

The Town has remedied, or is in the process of remedying, many of the deficiencies identified in the studies cited above. More specifically:

- A new Building Official has been appointed.
- The Town is in the process of hiring a Senior Building Inspector and has started the process of hiring a Permit Technician to process routine building permit applications.
- The Town is in the final stages of purchasing a new, computerized permit tracking system that also is capable of tracking citizen complaints.

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<sup>4</sup> "Code Enforcement Assessment Report," CSG Consultants, Inc., October 18, 2006.

<sup>5</sup> "Assessment of Town of Atherton Planning and Building Department," Gary Binger, October 12, 2006.

<sup>6</sup> The title of the combined positions of Building Official and Planning Official, no longer used.

- Responsibility for reviewing and approving excavation, grading, drainage and other civil engineering issues has been transferred from the Building Department to the Public Works Department. The Town has contracted with an outside firm to provide the required professional services under the supervision of the Public Works Director.
- The Town has contracted with a second outside firm to rewrite the zoning ordinance to improve clarity, eliminate ambiguities, improve readability and ensure consistency with the Town General Plan.
- The Town has created a new Building Department Policy, Procedure and Interpretation Manual and is working to improve the business practices in the Department.

As noted above, the Grand Jury conducted a survey of six other cities in the County to determine the practices and procedures used in their building departments and also visited the building department in a town that is comparable in size and demographics to Atherton. Atherton was the only community surveyed in which the positions of Building Official and Planning Administrator were combined and duties of both positions assigned to one person. The Town has recently rewritten the Building Official's job description and appointed a new Building Official. Town planners do not report to and are not supervised by the Building Official. The Town Council has also approved a plan to hire a contract planner to assist the Building Department staff in reviewing building permit applications for conformance with the zoning ordinance.

Five of the six cities surveyed notify residents when substantial construction projects are proposed in their neighborhood. In Atherton, for all practical purposes, residents are notified of new construction only when such construction requires a conditional use permit or a zoning ordinance variance.

Five of the six cities surveyed have formal, written procedures for handling citizen complaints. Atherton has prepared such procedures but has not yet permanently adopted them.

The Building Department has updated information sheets for applicants to reflect newly-adopted Town ordinances.

As recommended in the Interim Report, the Town is currently working with the MPFPD to define the role of each party and implement procedures to include MPFPD in the building permit review and approval process. Council members also recently stated their willingness to consider revision of the Town sprinkler ordinance to require sprinklers in all future basements.

### **Other Important Issues in Atherton**

In recent years Atherton experienced several incidents of misconduct by an employee, and multiple witnesses told the Grand Jury that senior Town officials were aware of these incidents. The nature of this misconduct was such that an impartial observer could

reasonably conclude that disciplinary measures were justified and appropriate. These acts of misconduct persisted in Atherton because of inattention or inaction by senior Town officials. While an investigation was eventually undertaken and the offender was disciplined, some of the incidents might not have occurred had the responsible senior Town officials intervened in a timely manner.

The International City/County Management Association (ICMA) is the professional association for city and town managers. The ICMA Code of Ethics, developed in 1924 and last revised in 2004, includes the following guideline on information sharing:

“The member [*e.g., the Town Manager, ed.*] should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.”

The Grand Jury has observed that the ICMA guideline on information sharing is not always followed in Atherton. The Grand Jury has heard some council members make statements in Town Council meetings that indicate that the Town Manager has failed to inform the council members of facts pertinent to Building Department issues before the Council. One example of this occurred during the March 21, 2007 meeting, at which a council member stated that the fire district had never asked to participate in the building permit review and approval process.

The Grand Jury received testimony that directly contradicts this statement. The Grand Jury was told that in 2001, MPFPD requested a meeting with Town officials to discuss MPFPD participation in the building permit review process. The Grand Jury was told that the Town Manager, the former Building Official and the Town Attorney attended this meeting, and that the meeting ended acrimoniously when the Town officials rejected the MPFPD request. If the Town Manager had not previously informed the council members of this meeting, he could have done so after the erroneous statement by a council member was made. The Grand Jury has confirmed in subsequent interviews that this was never done.

The agendas for the first four Council meetings in 2007 collectively include six appeals to the Council requesting that certain decisions or representations made by the former Building Official be allowed to stand, those decisions having been subsequently countermanded by the current Building Official. There were no such appeals in 2006. The Council has sought and obtained advice from two outside law firms to guide the Council as they attempt to resolve these appeals.

## **Conclusions**

The problems of the Building Department were caused by the wide spectrum of deficiencies listed above and the absence of supervision and control by senior Town officials. It is fair to say that the former Building Official and the Building Department were not properly monitored and controlled by the Town Manager.

Many of the residential construction-related problems currently facing the Town of Atherton are a result of ambiguities in the poorly-written zoning ordinance and questionable interpretations of that ordinance by the former Building Official.

The full impact of past questionable practices in the Building Department may not be known for years, but the effects are beginning to surface. One of the six appeals to the Council discussed above, in which the Council denied the property owner's appeal, has morphed into a lawsuit against the Town.

The Grand Jury understands the dilemma facing the Town Council. If the Council attempts to force owners of non-conforming properties to comply with the zoning ordinances, litigation may result. If the Council ignores the violations, future accusations of unfair treatment may surface.

The Town has made substantial progress in implementing some of the recommendations of the several investigations of the Building Department, as summarized in a recent memo<sup>7</sup> by the former Acting Building Official.

Compared to the other six cities surveyed by the Grand Jury, Atherton was the only one that did not have a formal, written procedure for handling complaints related to zoning or construction projects and did not routinely inform neighbors of proposed construction projects.

To maintain the independence and integrity of the planning (or zoning) review process, employee and contract planners should not report to, or be supervised by, the Building Official.

The Grand Jury recognizes that the winds of change are gusting in Atherton. Discussions with the fire district are underway, new employees are being hired, new policies and procedures are being implemented, contracts with outside firms are being negotiated and executed, the Council faces several contentious and potentially litigious issues and the Town Manager has resigned. While the Grand Jury has attempted to make this report as current as possible, the pace of change in Atherton may make parts of this report out-of-date when the report is finally published.

## **Recommendations**

The Grand Jury recommends that the Atherton Town Council:

1. Require that the Town Manager keep the Council fully informed about all significant matters related to the administration and operation of the Town. The Council should consider revising the Town Manager's job description and the Atherton Municipal Code to include this requirement.

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<sup>7</sup> "Audit Recommendations Phases I, II & III." by former Acting Building Official to City Manager, March 8, 2007.

2. Re-examine the narrow policy of notifying neighbors of proposed substantial construction projects only when the project requires a conditional use permit or a zoning code variance.
3. Direct the Town Manager to implement a formal, written procedure for documenting a citizen's complaint, the actions taken to investigate and resolve the complaint, and the Town's response to the complainant.
4. Direct the Town Manager to inform the community of measures that have been and are being implemented to remediate the Building Department problems.



## **Town of Atherton**

**91 Ashfield Road  
Atherton, California 94027  
Phone: (650) 752-0500  
Fax: (650) 688-6528**

September 14, 2007

Hon. John L. Grandsaert  
Judge of the Superior Court  
County of San Mateo  
400 County Center  
Redwood City, CA 94063-1655

Re: Response to Grand Jury Report  
Reforms in Atherton Building Department  
Putting the Building Department Back on the Tracks

Dear Judge Grandsaert:

This letter responds to the report of the San Mateo County Civil Grand Jury entitled: Summary of Reforms in Atherton Building Department and Putting the Building Department Back on the Tracks.

The Town appreciates the statement in the report that the Grand Jury recognizes the substantial progress which the Town has made to correct deficiencies in the Building Department. This includes:

- acquisition of a modern computerized permit tracking system (capable of tracking citizen complaints);
- assignment of the responsibility for review of excavation and grading to the Public Works Department;
- preparation and implementation of a Building Department Policy and Procedure Manual;
- retention of an outside firm which has reviewed and is preparing recommendations for revisions to the Town Zoning Ordinance;
- retention of a contract planner who will report directly to the City Manager, hiring a new permit technician to process routine building permit applications;

- pursuing the process of hiring a senior building inspector;
- retention of the services of a contract code enforcement officer who has created a mechanism for documenting complaints of zoning ordinance violations and the response to such complaints;
- revising the ordinance regarding fire sprinklers to require fire sprinklers in conformance with the statutes of the Menlo Park Fire Protection District (MPFPD). There is a further requirement for sprinklers in the basements of all structures regardless of size of the basement.

#### MPFPD Review of Building Plans

The Grand Jury references an interim report issued in February 2007 which noted that the Town Building Department review and approval process did not insure that the MPFPD was included in the review and approval of all projects for which approval was prudent or appropriate. As explained below, after meetings in 2001 and 2002, insofar as the Town was aware, this issue did not arise again until 2006.

Beginning in 2001, the City Manager reported to the City Council on four (4) different occasions of meetings with the MPFPD. The City Manager has no recollection of any meeting with the MPFPD ending acrimoniously. The first meeting occurred in the Fall of 2001. During the week of October 18, 2001 there was a meeting attended by the City Manager, Building Official and MPFPD personnel regarding the review by the MPFPD of building plans. The MPFPD wanted plans sent to their office for review. The Building Official expressed concern about the security risk of releasing plans from Town offices. A MPFPD director demanded a retraction of the report after which there was another meeting with the MPFPD on the week of October 26, 2001. At that time, it was mutually agreed that plans would be viewed by Menlo Park Fire District personnel at the Building Department offices in the Town of Atherton.

In January 2002 the City Manager and building official met with the MPFPD. At that time it was agreed that plans would be submitted directly to the MPFPD regarding site access and water pressure requirements relating to fire flow. There was no request for a delegation of authority from the MPFPD to the town regarding approval of building permits.

From January 2002 through 2006 there was never any communication from the MPFPD to the City Manager concerning the review of building plans. The City Manager was never informed that anything to the contrary of what had been agreed to in January of 2002. The first time the City Manager became aware of any issue concerning MPFPD's not reviewing the plans was upon the appointment of the current Chief of the MPFPD and the commencement of the Grand Jury investigation.

### Public Employees Discipline

The Grand Jury observes at page 4 of the report that investigations by the Town of its Building Department began with one which dealt with employee conduct and resulted in "belated" disciplinary measures against two employees. The report observes that the Grand Jury did not further investigate these personnel matters. However, despite this statement, at page 6 of the report there is reference to several incidents of unidentified misconduct by an employee, the nature of which was such that an impartial observer could reasonably conclude the disciplinary measures were justified and appropriate. On page 7 of the report there is the statement that "while an investigation was eventually undertaken and the offender was disciplined, some of the incidents might not have occurred had the responsive senior town officials intervened in a timely manner." This allegation is without adequate foundation, in view of the earlier statement that no further investigation was conducted upon personnel matters for which discipline resulted.

As reported previously, the Town has conducted investigations of allegations of employee misconduct related to operations of the Town's Building Department. These investigations have been lengthy, thorough, and the reports of them, along with conclusions and recommendations for employee discipline have been provided to the Grand Jury. Disciplinary action has been taken in a degree supported by the findings and conclusions of an independent investigator and consultation with legal counsel with due regard for the constitutional rights of public employees.

### Resident Notification of Building Permit

The Grand Jury report states, at page 6, that in Atherton, for all practical purposes, residents are notified of new construction only when a construction acquires a conditional use permit or zoning ordinance variance. This is not accurate. In Atherton, neighbors are notified of any project which not exempt under the California Environmental Quality Act. Notification is also provided whenever a heritage tree is removed (Chapter 8.10 Atherton Municipal Code). Neighbor notification is also done when a conditional use permit is required under the provisions of the Atherton Municipal Code (Chapter 17.52) as well as variances under the provisions of Atherton Municipal Code (Chapter 17.56).

Significant construction projects invariably involve tree removal. The Town of Atherton was incorporated in 1923 as a large lot (one acre and above) residential community. The Town has enacted regulations which prescribe a building area on each lot with generous setbacks from neighboring properties. Floor area ratio restrictions regulate bulk and mass of structures built within the prescribed building area. Height limitations effectively keep Atherton homes at a two-story limit. Town requirements for landscape screening have resulted in a unique community with an urban forest, largely the result of intentional development activities. The extensive landscaping planted, maintained and enjoyed by Atherton residents obviates the detailed controls of residential property development

employed by other communities. It is the principal reason for the fact that Atherton has not adopted design review regulations such as those in effect in than many other communities.

#### Conclusion

In conclusion, addressing the four (4) recommendations of the Grand Jury report the Town states:

1. The Atherton City Council does require the Manager to keep the Council fully informed of all significant matters related to administration and operation of the Town. (Section 2.12.070 of the Atherton Municipal Code). It should be noted that the City Manager did keep the Council informed of issues with the MPFPD as described on page 2 above.

2. As recited above, the practical reality of development in Atherton does not require examination or has not resulted in a "narrow" policy of notifying neighbors of substantial construction projects.

3. As described above, the new computerized system being installed in the Building Department will implement procedures for documenting citizens' complaints, actions taken to investigate and resolve them, and documentation of the Town's response.

4. The community is being informed of the measures which have been implemented to remediate Building Department problems. This letter has been reviewed and discussed at a public meeting of the City Council on September 19, 2007.

Very truly yours,

MARC G. HYNES  
City Attorney, Town of Atherton

MGH:cwb

cc: Mayor and City Councilmembers, Town of Atherton  
John C. Fitton, Court Executive Officer  
[grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org)  
Michael Murphy, Chief Deputy County Counsel  
Acting City Clerk  
Interim City Manager

Hon. John L. Grandsaert  
Judge of the Superior Court  
9/14/2007  
Page 5

John C. Fitton, Chief Executive Officer  
Superior Court of San Mateo County  
400 County Center  
Redwood City, CA 94063-1655

Michael P. Murphy, Chief Deputy County Counsel  
County of San Mateo  
Hall of Justice and Records 6<sup>th</sup> Floor  
400 County Center  
Redwood City, CA 94063-1662



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

**DATE: FOR THE CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: 64 MOULTON AVENUE (APN0 61-350-020)  
TIME EXTENSION FOR TENTATIVE PARCEL MAP**

**RECOMMENDATION:**

For the reasons outlined in this staff report, Staff recommends that the City Council extend the time for filing the Final Parcel Map for the division of one parcel into two parcels at 64 Moulton Avenue.

**INTRODUCTION:**

The Planning Commission originally approved the tentative parcel map at its April 26, 2000, meeting. The item was then heard by the City Council on appeal at the July 19, 2000, meeting. The City Council voted 4-0 to approve the Tentative Parcel Map with conditions listed in the attached Tentative Parcel Map certificate. The map then expired on July 19, 2002, as the applicant did not file a timely request to extend. The Planning Commission, at its April 27, 2005, meeting approved the Tentative Parcel Map. The City Council approved the Tentative Parcel Map at its meeting of May 18, 2005.

Tentative Parcel Maps expire after two years. One or more extensions of time, up to a total of 3 years, may be granted by the City Council provided that written application for each extension is made by the subdivider prior to the expiration of the map. Mr. Merrill submitted his letter requesting extension on May 10, 2007 (prior to the expiration of the map). Staff had incorrectly scheduled this item for consideration by the Planning Commission. Staff has discussed the timing of the extension with Marc Hynes, City Attorney, and determined that the extension request and map are still valid and should be heard by the City Council.

**ANALYSIS:**

The conditions of approval for the subdivision of the property include relocation or removal of any and all structures either crossing a new property line or not meeting current setback requirements prior to recordation of a final map. Structures requiring relocation include the main residence, two guest houses, a carport and a shed. The main residence is comprised of three pieces, the dining room was from a building at the Douglass estate (Menlo School) and was built around 1860, the old master bedroom was from the Hopkins estate from 1871, and a third piece (not sure of origin) was constructed during the same time period. Due to the age and unique character of the home, it was very difficult to relocate and preserve. Other structures on the property are also quite old and take some time to relocate.

Atherton Municipal Code section 16.20 outlines the process for final parcel maps. This code section states that “all conditions of approval of the tentative map shall be fulfilled prior to approval of a final map, except those conditions which are fulfilled by the filing of an agreement to perform those conditions.”

The applicant, in his letter, notes family hardships that have delayed his completion of all the conditions of approval.

The Town’s subdivision requirements have not changed since the original approval of the Tentative Parcel Map. Further, the conditions contained in the original tentative parcel map certificate are still appropriate for this project. Staff recommends the City Council grant an 18-month extension for filing of a Final Parcel Map at 64 Moulton Avenue.

**CONCLUSION:**

It is Staff’s professional opinion that the extension of the Tentative Parcel Map is appropriate under the Town’s Subdivision Ordinance and General Plan.

**ALTERNATIVES:**

If the Council denies the extension request, the applicant could submit a new application for subdivision before the Planning Commission.

**FISCAL IMPACT:**

All costs covering the processing of this application are paid for by the applicants.

**ENVIRONMENTAL IMPACT:**

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15315 Minor Land Division involving four or fewer parcels.

Prepared by:

Approved by:

---

Lisa Costa Sanders  
Deputy Town Planner

---

Wendé C. Protzman  
Interim City Manager

**Attachments:**

1. Tentative Parcel Map Certificate of Extension
2. Letter of Request for Extension from Frank Merrill, dated May 10, 2007

**TOWN OF ATHERTON  
CITY COUNCIL  
TENTATIVE PARCEL MAP CERTIFICATE**

THIS IS TO CERTIFY THAT the Atherton City Council at a regular meeting thereof, held on September 19, 2007, did grant an extension of time for filing a Final Parcel Map at 64 Moulton Drive in Atherton (Assessor's Parcel Number 061-350-020), pursuant to Atherton Municipal Code Section 16.20.010(B). The time was extended to April 19, 2009. The extension includes all of the conditions of approval contained in the Tentative Parcel Map Certificate issued on May 18, 2005 and as listed below;

This approval requires substantial compliance with the map entitled, "Tentative Parcel Map" dated February, 2000, consisting of one sheet. The application was approved with the following conditions:

1. The Parcel Map and Improvement Plans shall conform to all town Ordinances, standards and fee requirements.
2. Any and all structures either crossing a new property line or not meeting current setback requirements shall be removed prior to recordation of a final parcel map.
3. Improvement plans, maps and construction shall be to the satisfaction of the Public Works Director/City Engineer.
4. Any tree removal necessitated by subdivision design or improvement construction shall be done in accordance with the Atherton Tree Ordinance, Municipal Code Chapter 8.10.
5. Per Chapter 16 of the Atherton Municipal Code, the subdivider shall provide preliminary and final drainage reports for the site satisfactory to the Public Works Director/City Engineer, showing a plan for drainage of the lots from the rear to the front.
6. Drainage from Parcels A and B shall not be allowed to surface flow onto adjacent properties, but shall be controlled by methods acceptable to the Public Works Director/City Engineer. A maintenance agreement shall be submitted by the subdivider for private storm drainage maintenance, and shall be subject to the approval of the Public Works Director/City Engineer..
7. All fill material and its compaction must conform to the Town of Atherton Municipal Code standards.
8. The applicant shall follow all San Mateo County Storm Water Pollution Prevention (STOPPP) recommended "Construction Materials Handling and Disposal" and "Construction Practices" and prohibit the occurrence of any non-storm water discharges into the storm drain system.
9. The portion of the driveway adjacent to the Oak tree shall be made of a pervious substance and retained as such. This condition shall be recorded as a restrictive covenant.

\_\_\_\_\_  
Lisa Costa Sanders,  
Deputy Town Planner

Effective Date: September 19, 2007  
Atherton, CA

64 Moulton Drive  
Atherton, CA 94027

May 10, 2007

To The Town of Atherton:

The purpose of this letter is to request an extension on our lot split application. The property is located at 64 Moulton Drive and is 2.2 acres. The split is between my brother and his wife and my wife and I. In order to save the family home it was necessary to move the house back 20 feet. We were not able to accomplish all tasks in the time allotted for the following reasons:

My wife and I are acting as our own general contractors.

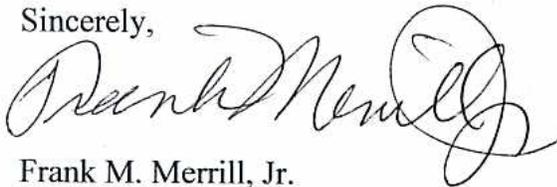
We did not demolish the house. We very carefully tore down what was necessary and saved much of the straight grain redwood and other old, difficult to find wood to use in our remodel.

In January 2005 my wife was diagnosed with breast cancer. Treatment included chemotherapy and radiation and kept my wife from participating at the level she normally would have.

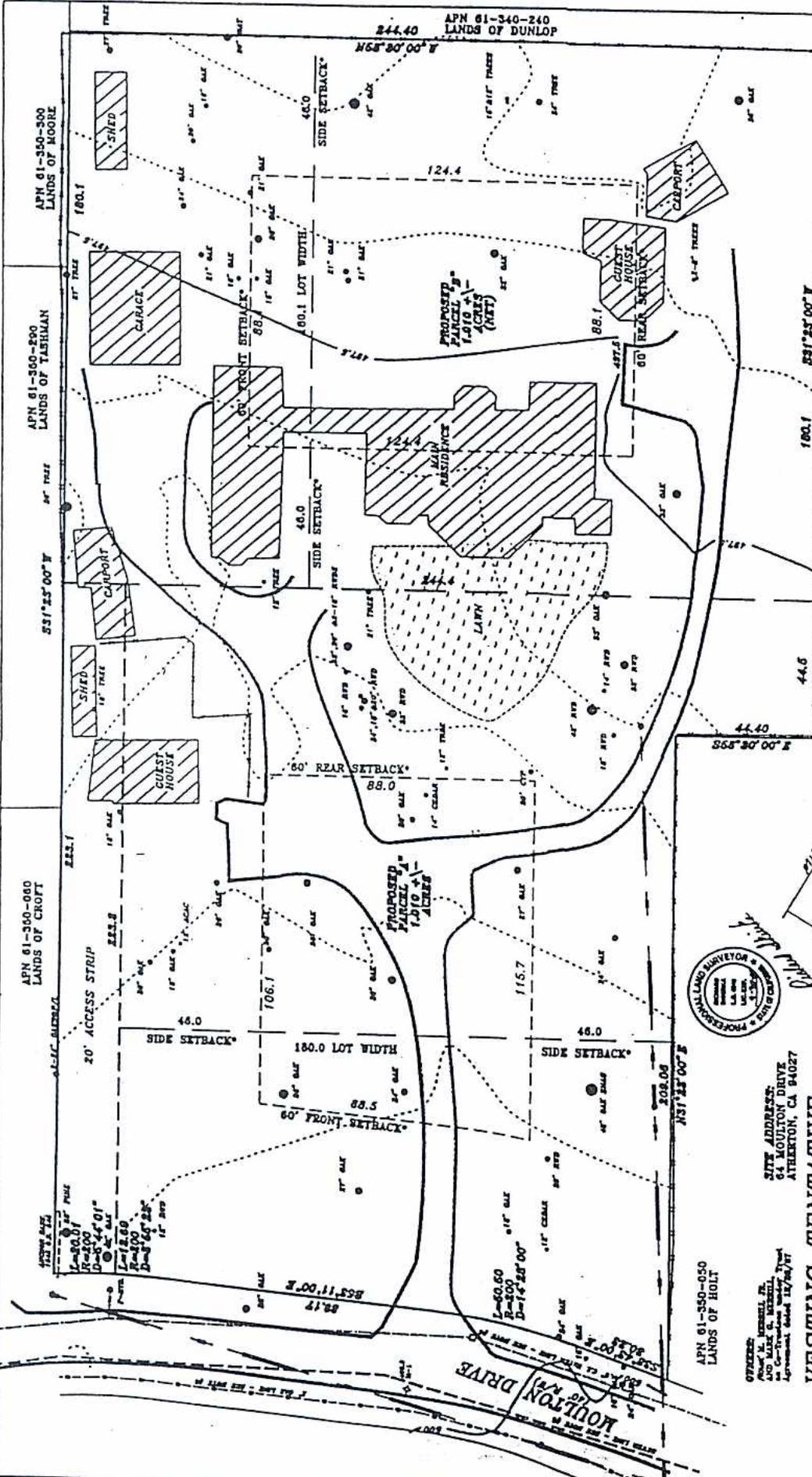
In January 2006 my wife's son and my stepson, Officer Rich May of the East Palo Alto Police Department was murdered in the line of duty. Not only was this the most traumatic event that wife and I have ever grieved, Rich was the "electrician" on the remodel and was also involved in other projects at the house.

Thank you for your consideration in granting our request for an extension.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank M. Merrill, Jr.", written in dark ink.

Frank M. Merrill, Jr.



- NOTE:
- 1) MOST TOPOGRAPHIC FEATURES WERE LOCATED BY A FIELD SURVEY OF THE PROPERTY. THE PROPERTY IS CURRENTLY ZONED R-1 AND IS SUBJECT TO THE FOLLOWING REGULATIONS: SETBACKS & LOT REQUIREMENTS WERE TAKEN FROM YOUR ZONING ORDINANCE.
  - 2) THE PROPERTY IS CURRENTLY ZONED R-1 AND IS SUBJECT TO THE FOLLOWING REGULATIONS: SETBACKS & LOT REQUIREMENTS WERE TAKEN FROM YOUR ZONING ORDINANCE.
  - 3) CONTOUR INTERVALS: 1'-00" FEET AMERICAN TITLE.
  - 4) ELEVATION INFORMATION WAS TAKEN FROM A FIRST AMERICAN TITLE SURVEY DATED 12/19/99 - ORDER NO. 44242.
  - 5) THE PROPERTY IS CURRENTLY ZONED R-1 AND IS SUBJECT TO THE FOLLOWING REGULATIONS: SETBACKS & LOT REQUIREMENTS WERE TAKEN FROM YOUR ZONING ORDINANCE.
  - 6) LOCATIONS OF UTILITIES (WATER & GAS LINES) ARE VERY APPROXIMATE. THE LOCATION OF UTILITIES PROVIDED BY WEST BAY ANTIQUARY SOCIETY (11-10-AM) CALIFORNIA ELECTRIC CO. (947-4000) AND PACIFIC GAS & ELECTRIC (949-740) SHOULD BE CONTACTED FOR FURTHER DETAILS OF THEIR FACILITIES. ONE SHOULD CONTACT THE RESPECTIVE COMPANY FOR ACCURATE LOCATION. CALL U.S.A. @ 800-827-8300.

APN 61-350-030  
LANDS OF CROCKER

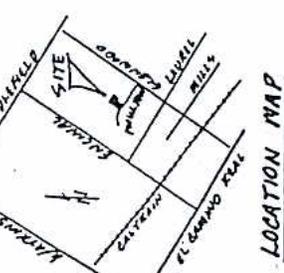
44.6

44.40

55°30'00" W

180.1

231°23'00" W



SITE ADDRESS:  
64 MOULTON DRIVE  
ATHLETON, CA 94027

### VESTING TENTATIVE PARCEL MAP

REFLECTING A PROPOSED SUBDIVISION OF LOT 3 AS SHOWN ON THE MAP ENTITLED "MERRILL WOODSIDE" FILED IN THE PUBLIC RECORDS AT PAGE 45 BEING MORE COMMONLY KNOWN AS ASSESSOR'S PARCEL NUMBER 61-350-030, SAN MATEO COUNTY RECORDS, CA.

FOR:  
MR. FRANK MERRILL  
C/O RICK SKIERKA  
(650)346-8356

TOFN OF ATHLETON  
SCALE 1" = 20'  
RICK SKIERKA - LICENSED LAND SURVEYOR  
P.O. BOX 620182, WOODSIDE, CA 94062  
(650)851-1236 (FAX)322-1536

CALIFORNIA  
FEB. 2000

APN 61-350-300  
LANDS OF MOORE

APN 61-350-290  
LANDS OF TASHMAN

APN 61-350-000  
LANDS OF CROFT

APN 61-350-050  
LANDS OF HOLT



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** WENDÉ PROTZMAN, INTERIM CITY MANAGER

**DATE:** CITY COUNCIL MEETING OF SEPTEMBER 19, 2007

**SUBJECT:** FOURTH AMENDMENT TO CITY ATTORNEY CONTRACT

#### **RECOMMENDATION:**

Approve Fourth Amendment to City Attorney's Agreement between the Town of Atherton and Marc G. Hynes of Atkinson-Farasyn, LLP.

#### **BACKGROUND:**

Attached is an amendment to the City Attorney's Agreement. This amendment revises the Agreement to increase the amount of the retainer from an amount of \$8,000.00 per month, which has been in effect since August 1, 2005, to an amount of \$8,500.00 per month. This rate will remain in effect for the next year. All other provisions of the agreement remain the same.

#### **FISCAL IMPACT:**

Increase in the retainer will result in a \$6,000.00 per year increase in City Attorney services.

Attachment

FOURTH AMENDMENT TO  
CITY ATTORNEY'S AGREEMENT  
BETWEEN  
TOWN OF ATHERTON  
AND MARC G. HYNES OF ATKINSON-FARASYN, LLP

This Fourth Amendment to the City Attorney's Service Agreement between the Town of Atherton and Marc G. Hynes, Esq. of Atkinson-Farasyn, LLP dated August 1, 2000, is hereby amended by revising the retainer amount in paragraph I. B. to read as follows:

"I. BASIC SERVICES – RETAINER

B. The retainer fee for basic services is \$8,500 per month, effective August 1, 2007 and continuing through July 31, 2008."

All other provisions of the agreement between the Town of Atherton and Marc G. Hynes dated August 1, 2000, except as amended above, shall continue to remain in effect.

Dated: August \_\_\_\_\_, 2007.

TOWN OF ATHERTON

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Attorney



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF ATHERTON AND WENDÉ PROTZMAN**

#### **RECOMMENDATION:**

Adopt Resolution approving Employee Agreement and authorizing Mayor to execute the employment agreement between the Town and Wendé Protzman, Interim City Manager.

#### **BACKGROUND:**

Attached is the employment agreement between the Interim City Manager and the Town. The agreement provides that Ms. Protzman will be employed as Interim City Manager effective August 1, 2007, and continuing until the date on which a City Manager has commenced duties in that capacity for the Town.

Compensation in an amount of \$11,700.00 per month will be paid to the Interim City Manager. Additional benefits described in paragraph 3b and paragraph 4 consistent with benefits provided to the City Manager position are also provided to the Interim City Manager.

The agreement may be terminated by the City Council at any time, although there is a 30-day written notice required prior to the termination of the agreement. In the event the agreement is terminated, the Interim City Manager will return to her position as the Assistant to the City Manager, the position which Ms. Protzman occupied prior to her employment as the Interim City Manager.

Prepared By:

Approved By:

/s/ Marc Hynes  
Marc G. Hynes  
City Attorney

\_\_\_\_\_  
Wendé C. Protzman  
Interim City Manager

EMPLOYMENT AGREEMENT

BETWEEN

THE TOWN OF ATHERTON AND WENDÉ PROTZMAN

This Agreement is made effective August 1, 2007, between the TOWN OF ATHERTON, a municipal corporation of the State of California, (“Town”) and WENDÉ PROTZMAN (“Interim City Manager”).

**RECITALS**

The Town desires to employ WENDÉ PROTZMAN as Interim City Manager of the Town.

WENDÉ PROTZMAN desires to accept the position of Interim City Manager of the Town.

For mutual consideration which is acknowledged, the parties agree as follows:

**1. EMPLOYMENT.**

**A. General.**

Wendé Protzman is hereby employed by Town as Interim City Manger. Interim City Manager accepts this position on the terms and conditions set forth below.

**B. Effective Date.**

The effective date for commencement of employment is August 1, 2007, and continuing until the date on which a City Manager has commenced duties in that capacity for the Town.

**2. DUTIES.**

Town agrees to employ Interim City Manager to perform the functions and duties ordinarily performed by City Manager for the Town as specified in Chapter 2.12 of the Atherton Municipal Code and any other applicable ordinances, resolutions or policies of the Town. Interim City Manager shall perform such other legally permissible and proper duties and functions as the Town shall from time to time assign. Interim City Manager agrees that to the best of her ability and experience she will at all times loyally and conscientiously perform all the duties and obligations required of her, either expressly or

implicitly, by the terms of this Agreement. Interim City Manager will devote her full time to her duties and agrees that she will not, so long as she is employed by the Town, take any employment that will interfere or be inconsistent with the performance of her duties as Interim City Manager of the Town.

**3. COMPENSATION AND BENEFITS.**

**A. Base Salary.**

During the term of this Agreement, Interim City Manager shall be paid a salary at the rate of \$11,700.00 per month, or at such salary as may be approved by the City Council of the Town by resolution from time to time.

**B. Public Employee's Retirement System.**

The Town is a member of PERS (Public Employee's Retirement System) and shall pay to PERS Interim City Manager's contribution, both the employer's and the employee's share.

**4. VACATION, HOLIDAYS, SICK LEAVE, AND MEDICAL/DENTAL INSURANCE BENEFITS.**

**A. Vacation.**

Interim City Manager shall have, initially, four (4) weeks of annual vacation per fiscal year. Vacation time may be adjusted by agreement of the parties as set out in a written amendment to this Agreement.

**B. Holidays.**

Interim City Manager shall be entitled to the same holidays provided to Town management employees as may be amended by the City Council from time to time.

**C. Sick Leave.**

Interim City Manager shall be entitled to accrued sick leave at the same rate as other management employees of the Town under then current policies, presently up to a maximum of 1040 hours.

**D. Administrative leave.**

Interim City Manager shall have, initially, one (1) week of administrative leave per fiscal year. Administrative leave time may be adjusted by agreement of the parties as set out in a written amendment to this agreement.

**E. Medical/Dental Insurance.**

The Town shall provide group health insurance and dental coverage for the Interim City Manager and her dependents.

**5. BONDING.**

Interim City Manager shall secure a public official's bond in the amount determined by the City Council in conformance with Section 2.12.040 of the Atherton Municipal Code. Town shall bear the full cost of such bond and/or any other bonds required of Interim City Manager under any law or ordinance.

**6. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.**

All provisions of the Atherton Municipal Code, and regulations and rules of the Town relating to management benefits, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to the Interim City Manager as they do to other management employees of the Town except as herein provided.

**7. TERMINATION OF AGREEMENT.**

The City Council may, subject to provisions set out below, terminate the services of Interim City Manager at any time, with or without cause, it being expressly understood and agreed between the parties that Interim City Manager serves as an at-will employee of Town's City Council. Town must provide Interim City Manager with thirty (30) days written notice prior to termination of this Agreement at which time Interim City Manager will return to her position as the Assistant to the City Manager.

**8. NOTICE.**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notice shall be deemed given as of the date of personal service or 24 hours after the date of deposit of such written notice in the course of transmission in the United States Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.

Notice to Interim City Manager shall be sent to: Interim City Manager  
Town Hall  
91 Ashfield Road  
Atherton, CA 94027.

Notice to Town shall be sent to: Mayor  
Town Hall  
91 Ashfield Road  
Atherton, CA 94027

**9. GENERAL PROVISIONS.**

**A.** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**B.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by Town and Interim City Manager.

TOWN OF ATHERTON

Dated: July \_\_\_\_\_, 2007

By: \_\_\_\_\_  
Alan B. Carlson, Mayor

INTERIM CITY MANAGER

Dated: July \_\_\_\_\_, 2007.

\_\_\_\_\_  
Wendé Protzman

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marc G. Hynes, City Attorney

RESOLUTION 07 -

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF  
ATHERTON AND WENDÉ PROTZMAN

The City Council of the Town of Atherton hereby resolves as follows:

**RESOLVED**, that the Employment Agreement between the Town of Atherton and Wendé Protzman as set forth in the Exhibit to the Staff Report from the City Attorney for the City Council Meeting of September 19, 2007 is hereby approved.

**RESOLVED FURTHER**, that the Mayor of the Town of Atherton is authorized to execute the agreement on behalf of the Town.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the Town of Atherton that the Resolution shall be effective immediately upon adoption.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of September 2007, by the following vote.*

*AYES: Council Members:*  
*NOES: Council Mmembers:*  
*ABSENT: Council Members:*  
*ABSTAIN: Council Members:*

\_\_\_\_\_  
Alan B. Carlson  
Mayor, Town of Atherton

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

*/s/Marc Hynes* \_\_\_\_\_  
Marc Hynes, City Attorney



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF ATHERTON AND JAMES H. ROBINSON**

#### **RECOMMENDATION:**

Adopt Resolution approving amendment to Employment Agreement and authorizing Mayor to execute a fourth amendment to the employment agreement between the Town and James H. Robinson, "City Manager."

#### **BACKGROUND:**

Attached is the fourth amendment to the employment agreement between the City Manager and the Town. The amendment revises the agreement by amending paragraphs 2, through 7.

Paragraph 2 provides that the City Manager will perform services on a consulting basis as described.

Paragraph 3 provides that from August 1, 2007, through and including August 31, 2007, the City Manager is on paid management leave. Beginning September 1, 2007, through December 31, 2007, the City Manager will provide consulting services as described in paragraph 2.

Paragraph 4 provides that for consulting services, the City Manager shall be paid at a rate of \$120.00 per hour. In addition, the City Manager shall be reimbursed for reasonable expenses incurred in performance of his duties as a consultant. These include, specifically, mileage at the rates established by the Internal Revenue Service for business expense deductions. The City Manager shall be entitled to the use of a Town-provided cellular telephone from September 1, 2007 through December 31, 2007.

Paragraph 5 provides that its provisions involving employee benefits, including vacation, sick leave and insurance, remain in full force and effect through August 31, 2007.

Paragraph 6 is amended to provide that the City Manager shall vacate the Town-owned home on or before midnight, August 31, 2007.

Paragraph 7 is amended to provide that the agreement for consulting services may be terminated by either party on 30 days written notice to the other.

Attachment

Prepared By:

Approved By:

---

Marc G. Hynes  
City Attorney

---

Wendé C. Protzman  
Interim City Manager

Attachment: Resolution

EXHIBIT A

FOURTH AMENDMENT TO  
EMPLOYMENT AGREEMENT  
BETWEEN  
THE TOWN OF ATHERTON AND JAMES H. ROBINSON

This Fourth Amendment to the Agreement dated May 25, 2001, between the TOWN OF ATHERTON, a municipal corporation of the State of California, ("Town") and JAMES H. ROBINSON ("City Manager") as previously amended is hereby further amended by revising paragraph 2, "Duties; paragraph 3, "Term of Agreement"; paragraph 4, "Compensation and Benefits"; paragraph 5, "Expense Reimbursement"; paragraph 6 "Housing Assistance" and paragraph 7, "Termination of Agreement" as follows:

**Paragraph 2 is amended to read as follows:**

"2. DUTIES.

Town agrees to employ City Manager to perform the functions and duties of City Manager for the Town as specified in Chapter 2.12 of the Atherton Municipal Code and any other applicable ordinances resolutions or policies of the Town. City Manager shall perform such other legally permissible and proper duties and functions as the Town shall from time to time assign. City Manager agrees that to the best of his ability and experience he will at all times loyally and conscientiously perform all the duties and obligations required of him, either expressly or implicitly, by the terms of this Agreement. **Except as provided in paragraph 3 below**, City Manager will devote his full time to his duties and agrees that he will not, so long as he is employed by the Town, take any employment that will interfere or be inconsistent with the performance of his duties as City Manager for the Town. **While performing consulting services as provided in paragraph 3 of this Agreement, City Manager will be available by telephone for consultation with the Mayor, Interim City Manager and/or City Attorney. City Manager will attend any meetings as deemed necessary by the Interim City Manager."**

**Paragraph 3 is amended to read as follows:**

"3. TERM OF AGREEMENT.

City Manager's employment shall commence on the date set forth in paragraph 1.B. City Manager agrees to remain in the exclusive employ of the Town thereafter subject to termination of the Agreement by either party as provided below. **Effective August 1, 2007 and through and including August 31, 2007, the City Manager shall be on paid management leave. Commencing September 1, 2007, and through and including December 31, 2007, the City Manager shall provide services as described in paragraph 2 of the Agreement on a consulting basis."**

**Paragraph 4 is amended by adding new subparagraphs F, G and H to read as follows:**

4. **COMPENSATION AND BENEFITS.**

**“F. From and after September 1, 2007, and through and including December 31, 2007, or earlier termination of the Agreement, in lieu of the compensation and benefits described in A through E, City Manager shall be paid as a consultant at an hourly rate of One Hundred Twenty Dollars (\$ 120.00).**

**G. From and after September 1, 2007, and through and including December 31, 2007, or earlier termination of this Agreement, the City Manager shall be reimbursed for all reasonable expenses incurred by the City Manager in the performance of his duties as a Consultant and in accordance with the approved budget and policies of Town. This shall include, mileage at the rates established by the Internal Revenue Service for business expense deductions.**

**H. From and after September 1, 2007, and through and including December 31, 2007, or earlier termination of this Agreement, City Manager shall be entitled to the use of a Town-provided cellular telephone.”**

**Paragraph 5 is amended by adding a new subparagraph I to read as follows:**

5. **EXPENSE REIMBURSEMENT.**

**“I. The foregoing provisions shall be in full force and effect through and including August 31, 2007.”**

**Paragraph 6 is amended by revising subparagraph B, Occupancy of the House, to read as follows:**

6. **“HOUSING ASSISTANCE.**

**B. Occupancy of the House.**

Occupancy of the house at 160 Watkins Avenue, Atherton, California, shall be at no cost to City Manager, save its interior furnishing with personal household goods. Except as otherwise provided here, Town shall pay all costs for non-routine maintenance, repairs, and upkeep including replacement of major built-in appliances, taxes, fees, and assessments. City Manager shall be responsible for all utilities (including water usage within the house) and routine maintenance including, but not limited to, window washing. Town shall provide gardening services. **City Manager shall vacate the house on or before midnight August 31, 2007.**

**Paragraph 7 is amended by adding a new subparagraph C to read as follows:**

7. **TERMINATION OF AGREEMENT.**

**“C. Paragraphs A and B shall be in full force and effect through and including August 31, 2007. Thereafter, this Agreement may be terminated by either party on thirty (30) days written notice to the other.”**

All other provisions of the agreement between the Town of Atherton and James H. Robinson dated May 25, 2001, except as amended shall continue to remain in effect.

TOWN OF ATHERTON

Dated: August \_\_\_\_\_, 2007.

By \_\_\_\_\_  
Alan B. Carlson, Mayor

Dated: August \_\_\_\_\_, 2007.

\_\_\_\_\_  
James H. Robinson, City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

\_\_\_\_\_  
Marc G. Hynes, City Attorney

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
APPROVING THE FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT  
BETWEEN THE TOWN OF ATHERTON AND JAMES H. ROBINSON**

The City Council of the Town of Atherton hereby resolves as follows:

**RESOLVED**, that the Fourth Amendment to the Employment Agreement between the Town of Atherton and James H. Robinson as set forth in the Exhibit to the Staff Report from the City Attorney for the City Council Meeting of September 19, 2007, is hereby approved.

**RESOLVED FURTHER**, that the Mayor of the Town of Atherton is authorized to execute the agreement on behalf of the Town.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the Town of Atherton that the Resolution shall be effective immediately upon adoption.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 19th day of September 2007, by the following vote.*

*AYES: Council Members:  
NOES: Council Members:  
ABSENT: Council Members:  
ABSTAIN: Council Members:*

\_\_\_\_\_  
Alan B. Carlson, MAYOR  
Town of Atherton

ATTEST:

\_\_\_\_\_  
Kathi Hamilton  
Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marc Hynes  
City Attorney



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: WENDÉ PROTZMAN, INTERIM CITY MANAGER**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT ADOPTION OF A RESOLUTION AUTHORIZING INTERIM CITY MANAGER AND THE MAYOR TO INITIATE TRANSACTIONS WITH THE STATE OF CALIFORNIA LOCAL AGENCY INVESTMENT FUND**

### **RECOMMENDATION**

Adopt the attached resolution regarding investment transactions with the State of California Local Agency Investment Fund.

### **DISCUSSION**

Due to the retirement of City Manager James Robinson, as well as the unavailability of the Finance Director, Council action to approve the attached resolution is necessary to authorize the Interim City Manager and Mayor Alan Carlson to initiate deposits and withdrawals into and from the Town's investment account on behalf of the Town.

### **FISCAL IMPACT**

Approval of the recommended resolution will not require any adjustment to appropriations or estimated revenues.

**RESOLUTION 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AUTHORIZING INVESTMENT OF FUNDS WITH THE STATE TREASURER**

**WHEREAS**, the Town of Atherton deposits and withdraws money in the Local Agency Investment Fund in the State Treasury; and

**WHEREAS**, the Town of Atherton wishes to delegate authorization to order the deposit or withdrawal of money in the Local Agency Investment Fund:

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the Town of Atherton , 91 Ashfield Road, that it agrees to deposit or withdraw money in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that Wendé Protzman, Interim City Manager of the Town of Atherton and Alan B. Carlson, Mayor, are authorized to order the deposit or withdrawal of money in the Local Agency Investment Fund.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 19th day of September 2007, by the following vote:*

AYES: Council Members:  
NOES: Council Members:  
ABSENT: Council Members:  
ABSTAIN: Council Members:

ATTEST:

\_\_\_\_\_  
Alan B. Carlson, MAYOR  
TOWN OF ATHERTON

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes  
\_\_\_\_\_  
Marc G. Hynes, City Attorney



# Town of Atherton

## CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ PROTZMAN, INTERIM CITY MANAGER**

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: AWARD OF CONTRACT TO G. BORTOLOTTO & CO. FOR THE STREET PATCHING CONTRACT PROJECT NUMBER 07-005 IN AN AMOUNT NOT TO EXCEED \$53,154.55 PLUS A TEN PERCENT CONSTRUCTION CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$58,470.00.**

### RECOMMENDATION:

Pass a motion to award the contract for the Street Patching Project, project number 07-005, to G. Bortolotto & Co., the low bidder on the 12<sup>th</sup> of September, 2007 bids, for \$53,154.55, with a 10% construction contingency of \$5,315.45, for a total authorization of \$58,470.00, and to authorize the Mayor to execute the contract on behalf of the Town.

### INTRODUCTION:

Grind and replace approximately 8615 square feet of asphalt to a six-inch depth to remediate local pavement failures. This work to include all necessary traffic control and will involve grinding, sweeping, tack coating, replacing asphalt to appropriate depth in an appropriate number of lifts and finish rolling per town of Atherton Standard specifications and special provisions.

This work is in various locations on Fair Oaks Lane, Atherton Avenue and Stockbridge Avenue.

### ANALYSIS:

(7) bids were received for the Street Patching Project, as follows:

<u>Company</u>	<u>Location</u>	<u>Bid Amount</u>
Galedridge Construction Inc.	Alviso, Ca.	\$59,012.75
El Camino Paving	Sunnyvale, Ca.	\$62,028.00

Alaniz Construction, Inc.	Fremont, Ca.	\$74,950.00
G. Bortolotto & Co.	San Carlos, Ca.	\$53,154.55
O'Grady Paving, Inc.	Mountain View, Ca.	\$58,151.25
Valley Slurry Seal, Inc.	West Sacramento, Ca.	\$70,556.85
J.A. Gonsalvez & Son Construction, Inc.	Napa, Ca.	\$64,612.50

**FISCAL IMPACT:**

Road Impact (\$160,000) and Gas Tax (\$40,000) funds totaling \$200,000 have been budgeted for street patching and sealing in FY 2007-08. Bids were received for the project on September 12, 2007. G. Bortolotto & Co. was the low bidder at \$53,154.55. This bid was 11.4% below the engineer's estimate prepared by staff, the designer of the project, of \$60,000. A 10% construction contingency of \$5,315.45 would bring the total authorization to \$58,470.00 which is within the FY 2007-08 Budget.

Prepared By:

Approved:

---

Duncan L. Jones, P.E.  
Public Works Director

---

Wendé C. Protzman  
Interim City Manager



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: ADOPTION OF A RESOLUTION FOR ACCEPTANCE OF  
ASSIGNMENT OF DRAINAGE EASEMENT FOR ORCHARD HILLS  
SUBDIVISION**

#### **RECOMMENDATION:**

Adopt the attached resolution to accept an assignment of a drainage easement serving the Orchard Hills subdivision for public use.

#### **BACKGROUND:**

The subdivision map for Orchard Hills was recorded in August 1985. It contained the dedication of several public utility easements and sewer easements. It also contained a reference to an off-site drainage easement to Stockbridge Avenue owned by the subdivider, but did not dedicate the easement to public use. In November 1985, the City Council unanimously approved acceptance of an assignment of the easement by RSO 85-27. However, resolution 85-27 does not appear to exist (the resolution number is shown as "skipped") and neither the resolution nor the assignment of easement were recorded with the County Recorder.

The original subdivider came to Public Works asking about an issue of maintenance of the pipe within the easement. On checking the building department files for the subdivision, the original signed unrecorded Assignment of Easement, prepared by the City Attorney, was located.

**ANALYSIS:**

In order to effectuate the intent of the 1985 City Council, a new resolution is needed accepting the Assignment of Easement and the improvements therein. This new resolution and the Assignment of Easement will then be recorded with the County Recorder.

**FISCAL IMPACT:**

There is no fiscal impact to this action correcting a 1985 error. The Town will be responsible for the maintenance and repair for the drainage pipes within the easement, but that should have been the result of the original subdivision map and improvement agreement.

Prepared by:

Approved by:

\_\_\_\_\_  
Duncan L. Jones, P.E.  
Public Works Director

\_\_\_\_\_  
Wendé C. Protzman  
Interim City Manager

Attachments: Resolution  
Assignment of Easement

**RESOLUTION 07-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RATIFYING  
ACCEPTANCE OF DEDICATION OF DRAINAGE EASEMENT  
FOR THE ORCHARD HILLS SUBDIVISION**

**WHEREAS**, the Orchard Hills subdivision map was accepted and recorded on August 5, 1985 at RSM 113/68; and

**WHEREAS**, said subdivision map referenced but did not dedicate a drainage easement to Stockbridge Avenue; and

**WHEREAS**, the Town of Atherton City Council, in November 1985, approved acceptance of an assignment of said easement; and

**WHEREAS**, acceptance of the drainage easement was to be confirmed by Resolution 85-27, which does not appear to have ever been prepared; By this Resolution, the City Council affirms and ratifies the acceptance of easement and directs that the acceptance which occurred in November of 1985 be officially recorded, and;

**WHEREAS**, the improvements within the easement were completed to Town standards and approved by the Public Works Director.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the Town of Atherton that:

1. The Assignment of Easement from Archie Snider to the Town of Atherton dated October 24, 1985 is hereby accepted and shall be recorded together with this resolution with the County Recorder.
2. The drainage improvements constructed within the easement are hereby accepted by the Town of Atherton for maintenance.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 19<sup>th</sup> day of September, 2007, by the following vote:*

<i>AYES:</i>	<i>COUNCIL MEMBERS:</i>
<i>NOES:</i>	<i>COUNCIL MEMBERS:</i>
<i>ABSENT:</i>	<i>COUNCIL MEMBERS:</i>
<i>ABSTAIN:</i>	<i>COUNCIL MEMBERS:</i>

ATTEST:

\_\_\_\_\_  
Alan B. Carlson, MAYOR  
TOWN OF ATHERTON

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marc G. Hynes, City Attorney



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

**DATE: FOR THE CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: REQUEST FROM THE GENERAL PLAN COMMITTEE**

**RECOMMENDATION:**

Authorize the General Plan Committee to act as the lead Committee to review and provide recommendations relating to Green Building.

**INTRODUCTION:**

The General Plan Committee reviews items as assigned by the City Council. The General Plan Committee met on August 1, 2007, to review the status of previous topics and discuss priorities for discussion of future agenda topics (General Plan Committee staff report attached).

**ANALYSIS:**

The General Plan Committee has held two joint meetings with the Environmental Programs Committee to discuss green building measures. The General Plan Committee requests the Council authorize the General Plan Committee to review and provide recommendations on green building measures, independent of the Environmental Programs Committee. Green building measures relate to other building and construction topics previously addressed by the General Plan Committee and Committee members felt it would be more efficient to charge one Committee with the task rather than continue with joint meetings.

The Environmental Programs Committee could continue its work on promoting Town-wide interest in environmental programs, including green building.

The General Plan Committee prioritized future topics for discussion as following:

1. Review the Zoning Code Update (after review by the City Council)
2. Review the Length of Construction Ordinance (as previously referred by the City Council)
3. Review Green Building Measures, including water efficient landscaping and impervious surface
4. Other Future Topics as assigned by the City Council which could include Heritage Artifact

Ordinance, Housing Element and any other topics resulting from the drainage study.

Individual committee members also expressed interest in discussing the following topics: construction and demolition ordinance, house size on smaller lots (setbacks), and the noise ordinance.

The topic of house size on smaller lots was previously discussed by the General Plan Committee, relating to floor area ratio. The Committee decided not to discuss further. The Council could request the Committee review setback requirements on smaller lots, although staff has not received a lot of community interest on this topic. The noise ordinance has been reviewed by the General Plan Committee on several occasions. The topic was most recently discussed at the October 5, 2005, General Plan Committee at the request of the Lindenwood Homes Association. The item was tabled until there is more experience with enforcing the Special Events guidelines (as complaints were mostly tied to events at M-A High School).

Staff recommends the City Council authorize the General Plan Committee to act as the lead Committee on the topic of Green Building and authorize the General Plan Committee to review the construction and demolition ordinance in conjunction with the green building review.

**CONCLUSION:**

Staff feels the General Plan Committee is the appropriate Committee to take the lead on the topic of green building measures.

**ALTERNATIVES:**

The General Plan Committee reviews and provides recommendations on topics as assigned by the City Council. The Council could assign the General Plan Committee as the lead for green building or could request the Committee continue joint meetings with the Environmental Programs Committee. The City Council could also assign other topics to the General Plan Committee.

**FISCAL IMPACT:**

Cost of staff assistance to the General Plan Committee are paid for by the Town of Atherton.

Prepared by:

Approved by:

\_\_\_\_\_  
Lisa Costa Sanders  
Deputy Town Planner

\_\_\_\_\_  
Wendé C. Protzman  
Interim City Manager

**Attachment:**

1. General Plan Committee Memo dated August 1, 2007



**Town of Atherton**

## **GENERAL PLAN COMMITTEE STAFF REPORT**

**DATE:** GENERAL PLAN COMMITTEE MEETING OF AUGUST 1, 2007

**TO:** GENERAL PLAN COMMITTEE

**FROM:** LISA COSTA SANDERS, DEPUTY TOWN PLANNER

**SUBJECT:** STATUS OF PREVIOUS TOPICS AND FUTURE AGENDA TOPICS

### **RECOMMENDATION**

Staff recommends the Committee review the list of possible future agenda topics and develop a meeting schedule or priority list to discuss the items.

### **BACKGROUND**

At its October 19, 2005 meeting, the City Council requested the General Plan Committee discuss recent construction issues facing the Town. The General Plan Committee held a public meeting on November 2, 2005 to hear from concern residents and builders. The Committee generated a list of topics raised at that meeting. The Committee reviewed each item (as listed in the below table) and provided its recommendations to the City Council. Staff provided an update to the Council at its September 20, 2007 meeting on actions taken by the Committee.

The General Plan Committee reviews items as referred by the City Council. Any new topic the Committee wishes to study requires Council authorization.

### **STATUS OF PREVIOUS TOPICS**

The attached list of topics was prepared from the community-wide General Plan Committee meeting held in November 2005. The Committee has addressed most of the topics, with recommendations to the Planning Commission and City Council for Ordinance changes. After discussion on a few of the items, the Committee felt the current regulations were sufficient. Discussion on a few of the topics is on hold pending outcome of the drainage study.

Staff has summarized the status of the topics as follows;

**Construction Parking** – the General Plan Committee recommended changes to the current construction parking regulations that was adopted by the City Council on May 17, 2006.

**Length of Construction Project** – the Committee recommended a new Ordinance that was adopted by

the City Council that provides maximum time limits for construction projects. The Ordinance was adopted on June 21, 2006. Staff recommended minor changes to the Ordinance at the Council's September 20, 2006 meeting. The Council requested General Plan Committee review the proposed changes and consider an option to add a presumptive time period, i.e. once a project was completed, another project could not be started for 18 months or 2 years, with the proviso that during the presumptive period, the Planning Commission could provide flexibility to allow further construction and waive the time period.

**Construction Hours** – the Committee reviewed the current construction hours with comparison to construction hours in neighboring communities. The Committee recommended no change to the current regulations. Comments were raised at the public meeting that extending the construction hours could reduce the length of time to complete a project.

**Discharge of water for basements** – the Committee held discussion on this item pending completion of the Drainage study authorized by the City Council. This study is currently scheduled for review by the Council at its September 19, 2007 meeting. Staff will provide a copy of the study to Committee members and any recommendations from the Council.

**Abandoned construction site** – the Committee felt the Town should enforce the current Nuisance Abatement Ordinance without amendment.

**Location of construction equipment, manufacturing building materials on-site** – the Committee studied this issue and determined no changes to the current regulations were necessary with the adoption of the construction site screening requirements and the length of construction ordinance.

**Screening construction sites** – the Committee recommended an Ordinance that was adopted by the City Council on June 21, 2006 to require construction site screening for all active construction projects.

**Setback for noise generating structures (HVAC, pool equipment)** – the Committee evaluated the existing Ordinances and determined that sufficient requirements currently exist as all new noise generating structures (HVAC, generators) are required to meet the current noise ordinance or include sound insulating design to mitigate and the operation of pool equipment is limited to certain hours.

**Basement** – the Committee recommended changes to the current basement regulations after discussing the topic at several meetings. The City Council adopted the new requirements at its July 18, 2007 meeting. The effective date of these new regulations tracks the new grading and drainage requirements (September, 2007).

**Location of accessory structures** - the Committee decided not to discuss this item further, citing that the existing regulations are sufficient.

**House size on smaller lots** – the Committee decided not to discuss this item further.

**Design review for larger homes** - Committee members were not interested in pursuing design review.

**Green Building/Sustainable Building requirements** – the Committee has held two joint meetings with the Environmental Programs Committee on this topic. At the first meeting, Dianne Anderson of

the County discussed measures the County has taken to require green building on all new County facilities as well as education for other jurisdictions and homeowners. Ms. Anderson reviewed samples from other jurisdictions and provided copies of the Sustainable booklet. The second joint meeting was held on June 6, 2007 at the Green Building Exchange in Redwood City. This meeting was intended as a workshop setting to get feedback from residents, builders and architects. Staff advertised the meeting and sent direct mail to local builders and architects. Staff provided the Committee with ordinances from other communities and recommended Atherton consider Energy Efficiency Ordinance utilizing performance standards beyond Title 24. At the last meeting, the Committees agreed to schedule another forum for September 5, 2007 for discussion with industry leaders, with the next joint meeting scheduled for October 3, 2007 at 6:00 p.m. After speaking with Council Member/Environmental Programs Chair Charles Marsala, these meetings will need to be rescheduled. Mr. Marsala stated that ICLEI is sponsoring October 4, 2007 as "National Conversation Day on Climate Change", with an event in Atherton as a signer of the "Mayor's Climate Protection Agreement". The event is anticipated to include Menlo Park, Woodside and Portola Valley and will be held at the Pavilion. A joint meeting between the General Plan Committee and the Environmental Programs Committee could be scheduled for November 2007.

**Impervious surface** - the Committee held discussion on this item pending completion of the Drainage study the City Council (drainage study anticipated completion: September, 2007)

**Code Enforcement Officer** – the Committee did not comment on this item as it was under review by the City Council.

**House size on larger lots** (greater than one acre) – the Committee decided not to discuss this item further.

### **FUTURE AGENDA TOPICS**

**Green Building/Sustainable Building** - ongoing with the Environmental Programs Committee – next joint meeting could be scheduled for November 2007.

**Heritage Artifact Ordinance** - the City Council approved the Heritage Artifact Ordinance at its September 2006 meeting. Upon approval of the Ordinance, the Council also requested the General Plan Committee consider creating a public trust or foundation to solicit funds for the purpose of acquiring the artifacts for the Town. The Heritage Artifact Ordinance is the subject of current litigation between the Town and a property owner. Staff recommends holding discussion on this topic pending outcome of the litigation.

**Length of Construction Ordinance** – Council requested General Plan Committee review provision relating to subsequent construction projects.

**Impervious Surface** - on hold for drainage study.

**Water Efficient Landscape Requirements** – staff would like to consider changes to the current water efficient landscape guidelines. The guidelines are contained in Atherton Municipal Code Section 15.48 and are “guidelines” rather than requirements”. This review could be completed in conjunction with the green building/sustainable building discussions or in response to the findings

of the drainage study. The preliminary presentation to the Council on the drainage study found issue with residents over watering their landscapes.

**Zoning Code Update** – The City Council authorized PMC to complete a comprehensive review and update to the zoning code. PMC is currently working on an Administrative Draft for staff review and is anticipated to have a Public Review Draft ready in September 2007. Staff would like to utilize the review with the General Plan Committee of the Public Review Draft as the first community-wide review of the proposed zoning code changes. This meeting could be scheduled for late September/early November 2007.

**Housing Element** – the Town of Atherton is participating in a regional effort with all San Mateo County jurisdictions to establish housing needs allocation and assist with the preparation of the housing element update. Atherton’s Housing Element update is due June 2009. Staff will prepare a timeline in early 2008 for Housing Element review.

**RECOMMENDATION**

Staff recommends the Committee review the list of possible future agenda topics and develop a meeting schedule or priority list to discuss these items.

**Attachment:**

1. Summary of General Plan Committee topics and status

### Summary of General Plan Committee topics and status

Topic	Status
Construction Parking	City Council revised – May 17, 2006
Length of Construction Projects	City Council –adopted June 21, 2006 – requested further review by the General Plan Committee
Construction Hours	GP committee recommends no change to current regulations
Discharge of water for basements	Drainage study anticipated for review by City Council on September 19, 2007
Abandoned construction sites	Utilize Nuisance Abatement Ordinance
Location of construction equipment, manufacturing building materials on-site	General Plan Committee recommends no change to current regulations
Screening construction sites	City Council - adopted June 21, 2006
Setback for noise generating structures (HVAC, pool equipment)	General Plan Committee recommends no change to current regulations
Basements	City Council adopted July 18, 2007
Location of accessory structures <ul style="list-style-type: none"> <li>• Flexibility for lots with three streets</li> <li>• Do not allow structures in front of the main residence</li> </ul>	General Plan Committee decided not to discuss further
House size on smaller lots	General Plan Committee decided not to discuss further
Design review for larger homes	General Plan Committee decided not to discuss further
Green Building/Sustainable Building requirements	Ongoing discussions with Environmental Programs Committee
Impervious surface	Hold discussion pending results of Drainage study
Code Enforcement Officer	Under review by City Council
House size on larger lots (greater than one acre)	General Plan Committee recommends no change to current regulations
Solar – exceptions to height and setbacks	Council requested this item be included in the comprehensive zoning code update.

### General Plan Committee Topics Requiring Additional Review

Topic	Timeline
Green Building/Sustainable Building	
Heritage Artifact Ordinance	
Length of Construction Ordinance	
Impervious Surface	
Water Efficient Landscape Requirements	
Zoning Code Update	
Housing Element Update	2008/2009



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: ADOPTION OF RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING SBWMA AGREEMENTS AND REQUESTS FOR PROPOSALS REGARDING SOLID WASTE MANAGEMENT**

#### **RECOMMENDATION:**

It is recommended that the City Council:

1. Adopt a resolution approving the solid waste, recyclable materials, and organic materials collection services outlined in the South Bayside Waste Management Authority (SBWMA) August 2, 2007, draft Request for Proposals (RFP) for Collection Services;
2. Approve the contract terms detailed in the SBWMA's August 2, 2007, draft Uniform Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials Collection Services;
3. Approve the scope of services in the SBWMA's August 2, 2007, draft Request for Proposals (RFP) for the Operation of the Shoreway Recycling and Disposal Center (SRDC); and
4. Approve the contract terms in the SBWMA's August 2, 2007, draft Agreement for the Operation of the Shoreway Recycling and Disposal Center (SRDC).

#### **READERS NOTE:**

The documents described above in items numbered 1 through 4 constitute some 400 pages of materials. In my opinion, the key issues for the Town are set out in a document described as attachment 14 referenced at page 39 of the RFP for Collection Services. This attachment is provided as Attachment A to this Staff Report and it is recommended that it be read first. Following that, attention is invited to pages 4 through 6 of this report which detail the key changes to the original SBWMA recommendations for Collection Services. Thereafter, review of some or all of the many pages available is entirely up to the reader. Because of the bulk of

this material, it has not been provided in every agenda packet. A notation appears, however, which advises that any interested person may obtain all of this material upon request. The material is provided with the agenda packet located at Town Hall and at the library.

## **BACKGROUND:**

The SBWMA was formed in 1982 (originally called the South Bayside Transfer Station Authority) as a solid waste joint powers authority of 12 member agencies – Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, County of San Mateo (unincorporated portions), and West Bay Sanitary District. Originally, the SBWMA was established to help with the development of the San Carlos Transfer Station. In 2000, the Authority exercised its option to acquire this facility. At that time, the Member Agencies made a commitment per a JPA that solid waste and recyclables collected under their franchise collection agreements would be processed at the transfer station. While each Member Agency has its own franchise collection agreement, the SBWMA assists with administration of those agreements.

The SBWMA is assisting the 12 Member Agencies in developing and conducting a coordinated, competitive selection process for Collection Services and is conducting a similar selection process for the Operation of its Shoreway Recycling and Disposal Center (SRDC).

The Town's franchise agreement with Allied Waste for solid waste, recyclable materials and organic materials collection services expires December 31, 2010, as does the SBWMA's agreement with Allied Waste for operation of the SRDC. These agreements have never been subject to a competitive selection process.

An overview of the contractor selection process, including a schedule, was provided to the Council in May 2006, which identified seven milestones at which the agency Council/Board would be asked for comments or decisions. In August/September 2006, a summary of the Programs and Facilities (PAF) and Process and Contracts (PAC) committee recommendations were presented to the Council prior to the vote at the SBWMA Board's meeting of October 26, 2006.

On October 26, 2006, the SBWMA Board approved the RFP recommendations to the Member Agencies regarding future services, contract terms and competitive proposal guidelines for the RFP process. As a follow-up to that meeting, a model staff report, resolution, and powerpoint presentation were prepared and distributed to Member Agencies on November 20, 2006.

Member Agencies were then asked to agendaize an item for their council or board requesting action as follows:

- Adopt a resolution committing to the SBWMA RFP process and approving the SBWMA recommended core service package.

In summary, the core service package for residential collection services includes: weekly solid waste, single stream recyclables, and organic materials (plant materials and food scraps) collection using carts (sizes ranging from 32-96 gallons) and primarily automated collection vehicles. Side or backyard service is considered an optional service.

Beginning first with the City of San Carlos on December 11, 2006, and last with the City of East Palo Alto on March 20, 2007, all Member Agencies voted affirmatively to participate in the RFP process. Several of the Member Agencies agreed to participate in the RFP process contingent on special service needs (i.e., Atherton and Hillsborough) being addressed, retaining the right to initiate their own RFP process (i.e., Belmont) and stating concerns regarding the intent of some portions of the contract terms (i.e., West Bay Sanitary District). The Council's attention is invited to Section 3.12.2 at page 39 of the RFP for collection services which references Atherton's unique scope of services. These are detailed in Attachment 14 to the RFP. That attachment is provided with this Staff Report as Attachment A..

Since the Member Agency approvals, SBWMA staff has prepared numerous drafts of the RFP documents. The draft documents have evolved over the past several months based on substantial input from a technical review committee of consultants, potential proposers, Board members, Member Agency staff, and outside legal counsel. SBWMA staff also toured some of the largest material recovery facilities (MRF) in California and nationally to gather further information. The net effect of this input is that staff has made some changes to reduce the complexity of the RFPs (both collection and operations) while maintaining the same set of proposed programs and services previously approved. The changes are described below in the "Analysis" portion of the staff report.

Related to the RFP process, the SBWMA Board on April 26, 2007, approved a preferred master plan so staff could move forward with permitting and design work on significant site improvements (e.g., transfer station building retrofits, new MRF building construction, traffic improvements, new recycling sorting equipment, etc.) required for the new solid waste and recycling collection services to be rolled out in late 2010/early 2011. The approved master plan was incorporated as a Site Plan into the draft Shoreway facility operations RFP. The recommended facility improvements must be permitted, designed, and constructed in time for the rollout of the new services.

On June 28, 2007, the SBWMA Board approved the draft Collection RFP and Agreement and draft Shoreway Operations RFP and Agreement. The next step in the RFP process is for Member Agencies to reaffirm their approval of the programmatic details and contract terms, including approval of the changes recommended by SBWMA staff as explained in the Analysis section. After receiving Member Agency approvals and any recommended changes to the draft RFPs and Agreements, the documents will be brought to the October 25, 2007, SBWMA Board meeting for final approval. In order for a Board vote to be taken at that meeting, all member agency approvals must be completed by September 28, 2007. Staff will finalize the documents based on Member Agency approvals and input received by September 28<sup>th</sup>. Shortly after SBWMA Board approval, the approved documents will be released to proposers.

## Schedule

The next steps in RFP process are outlined in the following schedule:

July – Sept. 28, 2007 Member Agency approval of draft Collection RFP and Agreement and draft Shoreway Operations RFP and Agreement ("RFP documents").

All Member Agency approvals and comments to be completed by September 28, 2007.

October 18, 2007 SBWMA staff sends out Board packet with final “RFP documents.”

October 25, 2007 SBWMA Board meeting to consider staff recommendation to approve release of the final “RFP documents.”

November 1, 2007 SBWMA release of the final “RFP documents.”

December 2007 Conduct mandatory pre-proposal conferences.

Feb. /March 2008 Proposals due.

March – July 2008 Review of Proposals, Proposer Interviews, and Selection.

Aug. – Sept. 2008 SBWMA Selection of Contractor(s).

Oct. – Dec. 2008 Member Agency Selection of Contractor(s).

Jan.-March 2009 SBWMA and Member Agencies complete negotiations with contractor(s).

April-June 2009 Member Agencies approve negotiated Agreements\*.

January 1, 2011\*\* Contractor(s) commences rollout of services.

\* The Shoreway Operations Agreement is subject to approval of two-thirds of the Member Agencies whereas the Collection Agreements are unique to each Member Agency and subject to approval by each Member Agency.

\*\* Services may be rolled out sooner if an alternative rollout schedule is negotiated.

## **ANALYSIS:**

At the June 28, 2007, Board meeting, the SBWMA Board approved the draft collection RFP and agreement and draft Shoreway operations RFP and agreement to reflect some changes to the original core services and contract term recommendations approved by the Board and member agencies in October 2006. These changes were notably driven by extensive input received from potential proposers. The changes primarily relate to making the RFP documents simpler in an effort to ensure that they are more reasonable and manageable for proposers to respond to and eventually provide the services requested. While simpler, the draft Collection RFP still remains highly complex given the large size of the SBWMA service area and magnitude of the rollout of new services, customization of services for Member Agencies, and potential for some Member Agencies to opt out of the process.

### ***Summary of Changes to the Collection RFP***

The key changes to the original SBWMA recommendations for Collection Services relate to the following areas:

1. Expanding the residential core recycling services to include used oil collection, battery and cell phone collection and food scraps (to be commingled with plant materials); **these programs were originally listed as optional programs.**
2. Expanding the commercial core recycling services to include multi-family and commercial technical assistance; **these programs were originally listed as optional programs.**
3. Developing separate and distinct scope of services to meet unique Member Agency needs. For example, the Town of Hillsborough has a unique scope that all potential proposers will be required to address.

4. Removing ancillary services (listed under Optional residential and/or commercial collection programs) such as on-call household hazardous waste, universal waste and Sharps from the Collection RFP so they can be addressed through a separate SBWMA procurement. **Member Agencies can still decide whether or not to add these services to their franchise Agreement.**
5. Addressing significant staff and proposer concerns regarding the improbability of a successful rollout of new programs and services in one-day, on January 1, 2011, at the expiration of the existing contract. Staff has included direction in the Collection RFP to solicit proposals for a phased rollout starting July 1, 2010 (“alternative start date”) or a phased rollout after January 1, 2011.
6. Simplifying the contractor compensation methodology from a hybrid cost-plus/fixed-price compensation methodology to pursue a more typical industry standard fixed base price contract under which certain costs are then subsequently adjusted each year based upon changes in corresponding indices (e.g., a consumer price index). Moreover, adjustments are also made for changes in disposal costs. Very few communities currently use a cost-plus compensation methodology for solid waste collection and recycling services.  
This compensation process eliminates detailed annual rate reviews so that contractor’s compensation will never be “trued up” to contractor’s actual costs (with the exception of an annual cost reconciliation related to actual tonnage collected and actual disposal and processing costs). **Elimination of the detailed annual rate review will dramatically reduce consultant expenses for this activity beginning in 2011. Also, this fixed price model should result in far greater rate stability and predictability compared to the current cost plus approach.**
7. Requiring all proposers to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services and use of new commercial collection containers when preparing their proposals. These assumptions are for the purposes of obtaining comparable cost proposals from proposers. **Member Agencies still retain the right to establish cart sizes for residents, use of used equipment, etc, as part of the final negotiated scope of services and costs with their selected contractor.**
8. The term of Collection Agreement was recommended as a 7-year term but has now been changed to a 10-year agreement term. This modification has been made to reflect a more standard amortization schedule for the primary equipment used to provide collection services. In addition, based on the fixed-price compensation methodology and no need for an annual rate review, a longer contract term provides Member Agencies with a longer time frame for rate stability and defers for a longer period of time the next procurement or negotiation cycle.
9. Adjusted the “Acceptable Materials” list for the curbside recycling collection program to exclude some small scrap metal types that pose a problem to sorting equipment (i.e., small appliances, hand tools, automotive parts, chain, wire, and banding).

### ***Summary of Changes to the Shoreway Operations RFP***

The key changes to the original SBWMA recommendations for Shoreway operations relate to the following areas:

1. Similar changes as in the Collection RFP to simplify the compensation methodology.
2. Similar change as in the Collection RFP to change the term from 7 years to 10 years.

3. Contractor will oversee MRF processing equipment installation and startup prior to the expiration of the existing Operating Agreement.
4. All proposers are required to bid new equipment for rolling stock and transfer vehicles for the purposes of preparing cost proposals. SBWMA may later negotiate with the selected contractor for the use of some used equipment.

Council should be aware that the final Collection RFP and Agreement will evolve through the procurement process as proposers raise questions and the SBWMA issues RFP addenda, as contract negotiations take place with selected contractor(s), and the final Agreements are approved. Ultimately, each Member Agency will approve its final Collection Agreement with the selected contractor(s).

The Shoreway Operations RFP and Agreement similarly will undergo change throughout the competitive procurement process. The final Shoreway Operating Agreement will be subject to approval by two-thirds of the SBWMA Member Agencies.

### ***Proposed Changes to the Shoreway Recycling and Disposal Facility***

A master plan for Shoreway facility enhancements has been developed as a part of the new collection and recycling services to be offered in 2011. On April 26, 2007 the SBWMA Board approved the Shoreway facility master plan. Increasing material handling capacity, conversion to single stream recycling, reduced offsite traffic queuing, improved onsite traffic circulation, and enhanced customer safety are issues that were considered in the master plan process. The approved master plan concept includes:

- New 72,000 square foot MRF building to replace the existing 48,000 square foot MRF building constructed in 1968 (purchased and renovated by BFI in 1992).
- New state-of-the-art single stream sorting system with separate infeeds for residential and commercial materials, automated bunkers, cardboard screening, and other paper and container (bottles and cans) screening components. A new single-ram baler will also be purchased to augment our existing two-ram baler.
- Major traffic improvements, including relocation of the current main scale entrance area, additional scales and truck queuing lanes, and a dedicated outbound scale.
- New 26,800 square foot addition to the transfer station building and demolition of the existing southern portion of the building (8,400 square foot) used for self haul tipping. This will add 18,400 square feet of net new tipping area to the transfer station.
- New 3,500 square foot operations building on the west side of the transfer station for operation personnel with a maintenance area for site loaders and forklifts.

Based upon the best information available, which is very preliminary and subject to revision, the total costs of the renovations to the SRDC is \$26 million. The proposed plan of finance calls for using \$6.3 million of the SBWMA's reserves and issuing taxable bonds for the balance of the costs. The annual principal and interest payments will be around \$2.1 million and will require a 2.82% increase in collection rates.

**FISCAL IMPACT:**

Solid waste and recyclables collection services and the operation of the Shoreway Recycling and Disposal Center are funded through the rates paid by customers. No change in the franchise fee is recommended as part of the RFP process. Therefore, no budget impact is anticipated.

Prepared By:

Approved By:

/s/ Marc Hynes  
Marc G. Hynes  
City Attorney

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Wendé C. Protzman  
Interim City Manager

Attachments

- A. Attachment 14 to RFP – Atherton Services
- B. Resolutoin
- C. RFP Documents

**RESOLUTION NO. 07**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
APPROVING THE SOUTH BAYSIDE WATER MANAGEMENT AUTHORITY  
COLLECTION AND OPERATIONS REQUESTS FOR PROPOSALS AND  
AGREEMENTS**

The City Council of the Town of Atherton hereby resolves as follows:

WHEREAS, the South Bayside Waste Management Authority, (“Authority”) is a joint powers authority between the cities of Belmont, Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos, and San Mateo; the towns of Atherton and Hillsborough; the West Bay Sanitary Service; and, the County of San Mateo (“Member Agencies”); and,

WHEREAS, the Authority is planning to request and shall receive proposals for the collection, processing, and transfer of solid waste, recyclable materials, and organic materials within the jurisdiction of the Authority (“RFP Process”); and,

WHEREAS, the City Council of the Town of Atherton has reviewed the solid waste, recyclable materials, and organic materials collection programs; the Shoreway scope of services; and the contract terms in the draft Collection Agreement and Operating Agreement, and,

NOW, THEREFORE, the City Council of the Town of Atherton hereby passes this resolution acknowledging its approval of the:

1. Solid waste, recyclable materials, and organic materials collection programs outlined in the South Bayside Waste Management Authority (SBWMA) August 2, 2007, draft Request for Proposals (RFP) for Collection Services;
2. Contract terms detailed in the SBWMA’s August 2, 2007, draft Uniform Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials Collection Services;
3. Scope of services in the SBWMA’s August 2, 2007, draft Request for Proposals (RFP) for the Operation of the Shoreway Recycling and Disposal Center (SRDC); and
4. Contract terms in the SBWMA’s August 2, 2007, draft Agreement for the Operation of the Shoreway Recycling and Disposal Center (SRDC).

This Resolution shall be effective immediately upon adoption.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 19th day of September, 2007, by the following vote.*

*AYES: Council Members:*  
*NOES: Council Members:*  
*ABSENT: Council Members:*  
*ABSTAIN: Council Members:*

:

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Alan B. Carlson, MAYOR  
Town of Atherton

ATTEST:

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Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

*/s/ Marc Hynes* \_\_\_\_\_  
Marc G. Hynes, City Attorney

**Attachment 14**  
**Atherton Scope of Services and RFP**  
**Requirements**



## Attachment 14 Atherton Scope of Services and Proposal Requirements

This Attachment presents an overview of the Town of Atherton's (Town's) objectives for its future collection agreement; describes the Town's required scope of services; and identifies proposal submittal requirements unique to the Town.

### Atherton's Objectives

The Town of Atherton is committed to providing its residents with excellent customer service. To this end the Town is seeking a contractor that will provide superior service in the field, work with the Town to address resident issues, and meet the Town's diversion goals.

The Town appreciates that higher levels of service (e.g., backyard vs. curbside service) demand the use of more labor and equipment, and the Town will provide the contractor with broad discretion to determine the best methods of collection. Currently, a large proportion of Atherton residents (approximately 44%) prefer to have solid waste collected in the back yard/side yard. Proposers are encouraged to consider non-traditional route schedules that allow the use of automated trucks where practical. For example, a company could propose overlapping routes that use automated trucks for materials placed at the curb (currently approximately 56% of residences) and semi-automated trucks for materials in back yard/side yards. Proposers will also have to provide a fleet of trucks that are of an appropriate size for the tree-lined, narrow streets of the Town.

The Town is committed to sustainable solid waste management practices, and as such is seeking to maximize residential diversion rates. In 2004, the Town's diversion rate was 69% (pending approval of the CIWMB), and the Town is seeking to maintain or increase this rate of diversion.

### Summary of Program Requirements

The table below summarizes the Town's preferences regarding programs and identifies where a description of their requested services can be reviewed (e.g., either elsewhere in the RFP or in this Attachment 14).

#### Summary of Atherton Program Requirements

SBWMA Programs Described in Section 3 of the RFP	Atherton's Program Requirements	Location for Description of Atherton Requirement
<b>Core Services for Single-Family Customers</b>		
1. Weekly solid waste collection	Same as SBWMA program with the exception that back yard/side yard shall be standard service and a rate discount will be provided for curbside collection	RFP Section 3.1.1.1 and Sections 1 and 2 of this Attachment
2. Weekly recyclable materials collection	Same as SBWMA program	RFP Section 3.1.1.2 and Sections 1, 2, and 3 of this Attachment

SBWMA Programs Described in Section 3 of the RFP	Atherton's Program Requirements	Location for Description of Atherton Requirement
3. Weekly plant materials collection	Same as SBWMA program	RFP Section 3.1.1.3 and Sections 1 and 2 of this Attachment
4. Annual holiday tree recycling collection	Same as SBWMA program	RFP Section 3.1.1.4
5. Weekly household battery recycling collection	Same as SBWMA program	RFP Section 3.1.1.5 and in Section 5 of this Attachment
6. Weekly cell phone recycling collection	Same as SBWMA program	RFP Section 3.1.1.6
7. Weekly used motor oil and used oil filter recycling collection	Same as SBWMA program	RFP Section 3.1.1.7 and Section 5 of this Attachment
8. Twice annual on-call clean-up collection	Same as SBWMA program	RFP Section 3.1.1.5 and Section 11 of this Attachment
<b>Optional Services for Single-Family Customers</b>		
1. Weekly organics recycling collection	Optional; same as SBWMA program	RFP Section 3.1.2.1 and Section 4 of this Attachment
2. Drop-off community clean-up event	Optional; same as SBWMA program	Section 12 of this Attachment
3. On-call HHW collection	Optional; same as SBWMA program	RFP Section 3.1.2.4
4. On-call e-waste and u-waste recycling collection	Optional; same as SBWMA program	RFP Section 3.1.2.8 and Section 10 of this Attachment
5. Sharps collection	Optional; same as SBWMA program	RFP Section 3.1.2.6
<b>Services for Multi-family Customers</b>		
	Provide multi-family services that are available to single-family and commercial customers (less than 10 multi-family units; therefore, separate MFD requirements are specified).	Not applicable
<b>Core Services for Commercial</b>		
1. Weekly solid waste collection	Same as SBWMA program	RFP Section 3.3.1.1
2. Weekly single stream collection	Same as SBWMA program	RFP Section 3.3.1.2
3. Weekly organics collection	Same as SBWMA program	RFP Section 3.3.1.3
4. Dual or multi-sort recycling collection	Not required	Not applicable
5. Technical assistance	Same as SBWMA program but required for <u>all</u> commercial accounts businesses in Atherton (including Menlo College)	Section 9 of this Attachment
<b>Optional Services for Commercial</b>		
1. On-call bulky item collection	Same as SBWMA optional program	RFP Section 3.3.2.1

2. On-call e-waste collection	Optional; same as SBWMA program	RFP Section 3.3.2.2
3. On-call u-waste collection	Optional; same as SBWMA program	RFP Section 3.3.2.3
4. Wet/dry collection	Optional; same as SBWMA program	RFP Section 3.3.2.4
5. Universal roll-out of recycling collection	Optional; same as SBWMA program	RFP Section 3.3.2.5
<b>Core Services for Member Agency Facilities</b>		
1. Solid waste collection	Same as SBWMA program	RFP Section 3.4.1.1 and Section 15 of this Attachment
2. Single-stream recycling collection	Same as SBWMA program	RFP Section 3.4.1.2 and Section 15 of this Attachment
3. Dual or multi-sort recycling collection	Not required	Not applicable
4. Organics recycling collection	Same as SBWMA program	RFP Section 3.4.1.4 and Section 15 of this Attachment
5. Public street litter/recycling receptacles collection	Same as SBWMA program	RFP Section 3.4.1.5 and Section 15 of this Attachment
6. Venues and events recycling collection	Same as SBWMA program	RFP Section 3.4.1.6
7. Shared recycling bins downtown	Not required	Not applicable
<b>Optional Services for Member Agency Facilities</b>		
1. U-Waste collection from drop-off sites	Same as SBWMA program	RFP Section 3.4.2.1
2. Building plan review and technical assistance	Required (not optional) service	RFP Section 3.4.2.2 and Section 15 of this Attachment

### Special Proposal Submittal Assumptions and Instructions

This section presents program and proposals assumptions that proposers must comply with and specifies unique proposal instructions for presenting the Atherton service proposal.

- 1. Single-Family Solid Waste, Recyclable Materials, and Organic Materials. Proposers shall provide a cost proposal for weekly collection of solid waste, plant and recyclable materials with semi-automated or automated solid waste vehicles.**

In 2011, the Town intends to adopt a new rate structure that will provide a discounted rate to customers who opt for curbside solid waste collection service instead of the back yard/side yard service. Following the introduction of a discount for curbside solid waste collection service the Town anticipates that some residents will migrate from backyard/side yard service solid waste to curbside solid waste collection service. Recyclable materials and plant materials shall be collected curbside (consistent with the current practice).

For the purpose of estimating costs, proposers shall assume that approximately 60% of residents will select the curbside solid waste collection option (currently 44% of residents use this service), assuming a discounted rate for such service. Approximately 50% of back yard/side yard collection points are within 50 feet of the curb.

Special Proposal Submittal Instructions:

- The proposer shall estimate of the cost per residence for curbside solid waste collection on a weekly basis.
- Proposers shall estimate the cost per residence for back yard/side yard collection of solid waste based on distance in increments of 50 feet; and if appropriate, estimate the cost per resident for the use of specialty collection vehicles.

**2. Single-Family Collection Containers. Contractor must provide a cart-based collection system.**

The Town prefers a 3 cart system that would provide residents with the greatest capacity to recycle materials.

- Solid waste: 20-, 30-, 60-, and 90-gallon carts (or similar sizes) to be distributed at customers' request.
- Recyclable materials and plant materials: 90-gallon standard cart with 30- and 60 gallon carts (or similar sizes) available upon customers' request

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies.

**3. Single-Stream Recyclables Collection. Contractor must provide single-stream recycling service, which includes all paper materials including cardboard, magazines, paperboard, aluminum and metals cans, all plastic bottles/containers coded #1-#7 and aluminum foil.**

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies.

**4. Single-Family Food Scraps Collection. The proposer shall propose food scrap collection services as an Optional Program.**

Food scraps can be collected in a manner determined by the proposer.

Special Proposal Submittal Instructions:

- Proposers shall describe method of collection, and if any additional equipment to be provided to the resident to facilitate food scraps collection and composting (e.g. kitchen waste pails).
- Proposers shall state what, if any, impacts to their collections costs would be caused by including food scrap collection.

**5. Single-Family and Multi-Family Oil, Oil Filters, and Household Battery Collection. The proposer shall propose weekly curbside collection of oil, oil filters, and household batteries (Optional Program).**

Special Proposal Submittal Instructions:

- The proposer shall recommend the collection method and set-out requirements for the residents if different than proposed for the other SBWMA member agencies.

**6. Use of Shoreway Facility. Collected materials should be delivered to the SBWMA's Shoreway Facility.**

The Town of Atherton is and will remain a member of the SBWMA joint powers authority, and receives the same preferred rates as other SBWMA members at the Shoreway Facility.

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies.

**7. Customer Service. The future collection contractor shall deliver high quality customer service and employ their own customer service representatives.**

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies.

**8. Failure to Deliver High Quality Customer Service. The future collection contractor must agree to higher liquidated damage amounts, which are being established to emphasize the importance of customer service.**

The customer service requirements will be stricter in regards to hold times, the duration of each call, and the definition of a missed pick-up. The Town does not anticipate the need to impose liquidated damages except in the most extreme circumstances. Town staff will work with the contractor and customers to resolve issues as promptly as possible.

The contractor must agree to liquidated damages of \$200 per incident if an issue cannot be resolved satisfactorily within 24 hours of receiving notice from the Town or customer that an issue exists. (Saturdays and Sundays shall not be included in the calculation of the 24 hours.)

If a similar problem that warranted liquidated damages occurs at the same address within a three-month period, the contractor must agree to liquidated damages of \$400 per incident.

Special Proposal Submittal Instructions:

- Proposers shall agree to the liquidated damages described above or present an alternative

**9. Commercial Technical Assistance. The future collection contractor must provide site visits/assistance for the few commercial accounts in the Town.**

The technical assistance will involve examining and proposing methods for reducing solid waste, right-sizing collection containers, and offering additional recycling service.

Special Proposal Submittal Instructions:

- Proposers shall describe what will be accomplished during each technical assistance visit if different than that proposed for the other SBWMA member agencies pursuant to RFP Section 3.2.1.6.

**10. Drop-Off E-Waste Collection The future collection contractor shall provide annual or periodic e-waste drop-off community collection events at a location selected by the member agency (Optional Program). The location for the drop-off event will be selected by the member agency.**

Contractor shall be responsible for promoting, managing, staffing, and operating a one-day, seven-hour drop-off event to accept e-waste from residential customers. Contractor shall be responsible for managing of the e-waste event; supervising and directing event personnel; inspecting materials delivered to the event; separating and packaging e-waste; documenting each material type and quantity of such; transporting e-waste to reuse, recycling, and/or processing locations; and cleaning-up the location of drop-off event at the end of the event. Contractor shall promote each e-waste event by preparing billing inserts to be included in each customer's bill and by advertising in a minimum of one local newspaper.

For all e-waste accepted, contractor shall arrange for and pay for repair, refurbishing, or upgrading for donation or resale; and/or recovery of component parts for resale; recovery of precious metals, aluminum, plastic resins, and metals for sale or recycling; and/or management of toxic or hazardous substances in accordance with applicable law; and/or proper disposal of non-recyclable or non-reusable materials.

The Town anticipates that the Contractor can conduct the drop-off e-waste collection events and process the e-waste at no charge to the Town or customers by relying on reimbursement of collection and processing costs pursuant to SB 20.

Special Proposal Submittal Instructions:

- Proposers shall describe its methodology to provide an annual drop-off community e-waste event (e.g., material types, customer participation requirements, control mechanisms for spills and contamination, and any limitations on allowable amounts) and the cost to operate this event.
- Proposers shall present cost for conducting e-waste event and processing e-waste (if any).

**11. Single-Family On-Call E-Waste, U-Waste, and HHW Service. The future collection contractor shall provide on-call curbside collection of household hazardous waste, e-waste, and u-waste for single-family customers (Optional Program).**

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies pursuant to RFP Sections 3.1.2.7 and 3.1.2.8.

**12. Twice Annual On-Call Clean-Up Collection. The future collection contractor shall provide single family customers with two on-call curbside clean-up events annually.**

The on-call service allows customers to request, at their convenience and no additional cost, curbside collection of excess trash, appliances, yard trimmings, and wood.

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies pursuant to RFP Section 3.1.1.5.

**13. Drop-Off Community Clean-Up Event. The future collection contractor shall provide community clean-up events at drop-off locations as requested by member agencies. (Optional Program)**

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies pursuant to Section 5.07.A of the Collection Agreement (provided as Attachment 2 to the RFP).

**14. Reporting Requirements. The future collection contractor shall provide quarterly and annual reports which describe the monthly residential diversion and disposed tons and rates. The reports for the monthly commercial account and tonnage information are also to be completed quarterly and annually.**

Reports are to be completed in a timely manner in a format established by the Town.

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies pursuant to Article 9 of the Collection Agreement (provided as Attachment 2 to the RFP).

**15. Services for Town Facilities. The future collection contractor will provide collection services to Town facilities as described below.**

Collection services to be provided to the Town:

- a. Collection of solid waste, recyclable materials, and plant materials.
- b. Collection of food scraps, upon request.
- c. Contractor-provided carts, bins, and/or drop boxes in a variety of sizes.
- d. Collection a minimum of once per week and up to six days per week.
- e. Collection of solid waste and recyclable materials from public litter and public recycling containers in parks and business districts on a frequency specified by the Town.
- f. Collection at no charge to the Town with costs for service recovered through the contractor's compensation.

Proposer shall provide plan review technical assistance and universal waste collection as optional programs.

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies pursuant to RFP Section 3.4.

**16. Cameras for Collection Vehicles. The future contractor's collection vehicles shall have cameras to monitor driving and loading activities including, at a minimum: (i) back-up cameras mounted at the back yard and side of the vehicle; and, (ii) a hopper camera clearly displaying the contents of the hopper prior to compaction.**

Special Proposal Submittal Instructions: None; requested service is consistent with that describe for other SBWMA member agencies pursuant to Section 8.04.B.4 of the Collection Agreement.

**17. Cost Proposal Forms. Proposers are not required to prepare additional cost forms for Atherton. Costs for servicing Atherton pursuant to the scope described in this Attachment shall be included in the South District cost proposals forms as required by Section 5.8.1.**

Note that the costs proposed by proposer for an optional drop-off community clean-up event (pursuant to instructions in Section 5.8.3 of the RFP) will be used to calculate Atherton's total cost of service to reflect that the Town is requiring two annual drop-off community clean-up events. As a result, proposers do not need to submit a separate cost for Atherton's drop-off community clean-up event.

The level of commercial technical assistance required for Atherton (e.g., site visits of all commercial accounts) shall be reflected in the South District cost proposal forms and is not requested separately because the Atherton level of effort is consistent to that required for the other member agencies (which are requesting site visits for only 10% of their commercial accounts but have many more accounts than Atherton).

Special Proposal Submittal Instructions: None.



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: ROBERT BRENNAN, CHIEF OF POLICE**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: ADOPTION OF A RESOLUTION REGARDING AMERICA  
SUPPORTING AMERICANS**

**RECOMMENDATION:**

The City Council adopts the attached resolution thereby adopting the United States Army, 2d Battalion, 327<sup>th</sup> Infantry, 1<sup>st</sup> Brigade, 101<sup>st</sup> Airborne Division.

**INTRODUCTION:**

The Town of Atherton was recently contacted by American Supporting Americans (ASA). This organization formed in 1968 provides a mechanism for communities to “adopt” a unit of the United States Armed Services. ASA is requesting that the Town of Atherton adopt a particular military division because the commander is from Atherton.

**ANALYSIS:**

ASA is dedicated to supporting our fighting men and women throughout the world. Atherton was specifically selected to support the United States Army, 2d Battalion, 327<sup>th</sup> Infantry, 1<sup>st</sup> Brigade, 101<sup>st</sup> Airborne Division because the commander of that unit grew up in Atherton and attended Atherton Schools. Officer Dean DeVlugt, a veteran of the armed services, has volunteered to represent Atherton to the ASA and our adopted military division. Other cities in San Mateo County have adopted military units via ASA, including Hillsborough, Burlingame and San Mateo.

Officer DeVlugt will act as the liaison between Atherton schools and our adopted military division. He has already contacted several schools in Atherton who have

pledged to aid the morale of the men and women of our adopted military division. Their support will include the mailing of cards, letters and gifts to those serving our country. Officer DeVlugt will create a method for residents to support our adopted military division as well.

**CONCLUSION:**

The approval of this request will create a relationship based on support and friendship between the Town of Atherton and the United States Army, 2d Battalion, 327<sup>th</sup> Infantry, 1<sup>st</sup> Brigade, 101<sup>st</sup> Airborne Division.

**FISCAL IMPACT:**

None.

Prepared by:

Approved by:

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Robert Brennan  
Chief of Police

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Wendé C. Protzman  
Interim City Manager

Attachments: Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
SUPPORTING THE ADOPT-A-UNIT PROGRAM CREATED BY  
AMERICANS SUPPORTING AMERICANS**

**WHEREAS**, American military forces are either engaged in defending or are prepared to defend and support American interests and principals; and

**WHEREAS**, the Adopt-a-Unit program created by American Supporting Americans on March 4, 1968, provides a mechanism whereby all branches of the United Sates Armed Services can be “adopted” by American communities; and

**WHEREAS**, the purpose of this adoption program is to create a bond between American communities and the military men and women without regard to individual political ties or affiliations; and

**WHEREAS**, in recognition of the challenges confronting American service men and service women, it is appropriate and fitting that the town of Atherton in the Sate of California does hereby adopt and offer its ongoing respect and support, in time of war and in time of peace, to the following unit: United States Army, 2d Battalion, 327<sup>th</sup> Infantry, 1st Brigade, 101st Airborne Division.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the Town of Atherton does hereby adopt and offer its ongoing respect and support, in time of war and in time of peace, to the following unit: United States Army, 2d Battalion, 327<sup>th</sup> Infantry, 1st Brigade, 101st Airborne Division.

**BE IT FURTHER RESOLVED**, that the City Council designates the following individual as the official, primary liaison between this community, the newly adopted unit, and *American Supporting Americans* as the organization which has facilitated this adoption: Officer Dean DeVlugt, Atherton Police Department. All contact information for this individual is included in the Adoption Agreement Form accompanying this Resolution.

The Town of Atherton hereby encourages all Town employees, service clubs, charitable organizations, and private citizens to become involved in supporting this adoption.

A copy of the Resolution shall be posted in a central, public place and shall be sent to the local California League of Cities urging participation in this cause.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 19th day of September, 2007, by the following vote:*

*AYES: Council Members:*  
*NOES: Council Members:*  
*ABSENT: Council Members:*  
*ABSTAIN: Council Members:*

ATTEST:

\_\_\_\_\_  
Alan B. Carlson, MAYOR  
TOWN OF ATHERTON

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes  
\_\_\_\_\_  
Marc G. Hynes, City Attorney

ITEM 26

**APPEAL REGARDING 55 BELBROOK WAY**

This item has been resolved; therefore, it will not be heard.



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

**DATE: FOR THE COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: APPEAL OF THE DECISION OF THE PLANNING COMMISSION TO DENY  
A CONDITIONAL USE PERMIT AT 94 TALLWOOD**

**RECOMMENDATION:**

Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Planning Commission to deny the conditional use permit for the reasons outlined in this report.

**INTRODUCTION:**

The subject site is a flag lot of approximately 61,855 square feet in area (1.42 acres) and is located at 94 Tallwood. The applicant applied for a Conditional Use Permit pursuant to Atherton Municipal Code 17.36.190 to exempt the basement area from the requirement of calculating floor area when the basement exceeds two feet in height above the surrounding average natural grade. The exception may be granted by the Planning Commission on sites where the average cross-slope of the property is greater than twenty percent as determined under section 16.24.050

The Planning Commission reviewed this item at its July 25, 2007, meeting. At that meeting, Commissioners stated that they could not approve the request due to the following: the property does not meet the hillside code requirement, the Commission relies on strict compliance with the code, that any modification to the ordinance with respect to this item must be done by the City Council and not the Planning Commission and that the purpose of the Planning Commission is to enforce the Ordinance. The Planning Commission voted 4-0 to deny the request (approved minutes attached).

Notice of the Appeal and the City Council meeting in which it will be considered was mailed to property owners within 500 feet of the subject site.

**ANALYSIS:**

Please review the attached staff report to the Planning Commission for project analysis and the memo from the outside Planner, Richard T. Loewke.

Mr. William Ross, in his letter of appeal cites four grounds for appeal.

1. There was no consideration of the issue of prior City conduct constituting estoppel which serves as a basis for granting the entire CUP advanced by appellants.
2. The Commission was incorrectly advised as to what “substantial compliance” with the Zoning Ordinance meant; that is, it was advised that substantial compliance means actual compliance, which is not the law.
3. There is a lack of clarity of the record presented to the Commission.
4. There is a lack of ex parte communications disclosure; neither prior to nor during nor after was there any ex parte disclosure by any Members of the Commission concerning the appellant’s CUP.

The engineer study as presented by the applicant indicates the property at 94 Tallwood has an average cross slope of 18.6%. Based on the information provided by the applicant, it is the opinion of Town Planning Staff that the property does not meet the objective criteria of “greater than 20%” as a hillside property and therefore cannot be granted a Conditional Use Permit to exempt the basement floor area from the floor area calculations for the property. As Atherton Municipal Code is specific in the description of “a cross slope greater than 20%” and the calculation method for determination of cross slope is specifically defined in the code, Town Planning staff, therefore, would not rely on substantial compliance.

**ALTERNATIVES:**

The Council has the following options:

- Uphold the decision of the Planning Commission and deny the appeal, thereby denying the request for a Conditional Use Permit.
- Approve the appeal and thereby approve a Conditional Use Permit to exempt the basement from the floor area calculations.

**FISCAL IMPACT:**

All costs covering the processing of this application are paid for by the applicants.

**ENVIRONMENTAL IMPACT:**

The proposal has been determine to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15303, Class 3(a) (new single-family residence).

Prepared by:

Approved by:

/s/ Lisa Costa Sanders

Lisa Costa Sanders  
Deputy Town Planner

\_\_\_\_\_  
Wendé C. Protzmas  
Interim City Manager

**Attachments:**

1. Letter of Appeal from William Ross, dated August 1, 2007
2. Planning Commission Staff Report for the July 25, 2007 meeting with attachments
3. Minutes from the July 25, 2007 Planning Commission meeting

**ATKINSON • FARASYN, LLP**

ATTORNEYS AT LAW

REPLY TO:  
MARC G. HYNES

660 WEST DANA STREET  
P.O. BOX 279  
MOUNTAIN VIEW, CALIFORNIA 94042  
TELEPHONE (650) 967-6941  
FACSIMILE (650) 967-1395

J.M. ATKINSON (1892-1982)  
L.M. FARASYN (1915-1979)

**MEMORANDUM**

TO: Lisa Costa Sanders, Deputy Town Planner, Town of Atherton  
FROM: Marc G. Hynes, City Attorney  
RE: 44 Tuscaloosa Avenue  
Appeal of Planning Commission Decision  
Heritage Tree Removal Permit Application Denial  
DATE: September 12, 2007

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Dear Lisa:

This follows our discussion concerning the August 2, 2007, appeal filed by Pietro Dova concerning the denial by the Planning Commission of his application to remove a heritage tree at 44 Tuscaloosa.

The appeal letter purports to serve as a record in case the appeal is denied. Mr. Dova states that "should the tree in question (identified as tree #333 in the permit removal application) subsequently fail causing any damage whatsoever, physical injuries or other, the Town of Atherton will be held responsible and liable to the fullest extent of the law.

As I explained, the Town and its officials are immune from liability related to any determination as to denial of licenses or permits. Government Code section 818.4, which is included within what is known as the "California Government Claims Act" (sometimes referred to as the California Tort Claims Act) provides in section 818.4 that a public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

Title 8.10 of the Town of Atherton provides in Section 8.10.040 for the issuance of heritage tree removal permits. This authorization is in conformance with the immunity envisioned in Government Code section 818.4. Case law has recognized this immunity as a bar to damages cause of action. (Thompson v. City of Lake Elsinore (1993) 18 Cal.App.4<sup>th</sup> 49; Burchette v. City of Newport Beach (1995) 33 Cal.App.4<sup>th</sup> 1472.)

Respectfully,

MGH:cwb  
C Interim City Manager

MARC G. HYNES

William D. Ross  
Kypros G. Hostetter  
Joseph Bakshandeh  
Karin A. Briggs

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Law Offices of  
**William D. Ross**  
A Professional Corporation  
520 South Grand Avenue, Suite 300  
Los Angeles, CA 90071-2610  
Telephone: (213) 892-1592  
Facsimile: (213) 892-1519

Palo Alto Office:

400 Lambert Street  
Palo Alto, California 94306  
Telephone: (650) 843-8080  
Facsimile: (650) 843-8093

File No.: 457/3

August 1, 2007

***VIA ELECTRONIC TRANSMISSION  
& FEDERAL EXPRESS***

Ms. Kathi Hamilton, Acting City Clerk  
and Commission Members of the  
Town of Atherton Planning Commission  
91 Ashfield Road  
Atherton, California 94027

Re: ***Appeal of Town of Atherton Planning Commission July 25, 2007 Decision Denying Conditional Use Permit - 94 Tallwood - Atherton Municipal Code Section 17.36.190; Charles W. King, III and Leslie King v. Town of Atherton, et al., San Mateo Superior Court Case No. CIV 461513***

Dear Ms. Hamilton:

This office represents Applicants, Charles W. King III and Leslie King, Trustees of the KCP Trust (the "Appellants"), the owners of improved residential real property at 94 Tallwood Court, Atherton, California, 94027-6432, Assessor's Parcel Number 074-130-310 (the "Subject Property"). The Subject Property is the subject of a Conditional Use Permit (the "CUP") which was denied by the Town of Atherton (the "Town") Planning Commission (the "Commission") on July 25, 2007.

**APPEAL OF COMMISSION JULY 25, 2005  
DECISION; 94 TALLWOOD COURT**

This communication summarizes the present basis or grounds for appeal ("Appeal") of the July 25, 2007 Commission decision denying the CUP to allow a basement to exceed

G:\457.003\LTR\Appeal of 072507 Denial of CUP

Ms. Kathi Hamilton, Acting City Clerk  
and Commission Members of the  
Town of Atherton Planning Commission  
August 1, 2007  
Page 2

two feet in height above the surrounding average natural grade for hillside properties as prescribed by Town Municipal Code Section 17.36.190.<sup>1</sup>

This Appeal is filed pursuant to Municipal Code Section 17.64.010. Appellants reserve the right to supplement the Appeal with respect to factual and legal matters which may arise in the course of this administrative proceeding or any related administrative proceeding or resulting from litigation involving the Subject Property.

As the evidence submitted to the Commission shows, the Commission should grant Appellants' Appeal.

### **GROUNDS FOR APPEAL**

The following are the present grounds for the Appeal:

- A. There was no consideration of the issue of prior City conduct constituting estoppel which serves as a basis for granting the entire CUP advanced by Appellants. Specifically, the issue was advanced in the entire context of the proceeding advanced by the City against the Kings as a result of Phase III of the Town Council initiated Audit and the expenditures incurred only *after* approvals by City Officials resulting in the completion of a single-family residence which by the City's own records had a minimum value of \$2,637,500.00.
- B. The Commission was incorrectly advised as to what "substantial compliance" with the Zoning Ordinance meant, that is, it was advised that substantial compliance means actual compliance which is not the law. *See, Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657. The Appellants presently substantially comply with all provisions of the Zoning Ordinance.
- C. There is a lack of clarity of the record presented to the Commission. Some Commissioners repeatedly referred to an "Administrative Record." The

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<sup>1</sup>All section references are to the Town Municipal Code sections unless otherwise noted.

Ms. Kathi Hamilton, Acting City Clerk  
and Commission Members of the  
Town of Atherton Planning Commission

August 1, 2007

Page 3

Appellants and this office are unaware of any Administrative Record therefore there was a lack of clarity as to what evidence the Commission was relying upon to make its decision. Further, calculations were advanced by individual Commissioners which cannot constitute substantial evidence by individual Commissioners which were advanced at the time of the hearing and therefore within sufficient notice for opportunity for response by the Appellants.

- D. There is a lack of *ex parte* communications disclosure; neither prior to nor during nor after was there any *ex parte* disclosure by any Members of the Commission concerning the Appellants' CUP.

Please acknowledge receipt of this Appeal for the Commission CUP decision. The Appellants' fee of \$750.00 is enclosed.

Very truly yours,



William D. Ross

WDR:mgl

Enclosure

cc: Mr. Charles W. King, III and Mrs. Leslie A. King



**DATE:** PLANNING COMMISSION MEETING OF JULY 25, 2007

**TO:** THE PLANNING COMMISSION

**FROM:** LISA COSTA SANDERS, DEPUTY TOWN PLANNER

**SUBJECT:** 94 TALLWOOD COURT (APN 074-130-310)  
CONDITIONAL USE PERMIT

**RECOMMENDATION:**

For the reasons outlined in this staff report, Town Planning Staff recommends that the Planning Commission deny the Conditional Use Permit for the subject site based the following findings:

1. The proposed project will not be detrimental or injurious to persons, property or improvement in the vicinity and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience. *Staff feels this finding can be made as exempting the basement floor area will not be detrimental to persons or property in the vicinity.*
2. The proposed project for the subject site is consistent with the Town of Atherton General Plan and the purposes of that plan and the Zoning Code. *Staff feels that this finding cannot be made as the request is not consistent with the purposes of the zoning code.*

**INTRODUCTION:**

The Town retained the services of Mr. Richard T. Loewke for independent planning analysis of the conditional use permit application for 94 Tallwood. Mr. Loewke's memo is attached to this staff report for the Planning Commission's consideration. Mr. Loewke will be present at the meeting to respond to any questions.

**ANALYSIS:**

Reference is made to the memo prepared by Richard T. Loewke for analysis of the conditional use permit request.

**CONCLUSION:**

It is Town Planning Staff's professional opinion that the property does not meet the objective criteria of "greater than 20%" as a hillside property and therefore cannot be granted a conditional use permit to exempt the basement floor area from the floor area calculations for the property. Town Planning Staff utilizes a strict interpretation of the zoning code where objective criteria are identified (i.e.; setbacks, height limit, and floor area). As the code is specific in the description of

“a cross slope greater than 20%” and the calculation method for determination of cross slope is specifically defined in the code, Town Planning Staff therefore would not rely on substantial compliance.

If the Commission, after review of the submittal materials and the independent analysis of Richard T. Loewke feels substantial compliance is appropriate for consideration with this application, the Commission may grant the Conditional Use Permit based on the making the two findings listed in the Recommendation section of this staff report in the affirmative and subject to the conditions listed in the draft Conditional Use Permit certificate.

**ALTERNATIVES:**

Reference is made to the memo prepared by Richard T. Loewke for discussion of alternatives.

**FISCAL IMPACT:**

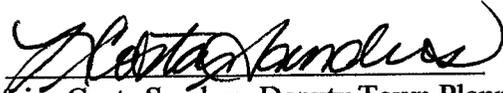
The applicant paid the Conditional Use Permit fee of \$750 for the processing of this application. Any additional expenses are borne by the Town.

**ENVIRONMENTAL IMPACT:**

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15303, Class 3(a); new single family residence.

**FORMAL MOTION:**

I move that the Planning Commission deny the Conditional Use Permit at 94 Tallwood Court, based on the findings and for the reasons incorporated in the Staff Report and subject to the conditions listed in the Draft Conditional Use Permit.

  
Lisa Costa Sanders, Deputy Town Planner

**Attachments:**

1. Draft Conditional Use Permit
2. Analysis of Use Permit Application for 94 Tallwood prepared by Richard T. Loewke, dated July 20, 2007
3. Letter of request from Charlie King III, dated June 7, 2007, with calculations by Lea & Braze Engineering as Exhibit C-1
4. Site plan prepared by Lea & Sung Engineering, Inc. dated April 1, 2005

*draft*

**TOWN OF ATHERTON  
PLANNING COMMISSION  
CONDITIONAL USE PERMIT CERTIFICATE**

THIS IS TO CERTIFY THAT the Atherton Planning Commission at a regular meeting thereof, held on Wednesday, July 25, 2007 did grant Conditional Use Permit to KCP Trust, pursuant to Atherton Municipal Code Section 17.08.054 to allow the basement area to be excluded from the floor area calculations for the property at 94 Tallwood Court in Atherton (Assessor's Parcel Number 074-130-310) The Permit was approved subject to the following conditions:

1. This and all other present and future improvements to the property shall comply with R1-A zoning provisions and other applicable ordinances.

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Lisa Costa Sanders  
Deputy Town Planner

Effective Date: \_\_\_\_\_  
Atherton, CA

July 20, 2007

Cris Carrigan  
Special Counsel, Town of Atherton  
c/o Morgan Miller Blair  
1331 N. California Blvd., Suite 200  
Walnut Creek, CA 94596-4544

**SUBJECT: Analysis of Use Permit Application for 94 Tallwood Court**

Dear Mr. Carrigan,

This report provides an independent analysis of the Conditional Use Permit application filed on June 8, 2007 by Charlie King, on behalf of the KCP Trust, pertaining to the newly constructed residence located at 94 Tallwood Court. The application seeks approval pursuant to Section 17.36.190 of the Atherton Municipal Code (AMC) to exempt the "basement" portion of the subject residence from height limitations established under the Code, thereby facilitating a computation of total floor area which complies with the maximum floor area limitations of AMC Section 17.20.040.

It is my understanding that this application will be considered by the Atherton Planning Commission at a public hearing scheduled for July 25, 2007. This analysis relies on the current application materials, the construction plan set dated March 30, 2005 and April 1, 2005, and Town file documentation provided via Morgan Miller Blair, in order to provide an independent analysis of requested Conditional Use Permit in the context of applicable AMC sections.

## 1. BACKGROUND

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Following is a summary of factual information which has been presented in the available application and file materials.

**A. Property Characteristics:** The subject property (APN 074-130-310) is a "flag lot" as defined in AMC Section 17.08.180 which includes a rectangular area measuring 200 feet in width by 290 feet in depth, together with an access area of approximately 20 feet in width, for a combined lot area as defined pursuant to AMC Section 17.08.160 of approximately 61,855 square feet (1.42 acres)<sup>1</sup>.

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<sup>1</sup> Documentation provided by the project civil engineer references a lot area of 1.42 acres; this figure has been independently verified based on data presented in the construction plan set.

The access area slopes up from a base elevation of 300' adjoining the Tallwood Court right-of-way boundary, to a natural grade elevation of approximately 327 feet at the point of connection to the body of the lot. The house itself is situated near the center of the lot on a gentle knoll which originally reached a pre-development natural elevation of approximately 354 feet. The lot rises to a maximum elevation of approximately 358 feet along the easterly property line, and again falls to a low point near the southwesterly corner of approximately 330 feet.

**B. Permitting and Inspection of Construction:** The construction plans provided for this report reflect a new residence with "basement" area, swimming pool, detached garage and attached cabana. Construction of these improvements commenced in mid-2005, according to file record documentation, based on separate permits for the garage and house with its attached cabana. An audit of plan check and inspection records was conducted by the Town the following year, after a series of Code compliance issues were identified, including that of potential inconsistency with the maximum floor area ratio (FAR) limitations imposed under the AMC. Based on permit records, plans and inspections of the premises, the audit concluded that because the "basement" extends more than two feet above the average natural grade, its floor area must be taken into account when calculating the total square footage of the house<sup>2</sup>. As a result, the Audit identified a total as-built floor area of 12,709 square feet, or 1,575 square feet in excess of the limit established by taking 18% of the lot area (see calculations below).

**C. Zoning District:** The subject property is situated at 94 Tallwood Court, in an area zoned R 1-A Single Family Residential Zoning District. The analysis which follows is based on zoning ordinance requirements applicable to this district.

**D. Floor Area Ratio Limitations:** Section 17.08.130 of the AMC defines "floor area ratio" (FAR) as the "sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area." Section 17.08.128 defines floor area as "the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures." When calculating floor area, this definition requires inclusion of "those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures." The definition of floor area also expressly excludes "pools, tennis courts, drives and other paved surfaces, and basements."

Section 17.20.040 of the AMC establishes a series of building and lot requirements applicable to improvements on properties within the R 1-A Zoning District. Subsection C of 17.20.040 specifically limits the FAR for the subject property in two ways: (a) first, the total floor area may not exceed an FAR of eighteen percent, or 11,134 square feet<sup>3</sup>; and

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<sup>2</sup> Based on audit report dated September 25, 2006.

<sup>3</sup> Calculated on the basis of 1.42 acres multiplied by 43,560 SF/acre times 0.180.

(b) second, the floor area above the first floor of the main building may not exceed 7.5 percent of the lot area, or 4,639 square feet<sup>4</sup>. In performing the calculation of "floor area" Section 17.08.128 provides that the following are to be excluded: (1) The first five hundred square feet of roofed area, completely open on two or more sides; and (2) Structures, open on all sides, with substantially open roofs.

**E. Basement Area:** The above referenced definitions call for the exclusion of a basement when calculating the floor area of a building and determining its FAR. However, Section 17.08.054 of the AMC defines "basement" to include "that story below the finished floor of the first story of a building that is at no point in excess of two feet in height above the surrounding average natural grade." Section 17.08.054 requires that "any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area" for purposes of determining the FAR. Finally, Section 17.08.054 also provides that basements are subject to the exception provisions of Section 17.36.190, which authorizes consideration of a conditional use permit to allow "basement" areas to exceed two feet in height above the surrounding average natural grade on hillside properties, "where the average cross-slope is greater than twenty percent as determined under Section 16.24.050" (see "cross slope" below).

The Basement Plan contained in the construction plan set identifies a game room with bar, wine cellar, bedroom, bath, mechanical room, and both unfinished and finished storage areas. The Town's Plan Check process identified the basement as having an area of 3,217 square feet<sup>5</sup>. The Plan Check audit completed in 2006 found that the basement had been constructed with a top plate elevation of 353.4 feet, which was found to be in excess of the surrounding average natural grade.

**F. Cross Slope:** Section 16.08.030 defines cross slope as the "average grade or slope of a parcel or area expressed as a percentage of vertical difference in elevation to the horizontal distance and determined by the cross slope formula in the lot size requirement section of this title." Section 16.24.050 (Lot Size Requirements) establishes a formula for computation of average cross slope. The applicant has submitted a computation, prepared by a civil engineer based on the 20-scale site plan and topographical map, using 2-foot contours in accordance with the requirements of Section 16.24.050. The analysis<sup>6</sup> shows the average cross slope for the entire 1.42-acre parcel to be 18.6%. This calculation includes the access area (or "flag pole") portion of the lot, as mandated by the definition of "lot area" found in AMC Section 17.08.160.

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<sup>4</sup> Calculated on the basis of 1.42 acres multiplied by 43,560 SF/acre times 0.075.

<sup>5</sup> The mechanical calculation of floor area was established through the plan check audit as report on September 25, 2006, and has not been repeated or otherwise recalculated for this report.

<sup>6</sup> Exhibit "C-1" prepared by Lea & Blaze Engineering, dated May 23, 2007.

**G. Enforcement Action:** A letter was issued to the property owner in October of 2006 advising that no further inspections would be performed due to the concerns over the floor area calculations. The property owner submitted an application for consideration of a Conditional Use Permit on June 8, 2007 pursuant to the exception provision of AMC Section 17.36.190 for basements on hillside properties where the average cross slope is greater than 20%.

## 2. ANALYSIS

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Following is an analysis of the June 8, 2007 Conditional Use Permit application for 94 Tallwood Court, based on the foregoing applicable plans, file documents and AMC sections.

**A. Determination of Building Area:** The Plan Check Audit performed by the Town has determined that the total building area for purposes of FAR determination is 12,709 square feet. The breakdown is as follows:

Upper Floor	2,305
Main Floor	3,811
Basement	3,217
Cabana	926
Porches (less 500 SF exclusion)	1,400
Garage	1,050
<b>Total</b>	<b>12,709</b>

**B. Inclusion of "Basement" Area as Part of Building Area:** The 2006 Audit documentation confirms that the top plate of the completed "basement" area has a top plate elevation of 353.4 feet. The Audit identified the average natural grade to be 349.5 feet, or 3.9 feet lower than the top plate of the "basement". The applicant's civil engineer submitted a letter on March 3, 2006 that identifies the "average finished grade" of the building site as 351.1 feet. The Town's independent engineering consultant performed a separate review and analysis of the "average natural grade" of the site<sup>7</sup>, and found the initial determination of 351.1 feet to be "consistent with the Town's current implementation policy."

Review of the language in AMC Section 17.08.052 indicates that "average natural grade" must be determined by "adding the sum of the highest natural grade elevation and lowest natural grade elevation and dividing by two, for that portion of the lot covered by a building." Based on a review of the existing natural grade contours shown on the construction plan set provided for this analysis, a pre-development high point elevation of approximately 354.5 feet was identified adjoining the southeast corner of the house covered patio (column

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<sup>7</sup> August 2, 2006 report prepared by Mokhatari Engineering, Inc.

supporting a deck), and a low point elevation of approximately 346 feet was identified adjoining the northwest corner of the house. Based on these measurements of pre-development natural grade differences at opposite corners of the house, the "average natural grade" for that portion of the lot covered by the building is 350.3 feet  $(346 + 354.5 / 2 = 350.25)$ . Using this calculation, the height of the "basement" top plate is 3.1 feet above average natural grade.

In summary, the Town's Audit measurement, the applicant's measurement and this independent measurement all conclude that the top plate of the finished "basement" is more than 2 feet above average natural grade. Therefore, unless exempted pursuant to discretionary entitlement afforded under the AMC, the floor area of the constructed basement area does not qualify as a "basement" area for purposes of exclusion from FAR calculations pursuant to AMC Section 17.08.054.

**C. Application of Floor Area Ratio Limitation:** Based on the foregoing analysis, the basement area must be included in the determination of FAR. This results in the following calculation:

<b>Factor</b>	<b>Calculation</b>	<b>Excess</b>
Area above first floor	6,116 SF	1,477 SF
Basement ("first floor")	3,217 SF	-
Garage, cabana & porch after 500 SF exclusion	3,376 SF	-
Total floor area	12,709 SF	1,575 SF
Site Area (1.42 acres)	61,855 SF	-
Total FAR (18% max. or 11,134 SF)	20.5%	2.5%
FAR above first floor (7.5% max. or 4,639 SF)	9.9%	2.4%

**D. Exception for Basement Areas Greater than 2' Above Surrounding Natural Grade:** An exception to allow treatment of the lowest floor of this structure as a "basement" as defined in AMC Section 17.08.054 is dependent on qualification under Section 17.36.190, which authorizes consideration of a conditional use permit "where the average cross-slope is greater than twenty percent as determined under Section 16.24.050. However, as identified above, the "average cross slope" of this 1.42-acre parcel, as determined pursuant to Sections 16.24.050 and 17.08.160, is 18.6%. Consequently, a strict interpretation of the language of Section 17.36.190 would, on its face, preclude granting of a Conditional Use Permit to qualify the above identified 3,217 square feet on the lowest living level of the house as a "basement".

**E. Findings for Approval of Conditional Use Permit:** Prior to the approval of a conditional use permit, the Planning Commission must be bound by AMC Section 17.52.050 to find as follows:

A. The proposed use at the proposed location will not be detrimental or injurious to person, property or improvements in the vicinity, and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience; and

B. The proposed use will be located and conducted in a manner in accord with the general plan and the purposes of that plan and this title.

The foregoing findings are a matter of judgement for the Commission, based on evidence provided in the record at the time of the hearing. Additionally, when issuing a conditional use permit, the Commission may, pursuant to AMC Section 17.52.060 impose reasonable conditions or restrictions, including, but not limited to:

“...time limits, review of performance and performance standards, as it deems necessary to secure the purpose of this ordinance and to assure operation of the use in a manner compatible with existing and potential uses of adjoining properties and in the general vicinity, and may require guarantees and evidence that such conditions are being or will be complied with.”

Despite the calculated 18.6% average cross slope not being in strict conformance with the language of Section 17.36.190, if the Planning Commission believes the above findings as required under Section 17.52.050 can be made, then it may determine that the project substantially complies with the AMC, and may grant the Conditional Use Permit.

**F. Alternatives for Consideration of FAR In Excess of 18%:** Two alternative procedures have been identified as being potentially available under the Town's zoning requirements for consideration of a basement area that has a top plate elevation measuring more than 2 feet above the pre-existing average natural grade surrounding the footprint of the house. These include the “Exception” procedure identified in Section 17.54.010, and the “Variance” procedure identified in Section 17.56.010. While this report does not attempt to judge the legal authority for or merits of such potential applications, the following standards for consideration are noteworthy:

- (1) Exceptions “to the design of the proposed new building” may be granted by the Commission subject to consideration of the following Guidelines: (a) The exception requested is compatible with the surrounding neighborhood visual character; (b) The landscaping and exception sought will not substantially decrease the privacy of neighbors; (c) The application shall not increase the degree of nonconformity as defined in Section 17.44.050; and (d) The exception requested is consistent with the general plan, the purposes of that plan and the Zoning Ordinance.

While I understand that this provision has not been historically applied to conditional use permit applications, under Section 17.36.190 there is no direct prohibition in so doing, should the Planning Commission determine that the project conforms to the Guidelines set forth in Section 17.54.010.

- (2) Granting of a variance from the specific provisions of the Zoning Ordinance may only occur following to a public hearing and subject to a determination of three mandatory "findings" in accordance with AMC Section 17.56.050 as follows: (a) Variances from the terms of the zoning title shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning title deprives such property of privileges enjoyed by other property in the vicinity and under identical classification; (b) Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and (c) A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The conclusions of this independent analysis are not binding on the Town or the Planning Commission. As noted above, it is also within the discretion of the Commission to proceed with consideration of the current Conditional Use Permit, based on a determination that the cross slope of the parcel is substantially consistent with the requirements of Sections 16.24.050 and 17.08.160, as to permit classification of the lower floor area as a "basement". Under these circumstances, the FAR requirements of the Code would be satisfied, and the conditional use permit findings noted in paragraph "E" would need to be considered.

### **3. ENVIRONMENTAL IMPACT**

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Section 21084 of the Public Resources Code requires that the California Environmental Quality Act Guidelines (the Guidelines) include a list of classes of projects which have been determined not to have a significant effect on the environment and which are therefore determined to be "exempt" from the provisions of CEQA. Guidelines Section 15303 identifies "Class 3" exemptions to include construction of "small structures", including one single-family residence in a residential zone, subject to a set of specific limitations. The Town of Atherton has relied upon this section of the Guidelines in its preliminary determination to "exempt" construction of the home and related improvements on the subject property from further specific analysis as a "project" under CEQA.

Section 15300.2(a) of the Guidelines provides that the applicability of a Class 3 exemption is specifically qualified by "consideration of where the project is to be located". This section of the Guidelines uses the following language to avoid routine application of exemptions without careful preliminary review of the circumstances of the project: "*A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.*" In addition, Subsection (c) of Section 15300.2 states that a categorical exemption: "*Shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*" The Town's consideration of a discretionary Conditional Use Permit would therefore be subject to analysis under CEQA if substantial evidence in the record indicated the existence of a particularly sensitive surrounding environment or other unusual circumstances.

Based on the information provided in the Town's administrative record, the environmental setting of the subject property is not unusual or especially sensitive as to slope, habitat conditions, relationship to adjoining improved properties or other natural features and environmental resources. The setback, building height and related zoning standards applicable to development of properties in this the R 1-A District provide a uniform basis to minimize the environmental effects associated with the construction of single-family residences. The exception sought through this discretionary permit would not result in a significant change in either the land use regulations applicable to the property or the resultant effect of the improvements on the surrounding physical environment.

#### 4. CONCLUSIONS

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Based on the definition of a basement, and the basement regulations, any lower floor level that is in excess of two feet in height above the surrounding average natural grade must be included in the calculations of floor area, unless otherwise excused through discretionary action. Basements with a height less than two feet above the surrounding average natural grade are currently exempt under provisions of the AMC from floor area calculations. Where the Planning Commission finds that the average cross-slope of the site is greater than 20% (or substantially in conformance with the 20% standard), the Commission may, subject to findings, issue a conditional use permit to exempt the basement area from the defined floor area calculations. This procedure would result in compliance with the Town's adopted floor area ratio (FAR) limitations.

Alternatively, the Planning Commission is authorized under the AMC sections referenced above to consider alternative procedures for approval of either: (1) an "exception" subject to conformance with Guidelines, or (2) or "variance" from the provisions of the Zoning Ordinance subject to separate hearing procedures and findings. Either such alternative procedure may result in the lower floor area being considered a "basement".

Sincerely,



Richard T. Loewke, AICP

Attachment 1

**ATTACH. 1: REFERENCED AMC SECTIONS APPLICABLE TO 94 TALLWOOD CT.**

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**16.08.030 Cross slope.** "Cross slope" means the average grade or slope of a parcel or area expressed as a percentage of vertical difference in elevation to the horizontal distance and determined by the cross slope formula in the lot size requirement section of this title. (Ord. 441 § 1 (part), 1988)

**16.24.050 Lot size requirements.**

A. Applicability and Exemptions. The provisions of this title shall apply to all proposals for subdivisions. Existing parcels of land which meet prior minimum zoning standards but which do not meet the standards of this section shall not be deemed substandard or nonconforming by enactment of this section. Minimum lot areas, widths and depths shall be as specified in Table 16.24.050. Each individual lot shall comply with the slope/density standards specified in Table 16.24.050.

Table 16.24.050

**LOT SIZE STANDARDS**

NOTE: THESE WERE CCI TABSETS: TP 30,30,25,25

Minimum Cross Slope	Minimum Lot Area (in acres)	Minimum Lot Width (in feet)	Minimum Lot Depth (in feet)
0 — 19.9%	1	175	200
20 — 34.9%	2	200	200
35%+	5	300	300

\*Measured at the building setback line.

B. Applications. Applications for all divisions of land shall include calculations of the average cross slope of each individual lot proposed. Calculations shall be made using the following formula and shall be in a form capable of being checked.

NOTE: THESE WERE CCI TABSETS: TS 6,8,11

$S = 100 \frac{IL}{A}$

A

NOTE: THESE WERE CCI TABSETS: TS 1,4,5,6,7

Where: S H average cross slope of parcel in percent

I H interval of measured contours

L H combined length of contours in feet (i.e., map measurement of contours in inches x scale)

A H area of parcel in square feet

C. Cross Slope Definition. As defined in Section 16.08.030.

D. Determination of Cross Slope. In all cases, the cross slope of an area shall be determined for land in its natural state or as altered pursuant to previous authorization by the city. The formula set forth in subsection B of this section shall be used to determine cross slopes.

**17.08.160 Lot area.** "Lot area" means the area of a lot measured horizontally between bounding lot lines, including any portion of a flag lot providing access to the street. (Ord. 407 § 16-14, 1985)

**17.08.180 Lot, flag.** “Flag lot” means a lot having access to a street by means of a private driveway or parcel of land (known as the access area) not otherwise meeting the requirements of this title for lot frontage. Width of the access area shall be measured perpendicular to the side line of the access area.

**17.08.052 Average natural grade.** “Average natural grade” means the vertical elevation, determined by adding the sum of the highest natural grade elevation and lowest natural grade elevation and dividing by two, for that portion of the lot covered by a building. (Ord. 497 § 4, 1998)

**17.08.054 Basement.** For the purposes of this chapter, “basement” means that story below the finished floor of the first story of a building that is at no point in excess of two feet in height above the surrounding average natural grade. Basements are subject to the requirements of Section 17.36.190. Any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area under Sections 17.20.040 and 17.24.040 of this code. (Ord. 497 § 1, 1998)

**17.08.070 Building height.** “Building height” means the vertical distance from the natural grade or finish grade, whichever results in the lower height, measured to the topmost point of the roof. Continuous decorative roof elements, including but not limited to widow walks and railings, shall be included in the maximum building height. (Ord. 539 § 2, 2003: Ord. 512 § 2, 2000: Ord. 497 § 5, 1998: Ord. 407 § 16-5, 1985)

**17.08.128 Floor area.** “Floor area” means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. Floor area shall also include those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures. Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements. (Ord. 497 § 2, 1998: Ord. 478 § 1(B), 1994: Ord. 456 § 3, 1990)

**17.08.130 Floor area ratio.** “Floor area ratio” means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area. (Ord. 497 § 3, 1998: Ord. 407 § 16-11, 1985)

**17.36.190 Basements.** Basements shall not exceed two feet in height above the surrounding average natural grade. Exceptions to the requirements of this section for hillside properties (where the average cross-slope is greater than twenty percent as determined under Section 16.24.050) may be permitted upon issuance of a conditional use permit. Basements are only permitted under the footprint of buildings located within the buildable area. Areas for stairways and light wells may extend beyond the footprint of buildings, but shall be limited to the buildable area. (Ord. 536 § 1, 2002: Ord. 497 § 10, 1998)

**17.20.040 Building and lot requirements.** The following minimum and maximum requirements shall apply in all R-1A districts:

A. Height. The maximum building heights permitted are:

1. The standard maximum height for main buildings shall be thirty feet; provided, that vertical sidewalls and columns may not exceed twenty-two feet; and provided further, that these standard maximum heights may be increased, but in no event to exceed thirty-four feet for main buildings nor to exceed twenty-eight feet for vertical sidewalls and columns, under any of the following circumstances:

a. The main building, vertical sidewalls and columns height may be increased in any case where the front, rear and side yards are increased above the standard setbacks by a ratio of at least five feet for each one foot increase of height.

b. Increased height for a main building (but not to exceed thirty-four feet) or for vertical sidewalls or columns (but not to exceed twenty-eight feet) shall be permitted in any case in which the planning commission grants an excessive height permit based upon findings that such increased height would be appropriate under the general plan of the town. In making such determination, the planning commission shall consider unique conditions on the particular property, trees, shrubs, screening, the effect of the proposed construction on neighboring properties both as to privacy and view, and the impact, if any, of the proposed construction on the rural character of the neighborhood. The procedure for application, hearing, decision, conditions of approval, other procedures and appeals shall be that specified in this code for conditional use permits.

2. Accessory structures: fifteen feet; provided compliance is maintained with other requirements as specified in Sections 17.36.050 and 17.36.055;

3. Stables: thirty-four feet;

4. Garages: fifteen feet; provided compliance is maintained with other requirements as specified in Section 17.36.060.

B. Site Area, Width and Depth. Minimum site requirements are:

1. Building site area: forty-three thousand five hundred sixty square feet;

2. Width: one hundred seventy-five feet;

3. Depth: two hundred feet;

4. Flag lots:

a. Width of access area, twenty feet,

b. Site area exclusive of access area, forty thousand square feet;

5. Existing legal structures, nonconforming due to height, may remain nonconforming as to height when they would be required to be made conforming only upon receipt of an excessive height permit as outlined in subsection A of this section.

C. Maximum Floor Area Ratio. The maximum floor area ratio shall be eighteen percent of the lot size except for those lots smaller than forty-three thousand five hundred sixty square feet (one acre) which shall be determined by the following equation:

$$\text{Floor area in square feet} = (\text{lot size in square feet} \times 0.163) + 726 \text{ square feet, with a minimum allowable floor area of 2,250 square feet.}$$

The floor area above the first floor of the main building for all lots shall not exceed 7.5 percent of the lot size.

The following conditions shall not be included in floor area calculations:

1. The first five hundred square feet of roofed area, completely open on two or more sides;

2. Structures, open on all sides, with substantially open roofs.

D. Front and Rear Yards. Minimum front and rear yard requirements are:

1. Main building, interior and corner lots: sixty feet minimum; provided, however, on lots of record prior to adoption of Ordinance No. 146 with a depth of less than two hundred feet, the front and rear yards shall each be thirty percent of the lot depth with a minimum of thirty feet; provided further, where main building heights are between thirty feet and thirty-four feet the front and rear yards shall be increased by a ratio of two feet for each one-foot increase in height;

2. Accessory structures: as provided in Chapter 17.36;

3. The property owned by the city and county of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the city and county of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.

E. Side Yards. Minimum side yard requirements are as provided in Chapter 17.40; provided, however, where main building heights are between thirty feet and thirty-four feet, the side yards shall be increased by a ratio of one and a half feet for each one-foot increase in height.

1. The property owned by the city and county of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the city and county of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.

F. Accessory Structure Area. Maximum area permitted for all accessory structures, exclusive of pools, tennis courts, garages, carports, drives and other paved surfaces, on a building site shall not exceed the ratio of one thousand two hundred square feet of accessory structure for each forty-three thousand five hundred sixty square feet of lot area.

G. Eaves. Roof eaves may encroach into any yard not to exceed a maximum of four feet on the main building and not to exceed one foot on an accessory building.

H. Exception Review. Exception review shall be required under the provisions of Chapter 17.54 of this code for each main building proposed to be built on any lot one-half acre or less in area, which lot was previously used in conjunction with any adjoining lot or lots as the site for a single primary residence, or has at any time been assessed with any other lot or lots as a single parcel. There shall be excepted from the requirements of this subsection any proposed main building which is single story and less than eighteen feet in height, and any proposed main building which in the judgment of the building official substantially differs from the main building on the lot previously used in conjunction with the subject lot in three of four items in Category A and at least three of the six items in Category B listed below:

<b>Category A</b>	<b>Category B</b>
Roof profile	Color
Front or side setbacks	Exterior wall materials

Second floor configuration	Front door location
	Window style
Window placement	Garage door location
	Roof material

I. Retaining Walls. Retaining walls shall be located no closer than five feet from any property line. (Ord. 556 § 1, 2005; Ord. 512 § 1, 2000; Ord. 497 §§ 6, 7, 1998; Ord. 478 § 1(C), 1994; Ord. 471 § 1, 1992; Ord. 476 § 1(B), 1993; Ord. 466 § 1, 1991; Ord. 449 §§ 4, 5, 1989; Ord. 434 §§ 6—10, 1988; Ord. 407 § 2-1(C), 1985)

**17.52.050 Use Permit Approval conditions.** The planning commission may grant a conditional use permit pursuant to this section if, from the application or the facts presented at the public hearing, it finds:

A. The proposed use at the proposed location will not be detrimental or injurious to person, property or improvements in the vicinity, and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience;

B. The proposed use will be located and conducted in a manner in accord with the general plan and the purposes of that plan and this title. (Ord. 407 § 14-3(D) (part), 1985)

**17.52.060 Use Permit Conditions and restrictions.** The planning commission may impose such reasonable conditions or restrictions, including, but not limited to: time limits, review of performance and performance standards, as it deems necessary to secure the purpose of this ordinance and to assure operation of the use in a manner compatible with existing and potential uses of adjoining properties and in the general vicinity, and may require guarantees and evidence that such conditions are being or will be complied with. (Ord. 407 § 14-3(D) (part), 1985)

Charles and Leslie King  
94 Tallwood Court  
Atherton, California 94027  
(650) 233-1749

June 7, 2007

Ms. Lisa Costa Sanders  
Town of Atherton Planning Department  
91 Ashfield Road  
Atherton, California 94027

Re: Request for Conditional Use Permit, King Residence - 94 Tallwood Court

Dear Lisa:

Enclosed is the application for a Conditional Use Permit (CUP) at 94 Tallwood Court, Atherton. The intent of the application for the CUP is to get final approval and occupancy from the building department for the residence at the above address. At the direction of the Town's Special Legal Counsel, we understand the basement may be excluded from the floor area because the residence sits on a site that has a slope greater than 20%.

Several calculations have been performed to meet the initial definitional requirement of Town Municipal Code section 17.36.190, *i.e.*, that exceptions to the hillside requirements can be permitted through the issuance of a Conditional Use Permit where average cross slope is greater than 20% as determined under Municipal Code Section 16.24.050.

Section 16.24.050 dealing with lot size requirements sets forth a calculation method (Table 16.24.050) which applies to the slope density standards specified in the section. If that calculation is performed with respect to the 302 elevation contour on the subject property through elevation contour 360, an average slope density percentage of 18.60 is obtained as set forth in Exhibit 1.<sup>1</sup>

However, the subject property is a "flag lot," which are recognized as being "unique" in terms of compliance with zoning ordinance designation. *Costello v. City of Los Angeles* (1975) 54 Cal. App. 3d 28. This is particularly true with respect to the subject property, as, for example, more than half the driveway (145 feet in length) exceeds a 20% slope density as reflected in the overall Site Plan approved by the Town, June 21, 2005 on Sheet No. C-2 (Exhibit 2).

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<sup>1</sup>See, May 23, 2007 calculations by Lea & Braze Engineering for that figure.

Accordingly, in order to be consistent with the purpose of a slope density analysis (see Municipal Code section 16.04.010) as implementation of the Town General Plan Policy providing for orderly development with provision for the exercise of private property rights, a “rise and run” analysis from at least one half of the distance of the existing driveway would achieve the development purpose set forth in the Zoning Ordinance and the General Plan, that is, to allow for variation in development restrictions for lots having a cross-slope grade analysis in excess of 20%.

Therefore, measuring from a point 3 ½ inches to the south of the pole portion of the flag lot to the nearest portions, as they become visible, of the already improved single-family structure would present a more realistic cross-slope grade analysis of the property. If this is done, the beginning elevation point for measurement on the driveway is slightly less than elevation contour 315. The distance to the nearest portion of the improved single-family home from that point is slightly less than 180 feet. These figures result in a cross-slope analysis in excess of 20%, as well as a calculation taken from the point on the driveway, elevation contour 318 to where the northeast corner of the now improved single-family structure becomes visible.

Accordingly, under either of these calculation methodologies, the requirements of 17.36.190 are met for consideration of exemption from the hillside requirement. Again, the configuration of the subject property as a “flag lot” supports these conclusions.

These calculations have been discussed with Special Counsel for the Town before inclusion.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charlie King III

Enclosures

EXHIBIT C-1  
TOWN OF ATHERTON

**CALCULATIONS BY LEA & BRAZE ENGINEERING (510) 887-4086**

CALCULATION OF AVERAGE SLOPE (Including Panhandle)

<b>PROPERTY OWNER(S)</b>	Charles King		
<b>PROPERTY ADDRESS</b>	94 Tallwood Court		
<b>CALCULATED BY</b>	Darren Bunting	<b>DATE</b>	May 23, 2007
<b>REFERENCE MAP:</b>	Partial Topo by Lea & Braze	<b>JOB#</b>	2040472

**1. CALCULATION OF AVERAGE SLOPE**

- A. NET AREA (An)                      1.42 ACRES                      B. CONTOUR INTERVAL (I)                      2.0 FT.  
 C. DRAWING SCALE                      1" = 20'  
 D. CONTOUR LENGTH WITHIN NET AREA OF LOT (An)

CONTOUR	LENGTH (INCHES)	CONTOUR	LENGTH (INCHES)	CONTOUR	LENGTH (INCHES)	CONTOUR	LENGTH (INCHES)
302	0.7	322	1.0	342	20.7	362	0.0
304	1.2	324	1.0	344	20.8	0	0.0
306	1.1	326	0.0	346	20.7	0	0.0
308	1.1	328	8.2	348	21.0	0	0.0
310	1.0	330	13.0	350	21.4	0	0.0
312	1.0	332	17.0	352	23.3	0	0.0
314	1.1	334	19.1	354	22.8	0	0.0
316	1.1	336	19.9	356	5.0	0	0.0
318	1.0	338	21.1	358	0.5	0	0.0
320	1.0	340	20.9	360	0.0	0	0.0
<b>TOTAL</b>						<b>287.7</b>	

CONVERT INCHES TO FEET (MULTIPLY BY MAP SCALE) = (L) = 5754.0 FT.

E. AVERAGE SLOPE WITHIN NET AREA OF LOT

$$S = \frac{(2.0 \text{ FT}) (5754 \text{ FT}) \# (100\%)}{(1.42) \ 43560} = \underline{\underline{18.6\%}}$$



Attached letter from William D. Ross dated July 19, 2007 was received after preparation of the Town's staff report and after preparation of the independent analysis memo prepared by Dick Loewke.

Staff was not in receipt of the site plan referenced in the attached letter at the time of packet preparation.

William D. Ross  
Kypros G. Hostetter  
Joseph Bakshandeh  
Karin A. Briggs

Law Offices of  
**William D. Ross**  
A Professional Corporation  
520 South Grand Avenue, Suite 300  
Los Angeles, CA 90071-2610  
Telephone: (213) 892-1592  
Facsimile: (213) 892-1519

Palo Alto Office:  
400 Lambert Street  
Palo Alto, California 94306  
Telephone: (650) 843-8080  
Facsimile: (650) 843-8093

File No.: 457/3

July 19, 2007

VIA ELECTRONIC MAIL

ccarrigan@mmbllaw.com

Cris Carrigan, Esq.  
Morgan, Miller & Blair  
1339 North California Boulevard, Suite 200  
Walnut Creek, CA 94596-4544

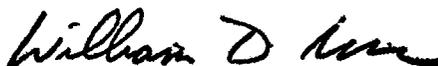
Re: Charles W. King, III and Leslie King v. Town of Atherton, et al., San Mateo Superior Court Case No. CIV 461513; Conditional Use Permit

Dear Mr. Carrigan:

Please find enclosed the supplement to the Application for the Hillside Conditional Use Permit of Charles and Leslie King within the Town of Atherton ("Town") which is requested to be evaluated by the Contract Planner for the Town.

If after review of this matter you have questions, please contact the undersigned directly.

Very truly yours,

  
William D. Ross

WDR:lla  
Enclosure

cc: Mr. Charles W. King, III and Mrs. Leslie A. King

G:\457.003\LTR\Carrigan 071907.wpd

**SUPPLEMENT TO APPLICATION OF CHARLES AND LESLIE KING FOR HILLSIDE CONDITIONAL USE PERMIT, 94 TALLWOOD COURT TOWN OF ATHERTON.**

This transmittal supplements the application of Charles and Leslie King (collectively, the “Applicant”) for a “Hillside” Conditional Use Permit (“CUP”) under the provisions of Municipal Code section 17.36.190<sup>1</sup> for property located at 94 Tallwood Court within the Town (the “subject property”). The claimed permit authorization subject for use and occupancy of the property is also the subject of currently stayed litigation entitled *Charles W. King, III and Leslie King v. Town of Atherton, et al.*, San Mateo Superior Court Case No. CIV 461513.

Like State Legislation, the Town Municipal Code (and Zoning Ordinance) is subject to rules of statutory construction.

The applicable rules for the issuance of a Hillside CUP are contained in Municipal Code section 17.36.190 and Chapter 17.52. The applicable provisions of the Municipal Code are to be read together to ascertain their intent. This means that one section is not to be isolated but that the applicable sections of the Municipal Code are to be reviewed together to implement the intent of the Town Council when the respective regulations were enacted.

Here, a comprehensive review of Chapters 17.36 and 17.52 would reveal that a Hillside CUP was meant to allow improvements of real property on lots having a slopes in excess of 20 percent to alleviate, among other things, what would be excessive grading and disruption of the quiet enjoyment of adjacent residentially zoned property necessary to meet the two foot restriction of height of basements in section 17.36.190.

In order to ascertain a 20 percent slope, the standards of section 17.36.190 for a Hillside CUP require a cross slope calculation determination consistent with section 16.24.050. It is unclear why the particular calculation associated with the cross slope calculation is to be used. The Applicant has performed the cross slope calculation analysis yielding a calculation of 18.6 percent, a calculation which is in substantial compliance with the required 20% threshold.<sup>2</sup>

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<sup>1</sup> All section references are to the Municipal Code unless otherwise noted.

<sup>2</sup> See for example, *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657.

The Applicant has conducted additional line of site slope evaluations<sup>3</sup> within the four corners of the subject property, all of which exceed 20 percent requirement which demonstrate substantial compliance with the Zoning Ordinance provisions and constitutes substantial evidence for granting the Hillside CUP.

More specifically, utilizing page C-2 of the Site Plan for the subject property, approved on June 21, 2005 by the Town, the respective line of sites are set forth. Those respective lines (lines of site A through D) coincide with what would be, if extended beyond the lines of the property, lines of sites from adjoining property, all of which is improved but with residential home locations which would not given the topography of those lots have a view of the improved structure existing on the subject property.

The respective percentage calculations are as follows:

**Slope = Rise/Run = (Change in Elevation Between Points)/(Linear Distance Between Points)**

**Line A**

$$\text{Slope} = (A1 - A2)/\text{Distance} = (350 - 330)/55 = 20/55 = 36.4\% \text{ slope}$$

**Line B**

$$\text{Slope} = (B1 - B2)/\text{Distance} = (350 - 338)/52.5 = 12/52.5 = 22.9\% \text{ slope}$$

**Line C**

$$\text{Slope} = (C1 - C2)/\text{Distance} = (352 - 330)/98.75 = 22/98.75 = 22.3\% \text{ slope}$$

**Line D**

$$\text{Slope} = (D1 - D2)/\text{Distance} = (344.25 - 332)/65 = 12.25/65 = 18.8\% \text{ slope}$$

It is noted that each one of these line of site calculations touch and concern a portion of the existing improvements on the subject property, both the principal residence, and improvements.

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<sup>3</sup> See enclosed Attachment A.

Accordingly, the supplemental information in conjunction with the initial Application constitute substantial evidence in support of the Hillside CUP application.<sup>4</sup>

With respect to factual matters set forth in this Supplement I declare under penalty of perjury of the laws of the State of California that those facts are true and correct, or are based on public records on file with the Town which are presumed to be accurate.

Executed this 19th day of July, 2007 at Palo Alto, California.

  
William D. Ross

Enclosure:

Attachment A - Additional Line of Site Slope Evaluations

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<sup>4</sup> "Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion or evidence of ponderable legal significance reasonable in nature, credible, and or solid value. *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

**APPROVED MINUTES  
PLANNING COMMISSION MEETING  
July 25, 2007  
6:00 p.m.**

**ATHERTON TOWN COUNCIL CHAMBERS  
94 Ashfield Road  
Atherton, California**

**REGULAR MEETING**

Chair Oster called the meeting to order at 6:00 p.m.

**1. ROLL CALL:**

**PRESENT:** Marion Oster  
James Dobbie  
Philip Lively  
Herman Christensen, Jr.

**EXCUSED:** Kristi Waldron

City Attorney Marc Hynes, Deputy Town Planner Lisa Costa Sanders, Building Official Mike Wasmann, and Town Arborist Kathy Hughes Anderson were also present.

**2. APPROVAL OF MINUTES**

**MOTION approval of the June 27, 2007 meeting minutes as corrected.**

**M/S Dobbie/Lively      Ayes: 4      Noes: 0      Excused: 1**

**3. PUBLIC COMMENTS**

None.

**4. COMMISSIONER'S REPORTS**

None.

**5. GENERAL PLAN COMMITTEE REPORTS**

The General Plan Committee has not met since the last Planning Commission meeting. The next meeting is scheduled for August 1, 2007.

**6. NEW BUSINESS**

None.

**7. STAFF REPORTS**

Marc Hynes reported that a hearing was scheduled for July 13, 2007 with a final ruling by the end of this month regarding 51 Laburnam.

## **PUBLIC HEARINGS**

8. **Conditional Use Permit – 94 Tallwood** – Conditional Use Permit request to allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties. Atherton Municipal Code section 17.36.190.

Marc Hynes introduced Jean Savaree, special legal counsel for the Town and Brian Wenter, special legal counsel for the Town. Deputy Town Planner Lisa Costa Sanders presented the staff report and introduced Dick Loewke, outside planner for the Town to respond to additional questions.

Commissioner Christensen asked if the basement area was included in the plans for the home and if it was intended to count in the floor area, and if there is any other way to calculate the cross-slope. Mr. Loewke responded that the average cross-slope determination is accurate and the correct method based on the code.

Commissioner Christensen asked if the building was constructed to the height shown on the plans? Mr. Loewke stated that there is disagreement as to what the average natural grade is.

Commissioner Christensen asked what constitutes substantial compliance? Jean Savaree stated when a code section references a specific number, you rely on that number.

Commissioner Dobbie asked at what point was the discrepancy determined. Mike Wasmann stated that it was discovered during the audit prior to the house completion.

Commissioner Dobbie asked if this should have been caught earlier? Mike Wasmann replied that the height is verified by a survey at the framing stage and that the house was built to an approved set of plans issued by the former Building Official. The approved plans included a determination of average natural grade.

Commissioner Dobbie stated that he would not want to see this happen again and need new procedures. Lisa Costa Sanders stated that Planning is now conducting a review of all plans in addition to the building department plan checker.

Commissioner Christensen asked if the basement was included in the floor area. Staff responded that a portion of the basement was included in the floor area calculations and other areas were not included (garage and porches).

### **OPEN PUBLIC COMMENT**

Bill Ross, attorney representing the property owners, stated that there is no indication to do anything but what was directed by the former Building Official. He stated that he feels substantial compliance relates to percentage of compliance rather than actual compliance. Mr. Ross stated that he feels 18.6% is substantial compliance with the code. He further stated that the Kings relied on approvals granted by the former building official, the cost to remedy the situation is excessive and there is no impact to neighboring property owners. Mr. Ross stated that they are not waiving any rights of the lawsuit and estoppel can serve as basis for issuing permit.

Charles Marsala, Emilie, stated that the Commission needs to look at all the factors. Mistakes were made and where is the solution. The home does not impact neighbors.

Commissioner Dobbie stated that the Planning Commission relies on the Ordinance as written for basis of decision.

Melinda Tevis, Tallwood, stated that she raised concerns to Town management regarding the construction of this home.

Mr. Ross stated that the Commission needs to be rational in the 20% hillside rule. He further expressed concern that this process appears to be undue administrative delay.

#### CLOSE PUBLIC HEARING

Commissioner Lively stated that he could not approve the request, as the property does not meet the hillside code requirement.

Commissioner Christensen stated that he relies on strict compliance with the code.

Commissioner Dobbie stated he sympathizes with the property owner and stated that any modification to the ordinance with respect to this item must be done by the City Council and not the Planning Commission.

Chair Oster stated that the purpose of the Planning Commission is to enforce the Ordinance and hopes the City Council can resolve the issue

**MOTION to deny the Conditional Use Permit allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties at 94 Tallwood based on the following findings:**

**M/S Lively/Christensen    Ayes: 4    Noes: 0    Excused: 1 (Waldron)**

#### **Finding:**

1. The proposed project will not be detrimental or injurious to persons, property or improvement in the vicinity and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience.
2. The proposed project for the subject site is not consistent with the Town of Atherton General Plan and the purposes of that plan and the Zoning Code.

Chair Oster advised of the 10-day appeal period.

- 9. Major Alteration Permit – 133 Atherton Avenue – Major Alteration Permit to allow relocation of a heritage gate from the Atherton Avenue side of the property to the Elena Avenue side of the property. Atherton Municipal Code section 8.14.090(B).**

Deputy Town Planner Lisa Costa Sanders presented the staff report, noted the reasons outlined in the staff report to support the request and introduced Laura Jones, town's historical consultant.

Laura Jones stated that it is important for the gates to remain on the property. She also stated that the house was demolished and there are no significant remaining structures on the property for the gates to relate to.

Commissioner Christensen stated that the gates will lose its relation to the public road that it has been historically located on. Ms. Jones stated that the gates will remain accessible to the public on Elena with relationship to a public street.

**OPEN PUBLIC COMMENT**

Missy Morris, Elena, stated that Elena is a busy street as a cut-through. She stated that the gates were important to the former property owner.

Benjamin McGriff, Architect, stated that his clients desire for additional privacy along Atherton Avenue with a solid wall and gate.

Commissioner Oster asked what will be located inside the property from the gates. Mr. Benjamin McGriff responded that formal gardens will be located throughout the property. Commissioner Oster asked why the gates could not remain at its current location. Mr. Benjamin McGriff responded that the owner would like a new entry to relate to the residence.

M. Madding, Edwards Lane, spoke in opposition to the request.

**CLOSE PUBLIC COMMENT**

Commissioner Christensen stated that historic items should remain in place of significance. He stated that he would not object to moving the gate along the Atherton Avenue side of the property, but not to the Elena side of the property. Commissioner Dobbie stated that he would like to see more information on intended use of the property prior to acting on the application. Commissioner Lively stated support for the relocation as long as it retains all elements. Commissioner Oster expressed concern with the relocation.

**MOTION to deny the Major Alteration Permit at 133 Atherton Avenue based on the following finding:**

**M/S Christensen/Dobbie    Ayes: 3            Noes: 1 (Lively)    Excused: 1 (Waldron)**

**Finding:**

1. Movement of the gate would be contrary to the historic setting of the artifact along Atherton Avenue.

2.

Chair Oster advised of the 10-day appeal period.

**10. Heritage Tree Removal Permit – 44 Tuscaloosa – Heritage Tree Removal Permit to allow the removal of one Oak tree. Atherton Municipal Code section 8.10.**

Deputy Town Planner Lisa Costa Sanders presented the staff report and stated that staff does not support the tree removal as there are no compelling reasons to remove the tree.

**OPEN PUBLIC COMMENT**

Eileen Gordon, property architect was present.

CLOSE PUBLIC COMMENT

Commissioner Dobbie stated that the tree is not a great specimen, but there is no compelling reason for its removal.

Commissioner Oster stated that the tree has nice shape and would like to see it retained.

**MOTION to deny the Heritage Tree Removal Permit at 44 Tuscaloosa based on the following finding:**

**M/S Lively/Christensen      Ayes: 4      Noes: 0      Excused: 1 (Waldron)**

**Finding:**

1. The removal of the tree would be contrary to the purpose and intent of the Atherton General Plan.

Chair Oster advised of the 10-day appeal period.

- 11. Heritage Tree Removal Permit and Mitigated Negative Declaration – 368 Walsh Road - Heritage Tree Removal Permit to allow the removal of thirteen heritage trees. Atherton Municipal Code section 8.10.**

Deputy Town Planner Lisa Costa Sanders presented the staff report and noted the reasons outlined in the staff report to support the tree removal request based on the mitigation measures contained in the draft negative declaration.

OPEN PUBLIC COMMENT

Steve Swanke, project architect, reviewed the intended use of the property.

CLOSE PUBLIC COMMENT

Commissioner Lively stated that the trees appear to be at the end of their life.

Commissioner Christensen stated support for the request.

Commissioner Dobbie stated concurrence with other Commissioners' comments.

Commissioner Oster stated that the pine trees are in the declining stage.

**MOTION that the Planning find that the Initial Study and Draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act.**

**MOTION to adopt the Draft Mitigated Negative Declaration for the 368 Walsh Road Tree Removal Project.**

**M/S Lively/Oster      Ayes: 4      Noes: 0      Excused: 1 (Waldron)**

**Finding:**

1. The Initial Study and Draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act.

**MOTION to approve the Heritage Tree Removal Permit to allow removal of thirteen heritage trees based on the following finding and subject to the conditions of the Heritage Tree Removal Permit with the following additional conditions.**

**M/S Dobbie/Lively                      Ayes: 4                      Noes: 0                      Excused: 1 (Waldron)**

**Finding:**

1. The removal of thirteen trees would not be contrary to the purpose and intent of the Atherton General Plan.

Chair Oster advised of the 10-day appeal period.

- 12. Variance – 2 Belbrook** – Variance request to allow an accessory structure (bridge) to be located in the front yard. Atherton Municipal Code section 17.56.050

The applicant requests the item be continued to the next Planning Commission meeting.

**MOTION to continue the item to the August 22, 2007 meeting.**

**M/S Oster/Dobbie                      Ayes: 4                      Noes:0                      Excused: 1 (Waldron)**

**13. ADJOURN**

The meeting adjourned at 7:55 p.m.

**Respectfully submitted,**

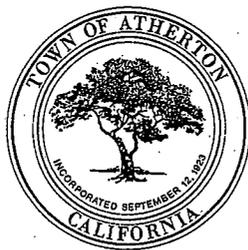
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Lisa Costa Sanders, Deputy Town Planner

ITEM 27B

**APPEAL REGARDING 94 TALLWOOD**

The attached staff report is the original staff report submitted to the City Council at its April 18, 2007, meeting.



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS**

**FROM: MICHAEL WASMANN, BUILDING OFFICIAL**

**DATE: CITY COUNCIL MEETING OF APRIL 18, 2007**

**SUBJECT: APPEAL OF NOTICE AND ABATEMENT ORDER  
94 TALLWOOD COURT**

**Recommendation.** Conduct public hearing on appeal of a Notice of Nuisance and Abatement Order dated March 9, 2007, regarding 94 Tallwood Court, Atherton, California. The Council has the authority to: uphold the appeal and reverse the notice and abatement order; modify the order; or deny the appeal thus upholding the Order. It is my recommendation that the Notice and Abatement Order be affirmed and, accordingly, that the appeal be denied. Any action taken by the Council should direct the preparation of written findings for consideration and adoption at a subsequent meeting.

**Executive Summary.** The Notice and Abatement Order dated March 9, 2007, informed the owners of property located at 94 Tallwood Court, Atherton, California, that the buildings there exceed the maximum allowable floor area under Section 17.20.040 C of the Atherton Municipal Code. Maximum coverage for the property is 11,322 square feet. The single-family residence and accessory structures, including a garage and pool house result in a total coverage of 12,505 square feet. Accordingly, the buildings occupy 1,183 square feet in excess of what is allowed for the property. The owners were ordered to abate the nuisance created by this zoning code violation and to bring the property into conformance with the municipal code.

A copy of the abatement order is attached. (Exhibit "A")

The abatement order was appealed. A copy of the appeal, a letter dated March 19, 2007, from Attorney William D. Ross, is attached. (Exhibit B).

**Background.**

1. Section 17.68.010 of the Atherton Municipal Code requires that all officials invested with the duty or authority to issue permits or licenses conform to the provisions of the Zoning Title (Chapter 17) and

"shall issue no permit or license for uses, buildings, or purposes in conflict with the provisions of this title. Any such permits or licenses issued in conflict with the provisions of this title shall be null and void. It shall be the duty of the chief building official to enforce the provisions of the zoning ordinance pertaining to erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure."

A copy of section 17.68.010 is attached. (Exhibit C)

2. The Town has adopted the Uniform Administrative Code 1997 edition and the 2001 California Building Code. Section 101.2 of the Uniform Administrative Code states:

"The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction ...".

A copy of Section 101.2 of the Uniform Administrative Code is attached. (Exhibit D)

3. Section 101.3 of the Uniform Administrative Code states in part :

"Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable."

A copy of Section 101.3 of the Uniform Administrative Code is attached. (Exhibit E)

4. Section 104.2.1 of the Uniform Administrative Code states in part :

"The building official shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code."

A copy of Section 104.2.1 is attached. (Exhibit F)

5. Section 104.2.7 of the Uniform Administrative Code states:

"Modifications. When there are practical difficulties involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official shall first find that a special individual reason makes the strict letter of this code impractical and that the modification is in conformance with the intent and purpose of this code and that such modification does not lessen any fire-protection requirements or any degree of structural integrity. The details of any action granting modifications shall be recorded and entered in the files of the code enforcement agency."

A copy of Section 104.2.7. of the Uniform Administrative Code is attached. (Exhibit G)

6. Section 104.2.8 of the Uniform Administrative Code relative to alternate materials, alternate design and methods of construction states:

"The provisions of this code are not intended to prevent the use of any material, alternate design or method of construction not specifically prescribed by this code, provided any alternate has been approved and its use authorized by the building official.

"The building official may approve any such alternate, provided the building official finds that the proposed design is satisfactory and complies with the provisions of this code and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The building official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any action granting approval of an alternate shall be recorded and entered in the files of the code enforcement agency."

A copy of Section 104.2.8 of the Uniform Administrative Code is attached. (Exhibit H)

7. Section 17.08.128 of the Atherton Municipal Code states:

"Floor area" means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. Floor area shall also include those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures.

Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements."

A copy of Section 17.08.128 is attached. (Exhibit I)

8. Section 17.20.040(C) of the Atherton Municipal Code limits the floor area ratio for a property such as Tallwood to a maximum of 18% of the lot size. The floor above the first floor of the main building for all lots shall not exceed 7.5% of the lot size. The Tallwood lot is approximately one acre in size or 53,560 square feet. Total lot coverage allowed is, therefore, 11,322 square feet.

A copy of Section 17.20.040 (C) is attached. (Exhibit J)

9. Section 17.08.130 of the Atherton Municipal Code defines floor area ratio as:

"Floor area ratio" means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area."

A copy of Section 17.08.130 is attached. (Exhibit K)

10. Section 17.08.054 of the Atherton Municipal Code defines "basement" as that story below the finished floor of the first story of a building that is at no point in excess of two feet in height above the surrounding average natural grade. Any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area.

A copy of Section 17.08.054 is attached. (Exhibit L)

11. Section 17.36.190 of the Atherton Municipal Code provides that basements are allowed only under the footprint of buildings located in the building or dwelling area of the property. That term is defined in section 17.08.080 of the Atherton Municipal Code as the area within a lot in which the dwelling may be constructed. Section 17.36.190 also requires that basements not exceed two feet in height above the average natural grade. If this occurs, the area is then counted in calculating floor area.

A copy of Section 17.36.190 is attached as Exhibit M and a copy of Section 17.08.080 is attached as Exhibit N.

12. Average natural grade is defined in Section 17.08.052 of the Atherton Municipal Code as "the vertical elevation, determined by adding the sum of the highest natural grade elevation and lowest natural grade elevation and dividing by two, for that portion of the lot covered by a building."

A copy of Section 17.08.052 is attached. (Exhibit O)

The concept of average natural grade works easily where the majority of properties are essentially level. With hillside properties, depending upon the location and number of measurements taken, results can differ. At 94 Tallwood, a number of measurements were taken to determine the average natural grade. This was based upon a decision of the former Building Official.

13. As reported above, the Building Department has determined that based upon the allowable floor area ratio the maximum coverage for the property is 11,322 square feet. The single-family residence, and accessory structures including a garage and pool house result in a total coverage of 12,505 square feet. Accordingly, the buildings at 94 Tallwood occupy 1,183 square feet in excess of what is allowed for the parcel.

A copy of calculations showing this is attached. (Exhibit P).

14. On October 24, 2006, the owners of the property were advised that because of potential discrepancies with requirements of the Atherton Municipal Code, no final building permit would be issued for the property.

A copy of that letter is attached. (Exhibit Q)

15. The property owners, through counsel, Attorney Michael Weed, have previously demanded that a final inspection be conducted on the property

A copy of his letter dated February 21, 2007, is attached. (Exhibit R)

**Legal Issues.** Issues raised by the Appellant concerning the legal concept of vested rights and estoppel will be addressed by counsel from the Miller, Morgan, Blair law firm. Counsel will respond to issues raised in connection with a vested rights claim, and/or estoppel of the Town to proceed with a nuisance abatement. Cases discussed will include Pettitt v. Fresno (1973) 34 Cal.App.3<sup>rd</sup> 822; Anderson v. City of La Mesa (1981) 118 Cal.App.3d 657 ; and Ciraulo v. City of Newport Beach (2007) 147 Cal.App.4<sup>th</sup> 838.

**Further Background Information** related to this property and for reference by the City Council appears in Exhibits S through U as follows:

Exhibit S	Inspection history for 94 Tallwood Court Property.
Exhibit T	Copy of Phase III Audit Report and accompanying staff report prepared by Finance Director John Johns for the City Council meeting of October 18, 2006.
Exhibit U	Documents submitted by Michael Weed, Esq. re 94 Tallwood.

**Fiscal Impact.** Appellants have paid \$750.00 for the appeal. This fee was requested pursuant to Resolution No. 03-19. Appellants have paid the fee under protest arguing that these fees relate to building and zoning charges and not to the nuisance abatement ordinance, Chapter 8.20 of the

Atherton Municipal Code under which notice and abatement order were sent. The City Attorney has determined that the appeal fees set out in Resolution No. 03-19 are appropriate here.

A copy of Resolution No. 03-19 is attached. (Exhibit V)

**Suggested Action:** I move that the appeal of the abatement order for 94 Tallwood Court be denied. Written findings shall be prepared for consideration and adoption at the next regular City Council meeting.

**Exhibits:** Exhibits "A" through "V" attached.

Respectfully,

MW:cwb

MICHAEL WASMANN

Prepared By:

Approved By:

\_\_\_\_\_  
Building Official

\_\_\_\_\_  
City Manager

TOWN OF ATHERTON, BUILDING DEPARTMENT

93 STATION LANE, ATHERTON, CA 94027

PHONE (650) 752-0518, HOURS 8 a.m. to noon & 1 p.m. to 5 p.m.

NOTICE OF NUISANCE AND ABATEMENT ORDER

Location: 94 Tallwood Court, Atherton, California 94027-6432 Assessor's Parcel Number 074-130-310

Landowner, per Assessor's record and address if different than location:

Charles W. King III and Leslie A. King, Trustees, of the KCP Trust dated March 19, 2004.

The City Official indicated at the bottom of this form, acting as designee of the City Manager, has determined that a nuisance is being maintained at the location shown above. The condition(s) constituting the nuisance, code section(s) being violated and corrective actions required are as follows:

This property violates the maximum allowable building floor area provided by the Atherton Municipal Code. Section 17.20.040(C) of the Atherton Municipal Code establishes a floor area of eighteen percent (18%) of the lot. Based upon the allowable floor area ratio, the maximum lot coverage for the property is 11,322 square feet. Lot coverage totals 12,505 square feet. Thus, the building(s) at 94 Tallwood occupy 1,183 square feet in excess of what is allowed for the parcel.

Because the building permit is in conflict with the provisions of the Atherton Municipal Code it is null and void in accordance with the provisions of Section 17.68.010.

You are hereby ordered to secure all appropriate permits and to physically commence within ten days from the date of service of this notice and to complete within thirty days from such date, abatement of the condition(s) described above. The disposal of materials involved in complying with this order shall be carried forth in a legal manner.

If the required work is not commenced and completed within the times specified, the Atherton Municipal Code provides that the City Manager will proceed to cause the work to be done and bill the persons named in this notice for the abatement costs and administrative expenses and/or levy the costs against the property. The code further provides that in case of non-compliance or non-payment the Town may record this notice and order in the office of the County Recorder and a lien may be placed on the property to cover abatement costs and administrative expenses.

Any person having an interest or record title in the property may appeal this notice and order or any action by the City Manager or his designee to the City Council, within ten days from the date of service of this notice and order. For additional information and to inform the Town of commencement and completion of abatement work, contact the Designated City Official listed below:

Designated City Official: Name: Mike Wasmann, Title: Building Official

Telephone Number: 650/752-0518

Date of Service: March 9, 2007.

Served by: Personal Service (affidavit attached) or certified and regular mail X

[Handwritten Signature]
(Signature)

EXHIBIT A

EXHIBIT A PG 1 OF 2

TOWN OF ATHERTON  
BUILDING DEPARTMENT  
93 STATION LANE, ATHERTON, CA 94027

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

Kelli Robertson declares:  
(Printed name)

I am and was on the date herein mentioned over the age of eight  
employee of the Town of Atherton in the county where the m...

On March 9, 2007, I mailed from Atherton  
attached NOTICE OF NUISANCE AND ABATE  
COURT, ATHERTON.

I served the document by enclosing a copy  
placing them for collection and mailing following ou  
readily familiar with the Town's practice for collecting  
for mailing. On the same day that correspondence is  
is deposited in the ordinary course of business with the  
sealed envelope with postage fully prepaid.

The envelopes were addressed and mailed as foll  
Via Certified First Class Mail, Return Receipt Requ  
Charles W. King III and  
Leslie A. King, Trustees  
94 Tallwood Court  
Atherton, CA 94027

Via First Class Mail  
Charles W. King III and  
Leslie A. King, Trustees  
94 Tallwood Court  
Atherton, CA 94027

Via First Class Mail  
Law offices of  
Michael H. Weed  
366 Lytton Avenue  
Palo Alto, CA 94301

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed on March 9, 2007 at Atherton,  
California.

Kelli Robertson  
(Signature of person completing this form)

EXHIBIT A PG 2 OF 2

William D. Ross  
Kypros G. Hostetter  
Joseph Bakshandeh  
Karin A. Briggs

Law Offices of  
**William D. Ross**  
A Professional Corporation  
520 South Grand Avenue, Suite 300  
Los Angeles, CA 90071-2610  
Telephone: (213) 892-1592  
Facsimile: (213) 892-1519

Palo Alto Office:  
400 Lambert Street  
Palo Alto, California 94306  
Telephone: (650) 843-8080  
Facsimile: (650) 843-8093

File No.: 457/3

March 19, 2007

***VIA ELECTRONIC TRANSMISSION,  
CERTIFIED MAIL - RETURN RECEIPT  
REQUESTED & FACSIMILE***

[mwassmann@ci.atherton.ca.us](mailto:mwassmann@ci.atherton.ca.us) & (650) 614-1224

[khamilton@ci.atherton.ca.us](mailto:khamilton@ci.atherton.ca.us) & (650) 688-6528

Mr. Michael Wasmann  
Town of Atherton Head Building  
Official  
93 Station Lane  
Atherton, CA 94027

Ms. Kathi Hamilton, Acting City Clerk  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Re: Appeal, Notice of Nuisance and Abatement Order Dated March 9, 2007

Dear Mr. Wasmann and Ms. Hamilton:

This office represents the owners of improved real property within the Town of Atherton ("Town"); 94 Tallwood Court (the "Property"), Charles W. King, III and Leslie A. King, Trustees, of the KCP Trust dated March 19, 2004 (the "Owners").

This communication responds to the Town Notice of Nuisance and Abatement Order (the "Abatement Order") dated March 9, 2007 sent by regular mail to the Owners with respect to the approved construction of a single-family residence (the "Project") on the Property.

This appeal, is without any waiver of any vested rights status of the Owners to the immediate Final Inspection and a Certificate of Occupancy for the single-family residence and its use.

G:\457.003\LTR\Wasmann (Appeal) 031407.wpd

**EXHIBIT B**

EXHIBIT B PG 1 OF 2

Mr. Michael Wasmann  
Town of Atherton Head Building Official  
Ms. Kathi Hamilton, Acting City Clerk  
March 19, 2007  
Page 2

Further, the appeal of the Abatement Order is being pursued recognizing the futility of such an appeal because of past actions of the Town Council which disregarded applicable facts, including the administrative past practice of the Town and that the completion of the Owners' single-family residence has been accomplished in reliance upon representations and approvals of the Town including sequential Town Building Officials upon which they were entitled to rely.

Because of the previous Council review of the Project and the lack of any established procedures concerning the appeal<sup>1</sup>, the Owners request all documentation of the procedures for the appeal as well as a written statement of what burden of proof would be applicable to the appeal.

Assuming that a burden of proof could be found to be applicable and established, it is unclear how the Council could meet standards of impartiality given their prior consideration of the matter and a lack of objectivity of review in view of their vested right status and the past approvals of the Town and Town Building Officials for development, occupancy and use of the Property.

Among other things, this request is made under the provisions of the California Public Records Act (Government Code section 6250 *et seq.*).

Very truly yours,



William D. Ross

WDR:mgl

cc: Charles W. King, III  
Michael Weed, Esq.  
Marc Hynes, Esq.

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<sup>1</sup>Atherton Municipal Code section 8.20.090 does not incorporate the provisions of Chapter 17.64 dealing with appeals to the City Council and even if it did, given the prior review of the Project what would be the applicable burden of proof.

**Chapter 17.68****ENFORCEMENT****Sections:**

- 17.68.010**    **Enforcement authority.**  
**17.68.020**    **Violation—Deemed  
                  nuisance.**

**17.68.010**    **Enforcement authority.**

All departments, officials, and public employees of the town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this title and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this title. Any such permits or licenses issued in conflict with the provisions of this title shall be null and void. It shall be the duty of the chief building official of the town to enforce the provisions of this title pertaining to erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure. (Ord. 407 § 15-1, 1985)

**17.68.020**    **Violation—Deemed  
                  nuisance.**

Each violation of this title shall constitute a public nuisance and be subject to abatement proceedings and costs pursuant to Chapter 8.20. (Ord. 490 § 49, 1996; Ord. 407 § 15-2, 1985)

**EXHIBIT C**

# Volume 1

## Chapter 1 ADMINISTRATION

### SECTION 101 — TITLE, PURPOSE AND SCOPE

**101.1 Title.** These regulations shall be known as the *Uniform Building Code*, may be cited as such and will be referred to herein as "this code."

*For the State of California, these regulations shall be known as the California Building Code. The provisions contained in the California Building Code of the (compiled) California Building Standards Code as defined in Section 18910, Health and Safety Code, may be cited as such and are referred to hereafter as "these regulations" or "these building standards" or "this code."*

**101.2 Purpose.** The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein.

The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code. *[For DSA/AC] This language is not adopted by DSA/AC.*

*[For DSA/AC] The purpose of this code is to ensure that barrier-free design is incorporated in all buildings, facilities, site work and other developments to which this code applies and to ensure that they are accessible to and usable by persons with disabilities.*

*[For HCD 1 & HCD 2 & HCD 1/AC] The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, accessibility, use and occupancy, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment.*

**101.3 Scope.** The provisions of this code shall apply to the construction, alteration, moving, demolition, repair, maintenance and use of any building or structure within this jurisdiction, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.

For additions, alterations, moving and maintenance of buildings and structures, see Chapter 34. For temporary buildings and structures, see Section 3103 and Appendix Chapter 31.

Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Wherever in this code reference is made to the appendix, the provisions in the appendix shall not apply unless specifically adopted. *[For DSA/AC] This language is not adopted by DSA/AC.*

**101.3.1** *The provisions of the model codes which are adopted by these regulations are applicable to all occupancy groups and uses regulated by this code. The amendments to the model codes are applicable only to those occupancies or uses which the state*

*agency adopting the amendments is authorized to regulate, as listed in Section 101.17.*

*NOTE: It is not the intent of this section that every existing occupancy within the scope of the state fire marshal's jurisdiction mandatorily conform or be made to conform to the new construction requirements relative to fire, panic and explosion safety. Reasonable judgment must be exercised by the enforcing agency in the application of these building standards to existing occupancies.*

*[For DSA/AC] EXCEPTION: Outdoor environments and uses shall be classified according to accessibility uses described in Chapters 11A, 11B and 11C, and life safety concerns.*

#### 101.4 Effective Date.

**101.4.1** *One hundred and eighty days after the date of publication, or as otherwise noted herein.*

*NOTE: For clarification purposes, the applicable sections of the Health and Safety Codes are repeated here for clarity and read as follows:*

*Section 18938. Application and Effective Date. The building standards contained in the Uniform Fire Code, of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc., the Uniform Building Code of the International Conference of Building Officials, Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, the National Electrical Code of the National Fire Protection Association, the Uniform Mechanical Code of the International Association of Plumbing and Mechanical Officials, as referenced in the California Building Standards Code, shall apply to all occupancies throughout the state and shall become effective 180 days after publication in the California Building Standards Code by the California Building Standards Commission, or at a later date after publication established by the commission.*

*[For HCD 1 & HCD 2] Section 17958. Except as provided in Sections 17958.8 and 17958.9, any city or county may make changes in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations thereafter adopted pursuant to Section 17922 to amend, add or repeal ordinances or regulations that impose the same requirements as are contained in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations adopted pursuant to Section 17922 or make changes or modifications in those requirements upon express findings pursuant to Sections 17958.5 and 17958.7. If any city or county does not amend, add or appeal ordinances or regulations to impose those requirements or make changes or modifications in those requirements upon express findings, the provisions published in the California Building Standards Code or the other regulations promulgated pursuant to Section 17922 shall be applicable to it and shall become effective 180 days after publication by the California Building Standards Commission. Amendments, additions and deletions to the California Building Standards Code adopted by a city or county pursuant to Section 17958.7, together with all applicable portions of the California Building Standards Code, shall become effective 180 days after publication of the California Building Standards Code by the California Building Standards Commission.*

## Volume 1

Chapter 1  
ADMINISTRATION

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The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code. *[For DSA/AC] This language is not adopted by DSA/AC.*

*[For DSA/AC] The purpose of this code is to ensure that barrier-free design is incorporated in all buildings, facilities, site work and other developments to which this code applies and to ensure that they are accessible to and usable by persons with disabilities.*

*[For HCD 1 & HCD 2 & HCD 1/AC] The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, accessibility, use and occupancy, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment.*

**101.3 Scope.** The provisions of this code shall apply to the construction, alteration, moving, demolition, repair, maintenance and use of any building or structure within this jurisdiction, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.

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*agency adopting the amendments is authorized to regulate, as listed in Section 101.17.*

*NOTE: It is not the intent of this section that every existing occupancy within the scope of the state fire marshal's jurisdiction mandatorily conform or be made to conform to the new construction requirements relative to fire, panic and explosion safety. Reasonable judgment must be exercised by the enforcing agency in the application of these building standards to existing occupancies.*

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EXHIBIT E

customarily recognized as normal by persons in the public service of preventing, suppressing or extinguishing fire; or which may obstruct, delay or hinder, or may become the cause of obstruction, delay or hindrance to the prevention, suppression or extinguishment of fire.

**102.2 [For HCD 1] Authority to Enforce.** Subject to other provisions of law, for administration, enforcement, actions, proceedings, abatement, violations and penalties in structures subject to State Housing Law, refer to Health and Safety Code Sections 17910 through 17995.5 and California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 1.

**102.2.1 [For HCD 2] Mobilehome parks and special occupancy parks.** Subject to other provisions of law, for administrative, enforcement, actions, proceedings, abatement, inspections and penalties applicable to the Mobilehome Parks Act, refer to California Health and Safety Code, Division 13, Part 2.1 commencing with Section 18200 and California Code of Regulations, Title 25, Division 1, Chapter 2 commencing with Section 1000.

NOTE: See Section 101.17.10.

**102.2.2 [For HCD 1] Employee Housing.** Subject to other provisions of law, for administration, enforcement, actions, proceedings, violations and penalties applicable to the Employee Housing Act, refer to Health and Safety Code, Part 1, Sections 17000 through 17062.5 and California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 6000.

**SECTION 103 — VIOLATIONS**

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish; equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

**103.1 [For SFM] Pursuant to Health and Safety Code Section 13112,** any person who violates any order, rule or regulation of the state fire marshal is guilty of a misdemeanor punishable by a fine of not less than \$100.00 or more than \$500.00, or by imprisonment for not less than six months, or by both. A person is guilty of a separate offense each day during which he or she commits, continues or permits a violation of any provision of, or any order, rule or regulation of, the state fire marshal as contained in this code.

Any inspection authority who, in the exercise of his or her authority as a deputy state fire marshal, causes any legal complaints to be filed or any arrest to be made shall notify the state fire marshal immediately following such action.

**103.2 [For HCD 1] Actions and Proceedings.** Subject to other provisions of law, California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 1 and Health and Safety Code, Sections 17980 through 17995.5 address punishments, penalties and fines for violations of building standards in structures subject to the State Housing Law.

**103.2.1 [For HCD 2] Actions and proceedings.** Subject to other provisions of law, California Code of Regulations, Title 25 Division 1, Chapter 2 commencing with Section 1000 and Health and Safety Code, Section 18700 addresses punishments, penalties and fines for violations of building standards subject to the Mobilehome Parks Act.

**103.2.2 [For HCD 1] Actions and proceedings.** Subject to other provisions of law, California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 600 and Health and Safety Code, Sections 17060 through 17062.5 address punishments, penalties and fines for violations of building standards subject to the Employee Housing Act.

**SECTION 104 — ORGANIZATION AND ENFORCEMENT**

**104.1 Creation of Enforcement Agency.** There is hereby established in this jurisdiction a code enforcement agency which shall be under the administrative and operational control of the building official.

**104.2 Powers and Duties of Building Official.**

**104.2.1 General.** The building official is hereby authorized and directed to enforce all the provisions of this code. For such purposes, the building official shall have the powers of a law enforcement officer.

NOTE [For SFM]: See Section 101.17.14.

NOTE [For HCD 1]: See Section 101.17.9.

[For SFM] Pursuant to Health and Safety Code Section 13108, upon the written request of the chief fire official of any city, county or fire-protection district, the State Fire Marshal may authorize such chief fire official and his or her authorized representatives, in their geographical area of responsibility, to make fire-prevention inspections of state-owned or state-occupied buildings, other than state institutions, for the purpose of enforcing the regulations relating to fire and panic safety adopted by the State Fire Marshal pursuant to this section and building standards relating to fire and panic safety published in the California Building Standards Code. Authorization from the State Fire Marshal shall be limited to those fire departments or fire districts which maintain a fire-prevention bureau staffed by paid personnel.

Pursuant to Health and Safety Code Section 13108, any requirement or order made by any chief fire official who is authorized by the State Fire Marshal to make fire-prevention inspections of state-owned or state-occupied buildings, other than state institutions, may be appealed to the State Fire Marshal. The State Fire Marshal shall, upon receiving an appeal and subject to the provisions of Chapter 5 (commencing with Section 18945) of Part 2, 5 of Division 13 of the Health and Safety Code, determine if the requirement or order made is reasonably consistent with the fire and panic safety regulations adopted by the Office of the State Fire Marshal and building standards relating to fire and panic safety published in the California Building Code.

The building official shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

[For SFM] Any person may request a code interpretation from the State Fire Marshal relative to the intent of any regulation or provision adopted by the State Fire Marshal. When the request relates to a specific project, occupancy or building, the State Fire Marshal shall review the issue with the appropriate local enforcing agency prior to rendering such code interpretation.

**104.2.1.1 [For HCD 1] Authority of city or county building departments.**

**104.2.1.1.1 [For HCD 1] General—State housing law.** Subject to other provisions of law, Health and Safety Code, Section 17960 is repeated here for clarity and reads as follows:

Section 17960. The building department of every city or county shall enforce within its jurisdiction all the provisions published in the State Building Standards Code, the provisions of this part, and the other rules and regulations promulgated pursuant to the provisions of this part pertaining to the erection, construction, reconstruction, movement, enlargement, conversion, alteration, repair, removal, demolition, or arrangement of apartment houses, hotels, or dwellings.





**17.08.080 Building or dwelling area.**

"Building or dwelling area" means the area within a lot in which the dwelling may be constructed. (Ord. 407 § 16-6, 1985)

**17.08.090 Building line or building setback line.**

"Building line" or "building setback line" means the front line of the building area. (Ord. 407 § 16-7, 1985)

**17.08.100 District or zone.**

"District" or "zone" means a portion of the city within which certain uses of land and buildings are permitted or prohibited, certain yards and other open spaces are required, and certain height limits are established for buildings. (Ord. 407 § 16-9, 1985)

**17.08.110 Dwelling, single-family.**

"Single-family dwelling" means a building designed for use and occupancy by no more than one individual, family or group of individuals and containing not more than one kitchen or kitchen facility. (Ord. 407 § 16-36, 1985)

**17.08.115 End wall.**

"End wall" means any wall or group of walls parallel to one another as so designated by this title or the town if no such designation exists. (Ord. 456 § 2, 1990)

**17.08.120 Fence.**

"Fence" means a structure having as its principal purpose the prevention of ingress or egress of persons or animals or the obstruction of vision or noise. Structures which are used to support a roof, awning, or other horizontal compositions, or structures which have a purpose other than those hereinabove specified, including, without limiting the generality of

the foregoing, tennis courts and other enclosures for athletic activities, compost bins, bath structure enclosures, and enclosures for the storage of tools, equipment and garden supplies, shall not be deemed to be fences. (Ord. 407 § 16-10, 1985)

**17.08.128 Floor area.**

"Floor area" means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. Floor area shall also include those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures. Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements. (Ord. 497 § 2, 1998; Ord. 478 § 1(B), 1994; Ord. 456 § 3, 1990)

**17.08.130 Floor area ratio.**

"Floor area ratio" means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area. (Ord. 497 § 3, 1998; Ord. 407 § 16-11, 1985)

**17.08.133 Front line of main building.**

"Front line of main building" means the

**EXHIBIT I**

2. Accessory structures: fifteen feet; provided compliance is maintained with other requirements as specified in Sections 17.36.050 and 17.36.055;

3. Stables: thirty-four feet;

4. Garages: fifteen feet; provided compliance is maintained with other requirements as specified in Section 17.36.060.

B. Site Area, Width and Depth. Minimum site requirements are:

1. Building site area: forty-three thousand five hundred sixty square feet;

2. Width: one hundred seventy-five feet;

3. Depth: two hundred feet;

4. Flag lots:

a. Width of access area, twenty feet,

b. Site area exclusive of access area, forty thousand square feet;

5. Existing legal structures, nonconforming due to height, may remain nonconforming as to height when they would be required to be made conforming only upon receipt of an excessive height permit as outlined in subsection A of this section.

C. Maximum Floor Area Ratio. The maximum floor area ratio shall be eighteen percent of the lot size except for those lots smaller than forty-three thousand five hundred sixty square feet (one acre) which shall be determined by the following equation:

Floor area in square feet = (lot size in square feet  $\times$  0.163) + 726 square feet, with a minimum allowable floor area of 2,250 square feet.

The floor area above the first floor of the main building for all lots shall not exceed 7.5 percent of the lot size.

The following conditions shall not be included in floor area calculations:

1. The first five hundred square feet of roofed area, completely open on two or more sides;

2. Structures, open on all sides, with substantially open roofs.

D. Front and Rear Yards. Minimum front and rear yard requirements are:

1. Main building, interior and corner lots: sixty feet minimum; provided, however, on lots of record prior to adoption of Ordinance No. 146 with a depth of less than two hundred feet, the front and rear yards shall each be thirty percent of the lot depth with a minimum of thirty feet; provided further, where main building heights are between thirty feet and thirty-four feet the front and rear yards shall be increased by a ratio of two feet for each one-foot increase in height;

2. Accessory structures: as provided in Chapter 17.36;

3. The property owned by the city and county of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the city and county of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.

E. Side Yards. Minimum side yard requirements are as provided in Chapter 17.40; provided, however, where main building heights are between thirty feet and thirty-four feet, the side yards shall be increased by a ratio of one and a half feet for each one-foot increase in height.

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**17.08.080 Building or dwelling area.**

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**17.08.090 Building line or building setback line.**

"Building line" or "building setback line" means the front line of the building area. (Ord. 407 § 16-7, 1985)

**17.08.100 District or zone.**

"District" or "zone" means a portion of the city within which certain uses of land and buildings are permitted or prohibited, certain yards and other open spaces are required, and certain height limits are established for buildings. (Ord. 407 § 16-9, 1985)

**17.08.110 Dwelling, single-family.**

"Single-family dwelling" means a building designed for use and occupancy by no more than one individual, family or group of individuals and containing not more than one kitchen or kitchen facility. (Ord. 407 § 16-36, 1985)

**17.08.115 End wall.**

"End wall" means any wall or group of walls parallel to one another as so designated by this title or the town if no such designation exists. (Ord. 456 § 2, 1990)

**17.08.120 Fence.**

"Fence" means a structure having as its principal purpose the prevention of ingress or egress of persons or animals or the obstruction of vision or noise. Structures which are used to support a roof, awning, or other horizontal compositions, or structures which have a purpose other than those hereinabove specified, including, without limiting the generality of

the foregoing, tennis courts and other enclosures for athletic activities, compost bins, bath structure enclosures, and enclosures for the storage of tools, equipment and garden supplies, shall not be deemed to be fences. (Ord. 407 § 16-10, 1985)

**17.08.128 Floor area.**

"Floor area" means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. Floor area shall also include those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures. Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements. (Ord. 497 § 2, 1998; Ord. 478 § 1(B), 1994; Ord. 456 § 3, 1990)

**17.08.130 Floor area ratio.**

"Floor area ratio" means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area. (Ord. 497 § 3, 1998; Ord. 407 § 16-11, 1985)

**17.08.133 Front line of main building.**

"Front line of main building" means the

**EXHIBIT K**

kitchen, bath, sleeping or living facilities. (Ord. 544 § 1, 2003; Ord. 407 § 16-38, 1985)

**17.08.040 Accessory use.**

“Accessory use” means a use incidental and subordinate to the principal use of the premises, which does not alter the essential characteristics of the primary use, and does not include any kitchen facilities. (Ord. 407 § 16-37, 1985)

**17.08.042 Antenna.**

“Antenna” means a system of wires, poles, rods, reflecting disks or similar devices used for the transmission or reception of electromagnetic waves, which system is either free-standing or attached to the exterior of any structure. (Ord. 421 § 1 (part), 1986)

**17.08.043 Antenna height.**

“Antenna height” means the total maximum height to which any part of an antenna is capable of being raised, extended or rotated, measured from the highest point of the natural grade adjacent to the antenna. (Ord. 421 § 1 (part), 1986)

**17.08.050 Athletic court.**

“Athletic court” means any hard surface area constructed for athletic activity use which is equipped with nets, standards, backboards or other projections above grade or which is equipped with sleeves suitable for the installation of nets, standards, backboards or other projections above grade. (Ord. 407 § 16-3, 1985)

**17.08.052 Average natural grade.**

“Average natural grade” means the vertical elevation, determined by adding the sum of the highest natural grade elevation and lowest natural grade elevation and dividing by two,

for that portion of the lot covered by a building. (Ord. 497 § 4, 1998)

**17.08.054 Basement.**

For the purposes of this chapter, “basement” means that story below the finished floor of the first story of a building that is at no point in excess of two feet in height above the surrounding average natural grade. Basements are subject to the requirements of Section 17.36.190. Any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area under Sections 17.20.040 and 17.24.040 of this code. (Ord. 497 § 1, 1998)

**17.08.055 Bathroom.**

“Bathroom” means any room or area intended or designed for personal care and hygiene use and including a sink, toilet and bathtub or shower. (Ord. 434 § 1, 1988)

**17.08.060 Building.**

“Building” means a structure having a roof supported by columns or walls. (Ord. 407 § 16-4, 1985)

**17.08.070 Building height.**

“Building height” means the vertical distance from the natural grade or finish grade, whichever results in the lower height, measured to the topmost point of the roof. Continuous decorative roof elements, including but not limited to widow walks and railings, shall be included in the maximum building height. (Ord. 539 § 2, 2003; Ord. 512 § 2, 2000; Ord. 497 § 5, 1998; Ord. 407 § 16-5, 1985)

**EXHIBIT L**

any street corner shall be over three feet in height measured from the level of the closest adjoining pavement to the top of the fence, wall or shrubbery. Within such triangular area, all trees shall be trimmed so that they shall not obstruct the vision of persons operating vehicles on adjoining streets.

D. Prior to construction of any fence or wall within ten feet of a public street or right-of-way, the property owners must pay a fee as established by resolution of the city council and obtain a building permit.

E. Each fence, wall, shrub or tree constructed or maintained in violation of any of the provisions of this section is declared to be a public nuisance, and subject to abatement as such.

F. Each boundary line fence or wall shall be constructed on or immediately adjoining the property line, unless the building official requires that it be set back to allow room for planting. (Ord. 521 § 1, 2001; Ord. 463 § 1, 1991; Ord. 449 §§ 7, 8, 1989; Ord. 433 § 1, 1988; Ord. 423 § 1, 1986; Ord. 422 §§ 1, 2, 1986; Ord. 407 § 4-1, 1985)

#### **17.36.160 Entry gate and post requirements.**

Entry gates, posts and decorative features in excess of the height limits established in Section 17.36.150 but not exceeding ten feet in height, may be permitted upon the issuance of a building permit therefor. Such gates, post and features shall not be in excess of ten feet in height. (Ord. 423 § 2, 1986; Ord. 407 § 4-2, 1985)

#### **17.36.165 Arbors and trellises.**

A. Except as provided for in this section, arbors, trellises, pergolas and other structures whose principal function is to support vines, roses, or other vegetation (except trees and

tree limbs) are considered accessory structures and subject to all requirements therefor.

B. However, arbors, trellises, pergolas and other such structures may be constructed without regard to the setback requirements if conforming to all of the following:

1. One or more such structures may be built in front of the rear line of the dwelling, provided that such structures shall not exceed eight feet in height, four feet in width, nor a total for all such structures of eight feet in length;

2. Is not located closer than ten feet to any property line other than a public right-of-way;

3. Is substantially open to the passage of light and air in all aspects;

4. Does not violate the provisions of Section 17.36.150(C) of this code;

5. Is expressly for the purpose of and used for supporting vines, roses or other vegetation (except trees and/or tree limbs).

An arbor or trellis type structure larger than specified in subsection (B)(1) of this section, or closer to neighboring property than specified in subsection (B)(2) of this section, or less open than specified in subsection (B)(3) of this section (or any combination thereof) may be constructed only after obtaining a conditional use permit under the provisions of Chapter 17.52 of this code.

C. Any arbor, trellis, pergola or other such structure maintained in violation of this section is declared to be a public nuisance and subject to abatement as such. (Ord. 454 § 2, 1990)

#### **17.36.190 Basements.**

Basements shall not exceed two feet in height above the surrounding average natural grade. Exceptions to the requirements of this section for hillside properties (where the average cross-slope is greater than twenty percent

17.36.195

as determined under Section 16.24.050) may be permitted upon issuance of a conditional use permit. Basements are only permitted under the footprint of buildings located within the buildable area. Areas for stairways and light wells may extend beyond the footprint of buildings, but shall be limited to the buildable area. (Ord. 536 § 1, 2002; Ord. 497 § 10, 1998)

**17.36.195 Retaining walls.**

Retaining walls shall be located no closer than five feet from any property line. Except for basements and underground driveway approaches, the maximum height of the retaining walls shall not exceed six feet solid wall construction, with a maximum three-foot-high safety fence on top. The safety fence shall be substantially open to light and air in compliance with applicable safety codes. Retaining walls shall be constructed no closer than twenty feet from one another on the same property; provided, however, that upon a proper showing, a conditional use permit may be issued to authorize retaining walls:

- A. In excess of the six-foot height limit;
- B. Located less than twenty feet from other retaining walls on the same property. (Ord. 563 § 1, 2006; Ord. 539 § 1, 2003; Ord. 497 § 11, 1998)

**17.08.080 Building or dwelling area.**

"Building or dwelling area" means the area within a lot in which the dwelling may be constructed. (Ord. 407 § 16-6, 1985)

**17.08.090 Building line or building setback line.**

"Building line" or "building setback line" means the front line of the building area. (Ord. 407 § 16-7, 1985)

**17.08.100 District or zone.**

"District" or "zone" means a portion of the city within which certain uses of land and buildings are permitted or prohibited, certain yards and other open spaces are required, and certain height limits are established for buildings. (Ord. 407 § 16-9, 1985)

**17.08.110 Dwelling, single-family.**

"Single-family dwelling" means a building designed for use and occupancy by no more than one individual, family or group of individuals and containing not more than one kitchen or kitchen facility. (Ord. 407 § 16-36, 1985)

**17.08.115 End wall.**

"End wall" means any wall or group of walls parallel to one another as so designated by this title or the town if no such designation exists. (Ord. 456 § 2, 1990)

**17.08.120 Fence.**

"Fence" means a structure having as its principal purpose the prevention of ingress or egress of persons or animals or the obstruction of vision or noise. Structures which are used to support a roof, awning, or other horizontal compositions, or structures which have a purpose other than those hereinabove specified, including, without limiting the generality of

the foregoing, tennis courts and other enclosures for athletic activities, compost bins, bath structure enclosures, and enclosures for the storage of tools, equipment and garden supplies, shall not be deemed to be fences. (Ord. 407 § 16-10, 1985)

**17.08.128 Floor area.**

"Floor area" means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. Floor area shall also include those portions of overhangs exceeding four feet on the main building and those portions of overhangs exceeding one foot on accessory structures. Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements. (Ord. 497 § 2, 1998; Ord. 478 § 1(B), 1994; Ord. 456 § 3, 1990)

**17.08.130 Floor area ratio.**

"Floor area ratio" means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area. (Ord. 497 § 3, 1998; Ord. 407 § 16-11, 1985)

**17.08.133 Front line of main building.**

"Front line of main building" means the

**EXHIBIT N**

kitchen, bath, sleeping or living facilities. (Ord. 544 § 1, 2003: Ord. 407 § 16-38, 1985)

**17.08.040 Accessory use.**

“Accessory use” means a use incidental and subordinate to the principal use of the premises, which does not alter the essential characteristics of the primary use, and does not include any kitchen facilities. (Ord. 407 § 16-37, 1985)

**17.08.042 Antenna.**

“Antenna” means a system of wires, poles, rods, reflecting disks or similar devices used for the transmission or reception of electromagnetic waves, which system is either free-standing or attached to the exterior of any structure. (Ord. 421 § 1 (part), 1986)

**17.08.043 Antenna height.**

“Antenna height” means the total maximum height to which any part of an antenna is capable of being raised, extended or rotated, measured from the highest point of the natural grade adjacent to the antenna. (Ord. 421 § 1 (part), 1986)

**17.08.050 Athletic court.**

“Athletic court” means any hard surface area constructed for athletic activity use which is equipped with nets, standards, backboards or other projections above grade or which is equipped with sleeves suitable for the installation of nets, standards, backboards or other projections above grade. (Ord. 407 § 16-3, 1985)

**17.08.052 Average natural grade.**

“Average natural grade” means the vertical elevation, determined by adding the sum of the highest natural grade elevation and lowest natural grade elevation and dividing by two,

for that portion of the lot covered by a building. (Ord. 497 § 4, 1998)

**17.08.054 Basement.**

For the purposes of this chapter, “basement” means that story below the finished floor of the first story of a building that is at no point in excess of two feet in height above the surrounding average natural grade. Basements are subject to the requirements of Section 17.36.190. Any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area under Sections 17.20.040 and 17.24.040 of this code. (Ord. 497 § 1, 1998)

**17.08.055 Bathroom.**

“Bathroom” means any room or area intended or designed for personal care and hygiene use and including a sink, toilet and bathtub or shower. (Ord. 434 § 1, 1988)

**17.08.060 Building.**

“Building” means a structure having a roof supported by columns or walls. (Ord. 407 § 16-4, 1985)

**17.08.070 Building height.**

“Building height” means the vertical distance from the natural grade or finish grade, whichever results in the lower height, measured to the topmost point of the roof. Continuous decorative roof elements, including but not limited to widow walks and railings, shall be included in the maximum building height. (Ord. 539 § 2, 2003: Ord. 512 § 2, 2000: Ord. 497 § 5, 1998: Ord. 407 § 16-5, 1985)

EXHIBIT ○

# 94 Tallwood

## Lot Coverage/Area Analysis

Basement .....	3,556 sqft
1 <sup>st</sup> Floor .....	3,658 sqft
2 <sup>nd</sup> Floor .....	2,979 sqft
Garage .....	800 sqft
Cabana .....	933 sqft
Porch Areas .....	580 sqft
Total Covered Areas .....	12,505 sqft
Allowable Lot Coverage .....	11,322 sqft
<b>Amount in Excess of Allowed .....</b>	<b>1,183 sqft</b>

The Basement was counted in its entirety.

The Roofed Areas – patio covers, covered walkways etc, were addressed in accordance with 17.20.040, allowing an exemption for the first 500 square feet, and roof eaves allow for the first 4 feet of overhang to be exempt.

**EXHIBIT P**



**Town of Atherton**  
Building Department

91 Ashfield Road  
Atherton, California 94027  
Phone: (650) 752-0523  
Fax: (650) 614-1212

October, 24, 2006

Chesler Construction  
4025 Bohannon  
Menlo Park, Ca. 94025

Charles and Leslie King  
956 Cedar St.  
San Carlos, Ca. 94070

RE: 94 Tallwood,

To Whom it Concern,

The Town has identified your project, among others, that warrants a closer review of the methods of calculating the total Floor Areas and Building Height. In addition it has been brought to my attention that a kitchen has been added, in the Cabana that was not shown on the approved plans.

In consideration of the complex issues involving Floor Area and Height it has been determined that before the Town staff can proceed with any further inspections of the building there must be a determination made regarding possible violations of the Town's Zoning Regulations.

Therefore, please be advised that until further notice the Building Department will provide no further inspections of this site. In accordance with California Building Code, no further work shall be performed, wherein an inspection would be required prior to the work being concealed or otherwise covered.

If you have any further questions regarding this notice please feel free to contact me at 650-752-0560

Respectfully,

Michael Cully  
Acting Building Official

Cc: J. Robinson, City Manager  
M.Hynes, City Attorney  
L. Costa Sanders, Town Planner

**EXHIBIT**

Law Offices of  
MICHAEL H. WEED  
366 Lytton Avenue  
Palo Alto, California 94301

Telephone: (650) 324-5387  
Fax: (650) 566-8164  
Email: mweed@pacbell.net

February 21, 2007

Mr. Michael Wasserman  
Head Building Official  
Town of Atherton Building Department  
91 Ashfield Road  
Atherton, CA 94027

Re: 94 Tallwood Road, Atherton, California

Dear Mr. Wasserman:

This office represents Mr. and Mrs. Charles W. King, III, the owners of the above referenced property. You advised my clients the final inspection of the home being constructed on the property would not be conducted by the Atherton Building Department until the Town Council had determined its course of action regarding alleged violations of the Town's zoning regulations regarding the floor area of the home.

Because the Town has held no hearing on this matter at which the alleged violations could be discussed at a properly noticed meeting (please note my clients have never been provided with a written statement of the basis for such alleged violations), this action amounts to an illegal revocation of the building permit by the Town.

The proposed basement height of the home was clearly set forth on the plans submitted to and approved by the Town's Building Department. The home has been constructed in full accordance with the approved plans. Mr. and Mrs. King did not misrepresent or fail to disclose any fact to the Town regarding the proposed home, were not aware of any technical violations which may exist, and did not in any way exceed the specifications authorized by the building permit.

Under these circumstances, I have advised my clients they have a vested right under applicable law to complete the home in accordance with the issued permit and occupy the home after completion, and the Town is not legally permitted to assert otherwise.

EXHIBIT R

EXHIBIT R PG 1 OE2

Mr. and Mrs. King understand that the Town has an interest in upholding zoning ordinances. In this case, however, it is unfair to punish homeowners who did not conceal or misstate any fact, and who complied with the provisions of the issued permit and fully cooperated with the Town's review of this matter. Mr. and Mrs. King do not desire to engage in a legal dispute with the Town, but cannot accept actions by the Town which punish them in an unfair and illegal manner.

This letter is to demand that the Atherton Building Department conduct the final inspection under the validly issued permit on or before Friday, February 23, 2007, and that occupancy of the home be permitted upon a satisfactory final inspection. If the Town does not timely take such action, my clients will file legal proceedings to compel the Town to conduct the final inspection, to permit occupancy of the home and to recover all damages available at law or in equity.

Very Truly Yours,



Michael H. Weed

cc: Mr. and Mrs. Charles W. King, III  
William Ross, Esq.  
Members of the Atherton Town Council  
James Robinson, Atherton Town Manager  
Marc Hynes, Atherton Town Attorney

PERMIT NO 36825 APPLY 4-4-2005 ISSUE 6-23-2005 EXPIRE 6-23-2006  
 NUMBER 94 STREET TALLWOOD COURT APN 074130310

OWNER CHARLES KING ADDRESS 94 TALLWOOD COURT  
 CITY ATHERTON, CA. 94027 PHONE 551-1749  
 CONTRACTOR CHESLER CONSTRUCTION ADDRESS 4025 BOHANNON DRIVE  
 CITY MENLO PARK, CA. 94025 PHONE 326-9449 LIC 337450 TOWN  
 ENG/ARCH FOCAL POINT DESIGN ADDRESS 1150 EL CAMINO REAL  
 CITY MENLO PARK, CA. 94025 PHONE

TYPE PERMIT ~~NEW RES~~  
 LANDSCAPE SCREENING APPROVAL NEEDED FOR FINAL

CLASS SQUARE FOOT VALUE \$2150000.00 PERMIT FEE \$9258.7  
 PLAN FEE \$6018.19 SMIP \$200.00 MICRO TOTAL \$32676.94  
 ROAD FEE \$10000.00 DEPOSIT TYPE  
 SUB LIST NOTES

REQUESTED INSPECTION DATE REQUESTED STAT  
 DATE FINALED

PERMIT NO	NUMBER	STREET	DATE REQUESTED	STAT
36825	94	TALLWOOD COURT		
NAME	DATE	TYPE	RESULT	
DRC	6-25-2005	UNDERSLAB PLUMBING	OK	
TCB	7-7-2005	STRUCTURAL STEEL	NO	
TCB	7-22-2005	SLAB STEEL	NO	
MCW	8-14-2005	STRUCTURAL STEEL	OK TO DOUBLE UP BASEM WALLS	
MCW	8-19-2005	HOLD DOWN BOLTS	OK TO POUR BASEMENT W SUBJECT TO SETBACK VE LTR & ENGRS LTR IN RE TO MOMENT FRAME BOLTI	
MCW	9-22-2005	SLABS @ FRONT ENTRY LOGIA COVERED PATIO, TERRACE	OK TO POUR	
MCW	9-22-2005	WALL AT STUDY	OK TO POUR	
MCW	10-5-2005	FLOOR JOIST	OK	
TCB	10-25-2005	ROOF NAIL, EXT SHEATHING	OK	
MCW	12-14-2005	DECKS, SUBFLOOR	2 EXT DECKS NAILING O TO COVER	
TCB	1-19-2006	EXT SHEATHING	OK	
TCB	2-1-2006	ROOF NAIL, FIREPLACE LATH	OK	
MCW	3-3-2006	PARTIAL SITE WALLS	OK TO POUR GRADE BEAM	

EXHIBIT S

EXHIBIT S PG 1 OF 4

PERMIT NO 36825 APPLY 4-4-2005 ISSUE 6-23-2005 EXPIRE 6-23-2006

NUMBER 94 STREET TALLWOOD COURT APN 074130310

OWNER CHARLIE KING	ADDRESS 94 TALLWOOD COURT
CITY AHERTON, CA. 94027	PHONE 551-1749
CONTRACTOR CHESLER CONSTRUCTION	ADDRESS 4025 BOHANNON DRIVE
CITY MENLO PARK, CA. 94025	PHONE 326-9449 LIC 337450 TOWN
ENG/ARCH FOCAL POINT DESIGN	ADDRESS 1150 EL CAMINO REAL
CITY MENLO PARK, A. 94025	PHONE

TYPE PERMIT NEW RES  
LANDSAPE SCREENING APPROVAL NEEDED FOR FINAL

CLASS	SQUARE FOOT	VALUE	PERMIT FEE
PLAN FEE	SMIP	MICRO	TOTAL
ROAD FEE		DEPOSIT	TYPE
SUB LIST	NOTES	SECOND PERMIT INSPECTION ENTRY SCREEN	

REQUESTED INSPECTION	DATE REQUESTED	STAT
DATE FINALED		

PERMIT NO 36825 NUMBER 94 STREET TALLWOOD DRIVE

NAME	DATE	TYPE	RESULT
MCW	3-3-2006	EXT SOFFITS	OK TO COVER
MCW	3-7-2006	PARTIAL FOOTING, RET WALL	OK SEE PLANS FOR LOCA
MCW	3-16-2006	PARTIAL FOOTINS, WALLS	SEE PLANS OK
MCW	4-13-2006	GRADE BEAMS FOR SPORT COURT	OK TO POUR STAIRS
MCW	4-18-2006	STAIR WALL	OK TO DOUBLE UP AND P
MCW	4-18-2006	ROUGHES, FRAMING	NO LEFT CORRECTION LI
MCW	5-8-2006	ROUGHES, FRAMING	OK
MCW	5-19-2006	DRYWALL SCREW	OK
TCB	6-9-2006	4 INT LATH	3 OK 1 NO
HUO	6-28-2006	EXT LATH	OK
MCW	9-19-2006	SEWER AIR TEST	NOT READY
MCW	9-20-2006	SEWER	OK
MCW	9-27-2006	ELECTRIC, SEWER	OK
MCW	10-3-2006	PARTIAL WATER LINE	OK
MCW	10-6-2006	WATER TEST	OK
MCW	10-10-2006	GAS TEST	OK
MCW	11-21-2006	GAS & ELECTRIC TAG	OK
HUO	12-5-2006	ELECTRIC SERVICE	OK

PERMIT NO 36826 APPLY 7-7-2005 ISSUE 6-23-2005 EXPIRE 6-23-2006  
 JMBER 94 STREET TALLWOOD COURT APN 074130310

OWNER CHARLES KING ADDRESS 94 TALLWOOD COURT  
 CITY ATHERTON, CA. 94027 PHONE 551-1749  
 CONTRACTOR CHESLER CONSTRUCTION ADDRESS 4025 BOHANNON DRIVE  
 CITY MENLO PARK, CA. 94025 PHONE 326-9449 LIC 337450 TOWN  
 ENG/ARCH FOCAL POINT DESIGN ADDRESS 1150 EL CAMINO REAL  
 CITY MENLO PARK, CA. 94025 PHONE

TYPE PERMIT NEW ACC GARAGE

CLASS SQUARE FOOT VALUE \$262500.00 PERMIT FEE \$1900.9  
 PLAN FEE \$1235.62 SMIP \$26.20 MICRO TOTAL \$5415.97  
 ROAD FEE \$1310.00 DEPOSIT TYPE  
 SUB LIST NOTES

REQUESTED INSPECTION DATE REQUESTED STAT  
 DATE FINALED

PERMIT NO	36826	NUMBER	94	STREET	TALLWOOD COURT	STAT
NAME	DATE	TYPE	RESULT			
TCB	7-7-2005	STRUCTURAL STEEL	NO			
TCB	7-27-2005	STRUCTURAL SLAB STEEL	OK			
MCW	4-18-2006	ROUGHS, FRAMING	NO LEFT CORRECTION LI			
MCW	5-8-2006	ROUGHS, FRAMING	OK			
MCW	5-19-2006	DRYWALL SCREW	OK			
MCW	9-18-2006	SEWER LATERAL	PARTIAL SEWER OK			

PERMIT NO 36824 APPLY 1-7-2005 ISSUE 6-23-2005 EXPIRE 6-23-2006

NUMBER 94 STREET TALLWOOD COURT APN 074130310

OWNER CHARLES KING ADDRESS 94 TALLWOOD COURT  
 CITY ATHERTON, CA. 94027 PHONE 551-1749  
 CONTRACTOR CHESLER CONSTRUCTION ADDRESS 4025 BOHANNON DRIVE  
 CITY MENLO PARK, CA. 94025 PHONE 326-9449 LIC 337450 TOWN  
 ENG/ARCH FOCAL POINT DESIGN ADDRESS 1150 EL CAMINO REAL  
 CITY MENLO PARK, CA. 94025 PHONE

TYPE PERMIT NEW ACC CABANA

CLASS SQUARE FOOT VALUE \$225000.00 PERMIT FEE \$1693.7  
 PLAN FEE \$1100.94 SMIP \$22.50 MICRO TOTAL \$4752.19  
 ROAD FEE \$1125.00 DEPOSIT TYPE  
 SUB LIST NOTES

REQUESTED INSPECTION DATE REQUESTED STAT  
 DATE FINALED

PERMIT NO 36824 NUMBER 94 STREET TALLWOOD COURT  
 NAME DATE TYPE RESULT  
 TCB 7-7-2005 STRUCTURAL STEEL NO  
 TCB 7-22-2005 SLAB STEEL NO  
 TCB 7-27-2005 STRUCTURAL SLAB OK  
 MCW 8-10-2005 UNDERFLOOR PLUMBING OK AND FLOOR JOIST  
 MCW 4-4-2006 REBAR, RET WALL, STAIRS OK TO POUR, SEE PLANS  
 LOCATION  
 MCW 4-18-2006 ROUGHS, FRAMING NO LEFT COREECTION LI  
 MCW 5-8-2006 ROUGHS, FRAMING OK  
 MCW 5-24-2006 DRYWALL SCREW OK  
 HUO 6-28-2006 EXT LATH OK



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** JOHN P. JOHNS, FINANCE DIRECTOR  
**DATE:** FOR THE MEETING OF OCTOBER 18<sup>TH</sup>, 2006  
**SUBJECT:** PHASE III BUILDING DEPARTMENT AUDIT REPORT

#### RECOMMENDATION:

Accept the findings and recommendations contained within the Phase III of the Building Department permit and processes audit.

#### INTRODUCTION:

At the regularly scheduled meeting of August 16<sup>th</sup>, 2006 the City Council directed staff to proceed with Phase III of the Building Department Permit and Process Audit.

In accordance with the project plan approved by the City Council, the scope and objectives of this Phase III audit were as follows:

- To identify exceptions in building permit files for the purpose of identifying systematic deficiencies within the Building Department's plan check, permit issuance and building inspection processes; and,
- To identify and recommend improvements in the Building Department's business and recordkeeping practices to enhance organizational effectiveness.

To accomplish these objectives, audit staff implemented a five-part audit program consisting of the following tasks and activities:

- Assessment of physical and electronic recordkeeping systems;
- Risk assessment and selection of building permit files for review;
- Substantive testing of building permit files;
- Additional inquiries and physical observation; and,
- Communicating the results of the review.

Transmitted herewith is a report that documents the findings and recommendations of audit staff.

#### Scope of reporting and additional considerations

In presenting the proposed audit program to the City Council, audit staff recommended performing an analytic review of the data contained within the Building Department's computerized permit tracking system. Based upon the results of this analytic review and based upon other information, staff had also proposed selecting between 40 and 60 building department files for substantive testing.

The purpose of the substantive testing was to:

- Identify exceptions within the Building Department files that suggested non-compliance with established policies and local building and zoning ordinances;
- Ascertain whether such exceptions (if any) occurred on a recurring basis and were indicative of deficiencies in the Department's operations that were systematic in nature; and,
- Formulate the basis for recommending improvements within the Building Department's recordkeeping systems and/or business practices to increase the level of assurance that the Building Department was effective in performing its designated function.

In performing the fieldwork on this audit, staff encountered certain circumstances which affected the manner in which the audit was conducted and the level of resources required to complete the audit. Most notably:

- Through an extraction of the data contained within the Department's computerized permit tracking system, audit staff was able to generate a substantial volume of information which was useful in assessing both the integrity and reliability of Department's business practices and recordkeeping systems. Such information was of much greater use in identifying opportunities for improvement and in formulating the basis for audit recommendations than had been anticipated.
- The Department's physical records, particularly those contained on microfiche format, had not been preserved in an orderly fashion. As a result, audit staff concluded that an

extensive examination of a large number of files would be highly labor intensive and would yield little if any additional insight than would performing less extensive substantive testing.

Accordingly, audit staff performed a limited review of 48 permit files, instead of the comprehensive review of between 40 to and 60 files that had been planned originally. Consequently, audit staff was able complete this audit in approximately 200 hours or 120 fewer hours than the 320 hours that had been budgeted.

In communicating the scope and objectives of the audit, the City Council was advised of the following scope limitations:

- Despite the limited size of our sample, audit staff would not be able to render a definitive judgment as to whether a particular project had in fact met all of the building and zoning requirements applicable; and,
- The audit was not connected with any personnel investigation.

Phases I and II of the Building Department permit and process audit identified a number of weaknesses in the Department's physical and electronic recordkeeping systems. Audit staff therefore recommended that planning for a new permit tracking system be initiated immediately.

At the regularly scheduled meeting of the City Council on August 16<sup>th</sup>, 2006, the Council expressed a strong desire to obtain information that would be useful to the Building Department in implementing a new permit tracking system. Pursuant to the City Council's instructions, we have included information within the body of this report that is intended to be useful in the Department's modernization efforts. However, the findings and recommendations within this report extend beyond needed improvements in the Building Department's physical and electronic recordkeeping systems, notably:

- Administrative controls over the permit intake and plan check process;
- Ensuring compliance with building codes and administrative requirements during the project construction and close-out phases; and,
- The level of discretion afforded to a local Building Official in interpreting the building code and zoning ordinances.

Accordingly, this internal audit report includes recommendations that, in addition to improving recordkeeping systems, are intended to provide greater assurance that the Town's building and zoning ordinances are enforced fully and equitably.

#### **FISCAL IMPACT:**

Acceptance of the attached report is not anticipated to affect appropriation requirements or estimated revenues.

Prepared by:

---

John P. Johns  
Finance Director

Attachment III: Phase III Audit Report Findings and Recommendations

**Finding 1: The lack of administrative controls over the plan check and permit issuance process has hampered the Building Department's ability to ensure that a construction project is in conformity with applicable building and zoning ordinances prior to the release of a building permit.**

Prior to allowing construction to proceed on major remodeling, additions to residential structures and new residences, an applicant is required to submit a complete set of plans to the Building Department for review by a qualified plan checker.

Elements required of the applicant's plans include:

- A site plan identifying the location, size and purpose of all proposed structures and geographic location of the proposed project;
- A grading and drainage plan that identifies any and all movement of earth;
- A topographic survey;
- Electrical, mechanical and plumbing plans;
- A graphic depiction of the exterior of the building at certain compass points;
- Detailed structural plans and supporting calculations; and,
- A depiction of the interior of the building identifying the purpose and locations of rooms and fixtures within the structure.

In reviewing the proposed plans, the responsibility of the plan checker is to ensure that the proposed construction conforms to all applicable requirements within chapters 15 and 17 of the Atherton Municipal Code. Significant project elements subject to plan review include:

- Building height and setbacks;
- Floor area coverage; and,
- Compliance with state building code requirements adopted by the Town.

Upon completion of the initial plan review, it is a standard practice for the plan reviewer to provide a list of changes that are necessary in order for the proposed project to be in compliance with applicable building codes and zoning regulations. This is commonly communicated in the form of plan review notes as well as comments and suggestions noted in pencil on the plan itself.

In conducting our assessment of the plan review process, we performed the following activities

- Randomly selected several plans on active construction projects along with the files associated therewith;
- Obtained and reviewed all documentation available from the Department which would indicate:

- The procedures used and evaluative criteria applied by plan review staff; and,
  - The manner in which the results of the plan review were communicated to the applicant.
- Performed follow-up inquiries of plan review and supervisory staff as necessary.

Based upon the activities described above, audit staff identified the following weaknesses in the plan review process.

- The Building Department does not have a current and complete set of instructions for plan reviewers to follow in conducting plan reviews. As a result uncertainty exists among plan reviewers as to the extent to which local building and zoning ordinances apply. As an example, the most recent document available for plan reviewers to use as a guide in evaluating conformity with the Town's zoning ordinances was created in 1995 and most recently updated in 2002.
- The Department has not established a standard template for plan reviewers to use as a guide in reporting upon the results of a plan review to the applicant. As a result, the Department is unable to ensure that plan check comments provided to applicants constitute a thorough and objective review of the plans and that reporting protocols are consistently followed by plan check staff. Additionally, the lack of a standard template makes it more difficult to verify that subsequent iterations of plans submitted by the applicant were fully responsive to the concerns of plan review staff.
- There is an absence of a commonly accepted process for documenting the approval of the plans upon completion of the plan review. As a result it is difficult, if not impossible to confirm that approval had been granted by a duly qualified and properly authorized Building Department employee. Based upon a physical examination of several approved plan sets, audit staff identified three different methods used to document plan check approval:
  - Use of a stamp alone;
  - Use of a stamp combined with the plan checker's initials; and,
  - Use of a stamp, combined with clerical staff's initials in the name of a plan reviewer.

The lack of sufficient competent evidence that plans have been subject to a thorough and complete review prior to release of such plans by the Building Department has been further compounded by what appears to have been an informal authority granted to Building Department clerical staff to sign building permits in the name of plan reviewers who had performed the plan review.

### Recommendations

To improve the overall integrity of the permit intake and plan review process, the Building Department should:

- Update and disseminate to plan check staff standardized plan review instructions based upon the current building and zoning code;
- Prepare a plan review template for the purpose of documenting the results of plan reviews to building permit applicants and to ensure consistency amongst reviewers in communicating the results of said plan reviews; and,
- Instruct plan review staff to initial plans and to sign permits themselves rather than to rely upon clerical staff to perform such recordkeeping functions on behalf of plan review staff.

**Finding 2: The Building Department does not have a complete or accurate accounting of events that have transpired subsequent to the issuance of a building permit. As a result, the Department is unable to demonstrate that it has been effective in ensuring compliance with chapters 15 and 17 of the Atherton Municipal Code during the project construction and close-out phases.**

The Building Department's electronic and physical records contain in excess of 34,000 entries dating back to as early as 1941. This repository of information is essential in demonstrating that improvements to real property have been conducted in accordance with an approved set of plans and that a host of administrative requirements associated with the construction project have been adhered to.

In examining the Department's reliability and completeness of the Department's accounting of events during the project construction and close-out phases, we performed the following activities:

- Extracted and analyzed data pertaining to construction projects that had been in an active status during calendar years 2000 through 2006;
- Selected for follow-up review 48 building permit files which appeared to be problematic based upon the results of the analysis of the permit tracking system data; and,
- Performed inquiries of Building Department personnel for the purpose of obtaining explanations for the apparent exceptions found within the Department's physical and electronic records.

Based upon the activities described above, we identified a number of weaknesses in the Department's business and recordkeeping practices that have adversely affected the ability of the Department to effectively enforce Chapters 15 and 17 of the Atherton Municipal Code once construction has been allowed to proceed.

These problems are described as follows:

Contrary to established policy, the Department has routinely scheduled inspections on construction projects without having ensured that certain administrative requirements have been met. For example, a detailed review of six projects that were either in the advanced stages of construction or that had been completed found only one file containing evidence of having satisfied all of the following requirements:

- Certification of compliance height limitations and minim setback requirements;
- Payment of school impact fees; and,
- Signed and notarized landscape screening agreements.

According to the Department's longstanding policy, an inspection by a building inspector is required within each 180-day period for the permit to remain active. Additionally Departmental policy indicates that permits for which there have been no inspections in 12 months may need to be resubmitted. However, an analytic review of permits issued since calendar year 2000 indicates that this policy is not being enforced. For example, the Department's permit tracking system lists a total of 537 permits are currently listed in an active status for which an inspection has not been performed for 12 months or more.

There is no ongoing analytic review of the information contained within the Department's permit tracking system to ensure that the information contained within the electronic database accurately reflects the status of the project. Based upon a sample of 46 permit files for which no inspections had been performed during the past 12 months, staff identified 33 permit files for which the Department no longer maintained a physical record. Of these 33 files, the senior building inspector was unable to determine the status of the project for 17 of these records. Additionally, nine of the 33 projects listed as active in the Department's permit tracking system had been issued a certificate of occupancy and therefore should have been identified as having been closed-out.

The Department does not perform a final review of its building permit files prior to project close-out. Additionally, the Department has not retained the field inspection reports within the permanent record. A result audit staff identified 36 projects that had been finalized despite the fact that the final entry in the record indicated that inspections were either incomplete or had resulted in an unsatisfactory condition.

#### **Recommendations:**

To ensure that construction projects conform to all applicable building and zoning codes during the construction and project close-out phases, the Building Department should:

- Adhere to its standard practice of requiring that certain administrative requirements be met prior to the scheduling of interim and final inspections;

- Through the use of a project close-out checklist provide an objective means of verifying that all project requirements have been met prior to the release of a certificate of occupancy; and,
- Ensure that both a project close-out-checklist-and-copies of field inspection reports are retained within the permanent record.

**Finding 3** The Building Department's permit tracking system (Q&A) lacks the features and functions to adequately support the Building Department's business objectives. Additionally, since much of the data contained within Q&A is unreliable, validating and converting data contained within Q&A to a new permit tracking system will add significantly to system replacement costs.

In conducting this review, audit staff evaluated the features, functions and capabilities of the Department's permit tracking system. The evaluative criteria applied by audit staff were as follows:

**Reliability** – input controls, edit functions and other checks and balances should be in place to minimize the potential for errors.

**Functionality**– data collection activities and transactions processes should be automated to the maximum extent possible. In particular redundant or overly labor-intensive data collection activities should be avoided.

**Accessibility** – standard and ad-hoc reports should be either readily available or easy to produce in order to facilitate workload planning and to assist management in evaluating organizational of organizational effectiveness.

**Verifiability** – evidence within the physical or electronic record should document that a transaction has been executed according to established procedures and by a properly authorized individual.

In conducting this review, audit staff:

- Examined the format, content and structure of the database used by the Department to record and track building activity;
- Performed inquiries of Building Department staff as to the intended and actual application of the permit tracking system; and,
- Attempted to acquire any documentation which would describe the features, functions and capabilities of the permit tracking system.

Based upon these activities audit staff determined that Q&A lacks both the features and functions to adequately support the Building Department's core business processes.

Additionally Q&A lacks a reporting capability that can effectively support management's planning and analysis functions.

To assist the Building Department in planning for a new system, audit staff has prepared a table that identifies a number of features and functions that are currently unavailable within Q&A and that are warranted for consideration in the design of a new system. This list is not intended to be comprehensive or complete definition of system requirements, rather it is intended to support the preparation of a business case for a new system and to help define the scope and objectives of a permit tracking system replacement project.

System element/attribute	Desired Capability
Database Design	<p>Ability to incorporate all pertinent information including project parameters and inspection results within a single record.</p> <p>Utilization of relational rather than a flat file database format, thereby enabling staff to access and update records properties based upon multiple parameters and at various stages in the permit life-cycle.</p>
Security	<p>Identity-based user access tree that limits access to features and functions consistent with the user's job classification.</p> <p>Implementation of an audit trail.</p>
Workflow Management	<p>Generation of sequentially numbered unique record locators for each permit.</p> <p>Ability to incorporate of results of plan review activities.</p> <p>Remote capture of field inspection results.</p> <p>Generation of certificates of occupancy upon project close-out.</p>
Decision Support	<p>Generation of standard and ad hoc reports that provide useful information on the productivity and organizational effectiveness including but not limited to:</p> <ul style="list-style-type: none"> <li>• Plan check turnaround times;</li> <li>• Complaint tracking/incident reporting; and,</li> <li>• Number and duration of field inspections conducted by building inspectors.</li> </ul>

In addition, audit staff has prepared a brief description of the major tasks that the Building Department should consider including within the scope of its permit tracking system modernization efforts. These tasks are outlined as follows:

Project Phase	Major Tasks
Requirements definition and evaluation of solution alternatives	Define features and functions needed in a new system.
Vendor selection	Preparation of a request for proposal (RFP) for software and system implementation support services (if off-the-shelf software is purchased) or software design services (if a custom solution is to be created).
Implementation and acceptance testing	Installing new software on the network
Data migration	Converting and hosting legacy data to the new application

During the course of this Phase III audit, a number of problems were identified with the manner in which data within Q&A was being maintained, these include:

- An absence of data entry controls which are designed to reduce the likelihood of records being entered into the system with either invalid or incomplete data;
- A lack of access controls or physical security surrounding the system that would prevent individuals who are not properly authorized from altering the records;
- A limitation on the size of the fields designed to capture the results of field inspections, necessitating the creation of duplicate records containing a second inspection screen for the purpose of capturing inspection data on complex projects
- An absence of an audit trail which would enable a supervisor to verify entries to the system were properly authorized and duly recorded; and,
- A lack of an exception reporting capability to identify files that are indicative of non-compliance with established business rules.

The following table presents the results of our analysis of the data within Q&A indicating the exception noted, exception frequency and apparent underlying cause.

Exception Identified	Exception Count	Underlying System Limitation or Process Weakness
Invalid permit numbers	25	Lack of data entry controls within permit tracking system
Duplicate records	314	Inability of permit tracking system to accommodate number of inspections resulting in a need to create a second permit record for complex properties.
Unaccounted for gaps in permit sequence numbers	684	Insufficient controls over pre-printed permit card stock
Expired permits listed in active status	537	Absence of a systematic method to identify and follow-up on inactive projects
Total exceptions	1,560	
Total Records Analyzed	6,647	
Exceptions as a percent of Records Analyzed	23%	

Given the significant number of exceptions identified within Q&A, it will be necessary to perform an extensive effort to audit and correct the entries in the current system prior to migrating such data to a new system. Such an effort is likely to add substantially to the acquisition costs of a new system.

#### Recommendation

To ensure that a new permit tracking system effectively supports the Building Department's business process and management reporting capability, the Building Department should implement a phased approach to its system replacement effort that includes:

- A careful and deliberate assessment of the functional requirements for a new system; and,
- An intensive data effort to rectify errors within the current permit tracking system prior to migrating such data to a new permit tracking system.

**Finding 4:** By relying upon discretionary powers afforded to the Chief Building Official, the Building Department has allowed residential construction to proceed that does not conform to the intent, if not the letter, of chapter's 15 and 17 of the Atherton Municipal Code.

### Introduction

Chapter 15 the Atherton Municipal Code contains the body of ordinances which regulate building activity within the Town of Atherton. Pursuant to Section 15.04 and 15.20 of the Atherton Municipal Code, the local building official is granted discretion in interpreting local ordinances concerning residential construction.

Chapter 17 of the Atherton Municipal Code contains the body of ordinances which is intended to ensure that construction within the geographic boundaries of the Town conforms to the General Plan. Although Chapter 17 constitutes a separate body of regulations, it has been generally accepted within the Town that the discretionary authority granted to the Chief Building Official pursuant to Sections 15.04 and 15.20 of the Atherton Municipal Code applies to zoning ordinances as well.

During the course of this Phase III audit, a number of construction projects came to the attention of audit staff which suggested that either the former Building Official or his designees had allowed construction to proceed that did not conform to the intent if not the letter of one or more key provisions within chapters 15 and 17 of the Atherton Municipal Code, notably:

- Height and setback limitations;
- Size, configuration and location on accessory structures; and,
- Permit expiration provisions.

As indicated in staff's August 16<sup>th</sup> memorandum to the City Council, this audit was not intended to render a definitive judgment as to whether specific properties were in compliance with the Atherton Municipal Code. However, based upon an examination of physical and electronic records and based upon a visual inspection of selected construction sites, audit staff did encounter four projects which were problematic in a number of respects. Of these four projects, three are in an active permit status and have been referred to the City Attorney and the Building Official for a determination as to the appropriate disposition.

This observation suggests that the Town's current organizational structure lacks sufficient checks and balances to ensure that the discretionary authority granted to a Building Official is not applied improperly.

For this reason audit staff believes that it would be prudent for the Town to consider revising the organizational structure of the Town to either:

- Elevate the status and extend the scope of responsibility of the Town Planner; or,

- Incorporate within the scope of responsibility of the Code Enforcement Officer to investigate and make recommendations to the City Manager on possible violations of the Town's building and zoning ordinances on permitted construction projects that are in progress.

The following is a description of the cases examined by audit staff.

#### Property A

*Apparent violation: Allowance of an accessory structure with a basement outside of the buildable area.*

At the regularly scheduled meeting of September 18<sup>th</sup>, 2002 the City Council approved Ordinance Number 536, amending Section 17.36.190 of the Atherton Municipal Code. This newly adopted ordinance had the effect of limiting the construction of basements to areas within the buildable area of a lot. The ordinance became effective on October 17<sup>th</sup>, 2002.

The apparent intent of the Ordinance 536 was to protect heritage trees on neighboring properties that could be damaged as a result of excavation activity close to the property line.

In November, 2002 a homeowner approached the Building Department with tentative plans for the construction of a guesthouse with a basement to be located approximately 12' from the owner's property line and therefore outside of the main buildable area.

In response to the applicant's initial request for a permit, the Building Department advised that, pursuant to the adoption of Ordinance Number 536, the proposed structure was no longer permissible. In response to the Building Department's instruction, the applicant's attorney submitted a letter to the Building Official requesting reconsideration of staff's denial for a permit for the following reasons:

- The applicant had been in consultation with the Building Department and had received assurances from staff that the passage of an ordinance prohibiting the type of structure contemplated was unlikely in the near future.
- Having been given assurances from Building Department staff as to the permissibility of the proposed structure, the property owner had invested a considerable sum of money in planning and design services.
- The wording of the ordinance adopted by Council was not entirely clear as to whether the structure being proposed was in fact prohibited.

Pursuant to the objections raised by the applicant's attorney, the Building Official reversed the decision of his staff to deny the issuance of a permit. According to the physical record, the plans were reviewed and approved by the former Building Official personally and a permit was issued to the applicant in December of 2002.

Based upon discussions with the City Attorney and the Town Planner, the action taken by the former Building Official was made without their consultation or consent.

#### **Property B**

*Apparent violation(s): Building height and floor area in excess of maximum allowable*

In early 2005, the Building Department received an application and plans to construct a three story residence with a detached garage on a heavily sloped lot in west Atherton.

Pursuant to a first review of the plans submitted for the subject property, the Building Department followed its standard practice in determining the average natural grade of the site for the purpose of calculating the maximum building height. The Building Department's standard practice for determining average natural grade represented a slight departure from that prescribed in the section 17.08.052 of the Atherton Municipal Code. However, the result of the Department's calculation was consistent with that of an independent engineer retained by the Town after the fact to independently calculate average natural grade in strict accordance with the provisions of the Code.

The Building Department's determination of the height of the proposed elevation resulted in a calculated building height, as measured by the elevation of the highest point of the roofline of the proposed structure minus the average natural grade, to be 31'. As such the Building Department determined that the height of the proposed structure was one foot in excess of the maximum allowable building height.

In rebuttal to the Building Department's plan review comments, the applicant's engineer proposed a determination of average natural grade at approximately one and one-half feet higher than that determined by the Building Department. Under the applicant's proposed average natural grade calculation, the distance between the uppermost point on the roof and the floor of the building (as determined by average natural grade) would be 29' 6" or one-half foot less than the 30' maximum. However, the approach used by the applicant's engineer to render its determination of average natural grade constituted a significant departure from both that prescribed in section 17.08.052 of Atherton Municipal Code and from the Building Department's established practice. (Rather than calculate average natural grade based upon an average of the high and low points within footprint of the Building, the applicant used no fewer than 30 data points located along the perimeter of the foundation).

Based upon discussions with the initial plan reviewer, it appears as though the former Building Official accepted the applicant's assertion of average natural grade even though the approach used by the applicant was inconsistent with both the letter of the Atherton Municipal Code and the Department's longstanding practice.

Audit staff also asked the Building Department to re-calculate the square footage of the main residence and detached garage and to compare the total square footage of the residence with the maximum floor area ratio as prescribed in the Atherton Municipal Code (18% of total floor area).

In re-calculating the floor area of the subject property, Building Department staff determined that the original calculation as approved by the former Building Official did not include significant elements of the proposed project, notably a 1,100 square foot detached garage and a 3,217 square foot basement.

Based upon a subsequent analysis of the plans and permit files, the exclusion of the detached garage appears to have been an oversight on the part of plan check review personnel due to the fact that it had been issued under a separate structure. However, the Building Department's exclusion of the basement for the purpose of floor area ratio calculations was improper due to the following circumstances:

- As indicated on the plans, the basement *was* included in the floor area calculations as provided by the project architects; and,
- The basement has been designed so that it stands in excess of 2' above the average natural grade of the building site. As a result, Section 17.08.054 of the Atherton Municipal requires the basement to be included as floor area for the purpose of calculating maximum floor area.

When including the basement, the detached garage and other project elements, the floor area of the property amounts to approximately 2,500 square feet in excess of the maximum floor area allowable for the size of the lot upon which it has been built.

### Property C

*Apparent Violation: Construction initiated on expired building permit.*

In early 2002, the Building Department issued a permit for an accessory structure with a basement. The size of the structure, including the basement was approximately 1,100 square feet.

As indicated on the face of the building permit, the applicant was notified of provisions within the California Uniform Building Code which render the permit null and void if construction is not initiated within 180 days from the date the permit is issued or if construction is suspended for 180 days or more. (A permit may be granted a one-time extension of 180 days upon written approval from a building official however.) As such the maximum amount of time for which a permit may remain valid without the initiation of construction on the project is 360 days.

Despite the provisions in state law, the Building Department maintained the permit in an active status until the time the applicant initiated construction on the project in May, 2005. Hence the

Building Department allowed the permit to remain active for more than 24 months beyond the maximum time frame allowed by statute.

In the intervening two years the Council approved two changes to the Town's building and zoning ordinances which had the effect on rendering the structure approved by the Building Department to be non-conforming, including:

- A prohibition on basements under accessory structures outside the buildable area; and,
- A requirement that fire sprinkler systems be installed on new construction with basements in excess of 250 square feet.

In reviewing the subject property with the building inspector who performed inspections on the subject property, the employee acknowledged that the structure did not conform to the current building code but indicated that that he had relied upon the authority of the Chief Building Official to allow the construction.

#### **Property D:**

*Apparent violation: Improper reinstatement of an expired permit*

In February 1978 the Building Department issued a permit to construct a new single family residence. The permitted value of the structure amounted to approximately \$170,000 and was issued to an individual who was acting as his-own-contractor.

According to the Building Department's records, construction ensued on the project for 17 years, a rate of progress that was unsatisfactory to both the Building Department's field inspectors and to neighboring residents.

Citing the intermittent pace of construction as a concern, one entry to the Department's inspection logs indicated that the residence had been allowed to remain exposed to the elements for an extended period of time. As a result, the inspection log indicated that instead of having made any substantial progress on the project, the work being inspected appeared to be limited to repairing weather-related damage that had occurred since the previous inspection.

In 1995, the longstanding presence of a partially completed structure combined with an accumulation of unsightly construction related debris prompted neighboring residents to retain an attorney and to demand that the City Manager declare the construction project a nuisance pursuant to Chapter 8 of the Atherton Municipal Code.

The City Manager then consulted with the newly appointed Building Official at the time as to what if any action should be taken with respect to the subject property. In response, the Building Official advised the City Manager that, since the City was unable to demonstrate that the property owner had ceased construction for a period of 180 days or more, the Building Official was of the opinion that the builder still had an active permit. The Building Official also advised

the City Manager that, based upon discussions with the owner-builder of the property, he was confident that construction on property would be completed within a reasonable time frame.

Subsequent to the Building Official's preparation of his 1995 memorandum to the City Manager, the file for the subject residence was sent off to be reproduced on Microfiche and the original documentation destroyed. Additionally, based upon an examination of the Building Department's permit tracking system, the electronic record associated with the project was deleted at some point in time between calendar years 1995 and 2002, only to be recreated between calendar years 2002 and 2004. Additionally, there is no indication in either the physical or electronic records of any inspection activity having occurred at the job site until calendar year 2005.

These observations suggest that at some point in time between 1995 and 2002 the Building Department considered the project to have been abandoned, only to reactivate the file between 2002 and 2005.

A physical inspection of the property in September, 2006 combined with an examination of the San Mateo County Assessor's tax roll indicates that the property continues to remain in a work-in-progress stage 29 years after the time the permit was issued.

**Recommendation:**

To provide greater assurance that both the letter and intent of the Town's building and zoning ordinances are enforced, the City Manager, in consultation with the City Council, should consider:

- Granting the Town Planner a status equivalent to that of the Building Official and vest within the Town Planner the authority to interpret and enforce Chapter 17 of the Atherton Municipal Code; or,
- Empower the code enforcement officer to review of permitted projects currently under construction and to take actions as necessary to ensure that such projects comply with Chapters 15 and 17 of the Atherton Municipal Code.

## FAR Analysis for 94 Tallwood Court

1. Although the basement area is set forth on the cover sheet of the permit set of plans (attachment 1), the basement was not included in the floor area pursuant to applicable Town ordinances (which exclude basements from floor area). See plan check comments for the FAR analysis which excludes the basement (attachment 2).
2. In Tim Wulff's "Plan Review 94 Tallwood Court" dated September 27, 2006 (attachment 3), which was prepared in response to a request from John Johns of the Finance Department, the basement is included in the floor area calculations with no explanation for such inclusion. It appears the basement was included because it was "submitted" in the plans as described above. Mr. Wulff concludes the residence exceeds maximum permitted FAR by 1,902 square feet, but this results solely from the inclusion of the basement area of 3,544 square feet.
3. The average natural grade accepted by the Town for the building permit was 351.1'. Section 17.08.054 of the Atherton Municipal Code defines a basement as the story below the finished floor of the first story of a building that is at no point in excess of two feet above the surrounding average natural grade. This means the maximum height of the basement should not exceed 353.1'.

EXHIBIT 4

RESOLUTION NO. 03-19

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING RESOLUTION NO. 00-13 BY MODIFYING FEES FOR SERVICES RELATED TO BUILDING AND PLANNING AND CONFIRMING EXISTING PRACTICE REGARDING BUILDING PERMIT VALUATIONS**

**WHEREAS**, the City Council of the Town of Atherton finds it necessary to amend the current fee schedule for fees for certain planning and building related services last adjusted May 17, 2000; and

**WHEREAS**, the Town has analyzed the costs associated with providing fee-based activities related to certain building and planning activities;

**WHEREAS**, adjustments are warranted in the level and structure of certain fees to ensure that activities relating to building and planning continue to be self-supporting;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ATHERTON, CALIFORNIA**, that fees relating to building and planning be established, adjusted, and confirmed as set forth below:

**EXISTING FEES**

<i>Activity</i>	<i>Current Fee</i>	<i>Fee Adjusted to:</i>
Conditional use permits	\$750	Actual Cost, \$750 initial non- refundable deposit
Variances	750	Actual Cost, \$750 initial non- refundable deposit
Front-Rear Yard Re-designation	750	Actual Cost, \$750 initial non- refundable deposit
Zoning Exception Reviews	750	Actual Cost, \$750 initial non- refundable deposit
Appeals	500	Actual Cost, \$750 initial non- refundable deposit
Zoning Ordinance Amendment	900	Actual Cost, \$750 initial non- refundable deposit
Environmental Assessment	400	Actual Cost, \$750 initial non- refundable deposit
School Master Plan	400	Actual Cost, \$750 initial non- refundable deposit

**BUILDING PERMIT FEES**

In determining the permitted value of construction, the Building Department, uses either a standard factor of \$250 per square foot or the actual cost of the new construction based upon contract documents provided by a homeowner. The latter approach is justified in circumstances such as a gazebo, garage or similar type of structure that is not of the same complexity as a main building.

NEW FEES

<i>Activity</i>	<i>Fee Established at:</i>
School Master Plan Reviews	Actual Cost, \$750 initial non- refundable deposit
After-hours construction permits	\$350

**AND BE IT FURTHER RESOLVED** that if any section, subsection, sentence, clause, phrase, or portion of this resolution or the application thereof to any person or circumstances is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof nor other applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

**AND BE IT FURTHER RESOLVED** that except as amended here, Resolution 00-13 continues to remain in full force and effect.

\* \* \* \* \*

*I HEREBY CERTIFY that the foregoing Resolution was regularly introduced and adopted at a Regular Meeting of the City Council of the Town of Atherton held on the 17<sup>th</sup> day of September, 2003 by the following roll call vote:*

Ayes: 5 Councilmembers: McKeithen, Marsala, Carlson, Corwell, Janz  
Noes: 0 Councilmembers:  
Absent: 0 Councilmembers:  
Abstain: 0 Councilmembers:

James R. Janz, Mayor  
Town of Atherton

ATTEST:

Sharon Barker, City Clerk

APPROVED AS TO FORM:

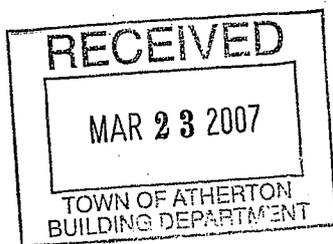
Marc G. Hynes, City Attorney

EXHIBIT V PG 2 OF 2

William D. Ross  
Kypros G. Hostetter  
Joseph Bakshandeh  
Karin A. Briggs

Law Offices of  
**William D. Ross**  
A Professional Corporation  
520 South Grand Avenue, Suite 300  
Los Angeles, CA 90071-2610  
Telephone: (213) 892-1592  
Facsimile: (213) 892-1519

Palo Alto Office:  
400 Lambert Street  
Palo Alto, California 94306  
Telephone: (650) 843-8080  
Facsimile: (650) 843-8093



File No.: 457/3

March 19, 2007

***VIA ELECTRONIC TRANSMISSION,  
CERTIFIED MAIL - RETURN RECEIPT  
REQUESTED & FACSIMILE***

[mwasmann@ci.atherton.ca.us](mailto:mwasmann@ci.atherton.ca.us) & (650) 614-1224

[khamilton@ci.atherton.ca.us](mailto:khamilton@ci.atherton.ca.us) & (650) 688-6528

Mr. Michael Wasmann  
Town of Atherton Head Building  
Official  
93 Station Lane  
Atherton, CA 94027

Ms. Kathi Hamilton, Acting City Clerk  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Re: Appeal, Notice of Nuisance and Abatement Order Dated March 9, 2007

Dear Mr. Wasmann and Ms. Hamilton:

This office represents the owners of improved real property within the Town of Atherton ("Town"); 94 Tallwood Court (the "Property"), Charles W. King, III and Leslie A. King, Trustees, of the KCP Trust dated March 19, 2004 (the "Owners").

This communication responds to the Town Notice of Nuisance and Abatement Order (the "Abatement Order") dated March 9, 2007 sent by regular mail to the Owners with respect to the approved construction of a single-family residence (the "Project") on the Property.

This appeal, is without any waiver of any vested rights status of the Owners to the immediate Final Inspection and a Certificate of Occupancy for the single-family residence and its use.

Mr. Michael Wasmann  
Town of Atherton Head Building Official  
Ms. Kathi Hamilton, Acting City Clerk  
March 19, 2007  
Page 2

Further, the appeal of the Abatement Order is being pursued recognizing the futility of such an appeal because of past actions of the Town Council which disregarded applicable facts, including the administrative past practice of the Town and that the completion of the Owners' single-family residence has been accomplished in reliance upon representations and approvals of the Town including sequential Town Building Officials upon which they were entitled to rely.

Because of the previous Council review of the Project and the lack of any established procedures concerning the appeal<sup>1</sup>, the Owners request all documentation of the procedures for the appeal as well as a written statement of what burden of proof would be applicable to the appeal.

Assuming that a burden of proof could be found to be applicable and established, it is unclear how the Council could meet standards of impartiality given their prior consideration of the matter and a lack of objectivity of review in view of their vested right status and the past approvals of the Town and Town Building Officials for development, occupancy and use of the Property.

Among other things, this request is made under the provisions of the California Public Records Act (Government Code section 6250 *et seq.*).

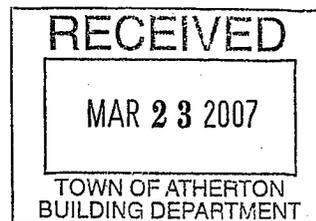
Very truly yours,



William D. Ross

WDR:mgl

cc: Charles W. King, III  
Michael Weed, Esq.  
Marc Hynes, Esq.



---

<sup>1</sup>Atherton Municipal Code section 8.20.090 does not incorporate the provisions of Chapter 17.64 dealing with appeals to the City Council and even if it did, given the prior review of the Project what would be the applicable burden of proof.

William D. Ross  
Kypros G. Hostetter  
Joseph Bakshandeh  
Karin A. Briggs

Law Offices of  
**William D. Ross**  
A Professional Corporation  
520 South Grand Avenue, Suite 300  
Los Angeles, CA 90071-2610  
Telephone: (213) 892-1592  
Facsimile: (213) 892-1519

Palo Alto Office:  
400 Lambert Street  
Palo Alto, California 94306  
Telephone: (650) 843-8080  
Facsimile: (650) 843-8093

File No.: 457/3

March 23, 2007

**VIA ELECTRONIC TRANSMISSION &  
CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Ms. Kathi Hamilton, Acting City Clerk  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Re: *Charles W. King, III and Leslie King v. Town of Atherton, et al.*, San Mateo  
Superior Court Case No. CIV 461513; Communication of Marc Hynes dated  
March 20, 2007

Dear Ms. Hamilton:

Consistent with the above-referenced communication of the Town Attorney, Marc Hynes, please find enclosed a draft in the amount of \$750.00 for the appeal of the March 9, 2007 Notice of Nuisance and Abatement letter directed to Charles W. King, III and Leslie King with regard to a single-family home located at 94 Tallwood Court within the Town.

Please ensure that receipt of this appeal fee is acknowledged.

Very truly yours,



William D. Ross

WDR:lla  
Enclosure

cc: Mr. and Mrs. Charles King

LAW OFFICES OF WILLIAM D. ROSS

A PROFESSIONAL CORPORATION

213-892-1592

520 S. GRAND AVE., STE. 300  
LOS ANGELES, CA 90071-2610

WELLS FARGO BANK, N.A.

16-24-1220

PAY Seven Hundred Fifty and 00/100 - -  
TO THE ORDER OF TOWN OF ATHERTON

DATE 03/23/07

AMOUNT \$750.00

Appeal of 3/9/07 Notice

*VeriCode*

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LAW OFFICES OF WILLIAM D. ROSS

20960

03/23/07

Appeal of March 9, 2007  
Notice of Nuisance  
and Abatement

457/3 \$750.00

#7910



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

**DATE: FOR THE CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: APPEAL OF THE DECISION OF THE PLANNING COMMISSION TO DENY  
A HERITAGE TREE REMOVAL PERMIT AT 44 TUSCALOOSA**

**RECOMMENDATION:**

Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Planning Commission to deny the heritage tree removal permit for the reasons outlined in this report.

**INTRODUCTION:**

The subject site is approximately 59,242 square feet in area (over one acre) and is located at 44 Tuscaloosa Avenue between Austin Avenue and El Camino Real. The property is the site of a new single-family house (under construction), detached pool house, and pool. The applicant requested approval to remove one heritage tree (a *Quercus agrifolia*, or Coast Live Oak). The Coast Live Oak, referred to as #333, is located at the front center of the subject property.

The Planning Commission reviewed this item at its July 25, 2007, meeting. At that meeting, Commissioners expressed concern with the removal citing no compelling reason to remove the tree and that the tree has nice shape and should be retained. The Planning Commission voted 4-0 to deny the request to remove the heritage Oak tree (minutes attached).

Notice of the Appeal and the City Council meeting in which it will be considered was mailed to property owners within 500 feet of the subject site.

**ANALYSIS:**

Please review the attached staff report to the Planning Commission for project analysis and the memo from the Town Arborist.

The applicants, in their letter of appeal, expresses concern that the failure of this tree could cause significant damage to the house and possibly to its inhabitants or any onsite guests or workers. City Attorney Marc Hynes has prepared a memo, as attached to this staff report, responding the applicants claim that the Town would be held responsible for any damage should the tree fail.

Staff is not supportive of the removal request due to the condition and location of the tree. The tree is in fair condition, is not located within the buildable area, and can be accommodated with the proposed driveway and motor court. The tree is not in direct conflict with any site improvements and can be preserved.

**ALTERNATIVES:**

The Council has the following options:

- Uphold the decision of the Planning Commission and deny the appeal, thereby denying the request for a Heritage Tree Removal Permit.
- Approve the appeal and thereby approve a Heritage Tree Removal Permit to allow the removal of one heritage tree as requested or as further amended by the Council.

**FISCAL IMPACT:**

All costs covering the processing of this application are paid for by the applicants.

**ENVIRONMENTAL IMPACT:**

The City Council has declared the removal of two or fewer trees to be less than significant environmental impact and exempt from further CEQA review.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders  
Lisa Costa Sanders  
Deputy Town Planner

\_\_\_\_\_  
Wendé C. Protzman  
Interim City Manager

**Attachments:**

1. Draft Heritage Tree Removal Permit
2. Memo from Marc Hynes dated September 12, 2007
3. Letter of Appeal from Pietro Dova, dated August 2, 2007
4. Planning Commission Staff Report for the July 25, 2007 meeting with attachments
5. Minutes from the July 25, 2007 Planning Commission meeting

*draft*

**TOWN OF ATHERTON  
CITY COUNCIL  
HERITAGE TREE REMOVAL PERMIT**

THIS IS TO CERTIFY THAT the Atherton City Council at a regular meeting thereof, held on Wednesday, September 19, 2007, did grant a Heritage Tree Removal Permit to Pietro Dova pursuant to Atherton Municipal Code Section 8.10 to allow the removal of one heritage tree at 44 Tuscaloosa Avenue (Assessor's Parcel Number 070-103-400). The Permit was approved subject to the following conditions:

1. Heritage tree removal shall be limited to one Oak tree identified as #333 as shown on the plan prepared by Louis J. Marano, dated May 7, 2007. Any substantive changes to the plans shall be reviewed by the Planning Commission.
2. The applicant shall follow the recommendations in the arborist reports for the preservation of all remaining trees on-site.
3. The replacement planting shall be a minimum of one 48" box size native oak tree and one 36" box size native tree species to the satisfaction of the Town Arborist and Building Official.

---

Lisa Costa Sanders,  
Deputy Town Planner

Effective Date: \_\_\_\_\_  
Atherton, CA

RECEIVED  
TOWN OF ATHERTON

2007 AUG -3 P 2: 42

August 2, 2007

City Council  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027-3896

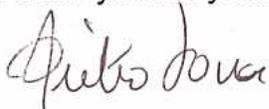
RE: 44 Tuscaloosa Avenue  
Appeal of July 25, 2007 Planning Commission decision to deny application  
for heritage tree removal.

I applied to the Planning Commission to remove tree #333 at 44 Tuscaloosa. This tree, located in close proximity to the front façade of my house, currently under construction, has been found by Karl Murphy of Econo Tree Service to have several defects that together produce a potential hazard and increase the likelihood of tree failure. Town staff and the planning commission did not approve my request, based on conclusions that the tree is not in a buildable area and not in direct conflict with proposed site improvements. My concern, however, is that the failure of this tree could cause significant damage to the house, and possibly to its inhabitants or any onsite guests or workers.

I would like the City Council to reverse the planning commission's decision and approve a permit for the removal of the tree. The site contains many other heritage trees that are now being actively cared for after many years of neglect under previous ownership of the property.

Please note that this letter will also serve for the record in case the appeal is denied. Should the tree in question subsequently fail causing any damage whatsoever, physical injuries or other, the Town of Atherton will be held responsible and liable to the fullest extent of the law.

Thank you for your consideration,



Pietro Dova



**DATE: FOR THE PLANNING COMMISSION MEETING OF JULY 25, 2007**

**TO: THE PLANNING COMMISSION**

**FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

**SUBJECT: 44 TUSCALOOSA AVENUE (APN 070-103-400)**  
**HERITAGE TREE REMOVAL PERMIT**

**RECOMMENDATION**

Staff recommends that the Planning Commission conduct the public hearing, make the following finding and deny the Heritage Tree Removal Permit request for the removal of one heritage tree at 44 Tuscaloosa Avenue in Atherton for the reasons outlined in this Report.

1. The removal of the tree would be contrary to the purpose and intent of the Atherton General Plan.

Should the Planning Commission want to approve the Heritage Tree Removal Permit for the removal of one heritage tree at 44 Tuscaloosa Avenue it would need to make the following finding:

1. The removal of the tree would not be contrary to the purpose and intent of the Atherton General Plan.

**INTRODUCTION**

The subject site is approximately 59,242 square feet in area (over one acre) and is located at Tuscaloosa Avenue between Austin Avenue and El Camino Real. The property is the site of a new single-family house (under construction), detached pool house, and pool. The applicant is requesting approval to remove one heritage tree, (a *Quercus agrifolia*, or Coast Live Oak). The Coast Live Oak, referred to as #333 is located at the front center of the subject property.

This item was originally scheduled for the June 27, 2007 Planning Commission meeting. However, the consulting arborist's report mistakenly identified the tree to be removed. In addition to the original arborist report, the applicant has submitted a new letter, dated June 25, 2007 which specifically addresses the tree to be removed.

This property was incorrectly surveyed in the past, resulting in the east property line not being accurately identified. The adjacent neighbor has agreed to sell a strip of this property to the applicant and the applicant is in the process of requesting a lot line adjustment.

The trees were numbered in an early tree survey by Ralph Osterling although the arborist report and letter, as well as subsequent survey were prepared by Econo Tree Service. The early tree survey was done for the demolition phase of the project; no plans had been prepared at that time for the residence.

A tree protection plan was approved for the demolition phase only. The Building Department issued a permit which incorrectly showed two trees (#333 and #340) as being removed. Ms. Kathy Hughes Anderson, Town Arborist, only issued a permit for a dead tree. She informed the applicant that both trees #333 and #340 would need to go before the Planning Commission for removal. The applicant had originally proposed a guest house where #340 is located. They are now proposing the guest house between Tree #39 and Tree #40. The permit for the guest house is pending the lot line situation and review by the Town Arborist. Tree #340 will be preserved.

### ANALYSIS

The applicant is requesting Planning Commission consideration for the removal of one tree, a Coast Live Oak. Tree #333 is listed in "Fair" condition. The applicant's consulting arborist, Henry Kramer, Econo Tree Service, Inc., evaluated 23 trees on the site, in his report dated March 30, 2007. On June 25, 2007 Karl Murphy, Econo Tree Service, Inc. evaluated tree #333. He indicates that the tree is currently enclosed within a tree protection fence; however, the area has become compacted dead turf with a 4-inch layer of mulch. He adds that the tree had been raised excessively and that the likelihood of tree failure was increased.

Ms. Kathy Hughes Anderson, Town Arborist, has prepared a memo based on her review, the arborist report and a site inspection. She notes that the area around the tree was previously a lawn and the Oak received its water from this lawn. She states that the recommendation to mulch the area and do deep root watering was made because after the lawn was removed, the Oak could have suffered from lack of water during construction. She adds that many Oaks on the property were not properly pruned; however, she does not agree that the crown was excessively raised. She notes that there had been two additional oaks in close proximity. She believes that the crowded condition may have caused the thin canopy mentioned by the consulting arborist. She adds that the sparse leaf size could be a sign of undetected root problem as stated by the consulting arborist,

or it could be from lack of proper cultural care, drought stress, or other environmental conditions.

Ms. Hughes Anderson notes that the site plan shows a new proposed driveway and motor court within six to seven feet of tree #333. She thinks that with careful consideration of materials and construction technique the tree could be able to accommodate impacts from the proposed driveway and motor court. She notes that the applicant does not mention any reason for removal other than condition of the tree. She states, “Given the potential impacts from construction activity on a number of trees on this property, I find it hard to justify the removal of this tree” (Town Arborist Memo).

The Zoning Code requires that the Commission grant a heritage tree removal permit unless it finds that the removal of the trees would be contrary to the purpose and intent of the General Plan. The Open Space and Conservation Element of the General Plan cites that “trees shall be preserved to the maximum extent feasible while allowing for construction within established parameters for setbacks and lot coverage in accordance with the Municipal Code chapter regulating the removal of and damage to heritage trees.”

Staff is not supportive of the removal request due to the condition and location of the tree. The tree is in fair condition, is not located within the buildable area, and could be accommodated with the proposed driveway and motor court. The tree is not in direct conflict with any site improvements and can be preserved.

### **CONCLUSION**

It is Planning Staff’s professional opinion that the removal of one tree would be contrary to the purpose and intent of the General Plan and the Zoning Ordinance, based on the condition of the tree and no direct conflicts with site improvements.

### **ALTERNATIVES**

The Commission could approve removal of the tree as requested by the applicant, could deny the request or request modification of the proposal.

### **FISCAL IMPACT**

All costs covering the processing of this application are paid for by the applicants.

### **ENVIRONMENTAL IMPACT**

The City Council has declared the removal of two or fewer trees to be less than significant environmental impact and exempt from further CEQA review.

**FORMAL MOTION:**

I move that the Planning Commission find that the proposed removal of one heritage tree at 44 Tuscaloosa Avenue in Atherton would be contrary to the purpose and intent of the General Plan, for the reasons outlined in the Staff Report, and that the Commission approve the removal subject to the conditions listed in the draft Heritage Tree Removal Certificate.

  
\_\_\_\_\_  
Lisa Costa Sanders, Deputy Town Planner

**Attachments:**

1. Draft Heritage Tree Removal Certificate
2. Memo from Kathy Hughes Anderson, Town Arborist, dated July 19, 2007
3. Letter of Request, undated
4. Arborist Report prepared by Henry Kramer, Econo Tree Service, Inc., dated March 30, 2007
5. Photos
6. Letter describing condition of tree #333, prepared by Karl Murphy, Econo Tree Service, Inc., dated June 25, 2007
7. Landscape Site Plan, prepared by Louis J. Marano, dated May 7, 2007

***Draft***  
**TOWN OF ATHERTON**  
**PLANNING COMMISSION**  
**HERITAGE TREE REMOVAL PERMIT**

THIS IS TO CERTIFY THAT the Atherton Planning Commission at a regular meeting thereof, held on Wednesday, July 25, 2007, did grant a Heritage Tree Removal Permit to Pietro Dova pursuant to Atherton Municipal Code Section 8.10 to allow the removal of one heritage tree at 44 Tuscaloosa (Assessor's Parcel Number 070-103-400). The Permit was approved subject to the following conditions:

1. Heritage tree removal shall be limited to one trees identified as #333 as shown on the plan prepared by Louis J. Marano, dated May 7, 2007. Any substantive changes to the plans shall be reviewed by the Planning Commission.
2. The applicant shall follow the recommendations in the arborist reports for the preservation of all remaining trees on-site.
3. The replacement planting shall be a minimum of one 48" native oak tree and one 36" box size native tree species mitigation for the removal of the tree and shall be planted to the satisfaction of the Town Arborist and Building Official.

\_\_\_\_\_  
Lisa Costa Sanders,  
Deputy Town Planner

Effective Date: \_\_\_\_\_  
Atherton, CA

# Memo



**To:** The Atherton Planning Commission  
**From:** Kathy Hughes Anderson, Town Arborist  
**CC:** Lisa Costa Sanders, Senior Planner  
**Date:** 07/19/07  
**Re:** Heritage Tree Removal Application, 44 Tuscaloosa Avenue

I have reviewed the tree removal application for 44 Tuscaloosa Avenue and offer the following observations for your review.

- The applicant Pietro Dova is requesting permission to remove a 22.5 dbh Coast Live Oak, *Quercus agrifolia*. The tree is #333 per the original tree survey for the property. Karl Murphy, Econo Tree Service, has prepared an arborist letter describing the condition of the tree. The survey prepared by Henry Kramer, Econo Tree Service, dated 3/30/07, lists the tree as being in Fair condition. The trees were numbered in an earlier survey prepared by Ralph Osterling, Osterling Consulting Arborists, dated May 2006, for the demolition phase of the project. At that time, plans had not been prepared for the new residence.
- As noted in the arborist report, the area around Tree #333 was previously a lawn. The recommendation to mulch the area and do deep root watering during the summer was made because it was getting water from the lawn and even Oak trees can suffer from lack of water during construction. Even though summer water is what we don't recommend for oaks, they can suffer from drought if suddenly deprived of water. The arborist further notes that the upper canopy is sparse, with small leaves and little interior growth. While I do feel that most of the Oaks on the property were not properly pruned in the past, as evidenced by decaying old flush cuts and over thinning of the canopies, I don't think we can say that the crown was excessively raised. In addition to the two oaks in close proximity at the front property line, there was another oak on the front property line adjacent to the pedestrian gate that was removed last year when it died from oak root fungus. This crowded condition may have resulted in all of these trees developing high thin canopies due to competition for light. Under those conditions, lower branches will die off. The sparse leaf size and sparse canopy could be a sign of an undetected root problem as stated in the arborist report, it could also be from the lack of proper cultural care, drought stress or other environmental conditions.
- The site plan shows a new proposed driveway and motor court within 6-7' of Tree #333. While this is a preliminary plan and the pavement material is not called out, the combined impact of the new garage structure and the hardscape surfaces will have an impact on the health of this tree. I think with careful consideration of the materials and construction techniques used, it may be able to accommodate these improvements with minimal impact, or these improvements could also cause the tree to decline. The applicant does not state any reason for wanting to remove the tree other than what he feels to be a condition issue, but I think the close proximity to the new driveway and motor court may be what is driving this removal request.
- This property was incorrectly surveyed, resulting in the east property line not being accurately identified and the new structure in violation of the setback requirement. In order to correct this situation without demolishing the new construction, the adjacent neighbor has agreed to sell a strip of his property to the applicant. He will be requesting a lot line adjustment in order to bring

the project into compliance. The portion of the new home near Tree #336 is a pier and grade beam foundation and is in the same location as the foundation of the previous home.

- As I stated above, when the home was first purchased, a demolition permit was granted with a tree protection plan for the demolition phase only. In the meantime, the landscape architect and the arborist I was working with were no longer on the project. The Building Department issued the building permit showing trees #333 and Tree #340 as being removed. I was not aware that the building permit had been issued until the contractor called to say he was removing the trees, which came as a surprise to me as it was my understanding that no trees were being removed other than the dead tree that I had issued a permit for. After reviewing the situation with the contractor, I told him that both trees would need to go before the Planning Commission. The new guest house was originally sited where tree #340 stands. I tried to convince them to relocate the guest house to the opposite side of the property, however they relocated to squeeze between Tree #340 and Tree #339. While I am not pleased that the new structure will have a potential impact on both trees, I did not feel that the removal of Tree #340 was justified when there are clearly other options for the size and location of the guest house. They have been told that they need to submit an arborist report addressing the tree protection measures and foundation specifications, including hand digging for the construction of the guest house. The permit for the guesthouse has not been approved and is pending the outcome of the lot line situation and my review.
- Given the potential impacts from construction activity on a number of trees on this property, I find it hard to justify the removal of this tree. I think the tree's condition could be improved and would like to see it have a chance. I would recommend denial of this request.

## APPLICATION FOR HERITAGE TREE REMOVAL

### Item #6

The attached tree report was prepared by Econo Tree Service Inc. on 03/30/07 and details the condition of all "heritage" trees located on the property at 44 Tuscaloosa Avenue in Atherton. The accompanying plot plans show the location of every major tree on the property.

This request is for the removal of tree #333 (*Quercus Agrifolia*) situated at the front of the property. The condition of the tree is listed as "Fair" in the accompanying report with most of its growth is located in the top third section. The tree has also been visually inspected by Kathy Hughes Anderson who commented that it wasn't looking very good.

The property is currently under construction by Lencioni Construction LLC. The owner has retained Lou Morano, Landscape Architect based in San Mateo, to prepare the master landscape design. In lieu of removing tree #333, we have discussed the possibility of planting another 72" box specimen somewhere in the front of the property.

A majority of the work described in the report prepared by Econo Tree Service has already been completed by Chris Hall (Certified Arborist) from West Coast Trees in San Jose. The deep root watering is the only outstanding item at this point. (Note: the owner, Lou Morano and Kathy Hughes Anderson walked the property in late April and (in accordance with the tree report) agreed that clearing several of the small redwoods around trees #342 and #343 would give more light and aeration for the remaining trees to flourish. That work was also completed.)



***Tree survey and condition report***

***Prepared for***

***Pietro Dova***

for the property at

***44 Tuscaloosa, Atherton, CA***

ARBORISTS



CONTRACTORS

1914 Spring St. Redwood City, CA 94063  
650 367-4900  
www.econotree.com  
fax 650 367-4901

03/30/2007

Mr. Pietro Dova  
814 Intrepid Lane  
Redwood City, CA 94065

Re: Status of tree preservation at 44 Tuscaloosa, Atherton, CA

Mr, Dova,

At your request, Econo Tree Service performed an inspection of the trees on the above property. The report is separated into two sections. There is a detailed report on tree number 340 stating its current condition and its relation to the proposed construction of a pool house.

The second section is a survey of the remaining trees, along with short recommendations on how to best care for them in the immediate future.

A detailed Tree Protection Plan can be compiled and provided at your request.

#### Summary

This property was surveyed by Ralph Osterling Consultants, Inc. in April of 2006. At this time the trees were marked with numbered metal disks. We have continued the use of that numbering system, however, the trees were all remeasured and reinspected independently of the previous survey.

With the exception of tree number 340, all inspections were made at ground level, with no root crown excavations or invasive testing done. Tree 340 did have a root crown excavation performed and the results of that inspection are included in that tree's detailed report. If any further inspection seems warranted, it will be noted under the recommendations for that tree.

#### General Observations

Most of the trees on the site have adequate fencing, however there is little to no mulch present to reduce soil compaction. Much of the site has been subjected to heavy foot and vehicle traffic and this has caused extensive soil disturbance.

## Tree reports and recommendations

### Detailed report on tree number 340

This is a report on tree #340 to evaluate the present condition of this Coast Live Oak (*Quercus agrifolia*) located in the north east corner of the property nearest the existing tennis court. The tree has two main stems (M2,26",28") bifurcating slightly above grade. The original tree survey labels the tree for removal due to various conditions.

#### Observation:

The above Oak tree #340 has been amply fenced to protect a reasonable root zone (TPZ). The tree is away from the current construction. Hence forth, plans show a pool house to be constructed inside the TPZ of this Oak and the adjacent Oak to the south. This report is to determine the condition of the Oak tree labeled #340 and request that it be removed. Its' removal will give space for the pool house and subsequently relieve impingement on the adjacent Oak, #339. Alternatively, the pool house is to be sandwiched between the two Oaks.

The original report, dated April 27<sup>th</sup>, 2006, indicates Oak tree #340 having low vigor despite new seasonal growth. The leaf crown is thin. This appears due mainly to the loss of mature leaves. The result of cooler longer winters as of recent, and a shallow indication of decline. Photo 1.

The report also mentions a bleeding lesion on one of the two main stems. This portion should be traced to determine the size and extent of the bleeding lesion, and what might be done. It is located 10 feet up the west stem. Photo 4.

The tree has two stems, which bifurcate from the main trunk at approximately three feet above grade. At this union a cavity has developed. Photos 2&3. Due to this structure, the two stems have been cabled. A total of three cables support the union. The cables were installed on two if not three separate occasions.

Further investigation was needed to evaluate the extent and condition of these sections. Therefore, tracing of the lesion, excavation of the root collar, and sounding of the cavity were performed on Friday the 2<sup>nd</sup> of March.

The tracing would reveal the extent of the lesion. The sounding would show the general size of the cavity, and the root collar excavation would show any destruction or deterioration of the root collar.

#### Discussion:

The root collar excavation showed the trunk to have an intact buttress flair on 100% of the circumference with minor recessions but no deterioration due to fungal development or other impact. Photos 2&3.

The cavity was holding water and a probe indicated that it extend well into the trunk and below grade. It subsequently drained by the technician.

The cables had been installed to protect and secure this union and had been augmented on three occasions. The cable and attachment appeared secure at this juncture despite the cavity. The cables were viewed to be solid. A new cable had been recently installed and the other two remain under proper tension

The tracing of the bleeding lesion revealed that to be slime flux, a localized bacterial development. A technician traced and cleaned the affected area. Exposing it to open air. The affected section was only 12" by 2" by 1". Most commonly, slime flux will clear with exposure, but can be

treated further if required or persistent.

The thinning foliar crown shows good seasonal shoot growth but the lack of sustainable older leaf growth. Much of this condition results from the cooler wetter weather we experienced the several seasons. This may also indicate some signs of decline in the tree's vigor.

**Recommendation:**

The Oak tree under discussion has had continued care and maintenance. This will need to continue due to the above mentioned situations and the proximity to living space.

The lack of vigor will need to be addressed quarterly. Both sub-surface soil and foliar treatments need to be employed to reduce leaf loss and enhance leaf development.

The attachment and limb weight will need to be regularly monitored to stabilize the weak attachment. This will require pruning and cable observation.

The cavity will need to be watched with the same consistency and treated as required.

A low impact landscape will need to be imparted to the TPZ after construction to encourage continued root growth and reduce any damage. This should persist with all the Oak trees on the property.

**Conclusion:**

This tree does required more attention because of it's location and condition. The removal of the tree would give the adjacent trees more space and root area when protected before, during and after construction.

If the tree is to remain, we suggest professionals guide its' care and others on the property.

Contact Econo Tree Service to assist with any area of this project. Thank you.

Sincerely,

Henry Kramer  
Certified Arborist  
WE1559A  
henryk@econotrec.com

Photo 1: Oak tree #340 showing twiggy lower leaf crown, the result of mature leaf drop.



Photo 2 : Root collar buttress, and stem bifurcation.



Photo 3: Bifurcation cavity



Photo 4 : Traced lesion at 10 feet on west stem



## **Section Two**

### **Tree Survey and Condition Report**

All the trees at this location have previously been marked with numbered metal disks and are referred to by those numbers in this report. The inspection focused on the following criteria:

1. Verification of location and species.
2. Tree size, in diameter inches at 48 inches above grade.
3. Presence and condition of tree protection measures.
4. Tree structure.
5. General condition of the tree.
6. General tree health.

The report also includes specific recommendations for each tree. General recommendations are given at the end of the report.

**Tree Survey Report**  
 44 Tuscaloosa  
 Atherton, CA

Tree #	Species	Diameter (inches)	Structure	Health	Condition	Comments/Recommendations
331	<i>Quercus lobata</i>	31	Fair	Fair	Stable	Some decline. Remove deadwood > 1"
332	<i>Quercus agrifolia</i>	29	Good	Fair	Stable	Sparse canopy. Install mulch in drip line area.
333	<i>Quercus agrifolia</i>	23	Fair	Fair	Stable	Most growth is in top 1/3rd of tree. Install mulch in adjoining high traffic area.
334	<i>Cedrus deodara</i>	19	Fair	Fair	Stable	Sparse canopy, could use supplemental watering
335	<i>Quercus agrifolia</i>	24	Fair	Fair	Stable	Neighbors tree, not inspected
336	<i>Quercus agrifolia</i>	23	Fair	Fair	Declining	Install mulch, remove deadwood
337	<i>Quercus agrifolia</i>	24	Fair	Fair	Stable	Sparse canopy, Install mulch and mitigate compaction from construction access. Remove deadwood.
338	<i>Quercus agrifolia</i>	30	Fair	Fair	Stable	Sparse canopy, Install mulch and mitigate compaction. Remove deadwood
339	<i>Quercus agrifolia</i>	37	Fair	Fair	Stable	Install mulch, remove swing.
340	<i>Quercus agrifolia</i>	54m2	Poor	Fair	Stable	Co-dominant trunks with cavity, check cables. See attached condition report.
341	<i>Quercus agrifolia</i>	23	Poor	Fair	Stable	Co-dominant trunks with included bark. Sparse canopy. Remove deadwood.
342	<i>Quercus agrifolia</i>	20	Poor	Fair	Stable	Pronounced lean toward neighbors. Crowded by small redwoods. Reduce weight and crown clean.
343	<i>Quercus agrifolia</i>	29	Poor	Fair	Stable	Co-dominant trunks with included bark. Crowded by small redwoods. Some decline. Deadwood and consider thinning redwood stand.

**Tree Survey Report**  
 44 Tuscaloosa  
 Atherton, CA

Tree #	Species	Diameter (inches)	Structure	Health	Condition	Comments/Recommendations
344	<i>Quercus agrifolia</i>	32	Poor	Good	Stable	Outside of property line. Included bark in major limbs. Deadwood and reduce weight of heavy ends.
345	<i>Quercus agrifolia</i>	29	Poor	Fair	Stable	Over weight on west side. Buried root crown. Reduce weight on heavy ends, excavate root crown.
346	<i>Quercus agrifolia</i>	36	Fair	Fair	Stable	Buried root crown. Remove ivy and excavate root crown. Reduce weight on neighbors side.
349	<i>Quercus agrifolia</i>	49	Poor	Poor	Poor	<i>Ganoderma sp.</i> fruiting body indicates decay in lower trunk. Over watered in past, compacted soil. Excavate root crown.
350	<i>Quercus agrifolia</i>	34	Fair	Fair	Stable	Has been wounded by construction equipment. Wrap limb with orange fencing to improve visibility. Mitigate soil compaction. Install mulch under entire drip zone. (Access road included)
351	<i>Sequoia sempervirens</i>	35	Good	Good	Growing	Mitigate soil compaction after construction.
352	<i>Sequoia sempervirens</i>	43	Good	Good	Growing	Mitigate soil compaction.
353	<i>Sequoia sempervirens</i>	62	Good	Good	Growing	Mitigate soil compaction.
354	<i>Quercus lobata</i>	51m2	Poor	Fair	Stable	Co-dominant trunks. Most of weight over neighbors Crowded by neighbors tree.
355	<i>Sequoia sempervirens</i>	38	Good	Good	Growing	

Definition of terms: Growing: Young tree maintaining active growth. Stable: Mature tree, some minor defects.  
 Good: No obvious defects or disease. Fair: Mature tree, moderate defects and/or pest or disease symptom  
 Poor: Major defects, major areas of deadwood. Dead: No signs of living tissue.

03/12/2007

## Conclusions

Almost all the trees surveyed show some degree of decline. Not having been involved with the previous survey we can not make a determination whether the decline is new or was present before construction began. At this point all we can do is take measures to decrease the trees stress and give them a better chance of surviving the continuing construction.

## Recommendations

### General

Tree specific recommendations are outlined in the survey. Any pruning and root crown excavations should be performed as soon as possible, before exterior construction begins.

### Hydration

To improve the vigor and decrease future stress it is recommended that all the trees on the property be given a deep root watering at the rate of 10 gallons per diameter inch with a dilute (2 lbs / 100 gallons) concentration of 22-14-14 fertilizer. Because this last winter has been unusually dry, the supplemental irrigation will help prevent the possibility of drought stress, particularly in any trees that have had their root zones compromised. This deep root watering should be applied as soon as possible to coincide with the trees active growth period. In addition to the deep root watering a regular irrigation plan should be put into practice during the dry season.

### Mulching

The entire site needs mulch, not just the areas protected by fencing. This will help prevent compaction and increase water retention in the soil. It will also help decrease dust during the dry season to come. A 5-7 inch layer of wood chips or other coarse biodegradable mulch should be applied within the tree protection zones and a 4-6 inch layer should be applied to the remainder of the site, particularly any areas that receive vehicle traffic or heavy foot traffic. The mulch over the high traffic areas should be replaced as needed during the project.

### Trenching

During any future trenching the project arborist should be consulted before any roots of over 1 inch diameter are cut. If trenches need to remain open longer than 1/2 hour any roots should be covered with wet burlap. In case of long term exposure a layer of burlap or other porous fabric should be placed in the trench, then covered with wood chips and kept moist. This also has the advantage of being easy to move for access to the trench.

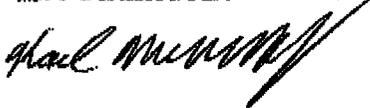
## Final Statements

A tree protection program seems to have been started but not followed up on. The fencing is up to standards but is in need of some repair and more signing. There was no mulch present under the trees at the time of inspection and this should be installed as soon as possible. A project arborist should be under contract to insure the steps recommended in this report are followed.

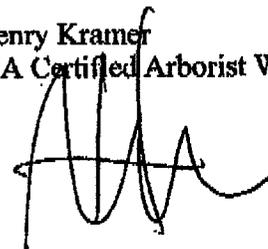
If you have any questions or are in need of any assistance performing the work detailed in this report please let us know.

For Econo Tree Service, Inc.

Karl Murphy  
ISA Certified Arborist WE-1740-A



Henry Kramer  
ISA Certified Arborist WE-1559-A



ARBORISTS



CONTRACTORS

1914 Spring St. Redwood City, CA 94063  
650 367-4900  
www.econotree.com  
fax 650 367-4901

06/25/07

Pietro Dova  
814 Intrepid Lane  
Redwood City, CA 94065

RE: 44 Tuscaloosa Ave. Atherton, CA, tree #333

Mr. Dova ,

You have asked me to give a short letter on the condition of tree #333 on the above property. I inspected the tree on 6/25/2007 and the following are the results of that inspection and my recommendations.

No invasive testing such as root crown excavation or core sampling was performed. The inspection was limited to a ground level visual inspection.

**Tree 333**

**Species:** Coast live oak, *Quercus agrifolia* **Size:** 22.5 inches DBH (diameter (in inches) at 48 inches above grade. Height = 35 feet, Spread = 30 feet diameter.

**Location \ Site:** The tree has been recently inventoried and marked with an aluminum tag as tree #333. It is situated in the center front of the property. The area was previously a well watered turf area but since construction began it has turned from well watered turf to compacted dead turf to compacted dead turf with a 4 inch layer of mulch. The area is enclosed in a tree protection fence extending out to 3/4 of the drip-line. The site is currently undergoing extensive construction.

**Condition:** The root crown of the tree seems solid, with no obvious damage or decay. A thick layer of mulch has been installed directly against the trunk. The lower trunk does not show any cavities or decay extending beyond the bark. An 8 inch flush cut has callused over 4 feet above ground level.

The tree has been trimmed such that there are no limbs originating from the bottom 18 feet of the trunk. The upper canopy is sparse, with small leaves and little interior growth. Deadwood up to 6 inches in diameter is present.

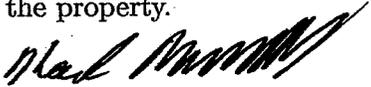
**Discussion \ Recommendation:**

Historically this tree has been growing in a well watered turf area. This is known to accelerate root decay on our native oaks. While no outward evidence of decay was seen during the limited inspection, signs such as the sparse canopy and small leaf size can be symptoms of a undetected root problem. The soil compaction that has developed during the construction has only made the condition worse by excluding oxygen and water from the root area.

The callused over flush cut could be hiding decay in the lower trunk.

The tree has also been raised excessively. The ideal is for 2/3 of a trees limbs to originate from the lower 1/3 of the trunk. In this case it is the exact opposite, with all of the limbs originating from the upper 1/3 of the trunk. The resulting raising of the moment arm to mid trunk, instead of at the root mass, increases the likely-hood of tree failure.

Continuing construction at the site will only exacerbate these problems. Alone, each defect is not a reason for removal, but together they produce a potential hazard. My recommendation is to remove this tree and replace it with another *Quercus agrifolia* elsewhere on the property.



Karl Murphy

ISA Certified Arborist WE-1740-A



**APPROVED MINUTES  
PLANNING COMMISSION MEETING  
July 25, 2007  
6:00 p.m.**

**ATHERTON TOWN COUNCIL CHAMBERS  
94 Ashfield Road  
Atherton, California**

**REGULAR MEETING**

Chair Oster called the meeting to order at 6:00 p.m.

**1. ROLL CALL:**

**PRESENT:** Marion Oster  
James Dobbie  
Philip Lively  
Herman Christensen, Jr.

**EXCUSED:** Kristi Waldron

City Attorney Marc Hynes, Deputy Town Planner Lisa Costa Sanders, Building Official Mike Wasmann, and Town Arborist Kathy Hughes Anderson were also present.

**2. APPROVAL OF MINUTES**

**MOTION approval of the June 27, 2007 meeting minutes as corrected.**

**M/S Dobbie/Lively      Ayes: 4      Noes: 0      Excused: 1**

**3. PUBLIC COMMENTS**

None.

**4. COMMISSIONER'S REPORTS**

None.

**5. GENERAL PLAN COMMITTEE REPORTS**

The General Plan Committee has not met since the last Planning Commission meeting. The next meeting is scheduled for August 1, 2007.

**6. NEW BUSINESS**

None.

**7. STAFF REPORTS**

Marc Hynes reported that a hearing was scheduled for July 13, 2007 with a final ruling by the end of this month regarding 51 Laburnam.

## **PUBLIC HEARINGS**

8. **Conditional Use Permit – 94 Tallwood** – Conditional Use Permit request to allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties. Atherton Municipal Code section 17.36.190.

Marc Hynes introduced Jean Savaree, special legal counsel for the Town and Brian Wenter, special legal counsel for the Town. Deputy Town Planner Lisa Costa Sanders presented the staff report and introduced Dick Loewke, outside planner for the Town to respond to additional questions.

Commissioner Christensen asked if the basement area was included in the plans for the home and if it was intended to count in the floor area, and if there is any other way to calculate the cross-slope. Mr. Loewke responded that the average cross-slope determination is accurate and the correct method based on the code.

Commissioner Christensen asked if the building was constructed to the height shown on the plans? Mr. Loewke stated that there is disagreement as to what the average natural grade is.

Commissioner Christensen asked what constitutes substantial compliance? Jean Savaree stated when a code section references a specific number, you rely on that number.

Commissioner Dobbie asked at what point was the discrepancy determined. Mike Wasmann stated that it was discovered during the audit prior to the house completion.

Commissioner Dobbie asked if this should have been caught earlier? Mike Wasmann replied that the height is verified by a survey at the framing stage and that the house was built to an approved set of plans issued by the former Building Official. The approved plans included a determination of average natural grade.

Commissioner Dobbie stated that he would not want to see this happen again and need new procedures. Lisa Costa Sanders stated that Planning is now conducting a review of all plans in addition to the building department plan checker.

Commissioner Christensen asked if the basement was included in the floor area. Staff responded that a portion of the basement was included in the floor area calculations and other areas were not included (garage and porches).

### **OPEN PUBLIC COMMENT**

Bill Ross, attorney representing the property owners, stated that there is no indication to do anything but what was directed by the former Building Official. He stated that he feels substantial compliance relates to percentage of compliance rather than actual compliance. Mr. Ross stated that he feels 18.6% is substantial compliance with the code. He further stated that the Kings relied on approvals granted by the former building official, the cost to remedy the situation is excessive and there is no impact to neighboring property owners. Mr. Ross stated that they are not waiving any rights of the lawsuit and estoppel can serve as basis for issuing permit.

Charles Marsala, Emilie, stated that the Commission needs to look at all the factors. Mistakes were made and where is the solution. The home does not impact neighbors.

Commissioner Dobbie stated that the Planning Commission relies on the Ordinance as written for basis of decision.

Melinda Tevis, Tallwood, stated that she raised concerns to Town management regarding the construction of this home.

Mr. Ross stated that the Commission needs to be rational in the 20% hillside rule. He further expressed concern that this process appears to be undue administrative delay.

#### CLOSE PUBLIC HEARING

Commissioner Lively stated that he could not approve the request, as the property does not meet the hillside code requirement.

Commissioner Christensen stated that he relies on strict compliance with the code.

Commissioner Dobbie stated he sympathizes with the property owner and stated that any modification to the ordinance with respect to this item must be done by the City Council and not the Planning Commission.

Chair Oster stated that the purpose of the Planning Commission is to enforce the Ordinance and hopes the City Council can resolve the issue

**MOTION to deny the Conditional Use Permit allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties at 94 Tallwood based on the following findings:**

**M/S Lively/Christensen      Ayes: 4      Noes: 0      Excused: 1 (Waldron)**

#### **Finding:**

1. The proposed project will not be detrimental or injurious to persons, property or improvement in the vicinity and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience.
2. The proposed project for the subject site is not consistent with the Town of Atherton General Plan and the purposes of that plan and the Zoning Code.

Chair Oster advised of the 10-day appeal period.

- 9. Major Alteration Permit – 133 Atherton Avenue** – Major Alteration Permit to allow relocation of a heritage gate from the Atherton Avenue side of the property to the Elena Avenue side of the property. Atherton Municipal Code section 8.14.090(B).

Deputy Town Planner Lisa Costa Sanders presented the staff report, noted the reasons outlined in the staff report to support the request and introduced Laura Jones, town's historical consultant.

Laura Jones stated that it is important for the gates to remain on the property. She also stated that the house was demolished and there are no significant remaining structures on the property for the gates to relate to.

Commissioner Christensen stated that the gates will lose its relation to the public road that it has been historically located on. Ms. Jones stated that the gates will remain accessible to the public on Elena with relationship to a public street.

**OPEN PUBLIC COMMENT**

Missy Morris, Elena, stated that Elena is a busy street as a cut-through. She stated that the gates were important to the former property owner.

Benjamin McGriff, Architect, stated that his clients desire for additional privacy along Atherton Avenue with a solid wall and gate.

Commissioner Oster asked what will be located inside the property from the gates. Mr. Benjamin McGriff responded that formal gardens will be located throughout the property. Commissioner Oster asked why the gates could not remain at its current location. Mr. Benjamin McGriff responded that the owner would like a new entry to relate to the residence.

M. Madding, Edwards Lane, spoke in opposition to the request.

**CLOSE PUBLIC COMMENT**

Commissioner Christensen stated that historic items should remain in place of significance. He stated that he would not object to moving the gate along the Atherton Avenue side of the property, but not to the Elena side of the property. Commissioner Dobbie stated that he would like to see more information on intended use of the property prior to acting on the application. Commissioner Lively stated support for the relocation as long as it retains all elements. Commissioner Oster expressed concern with the relocation.

**MOTION to deny the Major Alteration Permit at 133 Atherton Avenue based on the following finding:**

**M/S Christensen/Dobbie    Ayes: 3            Noes: 1 (Lively)    Excused: 1 (Waldron)**

**Finding:**

1. Movement of the gate would be contrary to the historic setting of the artifact along Atherton Avenue.

2.

Chair Oster advised of the 10-day appeal period.

**10. Heritage Tree Removal Permit – 44 Tuscaloosa – Heritage Tree Removal Permit to allow the removal of one Oak tree. Atherton Municipal Code section 8.10.**

Deputy Town Planner Lisa Costa Sanders presented the staff report and stated that staff does not support the tree removal as there are no compelling reasons to remove the tree.

**OPEN PUBLIC COMMENT**

Eileen Gordon, property architect was present.

CLOSE PUBLIC COMMENT

Commissioner Dobbie stated that the tree is not a great specimen, but there is no compelling reason for its removal.

Commissioner Oster stated that the tree has nice shape and would like to see it retained.

**MOTION to deny the Heritage Tree Removal Permit at 44 Tuscaloosa based on the following finding:**

**M/S Lively/Christensen      Ayes: 4      Noes: 0      Excused: 1 (Waldron)**

**Finding:**

1. The removal of the tree would be contrary to the purpose and intent of the Atherton General Plan.

Chair Oster advised of the 10-day appeal period.

- 11. Heritage Tree Removal Permit and Mitigated Negative Declaration – 368 Walsh Road - Heritage Tree Removal Permit to allow the removal of thirteen heritage trees. Atherton Municipal Code section 8.10.**

Deputy Town Planner Lisa Costa Sanders presented the staff report and noted the reasons outlined in the staff report to support the tree removal request based on the mitigation measures contained in the draft negative declaration.

OPEN PUBLIC COMMENT

Steve Swanke, project architect, reviewed the intended use of the property.

CLOSE PUBLIC COMMENT

Commissioner Lively stated that the trees appear to be at the end of their life.

Commissioner Christensen stated support for the request.

Commissioner Dobbie stated concurrence with other Commissioners' comments.

Commissioner Oster stated that the pine trees are in the declining stage.

**MOTION that the Planning find that the Initial Study and Draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act.**

**MOTION to adopt the Draft Mitigated Negative Declaration for the 368 Walsh Road Tree Removal Project.**

**M/S Lively/Oster      Ayes: 4      Noes: 0      Excused: 1 (Waldron)**

**Finding:**

1. The Initial Study and Draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act.

**MOTION to approve the Heritage Tree Removal Permit to allow removal of thirteen heritage trees based on the following finding and subject to the conditions of the Heritage Tree Removal Permit with the following additional conditions.**

**M/S Dobbie/Lively                      Ayes: 4                      Noes: 0                      Excused: 1 (Waldron)**

**Finding:**

1. The removal of thirteen trees would not be contrary to the purpose and intent of the Atherton General Plan.

Chair Oster advised of the 10-day appeal period.

- 12. Variance – 2 Belbrook** – Variance request to allow an accessory structure (bridge) to be located in the front yard. Atherton Municipal Code section 17.56.050

The applicant requests the item be continued to the next Planning Commission meeting.

**MOTION to continue the item to the August 22, 2007 meeting.**

**M/S Oster/Dobbie                      Ayes: 4                      Noes:0                      Excused: 1 (Waldron)**

**13. ADJOURN**

The meeting adjourned at 7:55 p.m.

**Respectfully submitted,**

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Lisa Costa Sanders, Deputy Town Planner



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ PROTZMAN, INTERIM CITY MANAGER**

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8 OF  
THE ATHERTON MUNICIPAL CODE REGULATING DRAINAGE**

#### **RECOMMENDATION:**

Staff recommends that the City Council introduce the attached Ordinance based on the following finding for the reasons outlined in this staff report:

1. The proposed amendment is required to adopt Drainage Criteria in order to achieve the objectives of the City Council to update the Town's drainage criteria for development projects.

#### **BACKGROUND:**

In May of 2006, with minor amendments in Augusts 2006, the City Council authorized BKF Engineers to review the Town's drainage criteria. BKF has completed their scope of work and compiled detailed Drainage Criteria.

BKF has held public meetings and made presentations to the City Council of the findings of their study and the concept for the proposed Drainage Criteria. BKF and staff, including CSG Consultants, Inc., who performed the drainage reviews, have reviewed in detail the Drainage Criteria and fine tuned each paragraph.

In July 2007, the City Council adopted an ordinance amendment to Chapter 17 regulating basements. That ordinance amendment does not go into effect until the Drainage Criteria are adopted by ordinance. Section 8.50 of the Municipal Code regulates storm water, and this

ordinance amendment adds section 8.50.050 to adopt the Drainage Criteria. This ordinance section allows the Drainage Criteria to be modified in the future and adopted by City Council resolution.

**ANALYSIS:**

Many of the provision of the Drainage Criteria are intended to implement normal drainage engineering practices and the requirements of the permit with the Regional Water Quality Control Board (RWQCB). Provisions have been inserted in the Drainage Criteria to track changes to the RWQCB permit, particularly because changes are currently in the works.

Other provisions of the Drainage Criteria are designed to protect downstream properties in the two stream systems in Atherton, the Atherton Channel and Redwood Creek watersheds. Because properties in Menlo Park, Redwood City and San Mateo County downstream from Atherton have experienced flooding in the past, runoff from properties in Atherton needs to be reduced. The Building Department has for many years required detention systems on development properties to this end. The Drainage Criteria continue this detention requirement, clarifying the specific criteria applicable to detention.

Still other provisions are designed to protect downstream neighboring properties from being impacted by changes to surface and groundwater from development of upstream properties. Part of these protections requires special attention when constructing basements. Continuous pumping of groundwater from a site after a basement is constructed is prohibited, and pumping of groundwater off-site during construction is limited. Detailed geotechnical and hydrological analysis will now be required in order to design and construct a basement. On difficult sites, innovative engineering solutions may be necessary in order to construct a basement.

**FISCAL IMPACT:**

There is no fiscal impact to the Town based on these Drainage Criteria. Fees for review of the material submitted pursuant to the Drainage Criteria will be evaluated by CSG to assure full cost recovery.

Prepared by:

Approved by:

---

Duncan L. Jones, P.E.  
Public Works Director

---

Wendé Protzman  
Interim City Manager

Attachments: Ordinance Amendment Section 8.50.050  
Drainage Criteria

**ORDINANCE NO. 07-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING CHAPTER 8.54 OF THE ATHERTON MUNICIPAL CODE BY ADDING A  
NEW SECTION 8.54.050 ADOPTING DRAINAGE CRITERIA**

The City Council of the Town of Atherton does hereby ordain as follows:

**Section 1: Amendment of Code.** Chapter 8.54 of the Atherton Municipal Code is hereby amended by adding thereto a new Section 8.54.050 to read as follows:

“Section 8.54.050. Drainage Criteria are hereby adopted. A copy of the criteria is attached to the report of the Director of Public Works for the City Council meeting of September 19, 2007, and incorporated here by this reference as if fully set forth. Revisions and/or amendments to the criteria may be adopted by resolution.”

**Section 2: CEQA Exemption.** This ordinance is exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the public Resources Code (California Environmental Quality Act (CEQA)) pursuant to the State CEQA Guidelines Section 15308 as an action that assures the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

**Section 3:** That the City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any word, sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**Section 4:** This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

*Ayes: Council Members*  
*Noes: Council Members*  
*Abstain: Council Members*  
*Absent: Council Members*

\_\_\_\_\_  
Alan B. Carlson, MAYOR

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes  
\_\_\_\_\_  
Marc Hynes, City Attorney

**Town of Atherton**

**Drainage Criteria**

- A. Standard Specifications**
- B. Storm Drain Design Standards**
  - 1. Project Documents**
  - 2. Hydrologic Criteria**
  - 3. Hydraulic Criteria**
- C. Additional Permit and Notification Requirements**
- D. Basement Construction Hydraulic Criteria**
- E. Criteria References**

Tables

- Tables 1A – 1D      Precipitation Values
- Table 2              Adjustment of Intensities with Mean Annual Precipitation

Appendix

- Exhibit 1              Mean Annual Precipitation (MAP) Isohyetals
- Exhibit 2              Groundwater Map
- Attachment A        NPDES Permit Requirements Checklist
- Attachment B        Operation and Maintenance Agreement

## Town of Atherton Drainage Criteria

The following Manual of Standards for Storm Drainage supplements Town Ordinances 8.50 and 8.54.

### **A. STANDARD SPECIFICATIONS**

Storm drain facilities, manholes and appurtenances shall meet product and installation requirements listed in the current Caltrans Standard Specifications and Standard Plans, current APWA “Standard Plans for Public Works Construction” (commonly referred to as “The Green Book”) and associated Specifications. Standard details from Bay Area Cities and Agencies may be used with prior approval of the City Engineer.

### **B. STORM DRAIN DESIGN STANDARDS**

#### 1. PROJECT DOCUMENTS

- a) A Drainage Area Master Plan, Storm Water Management Plan and Storm Water Pollution Prevention Plan are to be submitted with all Improvement Plans. Exemptions to this requirement are listed in Ordinance 8.54. The three plans each must be signed and stamped by a Professional Civil Engineer registered in the State of California.
- b) Drainage Area Master Plans shall include the following information:
  - 1) A scaled Engineering topographic map for the on-site drainage. The on-site drainage map shall document that either, (1) proposed improvements do not block subsurface or overland flow across the property, or, (2) appropriate drainage facilities are proposed to direct subsurface and overland flows around existing and proposed improvements.
  - 2) A second map of appropriate scale, preferably 1"= 100' scale, as necessary to show large offsite drainage basins.

3) Delineated and labeled project site plan showing all existing drainage basins, both before and after development. The boundaries of the site plan shall extend a minimum of 10 feet outside the property line, and to the centerline of all adjacent streets and channels.

4) The area in acres and the flow (Q) in cubic feet per second (cfs) of all drainage entering and leaving the site before and after development for the design storm event with associated calculations.

5) Drainage area and peak rate flows for all the drainage facilities for the design storm and 100-year storm. Hydrologic computations shall be provided that document flow rates.

6) Hydraulic computations for channel, structure and pipe sizing. Hydraulic gradients (for proposed structures or systems) shall be shown on a set of drainage plans.

7) A schedule for drainage improvements. For projects that construct greater than 5,000 square feet impervious area, stormwater detention facilities shall be in-place prior to construction of the impervious area. The schedule shall document that structures have required freeboard and that off-site flows are able to pass through the property without increasing off-site water levels through all phases of project construction.

8) For any project that will include excavation of soils, depth to groundwater shall be reported. For portions of the Town east of Alameda de las Pulgas, groundwater depth from either Plate 2 or from a site specific Geotechnical investigation. For areas west of Alameda de las Pulgas, a Geotechnical investigation is required that includes depth to groundwater.

9) A Geotechnical Report or additional soils information may be required at the discretion of the City Engineer. The Geotechnical Report is required if percolation is included as a Treatment Measure or if the lowest point of excavation is within 10 feet of the groundwater table. The Geotechnical Report

shall include documentation of the soil percolation rate at the treatment measure location.

10. An Arborist Report shall be submitted in conjunction with the Storm Drain Report. The Storm Drain Report shall state measures proposed to comply with drainage recommendations contained within the Arborist Report.

c) Storm Water Management Plans shall include the following information:

1) A project description including graphics from the Drainage Area Master Plan.

2) The hydrologic setting of the site including flows from the Drainage Area Master Plan.

3) A listing of stormwater quality opportunities and constraints.

4) Best Management Practices for Source Control that would be implemented as a part of the project. A checklist shall be provided showing Town mandated source control measures. A description of supplemental source control measures shall be provided.

5) Best Management Practices for Treatment of site runoff that would be implemented as a part of the project. Calculations shall be included that document compliance with Regional Water Quality Control Board C.3 Permit with San Mateo County. The C.3 Stormwater Technical Guidance Manual can be acquired from San Mateo County Water Pollution Prevention Program (STOPPP) at [www.flowstobay.org](http://www.flowstobay.org) .

6) A Monitoring and Maintenance Program shall be provided that includes an agreement to be recorded in the County property roles stating that the property owner will maintain the Source Control and Treatment measures. The plan shall include monitoring and cleanout access points. The plan shall provide for the facility being operable for the life-time of the system.

- d) Storm Water Pollution Prevention Plans shall be provided prior to start of construction. Projects with less than 5,000 square feet of impervious area shall include the San Mateo County, Construction BMP Plan Sheet, currently found at: <http://www.flowstobay.org/pdfs/bmp/Construction%20Series/SWPPP.pdf>.

For projects with a development area greater than 5,000 square feet of impervious area, the Construction BMP Plan Sheet shall be supplemented with the following information:

- 1) A project description including graphics from the Drainage Area Master Plan.
- 2) The hydrologic setting of the site including flows from the Drainage Area Master Plan.
- 3) A listing of pollutants at the site during construction.
- 4) Best Management Practices for Source Control that will be implemented during construction.
- 5) Best Management Practices for Treatment of site runoff that will be implemented as a part of the project in compliance with both the San Mateo Countywide National Pollution Discharge Elimination System (NPDES) municipal stormwater permit CAS002992 1 and Waste Discharge Requirements (WDRS) for Discharge of Storm Water Runoff Associated with Construction Activity NPDES General Permit No. CAS000002 and with future amendments and revisions to these permits. Calculations shall be included that document that proposed construction and post-construction measures are in compliance with both of these permits.
- 6) A schedule stating dates or actions that trigger the need for source control and treatment measures.
- 7) If applicable based on the area of the project, the Notice of Intent and WDID Number for the project.

## 2. HYDROLOGIC CRITERIA

- a) On-site structures, on-site drainage facilities and on-site bridges shall be designed to convey the peak design flows for the following storm return periods for the total tributary basin area with full build-out based on general plan land use and shall provide the following freeboard.

1) Drainage Systems                      25-year event with at least 0.50 feet freeboard at lip of inlets.

2) Bridge Structures                      The abutment for the bridge shall be on the overbank at least five feet from the top of bank. At the abutment, there shall be at least 1 foot of freeboard to the lowest elevation on the bottom of the structure for the 100-year event or largest flood of record, whichever is greater. Alternatively, at least 1 foot of freeboard shall be provided above the higher of, (1) the top of bank of the Atherton Channel, and (2) the proposed overbank elevation 5 feet from the channel. If the top of bank/overbank elevation is used, the 1 foot freeboard shall be maintained between the top of bank and the abutment.

3) Buildings on Property adjacent to Creeks and Channels      Minimum Finished Floor Elevation at least one foot above top of bank or 100 year flood elevation, if that is determined.

All openings to the building substructure (not including basements. See Basement Construction Hydraulic Criteria) shall be above the top of bank elevation, or the 100-year water level if that is determined.

4) All Other Structures      Project shall provide at least 1 foot freeboard to the minimum finished floor during a 100-year flood based on a combination of overland flow and flow through the storm drain system. The Director of Public Works may allow the minimum finished floor elevation to be lower provided flood proofing is included that accommodates water levels up to one foot above the 100-year water level.

The level of protection may be required to be greater than the minimum cited above if, in the opinion of the Director of Public Works, project failure would cause potential loss of life and/or unreasonable economic loss.

- b) Documentation shall be provided that site improvements shall not increase water levels on upstream properties during the 2, 10, and 100-year storm events. Documentation shall show that runoff to the property and site runoff both have positive drainage across the site, and that runoff is directed away from on-lot structures.
- c) The Town requires stormwater detention for the purpose of reducing peak flows to downstream creeks and channels. Stormwater detention is required for projects that create or replace greater than 5,000 square feet impervious surface, with no credit given for existing impervious surface that is removed. Stormwater detention shall be based on storing 2-inches of rainfall over the proposed

impervious area. The peak release rate shall be the 48-hour inflow volume over a 36 to 48-hour period. A higher rate of release is allowed if the calculated orifice size would be less than 1 inch diameter for a gravity release or less than that pumped by a 1/3 horsepower pumping unit, in which case, these minimum sizes are acceptable. Storage is required in all portions of the Town and within the Atherton Channel Drainage District. Detentions basins may discharge to groundwater, gravity flow to the Town storm drain system, which includes gutter flow if no storm drain line is present, or be pumped to the Town storm drain system.

- d) Percolation from detention ponds is allowed only if a Geotechnical Report shows that there will be at least a 10-foot separation from the groundwater table and that percolating water will not seep onto other properties. Raising the groundwater table by seepage is accepted. If the bottom of the storage basin is within 10 feet of the groundwater table or affects seepage to other properties, a low permeability barrier designed to mitigate the effects of the seepage is required. Infiltration devices shall be located at least 100 feet away from water supply wells.

If percolation is used, the Geotechnical Report shall verify that all soils to the groundwater level will percolate at the minimum rate recommended for design.

- e) Use of the Rational Method is satisfactory for small drainage areas (< 200 acres). Analyses for projects with drainage areas greater than 200 acres shall be based on Hydrograph Methods following procedures listed in either the current, at the time of permit application, (1) Santa Clara County Drainage Manual or (2) Bay Area Hydrographic Model.

- f) For areas less than 200 acres, use rational formula  $Q=CIA$  to determine the peak flow rate. The rainfall intensity shall be calculated using the following equations:

$$I_{2\text{-year}} = 3.67 * K_2 / \text{Time of Concentration}^{0.50}$$

$$I_{10\text{-year}} = 6.18 * K_2 / \text{Time of Concentration}^{0.50}$$

$$I_{25\text{-year}} = 7.39 * K_2 / \text{Time of Concentration}^{0.50}$$

$$I_{100\text{-year}} = 9.61 * K_2 / \text{Time of Concentration}^{0.51}$$

Where  $K_2$  is the correction factor for the Town of Atherton, which varies with Mean Annual Precipitation (MAP). Tables 1A, 1B, 1C, 1D and 2 present data used for the intensity-duration-frequency equation. Tables 1B lists the precipitation values for the San Francisco Bay Area modified for the Town of Atherton, 10-year event, with a Mean Annual Precipitation (MAP) of 18 inches. Exhibit 1 shows the MAP within Atherton. Table 2 is the adjustment in rainfall intensity with respect to different MAPs.

- g) Runoff Coefficients shall be as follows:

"C" Factor (10-Year Event)	Description
0.30	Parks and Open Areas
0.50	Residential (R-1) Areas (predominate in Atherton)
0.70	Multiple Dwelling and Single-Family Attached Areas
0.90	Paved Areas
0.95	Roof Area

The 10-year Runoff Coefficients shall be multiplied by 1.1 for the 25-year event and by 1.25 for the 100-year event. The maximum runoff coefficient is 1.0.

(For combined paved and unpaved areas, a "weighted" C-factor shall be used, with a maximum C-coefficient of 1.0 used in the weighting equation.)

Runoff Coefficients for the Town of Atherton are assumed to be 0.5 for Residential suburban land uses. Specific exceptions are for schools, parks and

other large land uses that are within the Town, and shall be calculated accordingly. The Runoff Coefficient of 0.5 was established by Nolte in the Town-wide Drainage Study dated June 28, 2001.

- h) An initial time of concentration at the first catch point or concentration point of 5 minutes shall be used for steep (greater than 4:1 slope) and/or small (less than 100 feet to inlet) drainage areas and 10 minutes otherwise. The time of concentration shall be increased using the calculated flow time in pipe or drainage swale. For large drainage areas, the initial time of concentration is estimated from the equation below:

$$T_c = 10 + 0.0078 \left( \frac{L^{3/2}}{H^{1/2}} \right)^{0.77}$$

- where: L = the maximum length of travel, in feet.  
H = the difference in elevation along the effective slope line, in feet.  
Tc = the time of concentration, in minutes.

- i) Runoff to Adjoining Property

Runoff may flow to adjoining property so long as it meets all three of the following conditions:

- 1) The peak flow rate is consistent with the pre-development runoff pattern.
- 2) The portion of the flow associated with project development is detained in accordance with Town Requirements.
- 3) The flow is spread consistent with the pre-development release from the site.

Flow may be concentrated at a release point provided that an easement or written agreement is obtained from the downstream property owner. If an easement is not obtained, the peak flow rate and velocity at the property boundary shall be less than or equal to the pre-project condition peak flow and velocity for the 2, 10, 25 and 100-year storm events.

### 3. HYDRAULIC CRITERIA

#### a) Starting Water Level – Piped System

- 1) Discharge to a Creek or Channel – Where practical, the systems are analyzed using the peak 25-year water levels for Atherton Channel and Redwood Creek, whichever is applicable. In lieu of analyzing the 25-year water level in the Channel, a water level at the top of the channel bank may be used.
- 2) Discharge to (1) a Town Storm Drainage System, or (2) curb side system where a drainage system is not present – The on-lot drainage system shall be evaluated using a starting water level that is the 25-year water level in the downstream system. If approved by the City Engineer in advance, the 25-year water level in the off-site system may be determined using the following simplifying approaches:
  - i. If discharging to a storm drain, a starting water level 1 foot below the rim elevation at the connection point may be used.
  - ii. If discharging to a roadside ditch, a starting water level 0.25 feet above edge of pavement may be used.
  - iii. If discharging through a curb drain to a gutter, a water level 0.5 feet above gutter flow line may be used.
- 3) Discharge to Storage Area – Storm drain systems sized to convey runoff to a storage facility shall be sized based on the storage facility being full at the peak of the storm event unless detailed hydrographic analyses are provided based on the methodology presented in the Santa Clara County Drainage Manual or Bay Area Hydrograph Model.

- #### b) The effect of debris, erosion, and channel bedload during flood flows shall be considered in the design of culverts and bridge structures.

- c) Where pump stations are used, discharge shall leave site as gravity flow with an air break provided, i.e., by a catch basin, that will: (a) protect the property by allowing the pumped flow to safely flow out if the gravity portion is clogged, and (b) readily indicate that the gravity portion of the system is clogged.
- d) All drainage facilities, including treatment devices, shall completely dewater within 96 hours of the end of a rainfall event. Pumping facilities may be required to assure that complete dewatering occurs within 96 hours.
- e) All drainage facilities draining into the channel or other drainage system that may cause backflow above the lowest rim in the drainage system during a 100-year storm event shall include a backflow prevention device. The top of bank may be used in-lieu of calculating a 100-year water level.
- f) Hydraulic Analysis and Design

Storm drainage and flood protection systems must be sized so that design flows can be collected, conveyed, and safely discharged to receiving waters while meeting general drainage and freeboard requirements. Hydraulic analysis shall be conducted following current, at the time of permit application, Santa Clara County Drainage Manual guidelines. For drainage areas under 5 acres, overland flow depths may be calculated using Manning's Equation with normal depth. For drainage areas greater than 5 acres, a steady state, two dimensional flow model, such as the Army Corps of Engineers River Analysis System, HEC-RAS computer model shall be used.

### **C. Additional Permit and Notification Requirements**

1. Every project shall provide the Town with a completed 'NPDES Permit Compliance Checklist' (Attachment "A"). The checklist shows the requirements needed in order to prevent stormwater pollution as part of the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP).

2. Projects over disturb land over one acre will need to obtain a Notice of Intent (NOI) with the State Water Resources Control Board, and must prepare a Stormwater Pollution Prevention Plan (SWPPP) and Stormwater Management Plan.
3. Developers are required to sign an Operations and Maintenance Agreement for any new permanent control measures. The Operations and Maintenance Agreement shall be based on the Town's model Operations and Maintenance agreement (Attachment B).
4. San Mateo County Mosquito Abatement District shall be notified of location. See the County's Vector Control Plan for guidance on how to address potential mosquito breeding habitat.

#### **D. Basement Construction Hydraulic Criteria**

1. Basement construction shall not impact groundwater within the Town. If any portion of a building is constructed below the existing ground surface, measures shall be taken to not impede seepage or groundwater flows. Construction shall not release contaminants into the groundwater. Measures to maintain seepage and groundwater flow around the basement include placement of a subdrain consisting of drain rock and perforated pipe that allows passage of flows around subsurface structures. Measures to prevent contamination of groundwater include placement of protective barriers to prevent the release of construction materials into the groundwater.
2. Pumping of groundwater to the Town drainage system during construction is accepted for a period not to exceed two weeks. If pumping is required for more than two weeks, pumping shall be to injection wells or by other means, with the approval of the City Engineer. For purposes of this requirement, a Geotechnical Engineer shall certify a Historical High Groundwater Level. The Geotechnical Engineer shall incorporate the groundwater levels presented in Exhibit 2. Seepage water, direct rainfall and nuisance flows may be pumped from the site at any time, however, the pump intake may not be lower than the historical high groundwater elevation except for during the two week period of allowed groundwater pumping.

3. No groundwater pumping is acceptable after completion of construction. Seepage water, direct rainfall and nuisance flows may be pumped from the site at any time, however, the pump intake may not be lower than the historical high groundwater elevation.
4. Basement areas shall be hydraulically isolated from runoff that would occur during a 100-year storm event. Runoff includes Creek flows and overland flows from upstream drainage areas. Calculations shall show that there is at least 1 foot of freeboard protecting all entrances to the basement. The 100-year water level shall consider local overland flow, regional drainage and Creek water levels.
5. All basement access points including ventilation facilities, windows, doors, etc. must either be (1) at least one foot above the 100-year water level, or (2) protected by waterproof barriers that provide one foot protection above the 100-year water level.
6. Calculations shall be provided that document that the building can withstand loadings, including buoyancy, based on a water level at the 100-year overland flow water level.

## **E. Criteria References**

1. The design of storm drainage facilities shall conform to standard accepted engineering practices. Common reference texts are:

"Handbook of Hydraulics," King & Brater

"Street and Highway Drainage," The Institute of Transportation, University of California

"Highway Design Manual," CalTrans

"Practices in Detention of Urban Stormwater Runoff, Special Report No. 43," American Public Works Association '

Suggested Criteria for Hydrologic Design of Storm Drainage Facilities in the San Francisco Bay Region, California, "United States Department of the Interior, Geological Survey

ASCE Manual of Engineering Practice No. 37

"Open-Channel Hydraulics," V.T. Chow

"HEC-1 Flood Hydrograph Package," U.S. Army Corps of Engineers

"HEC-2 Water Surface Profile Users Manual" U.S. Army Corps Engineers

"A Guide to Hydrologic Analysis Using SCS Methods," McCuen

TABLE 1A

TOWN OF ATHERTON  
DRAINAGE CRITERIA

Precipitation Values  
Atherton, 2-Year Event, MAP 18 inches

Duration (minutes)	Rainfall Amount (inches)	Rainfall Intensity (inches/hour)	Intensity from Equation (inches/hour)
5			1.64
10	0.20	1.19	1.16
15	0.24	0.95	0.95
30	0.34	0.68	0.67
60	0.47	0.47	0.47
120	0.67	0.34	0.34
180	0.82	0.27	0.27

Equation:  $I = K_1 * K_2 / Tc^n$

I 2-yr = 3.67 \*  $K_2 / Tc^{0.5}$

Where  $K_2$  varies with MAP and is from Table 2

**TOWN OF ATHERTON  
DRAINAGE CRITERIA**

**Precipitation Values  
Atherton, 10-Year Event, MAP 18 inches**

<b>Duration (minutes)</b>	<b>Rainfall Amount (inches)</b>	<b>Rainfall Intensity (inches/hour)</b>	<b>Intensity from Equation (inches/hour)</b>
<b>5</b>			2.76
<b>10</b>	0.33	<b>1.99</b>	1.95
<b>15</b>	0.40	<b>1.59</b>	1.59
<b>30</b>	0.57	<b>1.14</b>	1.13
<b>60</b>	0.80	<b>0.80</b>	0.80
<b>120</b>	1.13	<b>0.56</b>	0.56
<b>180</b>	1.38	<b>0.46</b>	0.46

Equation:  $I = K_1 * K_2 / Tc^n$

I 10-yr = 6.18 \*  $K_2 / Tc^{0.5}$

Where  $K_2$  varies with MAP and is from Table 2

**TABLE 1C**

**TOWN OF ATHERTON  
DRAINAGE CRITERIA**

Precipitation Values  
**Atherton, 25-Year Event, MAP 18 inches**

Duration (minutes)	Rainfall Amount (inches)	<b>Rainfall Intensity (inches/hour)</b>	Intensity from Equation (inches/hour)
5			3.30
10	0.39	2.32	2.34
15	0.47	1.89	1.91
30	0.68	1.36	1.35
60	0.95	0.95	0.95
120	1.36	0.68	0.67
180	1.65	0.55	0.55

Equation:  $I = K_1 * K_2 / Tc^n$

$I_{25\text{-yr}} = 7.39 * K_2 / Tc^{0.5}$

Where  $K_2$  varies with MAP and is from Table 2

**TABLE 1D**

**TOWN OF ATHERTON  
DRAINAGE CRITERIA**

**Precipitation Values  
Atherton, 100-Year Event, MAP 18 inches**

Duration (minutes)	Rainfall Amount (inches)	Rainfall Intensity (inches/hour)	Intensity from Equation (inches/hour)
5			4.10
10	0.33	2.91	2.90
15	0.40	2.40	2.37
30	0.57	1.71	1.67
60	0.80	1.19	1.18
120	1.13	0.84	0.84
180	1.38	0.68	0.68

Equation:  $I = K_1 * K_2 / Tc^n$

$I_{100\text{-yr}} = 9.17 * K_2 / Tc^{0.5}$

Where  $K_2$  varies with MAP and is from Table 2

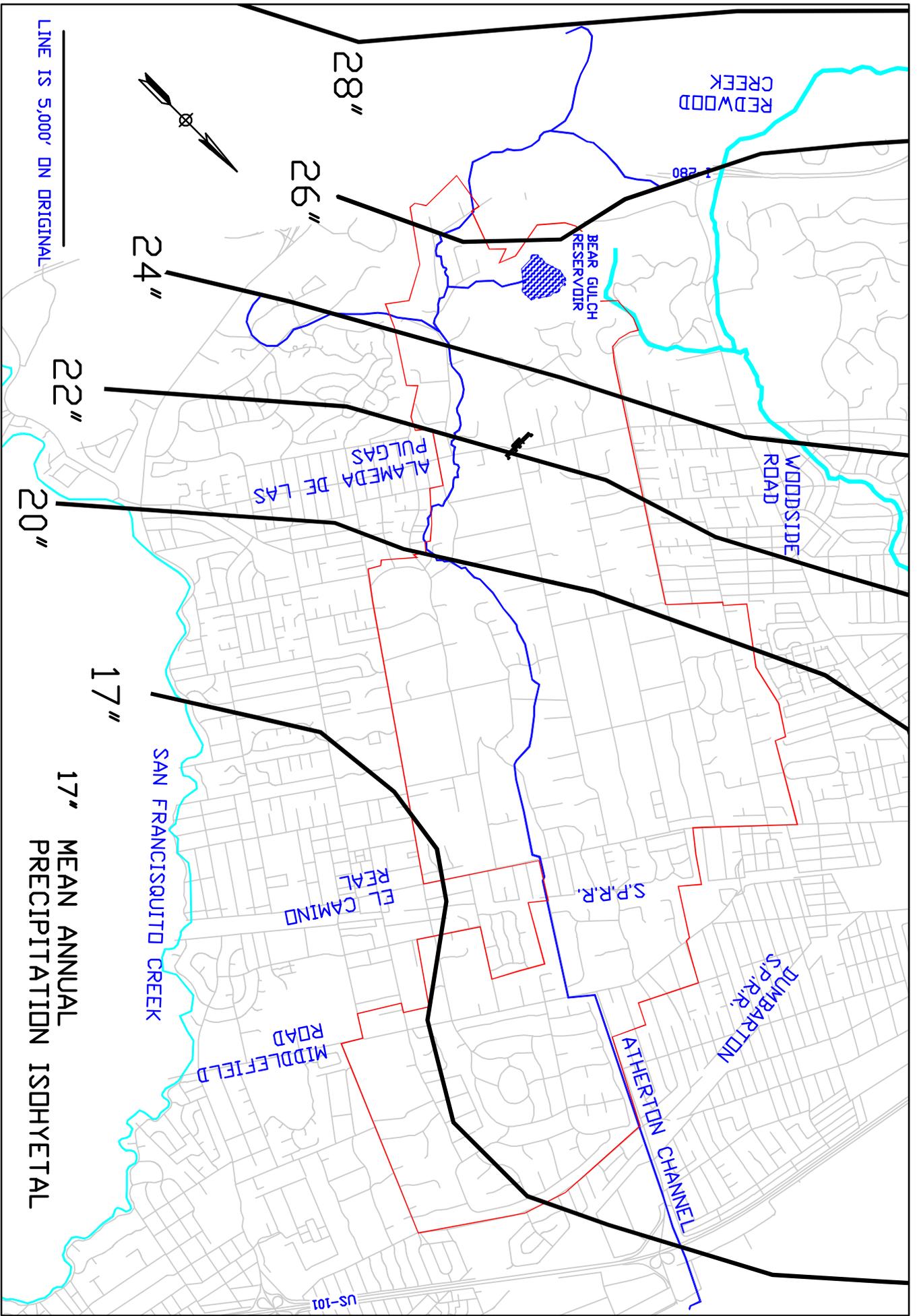
**TABLE 2**

**TOWN OF ATHERTON  
DRAINAGE CRITERIA**

Adjustment in Intensity with Mean Annual Precipitation

Mean Annual Precipitation	K2, Percentage Increase (%)
18.0	100%
20.0	104%
22.0	109%
22.5	110%
23.0	111%
24.0	113%
26.0	118%
28.0	122%
30.0	126%

No adjustment for less than 18"

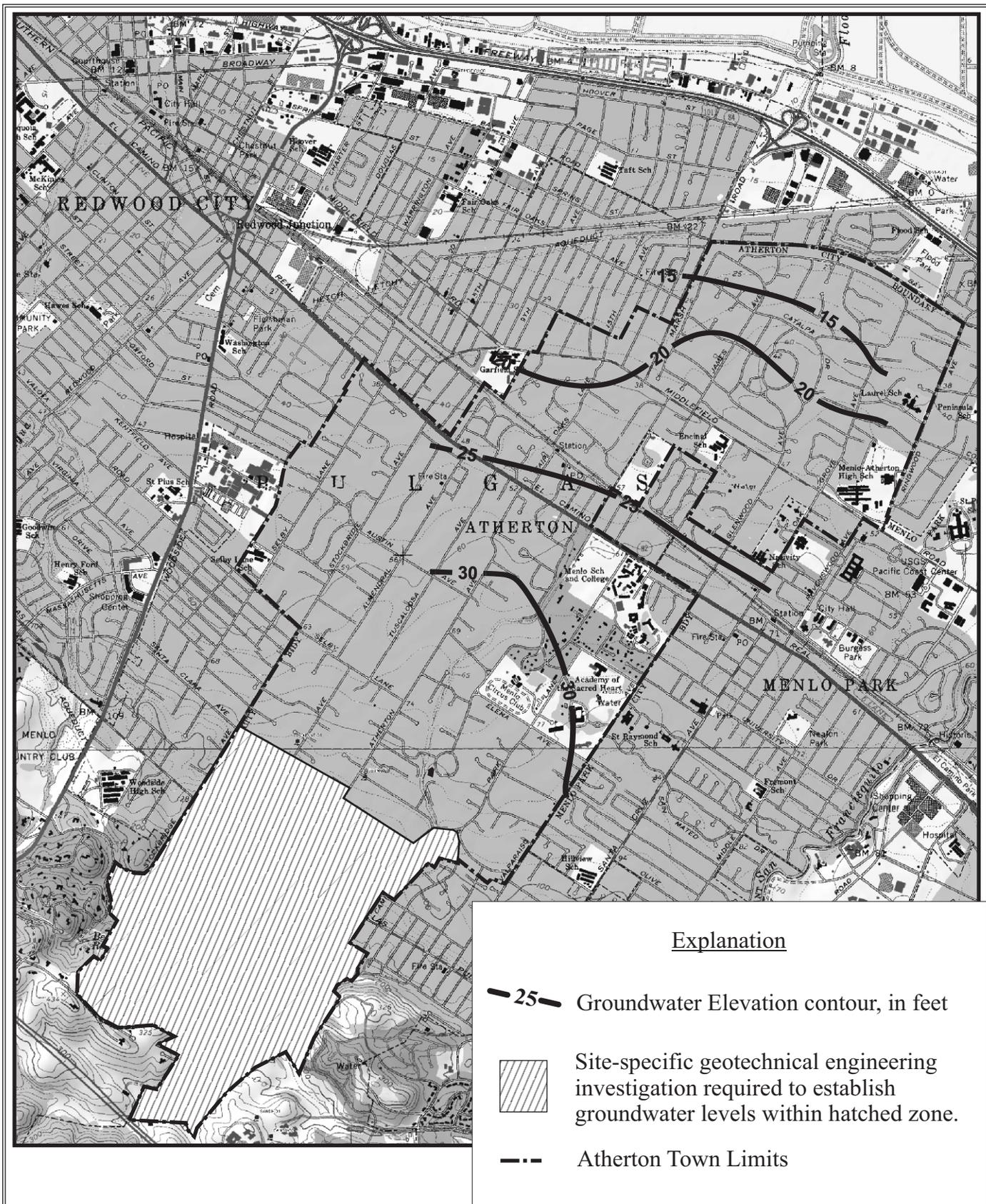


LINE IS 5,000' ON ORIGINAL

BKF No. 20060005

17" MEAN ANNUAL  
PRECIPITATION ISOHYETAL

MEAN ANNUAL PRECIPITATION (MAP) ISOHYETALS



Explanation

-  Groundwater Elevation contour, in feet
-  Site-specific geotechnical engineering investigation required to establish groundwater levels within hatched zone.
-  Atherton Town Limits

**Groundwater Elevation Contours  
Town of Atherton, California**

**GROUNDWATER MAP**

Date  
Jan., 2007

Job Number  
BKFEN-05-01

Exhibit  
2



# ATTACHMENT A

## Town of Atherton Stormwater Pollution Prevention Program NPDES Permit Requirements Checklist

### I. PROJECT DATA

Project Name \_\_\_\_\_  
Project Address \_\_\_\_\_  
APN \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Applicant Name \_\_\_\_\_  
Applicant Phone \_\_\_\_\_  
Applicant Address \_\_\_\_\_

#### Type of Development

Residential<sup>(1)</sup>  Commercial  Industrial  Mixed-Use  Streets, Roads, Highways, Freeways, etc.  
 Significant Redevelopment Project (as defined by the Municipal Regional NPDES permit Provision C.3.c.i.3)

Site Area \_\_\_\_\_ (sq. ft.)  
 Disturbed Area \_\_\_\_\_ (sq. ft.)\*  
 Existing Impervious Surface \_\_\_\_\_ (sq. ft.)  
 New Impervious Surface (created, added and/or replaced) \_\_\_\_\_ (sq. ft.)\*\*

\* If  $\geq 1$  acre (43,560 sq. ft.) of soil disturbance, please refer to Section III.

\*\* If  $\geq 5,000$  sq. ft. of impervious surface is added and/or replaced, please refer to Sections IV and V.

### II. MINIMUM REQUIREMENTS FOR ALL PROJECTS (Parts A, B, C, D, & E) – All projects must incorporate as many of the following measures as practical (check boxes that apply):

#### A. SITE DESIGN MEASURES

- Protect sensitive<sup>(1)</sup> areas and minimize changes to the natural topography.
- Minimize impervious surface areas.
- Minimize impervious areas from being directly connected to the storm drain system (e.g. direct roof downspouts to vegetated areas where feasible).
- Maximize permeability by preserving open space.
- Use permeable pavement surfaces where feasible.
- Use landscaping to treat stormwater.
- Use "Bay Friendly" landscape design, as indicated in "Bay-Friendly Landscape Guidelines – Sustainable Practices for the Landscape Professional".

#### B. SOURCE CONTROL MEASURES – Incorporate all applicable source control measures:

- A. Landscape & Pesticide Reduction Controls
- B. Labeling Storm Drain Inlets
- C. Parking Facilities Controls
- D. Pool & Spa Controls
- E. Food Service Equipment Controls
- F. Trash Areas Controls
- G. Outdoor Process Controls
- H. Outdoor Storage Controls
- I. Outdoor Vehicle Cleaning Facilities Control
- J. Vehicle/Equipment Repair & Maintenance Control
- K. Fuel Dispensing Area Controls

- \_ L. Loading Dock Controls
- \_ M. Miscellaneous Drains

**C. PERMANENT STORMWATER TREATMENT CONTROL MEASURES (if applicable)**

- \_ Grassy vegetated swale
- \_ Extended detention basin (dry)
- \_ Wet pond
- \_ Media filter (sand, organic matter)
- \_ Bioretention area
- \_ Vegetated buffer strip
- \_ Constructed wetland
- \_ Infiltration trench
- \_ Treatment "Train" (i.e. Vortex separator in combination with other, multi-step treatment devices)
- \_ Other \_\_\_\_\_

**D. EROSION and SEDIMENTATION CONTROL. *If the project involves any land disturbance, project plans must incorporate all of the following requirements:***

1. Stabilize all denuded areas and install and maintain all temporary erosion and sediment controls continuously throughout the entire year, until permanent erosion controls have been established.
2. Provide for diverting on-site runoff around exposed areas and diverting off-site runoff around the site (e.g., swales and dikes).
3. Provide for preventing erosion and trapping sediment on-site, such as sediment basins or traps, earthen dikes or berms, silt fences, check dams, storm drain inlet protection, soil blankets or mats, covers for soil stock piles, and/or other measures.
4. Provide notes, specifications, or attachments describing the following:
  - a) Construction, operation and maintenance of erosion and sediment control measures, including inspection frequency;
  - b) Methods and schedule for grading, excavation, filling, clearing of vegetation, and storage and disposal of excavated or cleared material;
  - c) Specifications for vegetative cover and mulch, including methods and schedules for planting and fertilization;
  - d) Provisions for temporary and/or permanent irrigation.

**E. CONSTRUCTION BMPs. *Project plans must incorporate all of the following BMPs as project notes. Additionally, project plan set must include STOPPP's Construction BMP page, available for download at <http://www.flowstobay.org/pdfs/bmp/Construction%20Series/SWPPP.pdf>***

1. Store, handle, and dispose of construction materials and wastes properly, so as to prevent their contact with stormwater.
2. Control and prevent the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, washwater or sediments, and non-stormwater discharges to storm drains and watercourses.
3. Use sediment controls or filtration to remove sediment when dewatering site and obtain all necessary permits.
4. Avoid cleaning, fueling, or maintaining vehicles on-site, except in a designated area where washwater is contained and treated.
5. Delineate with field markers clearing limits, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.

6. Protect adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate.
7. Perform clearing and earth moving activities only during dry weather.
8. Limit and time applications of pesticides and fertilizers to prevent polluted runoff.
9. Limit construction access routes and stabilize designated access points.
10. Avoid tracking dirt or other materials off-site; clean off-site paved areas and sidewalks using dry sweeping methods.
11. The Contractor shall train and provide instruction to all employees and subcontractors regarding the construction BMPs.

**III. CONSTRUCTION PROJECTS THAT DISTURB  $\geq$  1 ACRE OF AREA** — *For all projects with 1 acre or more of disturbed area, applicants must file a Notice of Intent (NOI) with the State Water Resources Control Board to obtain coverage under the State General Construction Activity NPDES Permit, and must prepare and implement a Storm Water Pollution Prevention Plan (SWPPP). **Note: Completion of this checklist does not imply certification of the adequacy of the SWPPP by the municipality.***

1. A copy of the project's NOI and SWPPP shall be submitted to the planning, building, or engineering department prior to issuance of a grading or building permit.
2. A copy of the project's NOI and SWPPP shall be kept on-site and make available for review by the municipal inspector upon request.

**IV. GROUP 1 PROJECTS: PROJECTS THAT ADD AND/OR REPLACE  $\geq$  5,000 SQ. FT. OF IMPERVIOUS SURFACE-**

*- The following requirements apply to projects that add and/or replace 5,000 sq. ft. or more of impervious surface, and are therefore subject to the requirements of Provision C.3 of the Municipal Regional NPDES permit.*

1. Incorporate site design measures, as listed in Section II.A above.
2. Incorporate all applicable source control measures listed in municipality's Local Source Control Measures List.
3. Incorporate pesticide-reduction measures, such as using Integrated Pest Management.
4. Enter into a maintenance agreement for ongoing implementation and maintenance of stormwater treatment control measures, as appropriate for the control measure.
5. Treatment control measure design must be consistent with Vector Control Plan requirements.
6. Incorporate permanent stormwater treatment controls, as follows (see <http://www.flowstobay.org/p2business/C3stormwatertechguide.html> for more information):

\_ A flow-based treatment control hydraulically sized to manage the flow of runoff produced by a rain event equal to at least 0.2 inches per hour; or

\_ A volume-based treatment control hydraulically sized to capture 0.49 inches per acre.

**V. HYDROMODIFICATION MANAGEMENT<sup>(3)</sup>**— *In addition to the requirements under Section IV, Hillside Group 1 projects shall do Hydrograph Modification using one of the following: (generally, lands east of Alameda de las Pulgas are exempt and lands west are subject to hydromodification management requirements). The HMP is available at <http://www.flowstobay.org/p2business/C3stormwatertechguide.html>.)*

\_ The HMP per the BMP Handbook (See CASQA Website).

\_ Use a flow duration stormwater control measure designed such that post-project stormwater discharge rates and durations match pre-project discharge rates and durations.

**NOTES:**

(1) "Sensitive" area is defined as any area in which plant life or their habitats are rare or especially valuable, including lakes, streams, wetlands, marshes, and coastal tide lands.

(2) The following types of projects are exempt from the requirements for hydromodification management:

A redevelopment project that does not increase the amount of impervious surface and the time of concentration of stormwater runoff.

A transit type of development within ¼ to ½ mile of a transit station and/or intermodal facility.

A project within a "Redevelopment Project Area" that redevelops an existing brownfield site or creates housing units affordable to persons of low or moderate income.

Reviewed by:

Planning: \_\_\_\_\_ date //

Engineering: \_\_\_\_\_ date //

**Project Applicant Checklist for NPDES Permit Requirements  
SAN MATEO COUNTYWIDE WATER POLLUTION PREVENTION PROGRAM (SMCWPPP)**

**I. PROJECT DATA**

**Project Name** \_\_\_\_\_ **Project Address** \_\_\_\_\_

**APN** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**Applicant Name** \_\_\_\_\_ **Applicant Phone** \_\_\_\_\_

**Applicant Address** \_\_\_\_\_

**Type of Development**

- Residential
- Commercial
- Industrial
- Mixed-Use
- Streets, Roads, Highways, Freeways, etc.
- Significant Redevelopment Project (as defined by SMCWPPP's NPDES permit Provision C.3.c.i.3)

- Site Area \_\_\_\_\_ (sq. ft.)
- Disturbed Area \_\_\_\_\_ (sq. ft.)\*
- Existing Impervious Surface \_\_\_\_\_ (sq. ft.)
- New Impervious Surface (created, added and/or replaced) \_\_\_\_\_ (sq. ft.)\*\*

\* If ≥ 1 acre (43,560 sq. ft.) of soil disturbance, please refer to Section III.

\*\* If ≥ 10,000 sq. ft. of impervious surface is added and/or replaced, please refer to Section IV. If ≥ 1 acre (43,560 sq. ft.) is added and/or replaced, refer also to Section V.

**II. MINIMUM REQUIREMENTS FOR ALL PROJECTS – All projects must incorporate as many of the following measures as practical (check boxes that apply).**

**A. SITE DESIGN MEASURES. Project must incorporate the following measures to the maximum extent practicable:**

- Protect sensitive areas and minimize changes to the natural topography.
- Minimize impervious surface areas.
- Minimize impervious areas from being directly connected to the storm drain system (e.g., direct roof downspouts to vegetated areas where feasible).
- Maximize permeability by preserving open space.
- Use permeable pavement surfaces where feasible.
- Use landscaping to treat stormwater.
- Use "Bay Friendly" landscape design, as indicated in "Bay-Friendly Landscape Guidelines - Sustainable Practices for the Landscape Professional".

**B. SOURCE CONTROL MEASURES.**

- Incorporate all applicable source control measures in Atherton Local Source Control Measures List.

**C. PERMANENT STORMWATER TREATMENT CONTROL MEASURES. Project must consider incorporating the following measures:**

Attachment A-1

<input type="checkbox"/> Bioretention area  <input type="checkbox"/> Vegetated swale  <input type="checkbox"/> Extended detention basin (dry)  <input type="checkbox"/> Wet pond  <input type="checkbox"/> Media filter (sand, organic matter)  <input type="checkbox"/> Vortex separator (commercially available in-line treatment unit)	<input type="checkbox"/> Vegetated buffer strip  <input type="checkbox"/> Constructed wetland  <input type="checkbox"/> Manufactured drain insert (may not be used unless part of a multi-step treatment process)  <input type="checkbox"/> Infiltration trench  <input type="checkbox"/> Other _____		
<b>Continued ⇒</b>			
<p><b>D. <u>EROSION and SEDIMENTATION CONTROL.</u> <i>If the project involves any land disturbance, project plans must incorporate all of the following requirements:</i></b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; padding: 5px;"> <ol style="list-style-type: none"> <li>1. Stabilize all denuded areas and install and maintain all temporary erosion and sediment controls continuously between October 15<sup>th</sup> and April 15<sup>th</sup> of each year, until permanent erosion control has been established.</li> <li>2. Provisions for diverting on-site runoff around exposed areas and diverting off-site runoff around the site (e.g., swales and dikes).</li> <li>3. Provisions for preventing erosion and trapping sediment on-site, such as sediment basins or traps, earthen dikes or berms, silt fences, check dams, storm drain inlet protection, soil blankets or mats, covers for soil stock piles, and/or other measures.</li> </ol> </td> <td style="width: 50%; vertical-align: top; padding: 5px;"> <ol style="list-style-type: none"> <li>4. Provide notes, specifications, or attachments describing the following:               <ol style="list-style-type: none"> <li>a) Construction, operation and maintenance of erosion and sediment control measures, including inspection frequency;</li> <li>b) Methods and schedule for grading, excavation, filling, clearing of vegetation, and storage and disposal of excavated or cleared material;</li> <li>c) Specifications for vegetative cover and mulch, including methods and schedules for planting and fertilization;</li> <li>d) Provisions for temporary and/or permanent irrigation.</li> </ol> </li> </ol> </td> </tr> </table>		<ol style="list-style-type: none"> <li>1. Stabilize all denuded areas and install and maintain all temporary erosion and sediment controls continuously between October 15<sup>th</sup> and April 15<sup>th</sup> of each year, until permanent erosion control has been established.</li> <li>2. Provisions for diverting on-site runoff around exposed areas and diverting off-site runoff around the site (e.g., swales and dikes).</li> <li>3. Provisions for preventing erosion and trapping sediment on-site, such as sediment basins or traps, earthen dikes or berms, silt fences, check dams, storm drain inlet protection, soil blankets or mats, covers for soil stock piles, and/or other measures.</li> </ol>	<ol style="list-style-type: none"> <li>4. Provide notes, specifications, or attachments describing the following:               <ol style="list-style-type: none"> <li>a) Construction, operation and maintenance of erosion and sediment control measures, including inspection frequency;</li> <li>b) Methods and schedule for grading, excavation, filling, clearing of vegetation, and storage and disposal of excavated or cleared material;</li> <li>c) Specifications for vegetative cover and mulch, including methods and schedules for planting and fertilization;</li> <li>d) Provisions for temporary and/or permanent irrigation.</li> </ol> </li> </ol>
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<p><b>E. <u>CONSTRUCTION BMPs.</u> <i>Project plans must incorporate all of the following BMPs as project notes. Additionally, project plan set must include SMCWPPP's Construction BMP page, available for download at <a href="http://www.ci.atherton.ca.us">www.ci.atherton.ca.us</a></i></b></p>			

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| <ol style="list-style-type: none"> <li>1. Store, handle, and dispose of construction materials and wastes properly, so as to prevent their contact with stormwater.</li> <li>2. Control and prevent the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, washwater or sediments, and non-stormwater discharges to storm drains and watercourses.</li> <li>3. Use sediment controls or filtration to remove sediment when dewatering site and obtain all necessary permits.</li> <li>4. Avoid cleaning, fueling, or maintaining vehicles on-site, except in a designated area where washwater is contained and treated.</li> <li>5. Delineate with field markers limits on clearing, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.</li> </ol> | <ol style="list-style-type: none"> <li>6. Protect adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures, as appropriate.</li> <li>7. Perform clearing and earth moving activities only during dry weather.</li> <li>8. Limit and time applications of pesticides and fertilizers to prevent polluted runoff.</li> <li>9. Limit construction access routes and stabilize designated access points.</li> <li>10. Avoid tracking dirt or other materials off-site; clean off-site paved areas and sidewalks using dry sweeping methods.</li> <li>11. The Contractor shall train and provide instruction to all employees and subcontractors regarding the construction BMPs.</li> </ol> |
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**III. CONSTRUCTION PROJECTS THAT DISTURB ≥ 1 ACRE OF AREA**— *For all projects with 1 acre or more of disturbed area, applicants must file a Notice of Intent (NOI) with the State Water Resources Control Board to obtain coverage under the State General Construction Activity NPDES Permit, and must prepare and implement a Storm Water Pollution Prevention Plan (SWPPP). Note: Completion of this checklist does not imply that the municipality has certified the adequacy of the SWPPP.*

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| <ol style="list-style-type: none"> <li>1. A copy of the project's NOI and SWPPP shall be submitted to the planning, building, or engineering department prior to issuance of a grading or building permit.</li> </ol> | <ol style="list-style-type: none"> <li>2. A copy of the project's NOI and SWPPP shall be kept on-site and make available for review by the municipal inspector upon request.</li> </ol> |
|---|---|

**Continued ⇒**

**IV. PROJECTS THAT ADD AND/OR REPLACE ≥ 10,000 S.F. OF IMPERVIOUS SURFACE** – The following requirements apply to projects that add and/or replace 10,000 sq. ft. or more of impervious surface, and are therefore subject to the requirements of Provision C.3 of SMCWPPP's amended NPDES permit. If the project consists of a single-family residence that is not part of a larger plan of development, the project will be considered in compliance with Provision C.3, regardless of amount of impervious surface added and/or replaced, with the incorporation of appropriate pollutant source control and site design measures, and the use of landscaping to appropriately treat runoff from the roof and house-associated impervious surfaces (e.g., runoff from roofs, patios, driveways, sidewalks, and similar surfaces).

- |  |   |
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| <ol style="list-style-type: none"> <li>1. Incorporate site design measures, as listed in Section II.A above.</li> <li>2. Incorporate all applicable source control measures listed in municipality's Local Source Control Measures List.</li> <li>3. Incorporate pesticide-reduction measures, such as using Integrated Pest Management.</li> <li>4. Enter into an agreement of responsibility and funding for ongoing operation and maintenance of stormwater treatment control measures, as appropriate for the control measure.</li> <li>5. Treatment control measure design must be consistent with Vector Control Plan requirements.</li> </ol> | <ol style="list-style-type: none"> <li>6. Use of a hydraulically sized, permanent stormwater treatment control, as follows (see <a href="http://www.flowstobay.org/p2business/C3stormwatertechguide.html">www.flowstobay.org/p2business/C3stormwatertechguide.html</a> for more information):             <ul style="list-style-type: none"> <li><input type="checkbox"/> A flow-based treatment control hydraulically sized to manage the flow of runoff produced by a rain event equal to at least 0.2 inches per hour; or</li> <li><input type="checkbox"/> A volume-based treatment control hydraulically sized to capture 80 percent or more of the volume of annual runoff, using local rainfall data.</li> </ul> </li> </ol> |
|--|---|

**V. HYDROMODIFICATION MANAGEMENT** – *In addition to the requirements under Section IV, the following requirement applies to applicable\*\* projects that create and/or replace 1 acre or more of impervious surface, for which permit applications are deemed complete on or after June 12, 2007, and are located in areas subject to hydromodification management. Generally, lands east of El Camino Real are exempt from hydromodification management requirements, and lands west are subject to these requirements. A map showing exempt and non-exempt areas is at [www.flowstobay.org](http://www.flowstobay.org) (click on “Business Pollution Prevention,” then click on “C.3 Technical Guidance,” then scroll to Appendix J).*

1. Incorporate site design and landscape characteristics that maximize infiltration (where appropriate), provide retention or detention, slow runoff, and minimize land coverage to the maximum extent practicable.
2. Construct a flow duration stormwater control measure designed such that post-project stormwater discharge rates and durations match pre-project discharge rates and durations. (Note: a single facility may be designed for both stormwater treatment and flow duration control.) Sizing requirements are described in Provision C.3.f.vii of the Program’s NPDES permit amendment at [www.flowstobay.org](http://www.flowstobay.org) (click on “Additional Information,” scroll to the heading “San Mateo Countywide Municipal Stormwater Permit,” and click on “Hydromodification Provisions). A Bay Area Hydrology Model (BAHM) is being developed to assist applicants with sizing flow duration controls.
3. Enter into an agreement of responsibility and funding for ongoing operation and maintenance of flow duration control measures (or combined flow duration/treatment control measures), as appropriate for the control measure.

\*\*The following types of projects are exempt from the requirements for hydromodification management:

- The construction of a single-family residence that is not part of a larger plan of development.
- A transit type of development within ¼ to ½ mile of a transit station and/or intermodal facility.
- A project within a “Redevelopment Project Area” that redevelops an existing brownfield site, or the portion of a project that creates housing units affordable to persons of low or moderate income.
- A redevelopment project may be exempt if a comparison of the project design to the pre-project condition shows the project will not increase impervious area and will not increase the efficiency of drainage collection and conveyance compared with the pre-project condition. The comparison must (1) assess site opportunities and constraints to reduce imperviousness and retain/detain site drainage, (2) describe proposed design features and surface treatments to minimize imperviousness, (3) inventory existing and proposed impervious areas, and (4) qualitatively compare pre-project and post-project efficiency of drainage collection and conveyance to demonstrate that the project will incorporate hydrologic source controls to the maximum extent practicable (for example, demonstrate that the time of concentration is not decreased).

Reviewed by:		
Planning:	_____	date / /
Engineering:	_____	date / /
Building:	_____	date / /



**4. Types of Stormwater Controls Used (check all that apply):**

Description

- Stormwater Treatment Measure
- Source Control Measure
- Site Design Measure

Code

- STM
- SCM
- SDM

**Examples of Stormwater Control Measures:**

**Stormwater Treatment**

- Biofilter (veg. swale/strip)
- Detention basin (dry)
- Detention pond (wet)
- Underground detention
- Media filter (sand, organic matter, bioretention)
- Hydrodynamic device (commercially available in-line treatment unit)
- Infiltration trench
- Porous pavement
- Wetland basin
- Wetland channel
- Inlet filter
- Other \_\_\_\_\_

**Source Controls**

- Wash area/racks, drain to sanitary sewer
- Roofed dumpster area, drain to sanitary sewer
- Swimming pool drain to sanitary sewer
- Beneficial landscaping (minimizes irrigation, runoff, pesticides and fertilizers; promotes treatment)
- Outdoor material storage protection
- Covers, drains for loading docks, maintenance bays, fueling areas
- Maintenance (street sweeping, catch basin cleaning)
- Other \_\_\_\_\_

**Site Design**

- Minimize land disturbance
- Minimize impervious surfaces
- Minimum-impact street or parking lot design
- Cluster structures/pavement
- Disconnect downspouts
- Alternative driveway design
- Microdetention in landscape
- Preserve open space
- Protect riparian and wetland areas, riparian buffers
- Minimize change in runoff hydrograph
- Other \_\_\_\_\_

*This section to be completed by Agency Staff*

**Reviewed:**

**Community Development Department**

**Planning Division:** \_\_\_\_\_

**Building Division:** \_\_\_\_\_

**Public Works Department**

**Engineering:** \_\_\_\_\_

**Return form to:** \_\_\_\_\_

**Data entry performed by:** \_\_\_\_\_

<p><b>Recording requested by and after recording return to:</b></p> <p>Town of Atherton 91 Ashfield Drive Atherton, CA 94027</p> <p>attn: City Engineer</p>	<p style="text-align: center;">THIS SPACE FOR RECORDER'S USE ONLY</p>
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**STORMWATER TREATMENT AND DETENTION MEASURES  
MAINTENANCE AGREEMENT**

This Stormwater Treatment and Detention Measures Maintenance Agreement ("Agreement") is entered into this \_\_\_\_\_ date of \_\_\_\_\_, 200\_\_ by and between the Town of Atherton, a municipal corporation, (" Town") and [insert name of property owner] , a \_\_\_\_\_, (the "Property Owner").

RECITALS

**WHEREAS**, on February 19, 2003, the Regional Water Quality Control Board, San Francisco Bay Region, adopted Order R2-2003-0023, CAS002992 1, reissuing the San Mateo Countywide National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit for the San Mateo Countywide Clean Water Program, for which the Town of Atherton is a permittee; and

**WHEREAS**, Provision C.3.e.ii. of this NPDES permit, and as it may be amended or reissued, requires the Town to provide minimum verification and access assurances that all treatment and detention measures shall be adequately operated and maintained by persons and entities responsible for the stormwater treatment and detention measures; and

**WHEREAS**, property Owner is the owner of real property commonly known as ("Property"), and more particularly described in the attached Exhibit A, upon which stormwater treatment and detention measures are located or to be constructed, as shown in Exhibit B (the "Site Plan"); and

**WHEREAS**, the Property Owner, its administrators, co-owners, executors, successors, heirs, assigns or any other persons, including any homeowners association (hereinafter collectively referred to as "Property Owner") recognizes that the stormwater treatment and detention measure(s) more particularly described and shown on Exhibit B, of which full- scale plans and any amendments thereto are on file with the Planning and/or Engineering Department of the Town of Atherton must be installed and maintained as indicated in this Agreement and as required by the NPDES permit.

**WHEREAS**, the Town and the Property Owner agree that the health, safety and welfare of the citizens of the Town require that the stormwater treatment and detention measure(s) detailed in the Site Plan shall be constructed and maintained on the Property; and

**WHEREAS**, the Town's Stormwater Management and Discharge Control Ordinance, guidelines, criteria and other written directions require that the stormwater treatment and detention measure(s), as shown on the approved Site

Plan, be constructed and maintained by the Property Owner

**NOW, THEREFORE**, in consideration of the benefit received by the Property Owner as a result of the Town's approval of \_\_\_\_\_, the Property Owner hereby covenants and agrees as follows:

#### SECTION 1: CONSTRUCTION OF TREATMENT AND DETENTION MEASURES

The on-site stormwater treatment and detention measure(s) shown on the Site Plan shall be constructed or cause to be constructed by the Property Owner in strict accordance with the approved plans and specifications identified for the development and any other requirements thereto which have been approved by the Town in conformance with appropriate Town ordinances, guidelines, criteria and other written direction.

#### SECTION 2: OPERATION & MAINTENANCE RESPONSIBILITY

This Agreement shall serve as the signed statement by the Property Owner accepting responsibility for operation and maintenance of stormwater treatment and detention measures as set forth in this Agreement until the responsibility is legally transferred to another entity. Before the Property is legally transferred to another entity, the Property Owner shall provide to the Town at least one of the following:

- A) A signed statement from the public entity assuming post-construction responsibility for treatment and detention measure maintenance and that the treatment and detention measures meet all local agency design standards; or B) Written conditions in the sales or lease agreement requiring the buyer or lessee to assume responsibility for operation and maintenance (O&M) consistent with this provision, which conditions, in the case of purchase and sale agreements, shall be written to survive beyond the close of escrow; or C) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning O&M responsibilities to the home owners association for O&M of the treatment and detention measures; or D) Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of treatment and detention measures.

#### SECTION 3: MAINTENANCE OF TREATMENT AND DETENTION MEASURES

The Property Owner shall not destroy or remove the stormwater treatment and detention measures from the Property nor modify the stormwater treatment and detention system in a manner that lessens its effectiveness, and shall, at its sole expense, adequately maintain the stormwater treatment and detention measure(s) in good working order acceptable to the Town and in accordance with the maintenance plan submitted by the Property Owner and approved by the Town Engineer or his or her designee, attached hereto as **Exhibit C**, and incorporated herein by this reference. This includes all pipes, channels or other conveyances built to convey stormwater to the treatment and detention measure(s), as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as maintaining the described facilities in good working condition so that these facilities continue to operate as originally designed and approved. The maintenance plan shall include a detailed description of and schedule for long-term maintenance activities.

#### SECTION 4: SEDIMENT MANAGEMENT

Sediment accumulation resulting from the normal operation of the stormwater treatment and detention measure(s) will be managed appropriately by the Property Owner. The Property Owner will provide for the removal and disposal of accumulated sediments. Disposal of accumulated sediments shall not occur on the Property, unless provided for in the maintenance plan. Any disposal or removal of accumulated sediments or debris shall be in compliance with all federal, state and local law and regulations.

#### SECTION 5: ANNUAL INSPECTION AND REPORT

The Property Owner shall, on an annual basis, complete the Treatment and Detention Measure Operation and Maintenance Inspection Report (annual report), attached to this Agreement as **Exhibit D**. The annual report shall include all completed Inspection and Maintenance Checklists for the reporting period and shall be submitted to the Town in order to verify that inspection and maintenance of the applicable stormwater treatment and detention measure(s) have been conducted pursuant to this Agreement. The annual report shall be submitted no later than December 31 of each year, under penalty of perjury, to:

Town of Atherton  
91 Ashfield Drive  
Atherton, CA 94027

attn: City Engineer

or another member of the Town staff as directed by the Town. The Property Owner shall provide a record of the volume of all accumulated sediment removed from the treatment and detention measure(s) in the annual report. The Property Owner shall conduct a minimum of one (1) annual inspection of the stormwater treatment and detention measure(s) before the wet season. This inspection shall occur between August 1st and October 1st each year. More frequent inspections may be required by the Maintenance Plan, **Exhibit C**. The results of inspections shall be recorded on the Inspection and Maintenance Checklist(s) attached as **Exhibit D**.

#### SECTION 6: NECESSARY CHANGES AND MODIFICATIONS

At its sole expense, the Property Owner shall make changes or modifications to the stormwater treatment and detention measure(s) and/or the long-term Maintenance Plan, **Exhibit C**, as may be determined as reasonably necessary by the Town to ensure that treatment and detention measures are properly maintained and continue to operate as originally designed and approved.

#### SECTION 7: ACCESS TO THE PROPERTY

The Property Owner hereby grants permission to the Town; the San Francisco Bay Regional Water Quality Control Board (Regional Board); the San Mateo County Mosquito Abatement District (Mosquito Abatement District); and their authorized agents and employees to enter upon the Property at reasonable times and in a reasonable manner to inspect, assess or observe the stormwater treatment and detention measure(s) in order to ensure that treatment and detention measures are being properly maintained and are continuing to perform in an adequate manner to protect water quality and the public health and safety. This includes the right to enter upon the Property when it has a reasonable basis to believe that a violation of this Agreement, the Town's stormwater management ordinance, guidelines, criteria, other written direction, or the San Mateo Countywide Clean Water Program's NPDES municipal stormwater permit (Regional Board Order R2-2003-0023, and any amendments or re-issuances of this permit) is occurring, has occurred or threatens to occur. The above listed agencies also have a right to enter the Property when necessary for abatement of a public nuisance or correction of a violation of the ordinance guideline, criteria or other written direction. Whenever possible, the Town, Regional Board, or the Mosquito Abatement District shall provide reasonable notice to the Property Owner before entering the property.

#### SECTION 8: FAILURE TO MAINTAIN TREATMENT AND DETENTION MEASURES

In the event the Property Owner fails to maintain the stormwater treatment and detention measure(s) as shown on the approved Site Plan or comparable document in good working order acceptable to the Town and in accordance with the maintenance plan incorporated in the Agreement, the Town, and its authorized agents and employees with reasonable notice, may enter the Property and take whatever steps it deems necessary and appropriate to return the treatment and detention measure(s) to good working order, in addition to all other rights and remedies available in law and in equity. Prior notice will not be necessary if emergency conditions require immediate remedial action. This provision shall not be construed to allow the Town to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that the Town is under no obligation to maintain or repair the treatment and detention measure(s) and in no event shall this Agreement be construed to impose any such obligation on the Town.

#### SECTION 9: REIMBURSEMENT OF TOWN EXPENDITURES

In the event the Town, pursuant to the Agreement, performs work of any nature (direct or indirect), including any reinspections or any actions it deems necessary or appropriate to return the treatment and detention measure(s) in good working order as indicated in Section 8, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Property Owner shall reimburse the Town, or shall forfeit any required bond upon demand within thirty (30) days of receipt thereof for the costs incurred by the Town hereunder. If these costs are not paid within the prescribed time period, the Town may assess the Property Owner

the cost of the work, both direct and indirect, and applicable penalties. Said assessment shall be a lien against the Property, or prorated against the beneficial users of the Property or may be placed on the property tax bill and collected as ordinary taxes by the Town. The actions described in this section are in addition to and not in lieu of any and all legal remedies as provided by law, available to the Town as a result of the Property Owner's failure to maintain the treatment and detention measure(s).

#### SECTION 10: INDEMNIFICATION

The Property Owner shall indemnify, hold harmless and defend the Town and its authorized agents, officers, officials and employees from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including attorney fees claimed or which might arise or be asserted against the Town that are alleged or proven to result or arise from the construction, presence, existence or maintenance of the treatment and detention measure(s) by the Property Owner or the Town. In the event a claim is asserted against the Town, its authorized agents, officers, officials or employees, the Town shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the Town, its authorized agents, officers, officials or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith. This section shall not apply to any claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including attorney fees claimed which arise due solely to the negligence or willful misconduct of the Town.

#### SECTION 11: NO ADDITIONAL LIABILITY

It is the intent of this Agreement to insure the proper maintenance of the treatment and detention measure(s) by the Property Owner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability not otherwise provided by law of any party for damage alleged to result from or caused by storm water runoff.

#### SECTION 12: PERFORMANCE FINANCIAL ASSURANCE

The Town may request the Property Owner to provide a performance bond, security or other appropriate financial assurance providing for the maintenance of the stormwater treatment and detention measure(s) pursuant to the Town's ordinances, guidelines, criteria or written direction.

#### SECTION 13: TRANSFER OF PROPERTY

This Agreement shall run with the land and shall be binding upon all heirs, successors, and assigns of Property Owner. The Property Owner further agrees whenever the Property is held, sold, conveyed or otherwise transferred, it shall be subject to this Agreement which shall apply to, bind and be obligatory to all present and subsequent owners of the Property.

#### SECTION 14: SEVERABILITY

The provisions of this Agreement shall be severable and if any phrase, clause, section, subsection, paragraph, subdivision, sentence or provision is adjudged invalid or unconstitutional by a court of competent jurisdiction, or the applicability to any Property Owner is held invalid, this shall not affect or invalidate the remainder of any phrase, clause, section, subsection, paragraph, subdivision, sentence or provision of this Agreement.

#### SECTION 15: RECORDATION

This Agreement shall be recorded by the Property Owner or by the Town by mutual agreement, within five (5) business days, or such time as agreed upon by both parties, after the execution date of this Agreement as stated above among the deed records of the County Recorder's Office of the County of San Mateo, California at the Property Owner's expense.

#### SECTION 16: RELEASE OF AGREEMENT

In the event that the Town determines that the stormwater treatment and detention measures located on the Property are no longer required, then the Town, at the request of the Property Owner shall execute a release of this Inspection and Maintenance Agreement, which the Property Owner, or the Town by mutual agreement, shall record in the County Recorder's Office at the Property Owner's expense. The stormwater treatment and detention measure(s) shall not be removed from the Property unless such a release IS so executed and recorded.

**SECTION 17: EFFECTIVE DATE AND MODIFICATION**

This Agreement is effective upon the date of execution as stated at the beginning of this Agreement. This Agreement shall not be modified except by written instrument executed by the Town and the Property -Owner at the time of modification. Such modifications shall be effective upon the date of execution and shall be recorded.

**SECTION 18: MISCELLANEOUS**

- a. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Mateo.
- b. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

**PROPERTY OWNER**

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print Property Owner name

\_\_\_\_\_  
Type or print Property Owner address, City, state, zip code

\_\_\_\_\_  
Type or print Property Owner phone number

{ attach notary acknowledgement }

**TOWN OF ATHERTON**

\_\_\_\_\_  
Signature for the Town

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print name and title

{ attach notary acknowledgment }

Approved as to form:

---

Signature for the City Attorney's Office

---

Type or print name and title

**Exhibit A**

*{legal description of property}*

## **Exhibit B**

*{legible reduced -scale (no larger than 8.5 "x14") conceptual plan showing location and type of stormwater treatment and detention measures. Stormwater treatment and detention measures should be labeled (e.g. swale #1, swale #2) and the direction of stormwater flow indicated. The location of bubblers and disconnected downspouts should be included in the conceptual plan.}*

**Exhibit C**

*{maintenance plan}*

## **Exhibit D**

*{annual report form for  
treatment and detention measure operation and  
maintenance inspection}*

Form to be based on the most recent version of the following original reference document:

**Appendix I** of the  
C.3 Stormwater Technical Guidance  
For developers, builders and project applicants  
Dated: March 20, 2007  
by: San Mateo Countywide Water Pollution Prevention Program



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: REQUEST FROM MENLO-ATHERTON LITTLE LEAGUE TO LEAVE  
THE HOLBRROK-PALMER PARK LITTLE LEAGUE FIELD  
BACKSTOP IN PLACE**

#### **RECOMMENDATION:**

The Park and Recreation Commission recommends that the request be denied.

#### **BACKGROUND:**

After extensive discussion and controversy in July 2000, the City Council approved a license agreement with Menlo-Atherton Little League, Inc. (Little League) permitting Little League to construct, operate and use a baseball field in Holbrook-Palmer Park. One provision of the agreement, Article 1, Paragraph 7, states:

Little League may install fencing on the first and third baselines of the Project Area baseball field, an appropriate backstop and players seating area fencing (the "Field Improvements") at the start of each Season during the term of this Agreement provided that the Field Improvements shall be removed by Little League at the end of each Season.

By letter to the Mayor dated July 7, 2007, Little League requested relief from this provision. The request was considered by the City Council at the July City Council meeting and referred to the Park and Recreation Commission for a recommendation.

**ANALYSIS:**

The Park and Recreation Commission discussed this request at its August 1, 2007, meeting. No representative from Little League was in attendance, although a representative did speak at the September 5, 2007, meeting. The letter from Little League does not state any changed conditions that would warrant a revision to the agreement, which has a term of ten (10) years. To quote one Commissioner: "A contract is a contract."

The Park and Recreation Commission recalled the extensive efforts required to approve a Little League field in the park in the years prior to its approval in 2000, with considerable public and Commission sentiment toward not allowing the field in the park. The Commission noted that when the backstop and fences are up, the area is a designated baseball field only; but when they are down, the area is open space, and open space is preferred.

The Little League representative who attended the September Park & Recreation Commission meeting noted that he is often asked by park patrons why he is taking the backstops down as they would like to use them all year.

The Park and Recreation Commission recommends that contract terms be continued unchanged.

**FISCAL IMPACT:**

There is no fiscal impact to the Town by this decision, either yes or no.

Prepared by:

Approved by:

\_\_\_\_\_  
Duncan L. Jones, P.E.  
Public Works Director

\_\_\_\_\_  
Wendé C. Protzman  
Interim City Manager

Attachments: Letter from Little League  
License Agreement

**From:** Carlson, Alan B. [ACarlson@littler.com]  
**Sent:** Saturday, July 07, 2007 3:05 PM  
**To:** Jim Robinson  
**Cc:** Kathi Hamilton; Jeffrey Morris; David Crowder; Robert Crowe  
**Subject:** RE: Holbrook Palmer Park - Menlo Atherton Little League  
Jim,

Please place this matter on the Council's agenda for the regular July 18 meeting.

Thanks, Alan

Alan B. Carlson  
Littler Mendelson  
50 W. San Fernando St., 14th Floor  
San Jose, CA 95113  
Telephone: (408) 998-4150  
Facsimile: (408) 715-0309  
Email: acarlson@littler.com

---

**From:** Jeffrey Morris [mailto:jeff@jamorris.com]  
**Sent:** Saturday, July 07, 2007 7:00 AM  
**To:** Carlson, Alan B.  
**Cc:** David Crowder; Robert Crowe; Jeffrey Morris  
**Subject:** Holbrook Palmer Park - Menlo Atherton Little League

July 7, 2007

Mayor Alan B. Carlson  
Town of Atherton  
91 Ashfield  
Atherton, CA 94027  
Dear Mr. Mayor,

On behalf of the Menlo-Atherton Little League, we would like to express our appreciation for the Town of Atherton's longstanding support for youth baseball in our community. Our league's use of the baseball field at Holbrook-Palmer Park is critical to our ability to offer the Little League baseball program to residents of Atherton and Menlo Park, and our players and their families really enjoy practicing and playing baseball in this beautiful park.

As you know, our operating agreement with the Town of Atherton requires the Little League to set up and take down the backstop at the Holbrook-Palmer field before and after each baseball

season. While we are happy to continue to honor our agreement, it would save Menlo-Atherton Little League considerable time and money if we could leave the backstop in place on a year-round basis. We would like to ask the City Council to reconsider this provision of our agreement so that we can leave the backstop in place for the foreseeable future.

We are happy to appear at the next City Council meeting if you think it would be helpful. If you have any questions or if there is anything we can do to facilitate approval of our request, please let us know.

Thank you for your consideration and for your support of Menlo-Atherton Little League.

Sincerely,

Bob Crowe  
President

Dave Crowder  
Vice President/Fields

Jeff Morris  
Coach/former Board member

----

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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To reply to our email administrator directly, send an email to [postmaster@littler.com](mailto:postmaster@littler.com)

Littler Mendelson, P.C.  
<http://www.littler.com>

COPY

## LICENSE AGREEMENT

(HOLBROOK-PALMER PARK LITTLE LEAGUE BASEBALL FIELD)

THIS LICENSE AGREEMENT (the "Agreement") is entered into as of the 19th day of July, 2000 by and between the Town of Atherton, a California municipal corporation ("Atherton"), and the Menlo-Atherton Little League, Inc., a 501(c)(3) tax exempt organization ("Little League").

### RECITALS

WHEREAS, subject to the terms set forth in this Agreement, Atherton has agreed to grant a license to Little League to permit Little League to construct, operate and use a little league baseball field and ancillary improvements on a portion of the public park commonly known as Holbrook-Palmer Park located in Atherton, California ("**Holbrook-Palmer Park**");

WHEREAS, the intent of the parties is that the proposed project will become a permanent part of Holbrook-Palmer Park and will be used and enjoyed by Little League's players, participants, coaches, spectators and others for many years; and

WHEREAS, in consideration for the license granted herein, Little League has agreed to construct certain improvements at Holbrook-Palmer Park and reimburse Atherton for certain maintenance costs incurred as a result of the proposed project.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I.

#### GRANT OF LICENSES

1. License to Use Project Area. Atherton hereby grants to Little League, its players, participants, coaches, spectators and invitees a license to operate, use and enjoy the portion of Holbrook-Palmer Park on which the baseball field and ancillary improvements to be constructed by Little League as approved by Atherton are located (the "**Project Area**") for the purpose of conducting little league baseball games, practices and related events, subject to the terms and conditions set forth in this Agreement. The foregoing described license shall be irrevocable unless this Agreement has been terminated pursuant to the terms of Article VII hereof. The "**Project Area**" is as delineated on the map attached hereto as Exhibit "A" and incorporated herein for all purposes. Atherton will not grant a license or permit or give

permission to any other person or group to use the Project Area for organized events during the Season (as defined below). Further, Atherton hereby grants to Little League and its agents an exclusive license to use the storage shed constructed as part of the Physical Improvements (as defined below) on a year-round basis.

2. License to Construct Physical Improvements. Atherton hereby grants to Little League, its contractors and agents a license to construct and install any and all of the grading, landscaping and physical improvements shown on the plan approved by Atherton attached hereto as Exhibit "B" and incorporated herein by this reference (collectively, the "**Physical Improvements**") at, on and under Holbrook-Palmer Park in the Project Area. The foregoing described license shall be irrevocable unless this Agreement has been terminated pursuant to the terms of Article VII hereof. Upon completion of such construction, the Physical Improvements will be owned by Atherton.

3. Little League Use During Season. Little League will have the exclusive right to use the Project Area during the months of late February, March, April, May and June (the "**Season**") of each year during the term of this Agreement. Little League's use of the Project Area during the Season shall be limited to the following schedule:

Monday through Friday: Little League may commence practices or baseball games on weekdays during the Season no earlier than 3:30 p.m. All practices must be concluded by 7:00 p.m. Little League will not start an inning of a game after 7:00 p.m.

Saturday: Little League may play two baseball games on Saturdays during the Season. The first baseball game will be scheduled to commence no earlier than 9:00 a.m. and must be concluded by 11:30 a.m. The second baseball game will be scheduled to commence no earlier than 1:00 p.m. and must be concluded by 4:30 p.m. On any Saturday during the Season, the Project Area baseball field may also be used for practices during the same time periods allowed for games.

Sunday: No baseball games or practices may be scheduled or held on Sundays.

4. Contribution for Restroom Facilities. Within thirty (30) days of the date of this Agreement, Little League will make a one-time payment of FIVE HUNDRED DOLLARS (\$500.00) to Atherton as a contribution toward the cost of maintenance of the restroom facilities located at Holbrook-Palmer Park which will be available for use by Little League, its players, participants, coaches, spectators and invitees during the time periods referenced in Article I, Section 3. All additional maintenance and operating costs of restroom facilities within Holbrook-Palmer Park shall be borne by Atherton.

5. Contribution for Maintenance. Within thirty (30) days of the date of this Agreement, Little League will deliver the sum of TWO THOUSAND DOLLARS (\$2,000) (the "**Security Deposit**") to Atherton to be held by Atherton as a Security Deposit to secure Little

League's maintenance contribution obligations pursuant to the terms of Article V of this Agreement (the "**Contribution Obligations**"). In the event that Little League is in default under its Contribution Obligations and such default continues for a period of more than thirty (30) days after Atherton has delivered written notice of such default to Little League, Atherton may use all or a portion of the Security Deposit to satisfy such Contribution Obligations. In the event that the Security Deposit is diminished below \$1,000 due to use thereof by Atherton pursuant to this Section, Little League, upon receipt of a written request from Atherton, will promptly restore the amount of the Security Deposit to TWO THOUSAND DOLLARS (\$2,000.00). The Security Deposit account will earn interest similar to other deposit trust accounts held and administered by Atherton, which will be added to the Security Deposit. The rate of interest will be determined by Atherton's Director of Finance in a manner consistent with other funds invested by Atherton. Little League assumes that Atherton may use the total return of the Local Area Investment Fund (LAIF) and the San Mateo County Pool Fund to determine the foregoing rate of interest. Any portion of the Security Deposit remaining upon termination of this Agreement shall be promptly refunded to Little League.

6. Outfield Fencing. Little League may install outfield fencing on the Project Area each Monday afternoon during the Season and will remove any such outfield fencing each Saturday during the Season after conclusion of the second game or practices. The outfield fencing will be removed by Little League at the end of each Season. The outfield fencing shall be the property of Little League.

7. First and Third Base Fencing, Backstop Fencing and Players Seating Area Fencing. Little League may install fencing on the first and third baselines of the Project Area baseball field, an appropriate backstop and players seating area fencing (the "**Field Improvements**") at the start of each Season during the term of this Agreement provided that the Field Improvements shall be removed by Little League at the end of each Season. Atherton will provide storage space in the corporation yard at Holbrook-Palmer Park or at the Public Works Corporation Yard on Dinkelspiel Lane for the Field Improvements at no cost to Little League. The Field Improvements shall be the property of Little League.

## ARTICLE II.

### PERMITS APPROVED

Atherton hereby acknowledges that Little League has applied for and Atherton has issued or granted all required land use permits and other approvals required to build and operate the Physical Improvements other than the required building and/or grading permits. Atherton hereby further acknowledges that it has approved a Mitigated Negative Declaration pursuant to the California Environmental Quality Act (hereinafter "**CEQA**") in connection with the project contemplated herein and the Physical Improvements and that all CEQA requirements related thereto have previously been satisfied by Little League.

### ARTICLE III.

#### CONSTRUCTION

1. Costs. All costs to construct the Physical Improvements, including, but not limited to the little league baseball field, storage shed and landscaping, each as designated on the plan attached hereto as Exhibit "B", will be paid by Little League. Atherton will not be required to contribute any funds for the construction of the Physical Improvements.

2. Contractor. Atherton shall select a contractor for the construction of the Physical Improvements pursuant to the public bidding law, Public Contracts Code Section 20160 as presently existing or hereafter amended. Little League will provide plans and specifications for such Physical Improvements for use by Atherton in its selection of the contractor. Following award of bid and selection of contractor, Atherton shall deliver notice to Little League which shall deposit within ten (10) business days after such written notice has been sent by Atherton to Little League, funds in the full amount of the approved bid. Upon receipt of these funds, Atherton shall give notice to proceed to the contractor.

### ARTICLE IV.

#### OWNERSHIP

1. Physical Improvements. Upon completion of construction, Atherton will own the Physical Improvements.

2. Field Improvements and Little League Equipment. Little League or its participants will own, operate and maintain all of the Field Improvements and the equipment, bases and other items used by Little League or its participants in connection with practice sessions and baseball games at Holbrook-Palmer Park.

### ARTICLE V.

#### MAINTENANCE OF PHYSICAL IMPROVEMENTS

1. Maintenance Obligations. Little League agrees that upon presentation of evidence of costs incurred by Atherton, Little League will reimburse Atherton for the costs incurred by Atherton in connection with the maintenance obligations described on Exhibit "C" attached hereto and incorporated herein for all purposes which maintenance obligations shall be performed by Atherton town staff, or by a private contractor acceptable to both Atherton and Little League, to the extent that such costs are in excess of the normal and routine costs which would have been incurred by Atherton prior to the construction of the Physical Improvements related to maintenance of the Project Area.

2. Third Party Damages. In the event that a third-party damages the Physical Improvements (excepting normal and reasonable wear and tear), Atherton will use its best efforts to identify the person or persons responsible for such damage and seek payment from them of monetary damages in an amount sufficient so that Little League may restore or replace the damaged Physical Improvements. In the event that any portion of the Physical Improvements is damaged or destroyed by an act of nature or unidentifiable third-party, Little League may, at Little League's option and cost, repair or replace such Physical Improvements; provided that in the event such Physical Improvements were covered by insurance carried by Atherton, Atherton will contribute any proceeds from such insurance to the cost of such repair or replacement.

## ARTICLE VI.

### INSURANCE

Little League shall maintain public liability insurance covering Little League's use of the Project Area in an amount equal to not less than ONE MILLION DOLLARS (\$1,000,000) with an endorsement showing Atherton as an additional insured.

Each party understands, however, and agrees that the insurance coverage provided by Little League will provide coverage only for Little League authorized activities and events, and will not provide coverage for third-parties or third-party events. Use of the Project Area by third-parties or for non-Little League events shall not be covered by Little League's insurance policy nor shall Atherton make a claim for coverage arising from such third-party usage against the Little League policy.

## ARTICLE VII.

### TERM

This Agreement shall remain in force for a period of ten (10) years from the date hereof, unless sooner terminated for cause pursuant to Article VIII hereof or extended as provided below. Unless Little League provides written notice to Atherton on or before the expiration of the then current term of this Agreement of its intent to terminate this Agreement, the term of this Agreement will be automatically terminated. The term of this Agreement may be extended, if desired, upon mutual agreement of the parties.

## ARTICLE VIII.

### ANNUAL REVIEW

The City Manager of Atherton and the President of Little League will jointly conduct an annual review of use and operation of the Project Area to ensure that Little League has used the Project Area in accordance with the CEQA mitigation measures adopted for the project and in accordance with the terms and provisions of this Agreement (the "**Annual Review**"). Prior to this meeting, the City Manager will meet with both the City Council and the Parks & Recreation Commission to receive input on Little League's compliance with this agreement and the CEQA mitigation measures. Unless otherwise determined by the mutual agreement of the City Manager of Atherton and President of Little League, the Annual Review shall be held at 7:30 p.m. on the third Tuesday of each July during the term of this Agreement at the offices of Atherton. If any material breach of the adopted CEQA mitigation measures or of Little League's obligations pursuant to this Agreement is identified in writing by Atherton to Little League as a result of the Annual Review, Little League will be given forty-five (45) days to cure the identified breach (or such longer period of time as is reasonable under the circumstances if the breach is not capable of being cured in such 45-day period and Little League is working diligently to cure such breach). In the event that Little League is unable or unwilling to cure or remedy such breach to the satisfaction of Atherton, then the parties may submit the issues to binding arbitration in accordance with applicable laws, the resolution of which could include the termination of this Agreement.

## ARTICLE IX.

### HOLD HARMLESS

During the term of this Agreement, Little League shall indemnify, defend and hold harmless Atherton from and against any and all damages, losses, liabilities, actions, suits, claims, proceedings, investigations, audits, demands, assessments, fines, judgments, settlements, costs and other expenses (including, without limitation, reasonable attorney's fees and expenses and costs of investigation incurred in defending against or settling any of the foregoing and any amounts paid in settlement thereof) incurred or resulting from Little League's activities on the Project Area ("**Claims**") excluding, however, any such Claims arising from the gross negligence, fraud or willful misconduct of Atherton.

## ARTICLE X.

### NOTICES

All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served (as an alternative to personal service) by registered or certified mail (postage pre-paid) or sent by



parties. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

4. Legal Construction/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5. Attorney's Fees. In the event of any controversy, claim, dispute, arbitration or litigation between the parties hereto (whether sounding in contract, tort or both) to enforce or interpret any of the provisions of this Agreement or any right of any party hereto, the non-prevailing party to such action agrees to pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred therein by the prevailing party, including, without limitation, fees incurred during a hearing of any action, claim or dispute and any fees incurred regarding any petition to confirm, correct, modify or vacate any award, as a result of any appeal from a judgment entered in connection with such litigation, or to enforce said judgment. To so recover, it shall not be necessary that the prevailing party prevail in each and every one of its claims. Rather, the amount of the award of attorney's fees shall, in the court's discretion, reflect the degree to which the prevailing party or parties have prevailed in some of their claims.

6. Limitation on Recourse. The obligations of Little League set forth in this Agreement are those of Menlo-Atherton Little League, Inc. only and under no circumstances shall Atherton have any recourse for satisfaction of such obligations from any officer, director, board member, commissioner or other representative of Little League, or any participant, player, coach, parent or affiliated entity that is related to Little League.

7. Authority. Each party to this Agreement hereby represents to the other that it has the appropriate authority to enter into and perform this Agreement and that no consents which have not previously been obtained are required for such party to enter into this Agreement.

8. Applicable Laws. This Agreement shall be governed by and construed in accordance with the internal laws, and not the laws pertaining to choice or conflict of laws, of the State of California.

9. Counterparts. This Agreement may be executed in several counterparts each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

**ATHERTON:**

TOWN OF ATHERTON, a California  
municipal corporation

Dated: 08/01, 2000

By: *Nan Chapman*  
Name: Nan Chapman  
Title: Mayor

Attest:

*Ralph Freedman*  
Name: Ralph Freedman  
Title: City Manager

**LITTLE LEAGUE:**

MENLO-ATHERTON LITTLE  
LEAGUE, INC., a 501(c)(3) tax  
exempt organization

Dated: 9/15, 2000

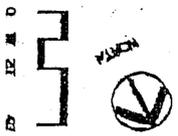
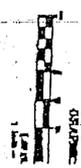
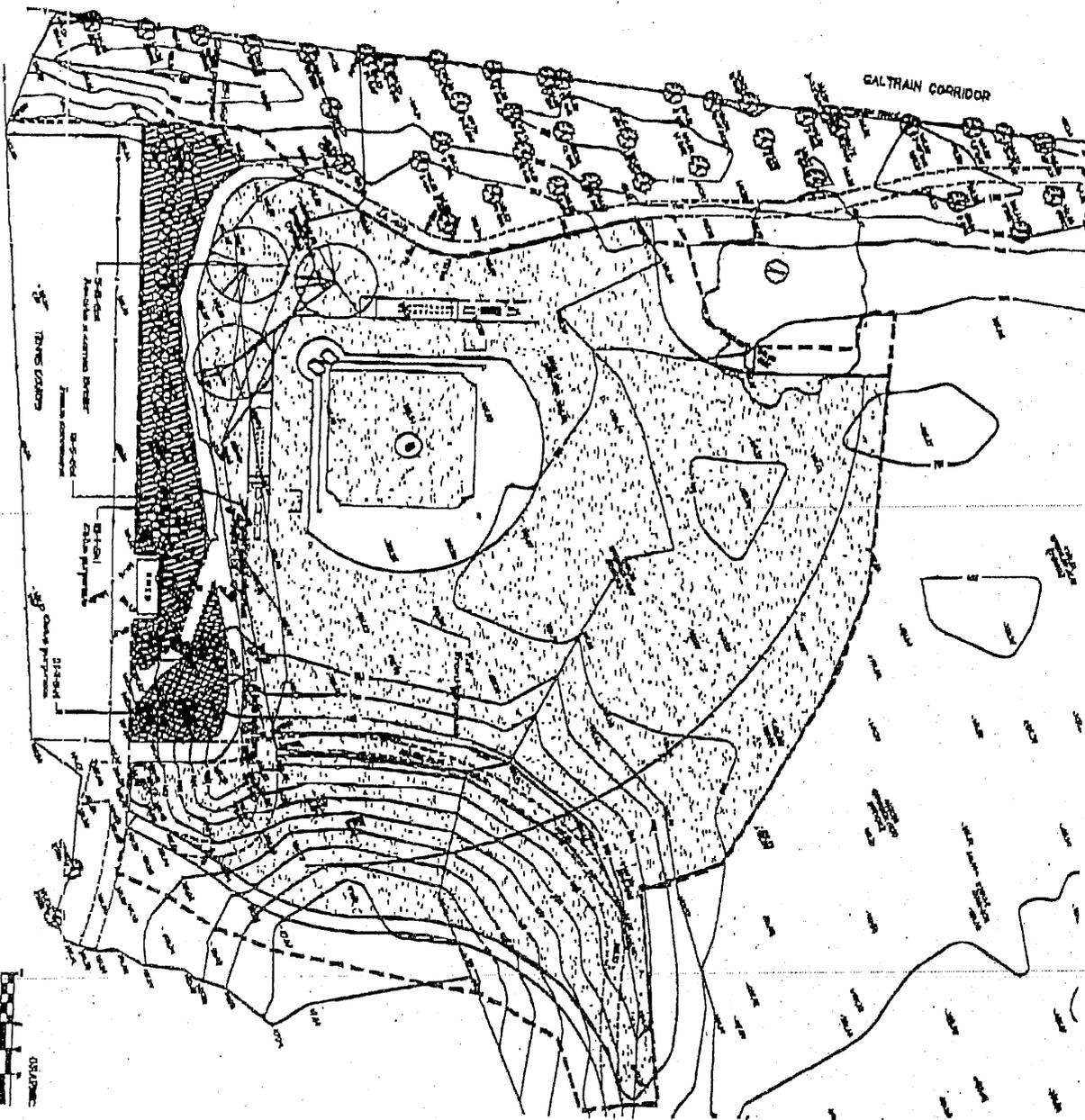
By: *St J Schultz*  
Name: Steven J. Schultz  
Title: President

Attest:

*John Foster*  
Name: John Foster  
Title: Menlo-Atherton Little League  
Board Member

**EXHIBIT "A"**

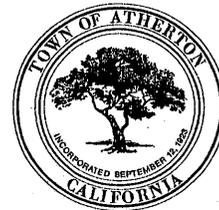
**Project Area**



<p><b>PLANTING PLAN</b> HOLBROOK FIELD Alhambra, California</p>						
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**EXHIBIT "B"**

**Physical Improvements**



**PUBLIC WORKS DEPARTMENT**  
91 Ashfield Road • Atherton, CA 94027  
(650) 752-0570 • Fax (650) 688-6539

September 7, 2007

Mr. Bill Kitajima  
Project Manager  
West Bay Sanitary District  
500 Laurel Street  
Menlo Park, CA 94025-3896

RE: Agreement between the Town of Atherton and West Bay Sanitary District for adjustment of sewer manholes on the Valparaiso Avenue Overlay Project #06-001

Dear Bill,

Enclosed is a copy of the signed agreements from the Town of Atherton for your records.

If you have any further questions, please do not hesitate to contact me at 650-752-0532.

Thank you,

Duncan Jones  
Public Works Director

## PROPOSAL TO THE TOWN OF Atherton

### HOLBROOK LITTLE LEAGUE FIELD PROJECT NO. 00-004

Proposal of Jensen Corporation (hereinafter called "BIDDER"), organized and existing under the Laws of the State of California, doing business as \* corporation to the Town of Atherton.

\*(Insert "a corporation," "a partnership" or "an individual" as appropriate)

In compliance with your Advertisement for Bids, the undersigned as BIDDER hereby proposes to perform all WORK for the construction of Holbrook Little League Field in strict accordance with the Contract Documents therefore. BIDDER, declares and certifies that he has carefully examined the location of the proposed work, the annexed proposed form of the Construction Contract, and the Plans, Specifications and Special Provisions and other Contract Documents referred to therein; that he proposes, and agrees if this Proposal is accepted, that he will contract with the Town of Atherton, in the form of the Construction Contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work and furnish all the materials specified in the Construction Contract, in the manner and time therein prescribed and according to the requirements of the City Engineer as therein set forth, and that he will accept in full payment therefore for the unit prices set fourth in the annexed BID SCHEDULE.

BIDDER certifies to comply with the California Labor Code requirements and General Prevailing Wage Determinations made by the Director of Industrial Relations.

Accompanying this Proposal is \* bidder's bond

\*(Insert "Cash," "Cashier's Check," "Certified Check" or "Bidder's Bond" as the case may be)

made out to the Town of Atherton, in an amount equal to at least ten percent (10%) of the total bid. If this proposal is accepted and the undersigned should fail to sign and return the Construction Contract, together with all bonds and insurance required by Sections 3.02 and 3.03 of the Standard Specifications within fifteen (15) working days of receipt of the Construction Contract, or fail to provide an acceptable schedule required by Section 6.03 of the Standard Specifications or an acceptable recycling plan required by section 16.02 of the Standard Specifications within 20 working days of receipt of the Construction Contract, the Town may, at its option, determine that the BIDDER has abandoned the Contract. Thereupon this Proposal and the acceptance thereof shall be null and void, and the forfeiture of such bid security accompanying this Proposal shall operate and the same shall become the property of the Town of Atherton.

BIDDER hereby agrees to commence WORK under this contract within 7 working days of the date shown at the top of the NOTICE TO PROCEED

Jensen Corporation

and to fully complete the WORK within 45 working days from the FIRST DAY OF CONSTRUCTION as defined in the NOTICE TO PROCEED. BIDDER further agrees to pay as liquidated damages, the sum of \$250.00 for each working day beyond the completion date deadline that the WORK has not been substantially completed, as provided in Section 6.06 of the Standard Specifications.

BIDDER acknowledges receipt of the following ADDENDUM:

Addendum Number 1, dated 8/17/00

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Addendum Number 2, dated 8/30/00

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### BID SCHEDULE

Bidder agrees to perform all the work described in the Contract Documents for the lump sum price stated below:

#### TOTAL LUMP SUM PRICE

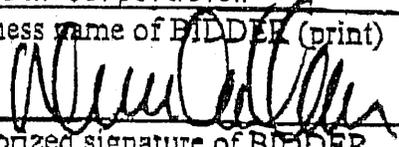
One hundred forty five thousand, five hundred DOLLARS (\$ 145,555.00 )  
fifty five

ADD ITEM PRICE INCREASE TO INSTALL SOD IN LIEU OF HYDROSEEDING LAWN

Seventeen thousand, five hundred DOLLARS (\$ 17,500.00 )

The undersigned Bidder, if the successful bidder shall, within five working days of bid opening, submit a schedule of values allocated to various portions of Work, prepared in such form and supported by such data to substantiate its accuracy as the City Engineer may require. The schedule, unless objected to by the City Engineer, shall be used as a basis for reviewing the Contractor's applications for progress payments.

Jensen Corporation  
Business name of BIDDER (print)

  
Authorized signature of BIDDER

10950 N. Blaney Ave., Cupertino, CA 95014  
Business address (print)

Duane G. Wasson  
Name of signer (print)

408) 446-1118  
Telephone number

Chairman  
Title of signer (print)

408) 446-4881  
Fax number

259540  
Contractor's License Number

C-27 A  
License Classification(s)

4/30/02  
Contractor's License expiration date

**Note:** Corporations must, upon request, furnish certification attesting to corporate existence and authority of officers to sign contracts and other documents.

**JENSEN CORPORATION LANDSCAPE CONTRACTORS LICENSE #259340**

10950 N. BLANEY AVENUE, CUPERTINO, CALIFORNIA 95014-0555 (408) 446-1118 FAX (408) 446-4881

Schedule of Values  
Holbrook Little League Field

Layout, engineering, demolition, drainage.....	\$39,000.00
Grading.....	22,000.00
Irrigation.....	37,000.00
Landscaping.....	37,555.00
Electrical.....	5,000.00
ACPaving.....	2,000.00
Maintenance.....	3,000.00

National Award Winning Landscape Contractors

**JENSEN CORPORATION LANDSCAPE CONTRACTORS LICENSE #259540**  
10950 N. BLANEY AVENUE, CUPERTINO, CALIFORNIA 95014 (408) 446-1118 FAX (408) 446-4881

September 7, 2000

Mr. Jeff Morris  
Town of Atherton

Re: Holbrook Field Value Engineering Suggestions

Dear Jeff,

The following are value engineering suggestions for the Holbrook Field project that would not compromise the quality that the Town expects from this construction.

Irrigation V.E.

Change rotor sprinklers from Rainbird T30 to Hunter I-20,  
Rainbird 37AP and 47AP to Hunter I-40 sprinklers.

DEDUCT (\$3,000.00)

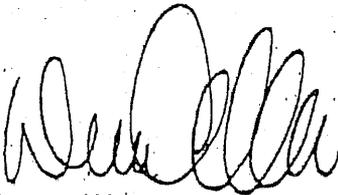
Electrical V.E.

If The Town of Atherton were to stamp the electrical plan, rather than a sub-contracted electrical engineer

DEDUCT (\$2,000.00)

If you have any questions, please feel free to call our office.

Sincerely,



Duane Wasson  
President

\_\_\_\_\_  
National Award Winning Landscape Contractors

### BID SCHEDULE

Bidder agrees to perform all the work described in the Contract Documents for the lump sum price stated below:

**TOTAL LUMP SUM PRICE**

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_ )

The undersigned Bidder, if the successful bidder, shall, within five working days of bid opening, submit a schedule of values allocated to various portions of Work, prepared in such form and supported by such data to substantiate its accuracy as the City Engineer may require. The schedule, unless objected to by the City Engineer, shall be used as a basis for reviewing the Contractor's applications for progress payments,

\_\_\_\_\_  
Business name of BIDDER (print)

\_\_\_\_\_  
Authorized signature of BIDDER

\_\_\_\_\_  
Name of signer (print)

\_\_\_\_\_  
Title of signer (print)

\_\_\_\_\_  
Contractor's License Number

\_\_\_\_\_  
Contractor's License expiration date

\_\_\_\_\_  
Business address (print)

\_\_\_\_\_  
Telephone number

\_\_\_\_\_  
Fax number

\_\_\_\_\_  
License Classification(s)

**Note:** Corporations must, upon request, furnish certification attesting to corporate existence and authority of officers to sign contracts and other documents

NON-COLLUSION AFFIDAVIT

HOLBROOK LITTLE LEAGUE FIELD  
PROJECT NO. 00-004

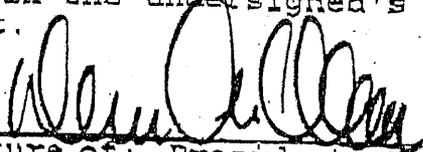
This Affidavit to be fully executed by Bidder  
and submitted with the bid

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Santa Clara )

\* Duane G. Wasson <sup>\*(name)</sup>, being first  
duly sworn, deposes and says that he or she is \* Chairman  
<sup>\*(President, Secretary, Manager, Owner or Representative)</sup>  
of \* Jensen Corporation <sup>\*(Name of Company or Corporation or Owner)</sup>, the party making the

foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing representations and all other representations made in the undersigned's proposal attached hereto are true and correct.

  
Signature of: President, Secretary,  
Manager, Owner or Representative

**BID BOND**

TOWN OF Atherton

HOLBROOK LITTLE LEAGUE FIELD  
PROJECT NO. 00-004

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_,  
\_\_\_\_\_, as Bidder, and \_\_\_\_\_,  
\_\_\_\_\_, as Surety, are held and firmly bound unto the Town  
of Atherton, in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_),  
lawful money of the United States, which sum is at least ten percent (10%) of the  
total amount bid by Bidder to the TOWN for the above stated project, for the  
payment of which sum well and truly made, we bind ourselves, our heirs,  
executors, administrations, and successors, jointly and severally, firmly by  
these presents.

The condition of this obligation is such that if the above bound Bidder  
submits a bid to the TOWN for the above referenced project (the terms and  
conditions of the bid are incorporated by reference), and if said bid is rejected  
by the TOWN, or if said bid is accepted by the TOWN and the Bidder executes all  
Contract Documents and provides all required bonds, insurance and schedule, in  
the time and manner specified in the Town of Atherton Standard Specifications,  
then this obligation shall become null and void; otherwise, it shall be and  
remain in full force and effect in favor of the TOWN.

The Surety, for value received, hereby stipulates and agrees that the  
obligations of said Surety and its bond shall be in no way impaired or affected  
by any extension of the time within which the TOWN may accept such Proposal; and  
said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the TOWN and judgement is  
recovered, the surety shall pay all reasonable costs incurred by the TOWN,  
including reasonable attorney's fees to be fixed by the court.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have  
the right, power, legal capacity and authority to enter into and execute this  
document on behalf of the above bounded Bidder and Surety, and have set their  
names, titles and signatures hereon this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

BIDDER

SURETY

BY \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney-in-Fact  
\_\_\_\_\_  
\_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Notary acknowledgments of Bidder and Surety must be attached.



CONTRACTOR'S EXPERIENCE AND QUALIFICATION

To be submitted with bid

HOLBROOK LITTLE LEAGUE FIELD
PROJECT NO. 00-004

The following statement as to experience and qualifications of the Bidder is submitted in conjunction with the proposal, as a part thereof and the truthfulness and accuracy of the information is guaranteed by the bidder.

The Bidder has been engaged in the contracting business under the present business name for 31 years. The experience of Bidder's RMO or RME in work of a nature similar to that covered in the proposal extends over a period of 12 years.

The Bidder currently holds a valid Contractor's License of the following Class or Classes, C-27 A issued by the Contractors License Board under the provision of Chapter 9 of Division 3 of the California Business and Professions Code.

The Bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to him, except as follows: (Name any and all exceptions and reasons therefore). n/a

The following is a list of plant and equipment owned by the Bidder, and which is available for use on the proposed work as required.

Table with 4 columns: Quantity, Name, Type & Capacity, Condition, Location. The first row contains the text 'See attached list'.

## CONTRACTOR'S EXPERIENCE AND QUALIFICATIONS (page 2 of 3)

The following are the most recent projects on which the Bidder has performed work of similar nature, size and complexity, and the names, addresses and phone numbers of the contracting agencies. (Name at least four.)

## PROJECT 1

Project name: Madsen Flanagan Fields  
 Location: San Carlos, Owner's name: City of San Carlos  
 Nature of project: New soccer and baseball fields  
 Completion date: 5/00, Contract time allotted: 45 working day  
 Total project cost: \$ 959,541.00, Completed on time? yes  
 Nature of Bidder's participation: General Contractor  
Supervised concrete, fencing, lighting, asphalt and underground subcontractors  
 Value of work performed by bidder's employees: \$ 550,000.00  
 Name of Owner's representative: Bob Eppler  
 Representative's address: 600 Elm St.  
San Carlos, CA, Telephone number: 650) 802-4204

## PROJECT 2

Project name: Rosita Park  
 Location: Los Altos, Owner's name: City of Los Altos  
 Nature of project: New baseball and soccer fields  
 Completion date: 2/00, Contract time allotted: 90 days  
 Total project cost: \$ 337,000.00, Completed on time? yes  
 Nature of Bidder's participation: General Contractor  
Supervised concrete, fencing, asphalt and electrical subcontractors  
 Value of work performed by bidder's employees: \$ 175,000.00  
 Name of Owner's representative: Ed Jackson  
 Representative's address: #1 North San Antonio Rd.  
Los Altos, CA, Telephone number: 650) 948-1491

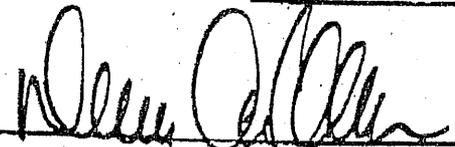
CONTRACTOR'S EXPERIENCE AND QUALIFICATIONS (page 3 of 3)

PROJECT 3

Project name: Wilcox High School Football, Baseball and Soccer Fields  
 Location: Santa Clara, Owner's name: Santa Clara Unified School District  
 Nature of project: Soccer, football and baseball fields  
 Completion date: 12/99, Contract time allotted: 8 months  
 Total project cost: \$ 1,230,986.00, Completed on time? yes  
 Nature of Bidder's participation: General Contractor  
Supervised concrete, asphalt, track surfacing, fencing, dugout construction,  
lighting and electrical subcontractors  
 Value of work performed by bidder's employees: \$700,000.00  
 Name of Owner's representative: Larry Adams  
 Representative's address: 1889 Lawrence Station Rd.  
Santa Clara, CA, Telephone number: 408) 983-2001

PROJECT 4

Project name: La Entrada Fields  
 Location: Menlo Park, Owner's name: AYSO - City of Menlo Park  
 Nature of project: New soccer and baseball fields  
 Completion date: 2/99, Contract time allotted: 90 working days  
 Total project cost: \$ 428,515.00, Completed on time? yes  
 Nature of Bidder's participation: General Contractor  
Supervised underground, asphalt, concrete, grading and electrical  
subcontractors  
 Value of work performed by bidder's employees: \$250,000.00  
 Name of Owner's representative: Steven Allen  
 Representative's address: P. O. Box 403  
Menlo Park, CA, Telephone number: 650) 367-5743

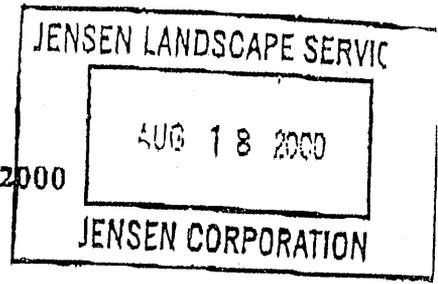
Signed by Bidder   
 Duane G. Wasson, Chairman

TRACTOR IDENTIFICATION

CODE	JENSEN #	NAME	MODEL	REF#	DESCRIPTION	FORERAN	DATE	PURCHASE PRICE
1	3	MASSEYFERGUSON	30D	19A337880	TRACTOR	Paul	10/26/80	24,500.00
1	2	MASSEYFERGUSON	30B	19A316316	TRACTOR	Bob	6/18/85	17,825.97
1	1	MASSEYFERGUSON	20E	1900702	TRACTOR	SHOP	4/26/84	28,579.34
1	6	MASSEYFERGUSON	40E	351280315	TRACTOR	Ramon	2/13/98	17,500.00
1	7	MASSEYFERGUSON	40E	312800484	TRACTOR	Memo	5/26/93	24,356.25
1	4	MASSEYFERGUSON	40E	512801045	TRACTOR	Paul	4/7/92	16,237.50
1	5	MASSEYFERGUSON	40E	512800540	TRACTOR	Emilio	10/1/98	25,000.00
1	9	MASSEYFERGUSON	640	4441116400214	TRACTOR	JL	8/1/96	47,442.00
1	10	FERREC	640	14411116400078	TRACTOR	Jesse	9/1/98	48,400.00
1	11	FERREC	640	44411116400728	TRACTOR	John	4/1/98	51,917.00
1	12	ROBOYA	620	72261	TRACTOR	Yard	9/30/96	22,250.00
1	8	FERREC	640B	44411116400728	TRACTOR	Memo	8/15/90	51,917.00
2	1	TOYOTA	3SDK5	10295	SKID STEER	Jesse	4/1/90	12,276.00
2	2	TOYOTA	3SDK5	10299	SKID STEER	Memo	3/20/90	15,557.25
2	3	TOYOTA	3SDK5	10563	SKID STEER	Ramon	12/29/91	13,248.80
2	4	TOYOTA	3SDK5	10418	SKID STEER	John	7/22/92	19,531.25
2	5	TOYOTA	3SDK5	10549	SKID STEER	JL	3/10/94	8,899.00
2	6	TOYOTA	3SDK5	10499	SKID STEER	Paul	10/8/96	8,961.26
2	7	TOYOTA	3SDK5	10143	SKID STEER	Emilio M	7/3/97	7,600.00
3	9	MUSTANG	940	3445007	SKID STEER	Ben	8/1/793	19,536.96
3	10	MUSTANG	940	547252	SKID STEER	Jacinto	4/1/98	22,000.00
3	11	MUSTANG	2040	SF98F002454	SKID STEER	Paul	10/15/98	19,982.00
3	12	MUSTANG	2040	SF98F002420	SKID STEER	Guillermo	7/1/98	19,800.00
3	13	MUSTANG	2000	SE98E000562	SKID STEER	N/A	6/1/96	22,000.00
3	14	MUSTANG	2040	SF98D003016	SKID STEER	Emilio T.	5/5/99	19,880.00
4	9	BOVAG	120AD	99512	ROLLER	Yard	9/16/91	15,608.00
4	10	YALE	N/A	N/A	FORKIFT	Yard	5/30/91	5,457.00
4	11	JO	401	2344781	TRENCHER	SHOP	1/30/94	4,500.00
4	12	DOMS	130AD	650124753	ROLLER	Yard	12/20/96	17,565.14
4	19	DITCHWITCH	3700	330870	TRENCHER	JCS	7/1/97	17,500.00
4	18	DITCHWITCH	3700	350939	TRENCHER	Dean	6/30/99	31,800.00
4	17	DITCHWITCH	3620		TRENCHER	Yard		
5	14	BRADCO	MBH34	6509443	BACKHOE ATTACH	Must 2080	8/4/90	9,485.00
5	15	BRADCO	40RN	8408NKB26	BACKHOE ATTACH	Toyola	6/26/98	7,823.00
5	16	BRADCO	40RN	8408NKS474	BACKHOE ATTACH	Toyola	12/15/97	7,823.00
5	17	TOYOTA	40RN	8408NKS13320	BACKHOE ATTACH	Toyola	5/28/99	8,254.00
5	18	TOYOTA	60RNH	65801064	BACKHOE ATTACH	Toyola	3/30/93	5,359.19
5	19	MUSTANG	BLD	35801076	BACKHOE ATTACH	Toyola	9/29/93	5,245.52
5	20	MUSTANG	MB9B	384001607	BACKHOE ATTACH	Must 940	12/21/95	8,706.20
5	21	TOYOTA	1200	9912560	AUGER ATTACH	Toyola	8/27/92	2,363.10
5	22	TOYOTA	1200E	10912642	AUGER ATTACH	Toyola	3/15/90	2,500.00
5	23	TOYOTA	1200	1013028	AUGER ATTACH	Toyola	4/27/90	1,657.01
5	24	MUSTANG	1200	6013633	AUGER ATTACH	Toyola	N/A	N/A
5	26	TOYOTA	14A	390718	TRENCHER	Must 2040		
5	27	TOYOTA	14	889510	TRENCHER	Toyola	2/13/90	2,976.89
5	28	TOYOTA	3200	1455	TRENCHER	Toyola	7/23/97	500.00
5	29	TOYOTA (MURPHE)	54	439500245	BREAKER	Toyola	2/25/92	7,198.69
5	30	MASCHID (MF)	155L	650116	TILLER	Toyola	4/19/90	2,000.00
5	31	ALAMO (MF)	SHD74	57214	FLAIL MOWER	Toyola	12/15/86	3,175.76
5	32	ALAMO (MF)	SHD74	57214	TILLER		3/31/93	3,632.00
5	33	BEANOR	SHD74	11808	TILLER		9/30/96	2,013.00

Codes: 1-Massey Ferguson, 2-Toyota, 3-Mustang, 4-Ditch, 5-Mustang

TOWN OF ATHERTON  
HOLBROOK LITTLE LEAGUE FIELD  
PROJECT 00-004



BIDS DUE AT 3 P.M., THURSDAY AUGUST 31, 2000

ADDENDUM NUMBER 1  
ISSUED AUGUST 17, 2000

This addendum (Number 1) makes the following changes in the bid documents for the Holbrook Little League Field, Project 00-003:

BID SCHEDULE: Substitute the enclosed REVISED BID SCHEDULE for the BID SCHEDULE included in the BID FORMS and SPECIAL PROVISIONS PACKAGE.

SPECIAL PROVISIONS: Add the following section 106 to the SPECIAL PROVISIONS

106 - BASIS OF AWARD

The contract, if awarded, shall be awarded to the Responsible Bidder submitting the lowest TOTAL LUMP SUM PRICE for the work, without consideration of the ADD ITEM price bid for sod.

TECHNICAL SPECIFICATIONS: Add the following section 21000 to the TECHNICAL PROVISIONS

The foregoing is a complete list of the bid document changes included in Addendum Number 1, dated February 22, 2000.

Clifford Temps  
Atherton Public Works Director/City Engineer

Duane G. Kesson  
Chairman

9/7/00

SOD 21000  
Holbrook Field  
Page 1 of 2

## PART 1 - GENERAL

### 1.1 SCOPE

- A. Delete Hydroseeding
- B. In areas where lawn was to be planted, install in its place, sod.
- C. Related work specified elsewhere:
  - 1. Landscape Soil Preparation - Section 02911
  - 2. Planting - Section 02934
  - 3. Landscape Maintenance - Section 02935

## PART 2 - PRODUCTS

### 2.1 MATERIALS

- A. Sod/Lawn: Shall be minimum 95% purity and 85% germination. Inert matter shall not exceed 2.0% nor weed content 0.00%, with no noxious weeds. Sod type shall be 95% fescue, 5% bluegrass. Sod shall have a well developed root structure sufficiently mature so that it will hold together when held by one end of the roll. Yellowing, brown, diseased, dried, or pest infested sod shall be rejected. Soil thickness of the sod shall be 1/4 inch to 5/8 inch thick excluding top-growth and thatch; top-growth shall be uniformly mowed to 1-1/2 inch to 2 inches; size of rolls or slabs shall be consistent to the suppliers standard length and width and is not to vary by more than 2% in either dimension.

## PART 3 - EXECUTION

### 3.1 GENERAL

- A. Sod Installation: Finish grade to smooth even surface allowing for sod thickness at pavement and other structures to leave the sod one-half inch below the finish grade of adjacent structures. The soil surface shall be sufficiently firm to resist impressions over one-quarter inch deep, and shall be lightly rolled until meeting this firmness. The top six to eight inches of soil shall be watered until this zone has an optimum moisture content for root growth.

Sod shall be laid in rows with staggered ends neatly and tightly butted on all edges. Sod shall be protected from wind and sun exposure during storage with a maximum storage period of twenty-four hours. No overlap, gaps, ripples, or other uneven

SOD 21000  
Holbrook Field  
Page 2 of 2

pavement will be accepted. Contractor shall lightly roll all sod after installation to insure optimum contact with the soil. Trimming and cutting around structures shall be completed with sharp tools and carefully fitted so the final appearance is a solid continuous turf.

**PUBLIC WORKS DEPARTMENT**  
91 Ashfield Road • Atherton, CA 94027  
(650) 752-0570 • Fax (650) 688-6539



**TOWN OF ATHERTON  
HOLBROOK LITTLE LEAGUE FIELD  
PROJECT 00-004**

**PREVIOUS BIDS DATE, 3 P.M., THURSDAY AUGUST 31, 2000**

**ADDENDUM NUMBER 2  
ISSUED AUGUST 30, 2000**

This addendum (Number 2) revises the bid date for the Holbrook Little League Field, Project 00-004, as follows:

Bids shall be due on Thursday September 7, 2000, at 3 P.M., at which time they will be publically opened and read.

This addendum (Number 2) also deletes the following work from this project:

- All backstop, baseline and outfield chain link fencing
- All backstop post and fence post footings
- All benches

The foregoing is a complete list of the bid document changes included in Addendum Number 2, dated August 30, 2000.

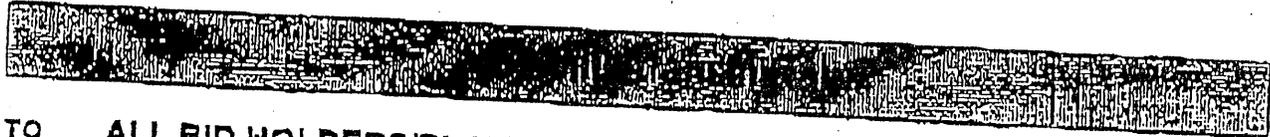
Clifford Temps  
Atherton Public Works Director/City Engineer

  
Duane G. Wasson, Chairman

9/7/00



TOWN OF ATHERTON  
91 ASHFIELD ROAD  
ATHERTON, CA 94027  
(650) 752-0570  
FAX (650) 688-6539



TO ALL BID HOLDERS/PLAN HOUSES

FROM CLIFFORD TEMPS

COMPANY/  
ATTENTION

DEPARTMENT Public Works

TELEPHONE

TELEPHONE (650) 752-0570

FAX

FAX (650) 688-6539

SUBJECT: ADDENDUM #2 - HOLBROOK LITTLE LEAGUE FIELD - BID CHANGES & EXTENSION

Urgent  For Review  Please Comment  Please Reply  Per Your Request  Action Needed

# HOLBROOK LITTLE LEAGUE FIELD

THIS IS TO ADVISE ALL BID HOLDERS  
AND PLAN HOUSES THAT THE  
CLOSING DATE AND TIME FOR BIDS  
ON THE  
HOLBROOK LITTLE LEAGUE FIELD  
PROJECT 00-004  
HAS BEEN EXTENDED TO

THURSDAY, SEPTEMBER 7, 2000  
AT  
3:00 PM

ATTACHED ARE THE CHANGES TO THE  
BID DOCUMENTS

# of pages: TWO (2) (Including this cover page)

Date: 8/30/00

BID BOND

TOWN OF Atherton

HOLBROOK LITTLE LEAGUE FIELD  
PROJECT NO. 00-004

KNOW ALL PERSONS BY THESE PRESENTS, that we, JENSEN CORPORATION LANDSCAPE CONTRACTORS, as Bidder, and INSURANCE COMPANY OF THE WEST, as Surety, are held and firmly bound unto the Town of Atherton, in the penal sum of Ten Percent of Total Bid dollars (\$ --10%-- ), lawful money of the United States, which sum is at least ten percent (10%) of the total amount bid by Bidder to the TOWN for the above stated project, for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bound Bidder submits a bid to the TOWN for the above referenced project (the terms and conditions of the bid are incorporated by reference); and if said bid is rejected by the TOWN, or if said bid is accepted by the TOWN and the Bidder executes all Contract Documents and provides all required bonds, insurance and schedule, in the time and manner specified in the Town of Atherton Standard Specifications, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect in favor of the TOWN.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the TOWN may accept such Proposal; and said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the TOWN and judgement is recovered, the surety shall pay all reasonable costs incurred by the TOWN, including reasonable attorney's fees to be fixed by the court.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this document on behalf of the above bounded Bidder and Surety, and have set their names, titles and signatures hereon this 7th day of September, 2000.

BIDDER  
JENSEN CORPORATION LANDSCAPE CONTRACTORS  
BY [Signature]  
Duane G. Wasson, Chairman  
10950 N. Planex ave.  
Cupertino, CA

SURETY  
INSURANCE COMPANY OF THE WEST  
[Signature]  
1575 Treat Blvd., #200  
Walnut Creek, CA

Notary acknowledgments of Bidder and Surety must be attached.



# Insurance Company of the West

HOME OFFICE: SAN DIEGO, CALIFORNIA

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS; That INSURANCE COMPANY OF THE WEST, a California Corporation, does hereby appoint:

**JODY A. JOHNSON**

its true and lawful Attorney(s)-In-Fact, with full power and authority, to execute, on behalf of the Company, fidelity and surety bonds, undertakings, and other contracts of suretyship of a similar nature.

This Power of Attorney is granted and is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors on the 23rd day of February, 1998, which said Resolution has not been amended or rescinded and of which the following is a true copy:

"RESOLVED, that the Chairman of the Board, the President, an Executive Vice President or a Senior Vice President of the Company, and each of them, is hereby authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company, fidelity and surety bonds, undertakings, or other contracts of suretyship of a similar nature; and to attach thereto the seal of the Company; provided however, that the absence of the seal shall not affect the validity of the instrument.

FURTHER RESOLVED, that the signatures of such officers and the seal of the Company, and the signatures of any witnesses, the signatures and seal of any notary, and the signatures of any officers certifying the validity of the Power of Attorney, may be affixed by facsimile."

IN WITNESS WHEREOF, INSURANCE COMPANY OF THE WEST has caused these presents to be signed by its duly authorized officers this 19TH day of MAY 1999.



INSURANCE COMPANY OF THE WEST

*[Signature]*  
John L. Hannum, Executive Vice President

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

SS.

IN WITNESS WHEREOF, the undersigned certify that they are adults, and have witnessed the signing of this instrument by the principal or have witnessed the principal's acknowledgment of the signature on the power of attorney, pursuant to California Probate Code §4121 and 4122.

*[Signature]*  
Jerry Fafaul

*[Signature]*  
Janis Theodore

### CERTIFICATE:

I, John H. Craig, Assistant Secretary of INSURANCE COMPANY OF THE WEST, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a true copy, is still in full force and effect, and that this certificate may be signed by facsimile under the authority of the above quoted resolution.

IN WITNESS WHEREOF, I have subscribed my name as Assistant Secretary, on this 7th day of September 2000



INSURANCE COMPANY OF THE WEST

*[Signature]*  
John H. Craig, Assistant Secretary

W 37

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

On September 7, 2000 before me, Anna Scandalis, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Duane G. Wasson  
Name(s) of Signor(s)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Anna Scandalis  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

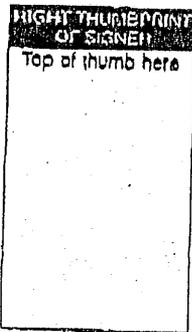
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

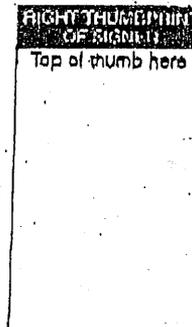
- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_  
\_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT "C"

### Maintenance Obligations

A. Maintenance of the turf area within the Project Area as follows:

(i) Mowing turf forty-four (44) times per year (minimum), including mowing during the Season not less than weekly;

(ii) Application of IBDU fertilizer, every three (3) months based upon soil test requirements (a log of all fertilizers applied shall be maintained showing the date, time and rate of application);

(iii) Turf aeration every six (6) months;

(iv) General Broadleaf weed control;

(v) Monthly checks on the turf sprinkler/irrigation system, with a report delivered to Little League regarding any required maintenance;

(vi) Maintenance of the turf sprinkler/irrigation system including, but not limited to, overseeing the programming thereof according to the recommended evapotranspiration rate for the area and subject to the water usage limitations, if any, as specified by Atherton and the replacement of broken sprinkler heads; and

(vii) Re-seeding of bare ground and damaged turf areas. Bare ground or damaged turf areas will be re-seeded only when Little League is not using the Project Area ball field for sufficient time to allow for germination and development of the re-seeded area. The parties acknowledge that the Project Area ball field is expected to require a minimum of four (4) weeks for seed to germinate and develop.

B. Pick-up of trash and other debris not less than bi-weekly during the Season.

C. Major turf renovation and capital improvements as agreed upon by both parties in writing, when and as needed.



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: DR. SAM GOODMAN, CHAIR AUDIT COMMITTEE**

**DATE: FOR THE CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: AUDIT COMMITTEE**

### **RECOMMENDATION:**

Approve revisions to the Audit Committee's charter to be consistent with the recommendations of the Government Finance Officer's Association.

### **DISCUSSION:**

In 2000, the Atherton City Council established the Audit Committee for the purpose of supervising the Town's annual financial audit and evaluating the Town's financial controls as the Audit Committee deemed necessary. Included as Attachment 1 to this report is a copy of the original staff report recommending establishment of the Audit Committee and explaining the rationale therefore.

As indicated in Attachment 1, the primary impetus for creating and Audit Committee was the concert amongst the community that the Town's financial controls had been adversely affected by staff turnover and a lack of consistency on the part of Finance Department with sound business practices.

In the six years subsequent to the establishment of the Audit Committee the Town's financial controls and business processes have improved significantly. This is evidenced by:

- Six consecutive years of unqualified audit opinions; and,
- The absence of any reportable conditions cited by the Town's independent auditors as a result of their most recent interim of internal controls.

Additionally, the Town's financial condition has strengthened considerably over the past six years. For example, the General Fund balance has increased from \$5 million for the year ended June 30<sup>th</sup>, 2001 to \$9.4 million for the year ended June 30<sup>th</sup>, 2006.

However, concurrent with an improvement in the Town's financial position and financial controls has been an erosion of confidence in the ability of the Town to manage its affairs. This erosion of confidence has resulted from a series of personnel investigations, internal audits, and an examination of the Town's affairs by the San Mateo County Grand Jury.

Additionally, changes in the accounting and financial reporting environment as prompted by passage of Sarbanes Oxley have necessitated a more active role of audit committee in both public and private sectors. Such changes are evidenced by a recent revision to the US Government Finance Officer's Association statement of preferred practices with respect to the role of audit committees in the public sector. (see attachment 2 to this staff report.)

These events have given the Audit Committee reason to reexamine its charter and to recommend that the role of Audit Committee be extended beyond oversight of the Town's *financial controls* to include the ability to assess the Town's *management's controls* on an as needed basis and pursuant to the direction of the full City Council.

In this expanded capacity, the Audit Committee would envision being a resource to the City Council and to management to help provide greater assurance that the Town's physical and financial resources are being used in a manner that is both efficient and effective in achieving the business objectives of the Town.

Activities that the collective expertise of the Audit Committee can and should be applied are as follows:

- Assisting in formulating a long-range financial plan;
- Identifying alternative sources of funding for the parcel tax;
- Assisting in evaluating the operational efficiency and effectiveness of selected programs and activities;
- Serving as an "early warning" capability by assessing the existence and effectiveness of management controls that should be in place at the department and program level to ensure that the organization as a whole is functioning properly; and,
- To provide advice and counsel to the Finance Director as necessary.

In this revised capacity, the Audit Committee proposes to serve as a valuable source of information to the Town Council and therefore strengthen the ability of the Town Council to fulfill its fiduciary obligation to the residents of Atherton. Attachment 3 to this staff report provides a comparison of the existing charter with the charter as proposed within the body of the report.

### **FISCAL IMPACT:**

The Audit Committee has determined that it has the collective expertise necessary to fulfill its role under the revised charter. Hence there would be no fiscal impact from implementation of the recommendation contained herein.

**Attachment 1: 2000 City Council staff report**  
**Attachment 2: GFOA Preferred Practice**  
**Attachment 3: Comparison of Existing versus Proposed Audit Committee Charter**

**Item No. 13**

**DATE: FOR THE CITY COUNCIL MEETING OF MARCH 15, 2000**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: RALPH FREEDMAN, INTERIM CITY MANAGER**

**SUBJECT: CREATION OF AN AUDIT COMMITTEE**

**RECOMMENDATION**

Approve the creation of an Audit Committee, which would have the following membership: the two Council Members who are on the Finance Committee, the City Manager, the Finance Director, and two citizens of Atherton.

**INTRODUCTION**

During my 2½ months in Atherton, there has been considerable discussion about the annual audits of the Town's financial records. This issue has been raised at both Council meetings and at the Listening Sessions that I have conducted during the past two months. In an effort to establish formal oversight of the annual audit, I am proposing the creation of an Audit Committee. This Committee will meet with the Town's Auditors prior to the start of the annual audit to discuss the methodology of the firm as it pertains to the Audit, and to provide the auditors with those issues of concern and importance to the Town of Atherton. After the preparation of the Draft Audit Report, the Audit Committee will meet with the auditors to discuss their findings, and to give feedback to the auditors on the process and the audit document. The Audit Committee should then prepare a written report that summarizes the audit process, makes recommendations on how the Town can improve the process prior to the next audit, and how the Town might improve its financial operations to comply with the Auditor's recommendations. This Report should be presented to the Council at the same meeting in which the Auditors present their Final Audit to the City Council.

The Committee will have two citizen representatives on it, in an effort to tap into the wealth of expertise that exists in this community in the auditing field. By having the two Council Members who are on the Town's Finance Committee, the Committee will have solid representation from the Council that must accept the final Audit. The representation of the City Manager and the Finance Director provide the Committee with the two Town staff that are most responsible for

the day-to-day financial activities of the Town. Together, these individuals provide a broad spectrum of representatives from within the Town organization and the community.

### **ANALYSIS**

There is the need at this point in time to make Town government more accessible and open to the public. Representation of citizens with an auditing, financial, or accounting background, will give this committee credibility in the community. The two appointed Town Staff on this Committee give this Committee the knowledge of specific financial affairs of the Town because of their daily involvement with the Town's finances. The two Council Members on the Committee provide an important linkage to the concerns of the balance of the Council as it pertains to our financial affairs.

### **CONCLUSION**

The Interim City Manager was retained to make positive changes in the Town's organization, and to restore trust and credibility in Atherton's Town Government. This Committee will facilitate the efforts of the Town to be more open and accessible to the public on Town activities, and to utilize the vast professional expertise that exists in Atherton.

### **ALTERNATIVES**

Alternatives to this recommendation are as follows:

- Have an Audit Committee comprised of Council and Staff representatives only.
- Continue on with the current practice, which has resulted in limited Town interaction with the Auditors prior to the Audit, and an Audit Report presentation to the City Council at the conclusion of the Audit.

### **FISCAL IMPACT**

No fiscal impact to the Town.



## RECOMMENDED PRACTICE

### Audit Committees (1997, 2002, and 2006) (CAAFR)

**Background.** Three main groups are responsible for the quality of financial reporting: the governing body,<sup>1</sup> financial management, and the independent auditors. Of these three, the governing body must be seen as “first among equals” because of its unique position as the ultimate monitor of the financial reporting process.<sup>2</sup> An audit committee is a practical means for a governing body to provide much needed independent review and oversight of the government’s financial reporting processes, internal controls, and independent auditors. An audit committee also provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, an audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management’s practices, and that the independent auditors, through their own review, objectively assess the government’s financial reporting practices.<sup>3</sup>

**Recommendation.** The Government Finance Officers Association (GFOA) makes the following recommendations regarding the establishment of audit committees by state and local governments:

- The governing body<sup>4</sup> of every state and local government should establish an audit committee or its equivalent;
- The audit committee should be formally established by charter, enabling resolution, or other appropriate legal means and made directly responsible<sup>5</sup> for the appointment, compensation, retention, and oversight of the work of any independent accountants engaged for the purpose of preparing or issuing an independent audit report or performing other independent audit, review, or attest services.<sup>6</sup> Likewise, the audit committee should be established in such a manner that all accountants thus engaged report directly to the audit committee. The written documentation establishing the audit committee should prescribe the scope of the committee’s responsibilities, as well as its structure, processes, and membership requirements. The audit committee should itself periodically review such documentation, no less than once every five years, to assess its continued adequacy;<sup>7</sup>

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<sup>1</sup> For the purposes of this recommended practice, the term “governing body” should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control, and auditing, provided they do *not* exercise managerial responsibilities within the scope of the audit. The term “governing body” also is intended to encompass appointed bodies such as pension boards.

<sup>2</sup> *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees*, “Overview and Recommendations.”

<sup>3</sup> Securities and Exchange Commission (SEC) Regulation 33-8220, “Background and Overview of the New Rule and Amendments.”

<sup>4</sup> For the purposes of this recommended practice, the term “governing body” should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control, and auditing, provided they do *not* exercise managerial responsibilities within the scope of the audit. The term “governing body” also is intended to encompass appointed bodies such as pension boards.

<sup>5</sup> Nothing in this recommended practice should be interpreted so as to limit the full governing body from exercising ultimate authority.

<sup>6</sup> Sarbanes Oxley Act, Section 301.

<sup>7</sup> *Report and Recommendations of the Blue Ribbon committee on Improving the effectiveness of Corporate Audit Committees*, Recommendation 4.

- Ideally, all members of the audit committee should possess or obtain a basic understanding of governmental financial reporting and auditing.<sup>8</sup> The audit committee also should have access to the services of at least one financial expert, either a committee member or an outside party engaged by the committee for this purpose. Such a financial expert should through both education and experience, and in a manner specifically relevant to the government sector, possess 1) an understanding of generally accepted accounting principles and financial statements; 2) experience in preparing or auditing financial statements of comparable entities; 3) experience in applying such principles in connection with the accounting for estimates, accruals, and reserves; 4) experience with internal accounting controls; and 5) an understanding of audit committee functions;<sup>9</sup>
- All members of the audit committee should be members of the governing body. To ensure the committee's independence and effectiveness, no governing body member who exercises managerial responsibilities that fall within the scope of the audit should serve as a member of the audit committee;
- An audit committee should have sufficient members for meaningful discussion and deliberation, but not so many as to impede its efficient operation. As a general rule, the minimum membership of the committee should be no fewer than three;<sup>10</sup>
- Members of the audit committee should be educated regarding both the role of the audit committee and their personal responsibility as members, including their duty to exercise an appropriate degree of professional skepticism;
- It is the responsibility of the audit committee to provide independent review and oversight of a government's financial reporting processes, internal controls and independent auditors;<sup>11</sup>
- The audit committee should have access to the reports of internal auditors, as well as access to annual internal audit work plans;
- The audit committee should present annually to the full governing body a written report of how it has discharged its duties and met its responsibilities. It is further recommended that this report be made public and be accompanied by the audit committee's charter or other establishing documentation;
- The audit committee should establish procedures for the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls, or auditing matters. Such procedures should specifically provide for the confidential, anonymous submission by employees of the government of concerns regarding questionable accounting or auditing matters<sup>12</sup>;
- The audit committee should be adequately funded and should be authorized to engage the services of financial experts, legal counsel, and other appropriate specialist, as necessary to fulfill its responsibilities<sup>13</sup>; and
- In its report to the governing body, the audit committee should specifically state that it has discussed the financial statements with management, with the independent auditors in private,<sup>14</sup> and privately among

<sup>8</sup> *Report and Recommendations of the Blue Ribbon committee on Improving the effectiveness of Corporate Audit Committees*, Recommendation 3. Continuity typically is a positive factor in achieving this goal, a fact that should be kept in mind when considering the appropriate length of service for audit committee members.

<sup>9</sup> Sarbanes Oxley Act, Section 407.

<sup>10</sup> In certain limited instances, as noted later, the audit committee will need to meet privately to achieve its goals. If the audit committee constitutes a majority of the governing body, such private meetings may be hampered by "sunshine" laws and similar "open meetings" legislation.

<sup>11</sup> SEC Regulation 330-8220, "Background and Overview."

<sup>12</sup> Sarbanes Oxley Act, Section 301.

<sup>13</sup> Nothing in this recommended practice should be interpreted so as to limit the full governing body from exercising ultimate authority.

committee members,<sup>15</sup> and believes that they are fairly presented, to the extent such a determination can be made solely on the basis of such conversations.

Approved by the GFOA's Executive Board, February 24, 2006.

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<sup>14</sup> It is important that the audit committee be able to meet privately with the independent auditors, as needed, to ensure a full and candid discussion. Governments are urged to amend "sunshine" laws and similar "open meetings" legislation to permit such encounters in these limited circumstances.

<sup>15</sup> It is important that audit committee members be able to meet privately among themselves, as needed, to ensure a full and candid discussion. Governments are urged to amend "sunshine" laws and similar "open meetings" legislation to permit such an encounter in these limited circumstances.



## RECOMMENDED PRACTICE

### Establishment of an Internal Audit Function (1997 and 2006) (CAAFR)

**Background.** The term "internal auditor" is commonly used in a variety of ways in the public sector. For example, some individuals with the title "internal auditor" are actually elected officials who, for all practical purposes, function as independent auditors. Conversely, many individuals in the public sector perform one or more of the duties of an internal auditor, although they may use some other job title. For purposes of this recommended practice, an "internal auditor" will be considered to be any audit professional who works directly for management, at some level, and whose primary responsibility is helping management to fulfill its duties as effectively and efficiently as possible.

Internal auditors can be of great value to state and local governments in a variety of ways. In particular, they commonly assist management in monitoring the design and proper functioning of internal control policies and procedures. In this capacity, internal auditors themselves function as an additional level of control and so help to improve the government's overall control environment. Internal auditors also can play a valuable role conducting performance audits, as well as special investigations and studies.

**Recommendation.** The Government Finance Officers Association (GFOA) makes the following recommendations regarding the internal audit function:

- Every government should consider the feasibility of establishing a formal internal audit function because such a function can play an important role in helping management to maintain a comprehensive framework of internal controls. As a rule, a formal internal audit function is particularly valuable for those activities involving a high degree of risk (e.g., complex accounting systems, contracts with outside parties, a rapidly changing environment). If it is not feasible to establish a separate internal audit function, a government is encouraged to consider either 1) assigning internal audit responsibilities to its regular employees or 2) obtaining the services of an accounting firm (other than the independent auditor) for this purpose;
- The internal audit function should be established formally by charter, enabling resolution, or other appropriate legal means;
- It is recommended that internal auditors of state and local governments conduct their work in accordance with the professional standards relevant to internal auditing contained in the U.S. General Accounting Office's publication *Government Auditing Standards*, including those applicable to the independence of internal auditors;
- At a minimum, the head of the internal audit function should possess a college degree and appropriate relevant experience. It also is highly desirable that the head of the internal audit function hold some appropriate form of professional certification (e.g., certified internal auditor, certified public accountant, certified information systems auditor); and
- All reports of internal auditors, as well as the annual internal audit work plan, should be made available to the government's audit committee or its equivalent.

Approved by the GFOA's Executive Board, February 24, 2006.

Town of Atherton

Comparison of Existing and Proposed Audit Committee Charters

Attribute	Existing Charter	Proposed
<p>Scope – The range of activities that comprise an auditing program. These include financial auditing, compliance auditing and program and performance auditing.</p>	<p>Annual financial audit oversight, interim reviews of financial controls. At present the charter of the Audit Committee is limited to monitoring the progress of the annual financial audit and in evaluating financial controls town-wide.</p>	<p>Scope of responsibility to include financial analysis and organizational reviews.</p>
<p>Program Review Criteria – The method by which functional areas are selected for testing.</p>	<p>The Annual Financial audit consists of examining, on a test basis, the Town’s financial records and supporting documents to ascertain whether the Town’s financial statements are fairly presented and in conformity with generally accepted governmental accounting principals. When conducting their field-work, the auditors establish the level and extent of testing that they deem necessary to assure themselves that the town’s financial records are fairly stated. This ordinarily accomplished through an evaluation of the town’s financial control structure and control environment.</p>	<p>Audit Committee priorities to be established based upon risk-assessment criteria developed in consultation with the Finance Director using a variety of quantitative and qualitative factors.</p>
<p>Funding allocated – The amount of resources dedicated to an auditing program.</p>	<p>In FY 2007-08 \$32,000 has been appropriated for the Town’s annual financial, mid-year review and for technical assistance as required.</p>	<p>Expanding the scope of an auditing program would draw upon the collective expertise of the members of the Audit Committee, hence, <u>no additional funding would be required unless the City Council would desire and fund the use of subject matter experts in specified areas.</u></p>
<p>Funding Source – The source of funds used to defray the costs of auditing.</p>	<p>General Fund</p>	<p>Special revenue, Capital Projects funds could be used, provided that the nature of the auditing activities conform to the objectives and funding restrictions established for the fund itself.</p>
<p>Composition and reporting relationship.</p>	<p>The Audit Committee consists of two members of the Town Council and five residents of the town. The Audit Committee serves in an advisory capacity to the City Council.</p>	<p>The composition of the Audit Committee would be as is. Additionally, the Finance Director would have a “dotted line” reporting relationship to the Audit Committee.</p>
<p>Staffing.</p>	<p>To comply with the requirements of the California Government code, the Town contracts with an independent CPA firm to perform the annual audit.</p>	<p>Auditing services that are beyond the annual financial audit may be performed by: a professional services firm under the supervision of the Audit Committee. However, the use of external consultants would be subject to the approval of and funding by the City Council.</p>



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: APPROVAL TO EXTEND THE LEASE FOR CINGULAR'S USE OF POLICE COMMUNICATION TOWER**

### **RECOMMENDATION**

Consider request for amendment to lease between the Town of Atherton and New Cingular Wireless PCS, LLC for lease of City Hall property for cellular telephone antenna. If approved, the amendment will extend the lease for an initial period of five (5) years with five options exercisable by Cingular for five years each. A copy of the amendment is attached as Exhibit A.

### **BACKGROUND**

The Town has leased a small part of floor space in City Hall and space on the Town's existing communication tower for cellular antennas. The original lease, as extended in accordance with its terms, a copy of which is attached as Exhibit B, will expire September 30, 2007.

The lease provides for annual increases in rent of five percent (5%) on the anniversary date of the lease. Original rent of \$1,090.00 per month has, as a result of these annual increases, grown to \$2,754.38 per month.

The extension proposes to amend the term to provide for a five-year term commencing October 1, 2007, with five additional 5-year terms. The notice provision of the original lease is revised owing to changes in ownership of the company. Paragraph 6 of the second amendment provides that, other than as set forth in the second amendment, the lease otherwise is unmodified and remains in full force and effect. Thus, the annual 5% rent increases remain in effect.

As required by Section 5 of the lease, Cingular is obliged to obtain all permits and approvals necessary to be legally entitled to construct the facility for providing cellular telephone services. One of these permits is a conditional use permit which, by its terms, will expire September 30, 2007. A copy of the use permit is attached as Exhibit C.

Cingular has been advised of the necessity to obtain an extension of the use permit co-incident with the extension of the lease. The use permit will require a noticed public hearing before the Planning Commission.

**FISCAL IMPACT**

Approval of the lease extension will continue the revenue source to the Town described above.

**Exhibits:** Exhibits A, B, and C attached.

Prepared By:

Approved By:

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Marc G. Hynes  
City Attorney

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Wendé C. Protzman  
Interim City Manager

Cell Site No: N128058 / 15/ATHERTON\_25859  
FA No: 10095854  
Site Address: 91 Ashfield Road, Atherton, CA 94025

## SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") dated as of the later date below is by and between The Town of Atherton, a California municipal corporation, having a mailing address at 91 Ashfield Road, Atherton, CA 94025 (hereinafter referred to as "Lessor") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor in interest to Bay Area Cellular Telephone Company, a California general partnership doing business as Cellular One, having a mailing address at 6100 Atlantic Boulevard, Norcross, GA 30071 (hereinafter referred to as "Cingular").

WHEREAS, Lessor and Cingular entered into a Lease dated November 1, 1986, and a First Amendment to Lease dated October 30, 1997, whereby Lessor leased to Cingular certain Premises, therein described, that are a portion of the real property located at 91 Ashfield Road, Atherton, CA 94025 (collectively the "Lease"); and

WHEREAS, Lessor and Cingular desire to extend the term of the Lease; and

WHEREAS, Lessor and Cingular, in their mutual interest, further wish to amend the Lease as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Cingular agree as follows:

- 1. Term.** The Term of the Lease shall be amended to provide that the Lease has a new initial term of 60 months ("New Initial Term"), commencing on October 1, 2007. The Term will be automatically renewed for up to 5 additional 60 month terms (each an "Extension Term") without further action by Cingular. Hereafter, the defined term "Term" shall include the New Initial Term and any applicable Extension Term.
- 2. Termination.** In addition to any rights that may exist in the Lease, Cingular may terminate the Lease at any time with 30 days prior written notice to Lessor for any or no reason.
- 3. Expansion of Permitted Use.** In addition to the rights set forth in the Lease, Cingular may modify, supplement, replace, upgrade, expand or refurbish its Cell Site/System, increase the number of antennas thereon or relocate the Cell Site/System within the leased Premises at any time during the term of this Lease, and Lessor shall cooperate with Cingular in all respects in connection with the foregoing. If Lessor does not comply with the terms of this section, in addition to any other rights it may have at law, Cingular may terminate this Lease and shall have no further liability to Lessor.
- 4. Acknowledgement.** Lessor acknowledges that: 1) this Second Amendment is entered into of the Lessor's free will and volition; 2) Lessor has read and understands this Second Amendment and the underlying Lease and, prior to execution of the Second Amendment, was free to consult with counsel of its choosing regarding Lessor's decision to enter into this Second Amendment and to have counsel review the terms and conditions of the Second Amendment; 3) Lessor has been advised and is informed that should Lessor not enter into this Second Amendment, the underlying Lease between Lessor and Cingular, including any termination or non-renewal provision therein, would remain in full force and effect.

Cell Site No: N128058 / 15/ATHERTON\_25859  
FA No: 10095854  
Site Address: 91 Ashfield Road, Atherton, CA 94025

5. **Notices.** Section 22 of the Lease is hereby deleted in its entirety and replaced with the following: NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows. As to Cingular, New Cingular Wireless PCS, LLC, c/o Network Real Estate Administration, Cell Site #N128058, Cell Site Name 15/ATHERTON, 6100 Atlantic Boulevard, Norcross, GA 30071, with a copy to Attn.: Legal Department, New Cingular Wireless PCS, LLC, Re: Cell Site #N128058, Cell Site Name 15/ATHERTON, 5601 Legacy Drive, Suite 3110A, Plano, Texas 75024; and as to Lessor, The Town of Atherton, 91 Ashfield Road, Atherton, CA 94025. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

6. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Second Amendment.

7. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Second Amendment on the date and year below.

LESSOR:  
The Town of Atherton,  
a California municipal corporation

CINGULAR:  
New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

WITNESSED BY:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREEMENT SIGNED

ORIGINAL

LEASE

Dated this 1<sup>st</sup> day of November, 1986, between BAY AREA CELLULAR TELEPHONE COMPANY, a California general partnership ("BACTC"), having its principal place of business at 2420 Camino Ramon, San Ramon, CA 94583, and THE TOWN OF ATHERTON ("Lessor"), having its principal place of business at 91 Ashfield Road, Atherton, California 94025.

SECTION 1. THE SITE. Lessor is the record owner of a certain parcel of real property located at: the Atherton Administrative Offices, 91 Ashfield Road, Town of Atherton, California (the "Site"). The legal description of the Site is contained in Exhibit A to this Lease.

SECTION 2. LEASE OF THE PREMISES. Lessor hereby leases to BACTC and BACTC leases from Lessor that portion of the Site generally described as 306 square feet of existing floor space and space on the existing communication tower to locate cellular antennas (the "Premises"). A description of the Premises which may be used for legal purposes is contained in Exhibit B to this Lease.

SECTION 3. RENT. BACTC shall pay to Lessor as rent the sum of ONE THOUSAND NINETY DOLLARS (\$ 1090.00) per month, due and payable on the first day of each month, in advance. The rent shall be increased by FIVE PERCENT (5%), on every anniversary of the Commencement Date (as defined below) of this Lease. As additional consideration, BACTC agrees to provide two (2) full power portable cellular telephones to be used by the Town of Atherton during the effective period of this Lease. Lessor shall pay for air-time usage and all monthly service charges associated with their use of the phones.

SECTION 4. TERM OF LEASE. This Lease shall be for an initial term of ten (10) years. BACTC shall have the right to extend its tenancy beyond the initial term for two (2) additional successive optional extension terms of five (5) years each.

SECTION 5. COMMENCEMENT DATE; GOVERNMENTAL PERMITS. The initial term of this Lease shall commence on the earlier to occur of the first day of the first month following BACTC's notice to Lessor in writing that BACTC has obtained all permits and approvals necessary for BACTC to be legally entitled to construct a facility for providing cellular telephone services at the Premises, or September 30, 1987 (the "Commencement Date").

SECTION 6. USE OF THE PREMISES. BACTC shall use the Premises as one of BACTC's cellular telephone sites (a "Cell Site") comprising BACTC's system (the "System") for furnishing cellular telephone service to the public. A Cell Site is a site at which

radio and telephone equipment is installed and used to send and receive radio signals to and from cellular telephones and to connect those signals to telephone facilities either directly, by means of cables, or indirectly, by means of microwave transmitting facilities (including microwave antennas) located at the Cell Site. A Cell Site consists of, but shall not be limited to, radio transmitting and receiving equipment, associated electronic hardware necessary to support the transmitting and receiving equipment, batteries and chargers to provide back-up power and as many as nine (9) cellular antennas. BACTC shall not use the Premises for any other purposes without the written consent of Lessor.

**SECTION 7. EASEMENT/LICENSE.** Lessor hereby grants to BACTC for the duration of this Lease, or any extensions thereof, an unimpaired, non-exclusive easement, license and right of way in and over the common areas at the Site and the following portions of the Site ("Access Areas"): All areas providing physical access by personnel and equipment including, but not limited to, ramps, walkways and ladders; the roof of any building on which BACTC equipment is installed; and all utility ducts and conduits (including, telephone and optical conduits) and other means by which heat, ventilation, air conditioning, power, communications signals, installation, service and maintenance personnel and any and all other products and/or services may be delivered to or from the Premises. The rights granted to BACTC herein are for the purpose of constructing, maintaining, restoring, replacing and operating BACTC's equipment located within or on the Premises or such common areas, including any necessary electrical and telephone conduits. Such rights shall include the right of ingress and egress, twenty-four (24) hours per day, seven (7) days per week over such common areas and the Access Areas for access to or from any of BACTC's equipment. Such rights shall be exercised only in accordance with established security procedures at the Site.

**SECTION 8. PROTECTIONS AGAINST INTERFERENCE.** Lessee warrants and agrees that its use of the demised premises will not at any time or in any manner interfere with Lessor's use of the premises, nor will Lessee cause any sort of electrical or electronic or magnetic interference with Lessor's communications equipment and/or operations. If Lessee's equipment or operations cause any interference with Lessor's communications, Lessor shall notify Lessee that such interference exists and upon receiving such notifications, verbally and followed up in writing, Lessee shall immediately shut down Lessee's operations at the Site, it being understood and agreed by the parties that Lessor's public safety operations and communications are the paramount use of the property. Notwithstanding the foregoing, Lessee, upon receiving notifications from Lessor that interference exists at the Site shall, with the assistance of the Lessor, proceed with due diligence to relocate the Premises to a mutually agreeable location at the Site from which interference will not occur, or in any other manner correct the cause of interference. If it is

then determined that there is no location at the Site from which Lessee can operate without causing interference to Lessor or in any other way correct the cause of the interference, Lessee or Lessor shall have cause for termination of the Lease in accordance with Section 12 and Section 13 hereof.

**SECTION 9. DAMAGE AND DESTRUCTION.** If the Premises are, in whole or in part, damaged or destroyed by fire or other elements, then (1) if wholly damaged or destroyed so that all of the Premises are rendered untenable, this Lease shall then terminate and BACTC shall be liable for the rent only up to the time of such destruction and any rent prepaid by BACTC shall be returned to BACTC; but (2) if only partially destroyed and still tenable, Lessor shall, within a reasonable time, repair the Premises with a reasonable reduction of rent from the time of such partial destruction until the Premises are again as fully usable by BACTC as they were before such partial damage or destruction; provided, however, that if such partial damage or destruction shall occur within three (3) months prior to the termination of this Lease, then this Lease, if either Lessor or BACTC so elects, shall then terminate and BACTC shall be liable for rent only up to the time of such damage or destruction and any rent prepaid by BACTC shall be returned to BACTC. A decision as to whether partially destroyed or partially condemned premises are still tenable as provided herein, shall be made jointly by Lessor and BACTC and, if they cannot agree, by an arbitrator reasonably acceptable to both parties.

**SECTION 10. CONDEMNATION.** If all or any part of the Premises is taken by condemnation, this Lease shall terminate unless BACTC's equipment and improvements can be relocated to another position at the Site acceptable to BACTC. BACTC shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of BACTC's equipment and improvements.

**SECTION 11. NEED TO PREVENT UNSUPERVISED ACCESS.** BACTC's cellular equipment is highly sensitive and is subject to federal requirements that any entry onto the Premises which could damage or interfere with it must be controlled. Accordingly, although Lessor may have a key to the Premises, Lessor shall not enter the Premises (other than in an emergency) unless it has given BACTC twenty-four (24) hours' actual notice. In case of emergency, Lessor shall make reasonable efforts to notify BACTC prior to entering the Premises.

**SECTION 12. TERMINATION BY BACTC.** BACTC may terminate this Lease for cause upon the giving of ninety (90) days' written notice to Lessor if any of the following events occur: (a) BACTC fails to obtain or loses any necessary permits, approvals or orders and is thereby unable to use the Premises as a Cell Site; (b) Lessor fails to comply with any term, condition or covenant of this Lease and does not cure such failure within thirty (30) days after written notice thereof; or (c) as specified in Section 8 above.

SECTION 13. TERMINATION BY LESSOR. Lessor may terminate this Lease upon the occurrence of any of the following: (a) Failure by BACTC to pay any rent required hereunder when due if such failure shall continue for more than ten (10) calendar days after delivery to BACTC of notice of such failure to make timely payment; (b) Failure by BACTC to comply with any material term, condition or covenant of this Lease, other than the payment of rent, if such failure is not cured within thirty (30) days after written notice thereof to BACTC; (c) if BACTC becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition under any section or chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or is adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder, or if a receiver or trustee is appointed for all or substantially all of the assets of BACTC; or (d) as specified in Section 8 above.

SECTION 14. EXERCISE OF OPTIONS TO EXTEND. BACTC shall have successive options to extend the term of this Lease for the successive extension periods set forth in Section 4 of this Lease, on the same terms covenants and conditions (except as to rent and term) as are contained in this Lease. BACTC shall exercise the options, if at all, by giving written notice of exercise to Lessor not less than sixty (60) days prior to the expiration of the initial term or any extended term, as the case may be, of this Lease.

SECTION 15. WARRANTIES AND COVENANTS OF LESSOR. Lessor warrants and covenants that (a) Lessor has legal right to possession of the Premises and the power and the right to enter into this Lease and that BACTC, upon the faithful performance of all of the terms, conditions and obligations of BACTC contained in this Lease, shall peaceably and quietly hold and enjoy the Premises upon the terms, covenants and conditions set forth in this Lease throughout the term of this Lease and any extensions thereof; (b) Lessor shall deliver the Premises to BACTC clean and free of debris on the Commencement Date and shall maintain the Site in a manner which will not interfere with BACTC's use of the Premises as contemplated hereby; (c) Lessor shall make available to Lessee at the Premises, all presently existing utility services required by BACTC for purposes of the operation of BACTC's equipment at the Premises, provided that BACTC may at its own expense (or Lessor may, if BACTC so requests, at BACTC's expense), install any and all additional utilities service facilities which are so required; (d) Lessor shall, during the term hereof, make payment of all real property taxes and general and special assessments levied against the Site and the Premises which it has the duty to pay within the time allowed by the taxing authorities in order to avoid penalty and BACTC shall compensate Lessor for any real property taxes directly attributable to the value of improvements placed upon the Premises by BACTC; and (e) BACTC shall have

access to the Premises from the nearest public way at all times and all loading doors and freight elevators (if any) shall be operational.

SECTION 16. WARRANTIES AND COVENANTS OF BACTC. BACTC warrants and covenants that throughout the term of this Lease, BACTC shall maintain comprehensive liability insurance, naming Lessor as an additional named insured, protecting and indemnifying Lessor and BACTC against claims and liabilities for injury, damage to persons or property, or for the loss of life or of property occurring upon the Premises resulting from any negligent act or omission of BACTC, its employees, agents, contractors and subcontractors. Such insurance shall afford minimum protection of not less than \$1,000,000 for injury to or death of any one person, \$3,000,000 for injury or death of two or more persons, and \$1,000,000 for property damage. BACTC shall furnish Lessor with a current certificate indicating the applicable coverage.

SECTION 17. LIABILITY AND INDEMNIFICATION. BACTC shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, height, location, use, operation and removal of improvements authorized herein. Lessee shall assume the defense of and shall indemnify and hold harmless the Town, its officers, officials, directors, employees and agents from and against any or all loss, liability, expense, claim costs, suits, and damages of every kind, nature and description incurred as a result of the installation, operation or removal or such improvements. Except for the acts of Lessor and Lessors' agents or employees Lessor shall not be liable to BACTC for any loss or damages arising out of personal injuries or property damage on the Premises.

SECTION 18. TITLE TO AND REMOVAL OF BACTC'S EQUIPMENT. Title to BACTC's equipment, and all improvements installed at and affixed to the Premises by BACTC shall be and shall remain the property of BACTC. BACTC agrees to construct, at its expense, a storage building approximately 564 square feet in size at the Site as shown in Exhibit B for the exclusive use of the Town. Title to the storage building shall be held by and in the name of the Town of Atherton. Lessor hereby acknowledges that BACTC has granted to the vendor of the equipment to be installed at and affixed to the Premises a security interest in all equipment and fixtures owned by BACTC now or hereafter located at or on the Premises. BACTC may at any time, including any time it vacates the Premises, remove BACTC's equipment, fixtures, and all of BACTC's personal property from the Premises. BACTC agrees to restore the Lessor's Premises and facilities to their original condition, reasonable wear and tear accepted. Notwithstanding the foregoing, BACTC shall not be required to remove any underground utility lines buried at the Site, or remove any structural improvements made to the Site or the Premises by Lessor or by BACTC in order to provide sufficient support for BACTC's

equipment, nor shall BACTC be required to remove any antenna or tower supports, foundations, or base plates.

SECTION 19. HOLDING OVER. If BACTC holds over after this Lease has been terminated, the tenancy shall be month-to-month, subject to the provisions of this Lease.

SECTION 20. SURRENDER. Upon termination of this Lease, BACTC shall surrender the Premises in as good order and condition as when first occupied by BACTC, wear and tear and damage by fire or other casualty excepted.

SECTION 21. ASSIGNMENT AND SUBLETTING. BACTC shall not assign, sublet, or otherwise transfer or encumber all or any part of BACTC's interest in this Lease without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Notwithstanding the foregoing, BACTC may assign or sublet the Premises, or any portion thereof, without Lessor's consent, to any entity which controls, is controlled by, or is under the common control with BACTC, or to any entity resulting from any merger or consolidation with BACTC, or to any partner of BACTC or to any partnership in which BACTC is a general partner, or to any person or entity which acquires all of the assets of BACTC as a going concern, or to any entity which obtains a security interest in a substantial portion of BACTC's assets. Any such assignment, subletting or transfer shall not relieve BACTC of its obligations under this Lease. Any assignee shall also assume and be bound to perform all of the obligations of BACTC under this Lease. Lessor hereby consents to the assignment by BACTC of its rights under this Lease as security to the vendor of the equipment to be installed at the Premises; provided, however, that such assignment shall in no way relieve BACTC of its obligations under this Lease.

SECTION 22. NOTICES AND OTHER COMMUNICATIONS. Every notice required by this Lease shall be delivered either by (i) personal delivery, or (ii) postage prepaid return receipt requested certified mail addressed to the party for whom intended at the addresses appearing above or at such other address as the intended recipient shall have designated by written notice. A copy of each notice sent to BACTC shall be sent to Robert C. Thompson, Esq., Graham & James, Suite 300, One Maritime Plaza, San Francisco, CA 94111.

SECTION 23. WAIVERS. Any waiver of any right under this Lease must be in writing and signed by the waiving party.

SECTION 24. WRITTEN AGREEMENT TO GOVERN. This Lease is the entire understanding between the parties relating to the subjects it covers.

SECTION 25. ATTORNEYS' FEES. The prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorneys' fees, costs and expenses in connection with such action or proceeding from the other party.

SECTION 26. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Lease, the parties shall each do whatever may be reasonably necessary to accomplish the transactions contemplated in this Agreement including, without limitation, execution of a Memorandum of this Lease and a Memorandum of Commencement hereof in form appropriate for recording in the county in which the Premises are situated.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

BAY AREA CELLULAR TELEPHONE COMPANY

By Mark B Nelson  
 Title Vice President -  
Engineering & operations

TOWN OF ATHERTON (Lessor)

By Ron G Hubbard  
 Title City Manager / City Clerk



SCHEDULED EXHIBITS:

- a. Exhibit A (the "Site");
- b. Exhibit B (the "Premises");
- c. Other: \_\_\_\_\_

Exhibit A

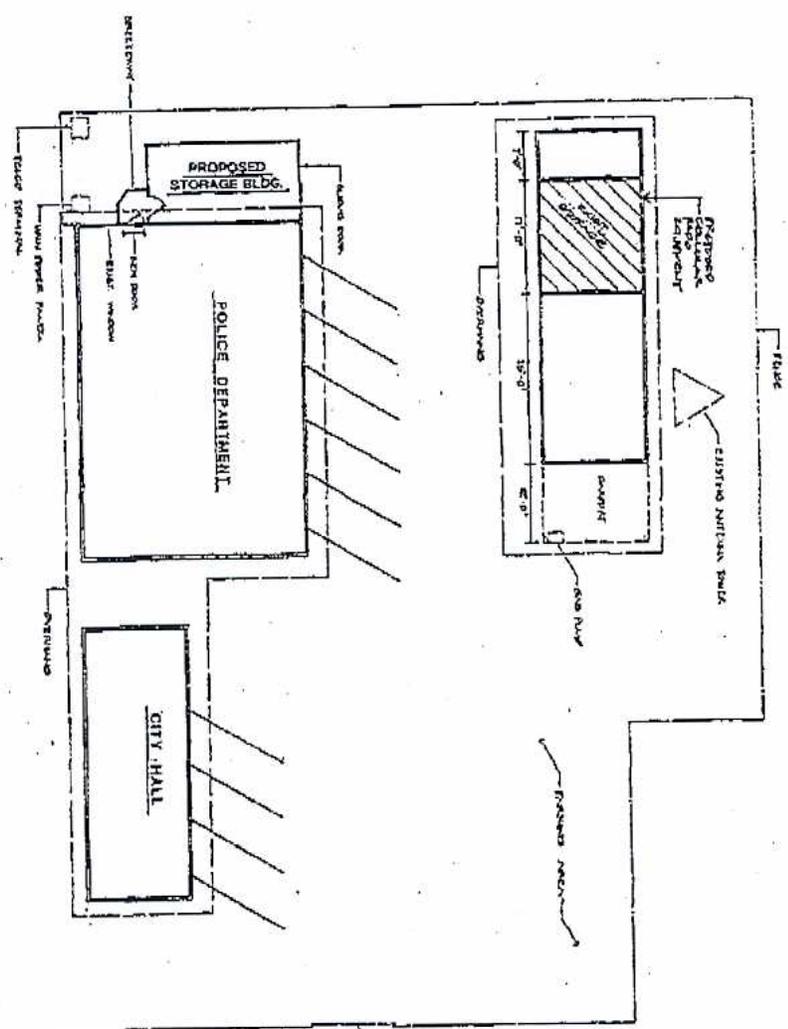
## LEGAL DESCRIPTION

Lot numbered 24 as shown on that certain map entitled "Map of Watlington Park, Fair Oaks, California" filed in the office of the City Recorder of San Mateo County June 18, 1907 in the Book of Maps at Page 8.

EXHIBIT B 1 of 2

FAIR OAKS

LANE



ASHFIELD ROAD

ROAD

STATION LANE

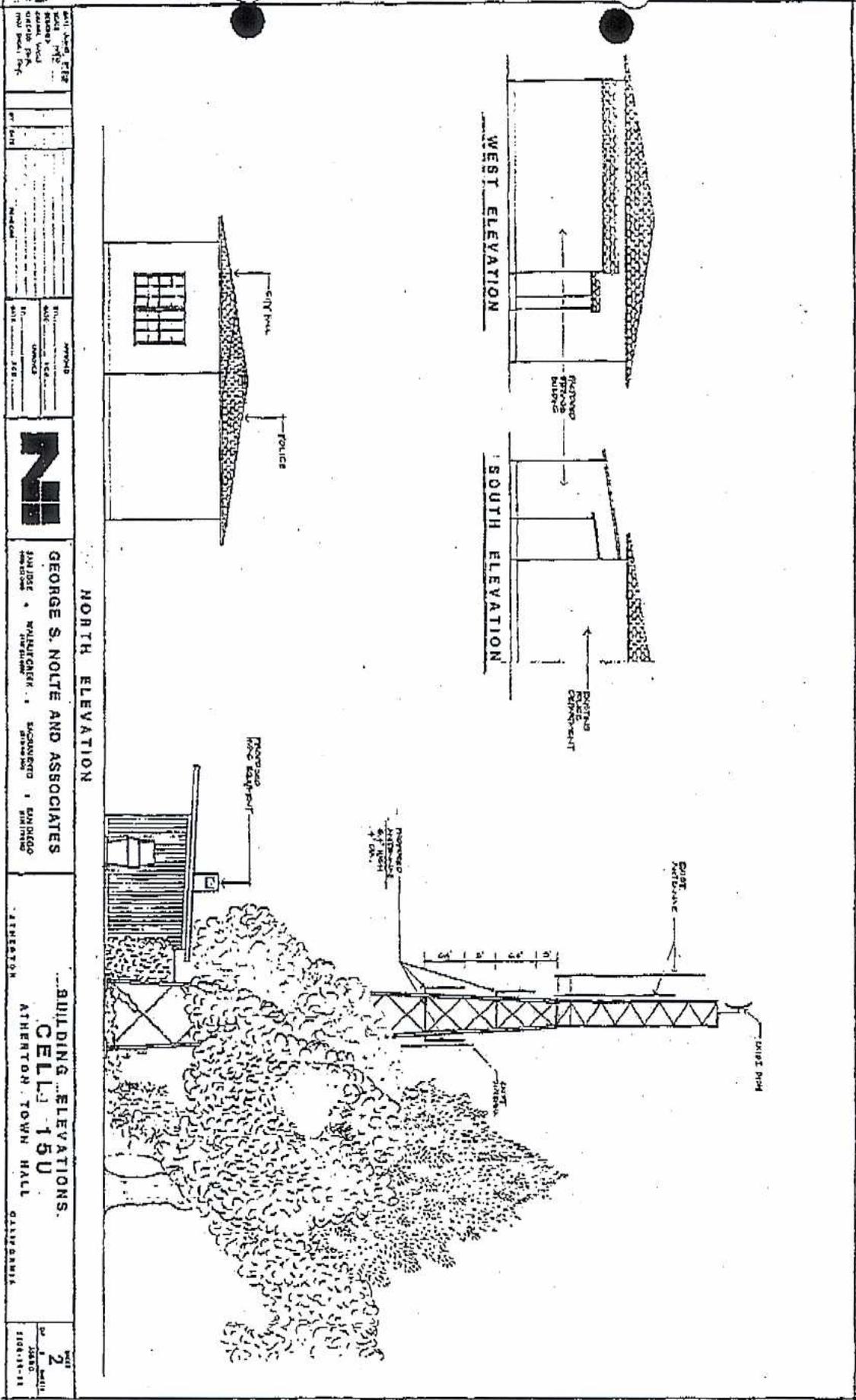
LANE



NOTE:  
 PLANS PREPARED FROM INFORMATION  
 PROVIDED BY THE CLIENT AND ASSUMED  
 TO BE ACCURATE. THE ARCHITECT  
 ASSUMES NO RESPONSIBILITY FOR THE  
 ACCURACY THEREOF.

<p>PROJECT NO. 07-001          SHEET NO. 150          DATE: 09/14/07</p>	<p>NO. 014          UNANI          08/14/07</p>	<p><b>GEORGE S. NOLTE AND ASSOCIATES</b>          ARCHITECTS          1000 W. WASHINGTON ST.          SUITE 100          DENVER, CO 80202          (303) 733-1111</p>	<p><b>PLAT PLAN</b>  <b>CELL 150</b>          ALHENTON TOWN HALL          CALIFORNIA</p>	<p>SCALE: 1" = 20'-0"          DATE: 09/14/07</p>
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EXHIBIT B 2 of 2



Date: 09/14/07 Drawn: J. Farasyn Checked: J. Farasyn Project: ATHERTON TOWN HALL GYMNASIUM	Client: ATHERTON Address: 1500' x 1500' x 15' City: SAN JOSE State: CA		<b>GEORGE S. NOLTE AND ASSOCIATES</b> SAN JOSE • WALKER CREEK • SACRAMENTO • SAN DIEGO ARCHITECTS • INTERIORS • ENGINEERS	<b>BUILDING ELEVATIONS</b> <b>CELL 150</b> ATHERTON TOWN HALL GYMNASIUM	Page: 2 Date: 09/14/07 Scale: 1/8" = 1'-0"
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## EXHIBIT C

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

GRAHAM & JAMES  
One Maritime Plaza, Suite 300  
Alcoa Building  
San Francisco, CA 94111  
Attention: F. Conger Fawcett

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE made and entered into as of the 1<sup>st</sup>  
day of November, 1986, by and between THE TOWN OF ATHERTON  
("Lessor") and BAY AREA CELLULAR TELEPHONE COMPANY ("Lessee"), a  
California general Partnership.

WITNESSETH

That Lessor hereby leases to Lessee and Lessee hereby leases  
from Lessor that certain real property in the County of San  
Mateo, California, commonly known as 91 Ashfield Road, Atherton,  
California and more particularly described as set forth in  
Exhibit B, for an initial term of ten (10) years, commencing not  
later than September 30, 1987 upon the terms and conditions and  
for the purposes set forth in that certain unrecorded lease  
between the parties thereto, dated November 1, 1986,  
including options to renew said lease for two (2) successive  
terms of five (5) years each.

IN WITNESS WHEREOF, the parties have executed this  
Memorandum of Lease the day and year first written above.

THE TOWN OF ATHERTON

BAY AREA CELLULAR TELEPHONE CO.

BY: Ross J. HubbardBY: Mark B. NelsonCity Manager/City ClerkTitle: Vice President -Engineering & Operations

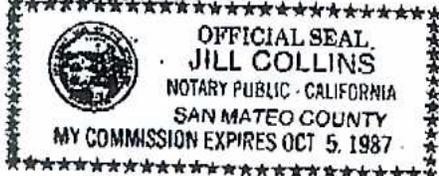
ACKNOWLEDGEMENT

BACTC

State of California )  
County of San Mateo ) ss

On this 24<sup>th</sup> day of November, in the year 19 86,  
before me, Jill Collins, a notary public, personally appeared  
Mark B. Nelson, personally known to me [or proved to me  
on the basis of satisfactory evidence] to be the person who  
executed this instrument on behalf of the partnership and  
acknowledged to me that the partnership executed it.

[Notarial Seal]



Jill Collins  
Notary Public for the  
State of California  
My commission expires:  
October 5, 19 87

LESSOR:

State of California )  
County of \_\_\_\_\_ ) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 19\_\_\_\_,  
before me, \_\_\_\_\_, a notary public, personally  
appeared \_\_\_\_\_, personally known to me [or proved  
to me on the basis of satisfactory evidence] to be the person who  
executed this instrument on behalf of the  
[partnership/corporation] and acknowledged to me that the  
[partnership/corporation] executed it.

[Notarial Seal]

\_\_\_\_\_  
Notary Public for the  
State of California  
My commission expires:  
\_\_\_\_\_, 19\_\_\_\_

## EXHIBIT D

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

GRAHAM & JAMES  
One Maritime Plaza, Suite 300  
San Francisco, California 94111  
Attention: F. Conger Fawcett

## MEMORANDUM OF COMMENCEMENT OF LEASE

THIS MEMORANDUM OF COMMENCEMENT OF LEASE is entered into as of this 1<sup>st</sup> day of November, 1986, by and between THE TOWN OF ATHERTON and BAY AREA CELLULAR TELEPHONE COMPANY ("BACTC").

## WITNESSETH

Pursuant to a lease executed between BACTC and Lessor and dated November 1, 1986, (the "Lease"), for which Lease a Memorandum of Lease was recorded \_\_\_\_\_, 1986, in Book \_\_\_\_\_ and Page \_\_\_\_\_ in the office of the County Recorder of San Mateo County, Lessor leased to BACTC and BACTC leased from Lessor, upon the terms and conditions set forth in that Lease, that certain real property in the county of San Mateo, State of California, described in Exhibit B attached hereto.

Pursuant to said Lease, BACTC and Lessor hereby establish the 1<sup>st</sup> day of November, 1986, as the Commencement Date for the initial term of said Lease, as that term is defined in Section 4 thereto for the purposes of that Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Commencement of Lease on the date first written above.

Lessor: THE TOWN OF ATHERTON

By: Ross Hubbard, City Manager/City Clerk

Lessee: BAY AREA CELLULAR TELEPHONE CO.

By: Mark B. Nelson  
Vice President - Engineering & Operations



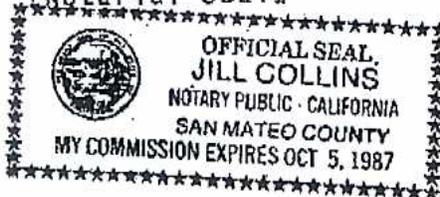
ACKNOWLEDGEMENT

BACTC

State of California )  
County of San Mateo ) ss

On this 24th day of November, in the year 19 86,  
before me, Jill Collins, a notary public, personally appeared  
Mark B. Nelson, personally known to me [or proved to me  
on the basis of satisfactory evidence] to be the person who  
executed this instrument on behalf of the partnership and  
acknowledged to me that the partnership executed it.

[Notarial Seal]



Jill Collins  
Notary Public for the  
State of California  
My commission expires:  
October 5, 1987

LESSOR:

State of California )  
County of \_\_\_\_\_ ) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 19\_\_\_\_,  
before me, \_\_\_\_\_, a notary public, personally  
appeared \_\_\_\_\_, personally known to me [or proved  
to me on the basis of satisfactory evidence] to be the person who  
executed this instrument on behalf of the  
[partnership/corporation] and acknowledged to me that the  
[partnership/corporation] executed it.

[Notarial Seal]

\_\_\_\_\_  
Notary Public for the  
State of California  
My commission expires:  
\_\_\_\_\_, 19\_\_\_\_

**FIRST AMENDMENT TO LEASE  
BETWEEN CELLULAR ONE AND THE TOWN OF ATHERTON**

THIS FIRST AMENDMENT TO LEASE, dated October 30, 1997 is made by and between **BAY AREA CELLULAR TELEPHONE COMPANY**, a California general partnership doing business as Cellular One ("CellularOne") and **THE TOWN OF ATHERTON**, a California municipal corporation ("Lessor") with respect to the following facts:

**RECITALS**

A. Lessor and CellularOne, entered into that certain Lease dated November 1, 1986 for premises located at 91 Ashfield Road, Atherton, California (the "Lease").

B. CellularOne desires to replace the six existing panel antennas located on the antenna tower with three new antenna panels.

C. Lessor and CellularOne desire to amend and modify the Lease by replacing the description of the Premises showing the antenna panels and their location on the antenna tower found in the exhibit marked "Exhibit B" attached thereto with a revised description of the Premises in a new, revised Exhibit B.

D. Lessor and CellularOne desire to further amend and modify the Lease by replacing the notice provision of Section 22 of the Lease with a new, revised Section 22.

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

1. **Replacement of Exhibit B.** Exhibit B to the Lease is hereby deleted in its entirety and is replaced and superseded by Exhibit B attached hereto.

2. **Replacement of Section 22.** Section 22 of the Lease is hereby deleted in its entirety and is replaced and superseded by the following new, revised Section 22:

22. **NOTICES AND OTHER COMMUNICATIONS.** All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

If to the Lessor:           Town of Atherton  
                                  91 Ashfield Road  
                                  Atherton, CA 94025

If to CellularOne:        CellularOne  
                                  Bay Area Cellular Telephone Company  
                                  651 Gateway Boulevard, Suite 1500  
                                  South San Francisco, California 94080  
                                  Attn: Director, Systems Development

With a copy to:           Paul B. Albritton, Esq.  
                                  Mackenzie & Albritton  
                                  One Post Street, Suite 500  
                                  San Francisco, California 94104

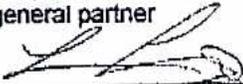
Nothing herein contained shall preclude the giving of any such written notice by personal service, which notice shall be effective upon receipt. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

3. No Further Modifications. Except as specifically modified herein, the Lease remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Lease as of the date and year first above written.

**CELLULARONE: BAY AREA CELLULAR TELEPHONE COMPANY**, a California general partnership

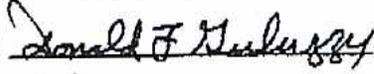
By: **CMT PARTNERS**, a Delaware general partnership  
Its: general partner

By: 

Title: Director, Systems Development

Printed Name: Lewis Loewen

**LESSOR: TOWN OF ATHERTON**, a California municipal corporation

By: 

Its: City Manager

Printed Name: Donald F. Guluzzo



TOWN OF ATHERTON  
PLANNING COMMISSION

CONDITIONAL USE PERMIT CERTIFICATE

This is to certify that the Atherton Planning Commission, on October 22, 1997 amended conditions of Conditional Use Permits approved by the Town of Atherton on August 19, 1987, September 23, 1992, June 23, 1993 and October 27, 1993, and did grant a Conditional Use Permit pursuant to Atherton Municipal Code Section 17.32.030 and Chapter 17.52 to allow the installation, operation, maintenance and repair of cellular telephone processing equipment (the "Facilities") by Bay Area Cellular Telephone, and its successors and assigns ("Cellular One") under that certain Lease with the Town made November 1, 1986; and to specifically allow the removal of six existing antennas and replacement with three 96" x 12" x 7" antennas mounted at the 55' height level, (one on each leg of the Town Radio Tower) at 83/91 Ashfield Road (Assessor's Parcel Number 060-321-010), in Atherton, CA. (the Property)". The previous Conditional Use Permits are hereby amended in their entirety and the application is approved subject to the following conditions.

- A. The installation, operation, maintenance and repair of cellular telephone processing equipment (the "Facilities") at 83/91 Ashfield Road, Town of Atherton (the "Property") by Bay Area Cellular Telephone, and its successors and assigns ("Cellular One"); under that certain lease with the Town made November 1, 1986 shall be permitted as an accessory use subject to the conditions set forth in subparagraph B and C hereof:

83/91 Ashfield Road  
Approved Cellular One Conditional Use Permit  
Effective November 1, 1997  
Page 2 of 6

- B. The Facilities may consist of (i) electronic switching equipment, building air conditioning, portable emergency power and standby battery power situated or to be situated in the existing leased premises in the Police Department storage building (the "Building") on the Property and (ii) no more than three (3) EMS wireless FS 70-12-00NA antennas as shown on plans and photos presented to the Planning Commission on October 22, 1997 on the existing communications tower located on the Property subject to the conditions set forth in subparagraph C hereof:
- C. The use of the Property for the use set forth and described in subparagraphs A and B above shall be subject expressly to the following conditions:
1. The two air conditioning units situated on the Building shall remain on the Ashfield Road side of the Building, or such other location as may be agreed upon by the Town, the owners of the 76 Fair Oaks Land and Cellular one, and the sound shall be directed away from the 76 Fair Oaks Lane property. Such air conditioning units shall be baffled to further minimize noise transmission in such manner as the Town deems necessary and appropriate. Reasonable, good faith efforts shall be made by Cellular one to minimize the hours and noise level of operation of the air conditioners to the extent feasible including cycling operation of the units, and avoiding operation in the evening, except when necessary and essential for providing cooling required for the equipment.
  2. No equipment may be installed on the roof or the rear wall of the Building by or for Cellular One and no structural alterations, including openings, may be made to the portion of the building leased by Cellular One without obtaining a modification of this Conditional Use Permit.
  3. Except for those antennas installed by the Town or the County of San Mateo for Municipal purposes, the installation of more than three (3) EMS wireless FS 70-12-

83/91 Ashfield Road  
Approved Cellular One Conditional Use Permit  
Effective November 1, 1997  
Page 3 of 6

00NA antennas as shown on plans and photos presented to the Planning Commission on October 22, 1997 or any antennas of a differing type or size shall require a modification of this Conditional Use Permit, which modification shall include such additional conditions as the Town determines necessary and appropriate with respect to (a) structural integrity of the tower; (b) any health hazards possible from additional radio frequency exposure levels; (c) any increase in noise transmission to neighboring property and (d) any adverse aesthetic impacts. If the Town determines that the imposing of additional conditions will not sufficiently mitigate adverse impacts of the requested modification then the Town shall deny the request for modification.

4. The antennas shall be installed upon the Tower in the highest possible locations, taking into consideration the structural integrity of the Tower and of the installation of the antennas thereon and the appropriate functionality of the antennas. Any extraneous, currently unused brackets or other facilities previously installed on the Tower by Cellular One shall be removed.
5. A qualified independent consulting engineer acceptable to the Town and to the owners of 76 Fair Oaks Lane shall be retained to study and prepare a detailed report regarding all radio frequency exposure levels existing on the Property and/or resulting from the Facilities, including theoretical power density calculations (made for worst case conditions) and on-site field measurements. If the study shows the ground level radio frequency exposure levels are, or could be, under worst case conditions, in excess of the American National Standards Institute (ANSI) C-95.1 1982, or ANSI/IEEE C95-1 and adopted November 18, 1992, standard safety levels with respect to human exposure to radio frequency electromagnetic fields, as such standards are modified from time to time, or such other standard as the Town, the owners of 76 Fair Oaks Lane and Cellular One mutually find to be an appropriate standard for safety with respect to radio frequency electromagnetic fields, then Cellular One shall immediately, at its cost, undertake such action as is necessary to cause the ground level radio frequency exposure levels to be within or lower than the safety levels for ground level

83/91 Ashfield Road  
Approved Cellular One Conditional Use Permit  
Effective November 1, 1997  
Page 4 of 6

radio frequency exposure levels set forth in the applicable safety standard selected hereunder.

If Cellular One is unable to bring the ground level radio frequency exposure levels within such safety levels within sixty (60) days of a written finding by the Town that the standards have not been met, then the use permitted hereunder shall terminate, the use of the Facilities shall cease and all of the facilities shall be removed from the property.

6. If Cellular One proposes or applies for any modification of the facilities including replacement or modification of the equipment from that existing at the time of initial study or should it apply to relocate any of the antennas on the tower, then the specifications of such equipment and antenna shall be furnished to the Town before modifying the Facilities and the same consulting engineer or, if unavailable, a qualified replacement engineer as agreed to by the Town, shall update the study and render a report to the Town based upon such proposed changes or modifications. A copy of all future reports or studies shall be submitted to the Town Council. If such future study shows that the exposure levels are, or could be, in excess of the applicable safety standards, as such standards are modified from time to time (based upon worst case conditions), then the requested modification shall be denied unless changes are made thereto causing such modification to be in compliance with such standards.
  
7. During the term of this Conditional Use Permit, the Town may at any time (but no more frequently than one time in any twelve (12) month period request that Cellular One have the same consulting engineer or, if unavailable, a qualified replacement engineer agreed to by the Town, perform on-site field measurements of radio frequency exposure levels at the Property and at adjoining properties and residences or prepare a Computer Model Study comparable to the Study of February 16, 1993, and

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Approved Cellular One Conditional Use Permit  
Effective November 1, 1997  
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report such information to the Town. If the measurements indicate that the exposure levels are in excess of applicable safety standards, then Cellular One shall bring the ground level radio frequency exposure levels within such safety levels within sixty (60) days of written finding by the Town that the standards have not been met, or the use permitted hereunder shall terminate, the use of the Facilities shall cease and all of the Facilities shall be removed from the Property.

8. Prior to the approval of any request for installation of any additional antennas on the Tower, by Cellular One, the Town shall require Cellular One to furnish a study by an independent structural engineer reasonably acceptable to the Town and the owners of 76 Fair Oaks Lane reviewing the wind load capacity and structural capacity of the Tower to determine the effect of the installation requested. The Town shall not approve the requested installation unless it finds that the Tower is structurally adequate to support the installation or that structural modifications will be made as a condition precedent to such installation to provide sound, adequate and safe structural support. This Use Permit shall not be effective unless the required engineering analysis for the proposed antennas on the Radio Tower demonstrates that no structural changes are required to the Radio Tower.
9. All safety requirements and/or recommendation of the Fire District shall be implemented and complied with as a condition of this Conditional Use Permit.
10. If the Town determines that Cellular One has not stayed in compliance with all of the conditions or is not taking satisfactory steps to assure compliance with all such conditions, this Conditional Use Permit may be revoked by the Town Council.
11. This Conditional Use Permit shall be coextensive with and coterminous with the Lease between the Town and Bay Area Cellular Telephone Company made November 1, 1986, subject to the terms hereof.

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Approved Cellular One Conditional Use Permit  
Effective November 1, 1997  
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12. Any modification of this Conditional Use Permit as provided hereinabove shall require a noticed public hearing in accordance with the provisions of Chapter 17.52 of the Atherton Municipal Code.



Michael Hood  
Zoning and Building Official

Effective Date: November 1, 1997  
Atherton, CA



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: CITIZEN REQUEST TO MODIFY TRAFFIC PROGRAM TO ALLOW  
SPEED HUMPS**

#### **RECOMMENDATION:**

The City Council determine if modification to the Traffic Program is warranted. If the decision is to revise the program, Council can refer the matter to the Transportation Subcommittee to develop revised rules, regulations and procedures.

#### **BACKGROUND:**

In April 1992, the Town of Atherton created Rules, Regulations and Procedures for Managing Traffic (the "Traffic Program"). In August 1995, the Traffic Program was amended to allow for consideration of speed-related traffic management devices and measures on streets with daily traffic volumes of up to 5,000 vehicles per day.

The Traffic Program does not include speed humps or tables as devices or measures to be used within Atherton. There are other traffic calming devices in the Institute of Traffic Engineers (ITE) Traffic Calming Toolbox that are also not included in the Traffic Program.

A citizen requested that the Traffic Program be updated and refined to include speed humps, speed tables and other appropriate devices not now addressed, with clear and sensible ground rules. It should be noted that the same request included a request to install traffic management devices, specifically speed humps or speed tables, on Fair Oaks Lane.

**ANALYSIS:**

The citizen's request was considered by the Transportation Subcommittee at the July 10, 2007, meeting. The Subcommittee particularly noted the speed tables installed by Menlo Park on Laurel Street that are not terribly intrusive except at high speeds. They also noted the difficulty the fire departments, police departments and other emergency responders have with such traffic calming devices in that they increase response time. The Council is asked to decide if the safety resulting from reduced speeds is sufficient tradeoff for these increased response times. And finally the Subcommittee noted the controversy resulting from the Town's attempts to install traffic management devices in the Fair Oaks area in the early 1990s.

After discussion, the Subcommittee was unable to develop a recommendation and is forwarding the issue to the full City Council for a decision. The specific Fair Oaks Lane request was continued pending the Council's decision.

**FISCAL IMPACT:**

There is no immediate fiscal impact of this decision; however, additional requests for traffic calming devices will increase demand for limited staff time and requests for traffic calming that are eventually approved will add costs to the Capital Improvement Program.

Prepared by:

Approved by:

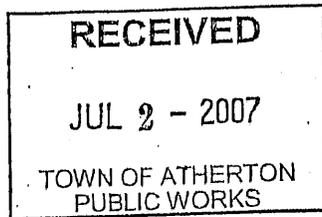
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Duncan L. Jones, P.E.  
Public Works Director

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Wendé C. Protzman  
Interim City Manager

Attachments: Citizen Request Letter  
Traffic Program



Item 5.4

197 Fair Oaks Lane  
Atherton, CA 94027  
July 2, 2007

Atherton Transportation Committee  
91 Ashfield Road  
Atherton, CA 94027

Subject: Request for Traffic Calming on Fair Oaks Lane

### THE SITUATION

1. Fair Oaks Lane is a winding street with higher traffic volume than any other winding street in Atherton. A major portion of volume is "cut-through" traffic by non-Atherton residents. From Highway 92 to 85 the Atherton Avenue/Fair Oaks Lane link is the fastest route between 280 and 101 which attracts much of the "cut-through" traffic.
2. Because of restricted visibility around curves, it is dangerous for resident drivers to enter Fair Oaks Lane from driveways and feeder streets, some of which are blind intersections.
3. The 25 mph speed limit is not enforced since Atherton police are reluctant to issue citations for speeds less than 10 mph over the limit. Fast traffic plus high volume, particularly during rush hours, also makes it unsafe for pedestrians and bicycles.
4. Within the last few years Menlo Park and nearby County areas have installed speed humps and speed tables as traffic calming devices on a number of streets including Laurel, Alma, Willow, Cambridge, Orange and Bay Road. They appear to be effective.
5. Speed humps and tables act as around-the-clock deterrents to speeding above a pre-designed limit - without police surveillance.
6. Atherton has a 27 page resolution (95-20) passed in 1995 containing rules and procedures for managing traffic. This resolution covers a variety of traffic calming devices but does not specifically address speed humps or tables.
7. Menlo Park adopted a Neighborhood Traffic Management Program in 2004 which is described in a comprehensive 53 page booklet. It specifically includes speed humps and tables along with criteria and procedures for neighborhood groups to apply for them as well as other devices. It could serve as a reference for Atherton.

## RECOMMENDATIONS

1. Conduct a traffic survey at key locations on Fair Oaks Lane to document traffic volumes, speeds and 85<sup>th</sup> percentile data overall and by time period. This should provide current information for analysis and decision making.
2. Update and refine the traffic management resolution to include speed humps, speed tables and other appropriate devices not now addressed, with clear, sensible ground rules.
3. Reduce speed limits at blind intersections.
4. Enforce speed limits.
5. Evaluate appropriate traffic calming.

Thank you very much for your consideration.

Jack Ringham

RESOLUTION 95-20

A RESOLUTION OF THE CITY COUNCIL  
OF THE TOWN OF ATHERTON  
AMENDING THE RULES, REGULATIONS AND PROCEDURES  
FOR MANAGING TRAFFIC

WHEREAS, the City Council has previously adopted Rules, Regulations and Procedures for Managing Traffic by Resolution 92-7 on April 29, 1992; and

WHEREAS, the Circulation Objective contained in the Atherton General Plan expresses the Town's intent to "minimize the encroachment of the circulation network on the residential and open space uses which prevail throughout most of the community"; and

WHEREAS, in addressing a traffic issue, the Town can consider, among other things, enforcement techniques, traffic controls, a project to improve the street's design, or a traffic management device or measure; and

WHEREAS, Section 10.04.010 of the Atherton Municipal Code allows the City Council to adopt rules and regulations governing traffic and parking on the various streets and highways within and under the jurisdiction of the Town; and

WHEREAS, the City Council has determined that it is in the best interest of the citizens of the Town of Atherton to amend the current rules, regulations and procedures to allow for consideration of speed-related traffic management devices and measures on streets with daily traffic volumes of up to 5,000 vehicles per day, and to make other clarifications of the existing rules and regulations; and

WHEREAS, the City Council has determined that the adoption of an amendment to the Rules, Regulations and Procedures for Managing Traffic will not have a significant effect upon the environment, and is further categorically exempt from the California Environmental Quality Act and the Town's environmental guidelines.

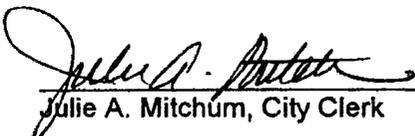
NOW, THEREFORE, BE IT RESOLVED by the City Council of the Town of Atherton, California that the amendment to the Rules, Regulations and Procedures for Managing Traffic, dated August 16, 1995, and attached hereto as Exhibit "A", is hereby adopted.

\*\*\*\*\*  
I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 16th day of August, 1995, by the following vote:

AYES: 4 COUNCILMEMBERS: Fisher, Conwell, Chapman, Huber  
NOES: 0 COUNCILMEMBERS: None  
ABSENT: 1 COUNCILMEMBERS: Dudley  
ABSTAIN: 0 COUNCILMEMBERS: None

  
\_\_\_\_\_  
Dianne M. Fisher, MAYOR  
TOWN OF ATHERTON

ATTEST:

  
\_\_\_\_\_  
Julie A. Mitchum, City Clerk

**RESOLUTION 92-7**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE TOWN OF ATHERTON, CALIFORNIA,  
ESTABLISHING RULES, REGULATIONS AND PROCEDURES  
FOR MANAGING TRAFFIC**

**WHEREAS**, traffic issues arise when the speed, volume or type of traffic in a particular area is not consistent with the area's street design or the street's intended use as designated in the General Plan;

**WHEREAS**, the Noise Goal of the Atherton General Plan seeks to "maintain the serene atmosphere of the Town by minimizing the intrusion of noise generating activities";

**WHEREAS**, the Circulation Element of the Atherton General Plan states that "Carrying traffic is a secondary function of local streets and they should be designed to discourage through traffic";

**WHEREAS**, the Circulation Objective contained in the Atherton General Plan expresses the Town's intent to "minimize the encroachment of the circulation network on the residential and open space uses which prevail throughout most of the community";

**WHEREAS**, the Land Use Goal of the Atherton General Plan is to "preserve the Town's character as a scenic, rural, thickly wooded residential area with an abundance of open space";

**WHEREAS**, in addressing a traffic issue, the Town can consider, among other things, enforcement techniques, traffic controls, a project to improve the street's design, or a traffic management device/measure, or other traffic management measures;

**WHEREAS**, Section 21101 of the California Vehicle Code provides that local authorities may adopt rules and regulations prohibiting entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers or other roadway design features to implement the Circulation Element of the General Plan;

**WHEREAS**, Section 10.04.010 of the Atherton Municipal Code allows the City Council to adopt rules and regulations governing traffic and parking on the various streets and highways within and under the jurisdiction of the Town;

**WHEREAS**, the City Council has determined that it is in the best interest of the citizens of the Town of Atherton to establish rules, regulations and procedures relating to the erection of traffic management devices/measures;

**WHEREAS**, erected traffic projects should be subject to review, in light of changed conditions or perspectives, to determine whether an erected project should be modified or removed in the best interests of the community. The same rules,

regulations and procedures should be utilized in addressing the modification and removal of traffic management devices/measures;

WHEREAS, the negative declaration and associated environmental review documents are on file in the Office of the City Clerk and were available in the City Council chambers at the time this resolution was considered; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the Town of Atherton, California, that:

A. The adoption of the Rules, Regulations and Procedures for managing traffic will not have a significant effect upon the environment. In accordance with the California Environmental Quality Act and the City's environmental guidelines, the City Council hereby certifies a negative declaration in conjunction with the adoption of the Rules, Regulations and Procedures.

B. The Rules, Regulations and Procedures for managing traffic provides a program that is consistent with the General Plan in that it will protect neighborhood streets from use in excess of the design of the street and its intended use in accordance with the Circulation Element of the General Plan and will further cause traffic to utilize streets in accordance with the General Plan.

C. That the Rules, Regulations and Procedures for managing Traffic, dated April 29, 1992, and attached hereto as Attachment A is hereby adopted.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 29th day of April, 1992, by the following vote:

AYES: COUNCILMEMBER: Christopher E. Cobey  
William R. Conwell  
Malcolm H. Dudley  
Nanette F. Chapman  
Dianne M. Fisher

NOES: COUNCILMEMBER: None

ABSENT: COUNCILMEMBER: None

*Christopher E. Cobey*  
\_\_\_\_\_  
Christopher E. Cobey, MAYOR  
TOWN OF ATHERTON

ATTEST:

*Susan P. Jankowski*  
\_\_\_\_\_  
Susan P. Jankowski, DEPUTY CITY CLERK  
TOWN OF ATHERTON

**EXHIBIT "A"**  
**TOWN OF ATHERTON**  
**RULES, REGULATIONS AND PROCEDURES**  
**FOR MANAGING TRAFFIC**

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## INTRODUCTION

A traffic issue arises when the speed, volume, or type of traffic in a particular area is not consistent with the area's street design or the street's intended use as designated in the General Plan.

In addressing a traffic issue, the Town can consider, among other things, enforcement techniques, traffic controls, a project to improve the street's design, or a traffic management device/measure, or other traffic management measure.

These Rules, Regulations and Procedures for Managing Traffic (hereinafter referred to collectively as the "Traffic Management Policy") will be used when the Town wants to consider addressing a traffic issue by using a traffic management device/measure.

In determining whether to implement a traffic management device or measure at a particular location, the Town shall conform to the rules and regulations included in this Traffic Management Policy.

- A. Section I contains the Rules and Regulations that the Town will use to determine whether the traffic issue in the particular location is appropriately addressed by a traffic management project.
- B. Section II contains the Rules and Regulations that the Town will use to determine the appropriate management device or measure, after it is determined that a traffic management project is the appropriate method for addressing a traffic issue in a particular area.
- C. Section III contains the environmental considerations, rules and regulations that the Town will use in making the determinations referenced above.
- D. Section IV sets forth the procedures for administering this Traffic Management Policy.

This Traffic Management Policy is established in accordance with the Town's authority and responsibility to provide for the health and welfare of its citizens.

The circulation element of the Atherton General Plan provides definitions for various categories of streets within the Town's jurisdiction. In particular, the main role of freeways, highways and minor arterial streets is to serve through traffic. Access to abutting properties is a minor function of these facilities. Collector streets provide both land access and traffic circulation service within the residential areas. The primary function of local streets is to provide access to abutting property. Carrying traffic is a secondary function of local streets and they should be designed to discourage through traffic. This Traffic Management Policy is applicable to both local streets and collector streets, under the jurisdiction of the Town of Atherton, meeting the criteria set forth in the Section I Rules and Regulations.

This Traffic Management Policy does not regulate but can be used in conjunction with other programs exercising the Town's authority to install official traffic control devices as provided under Title 10 of the Atherton Municipal Code or as provided under Section 21100 (d) of the Vehicle Code which states, in part, that "Local authorities may adopt rules and regulations by ordinance or resolution...regulating traffic by means of official control devices..."

This Traffic Management Policy guides the Town's authority under Section 21101, subsection (f) of the California Vehicle Code to prohibit entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the Circulation Element of the General Plan by rules and regulations that are consistent with the responsibility of the Town to provide for the health and safety of its citizens.

As used in this Traffic Management Policy, a neighborhood is a district or section of Atherton, or an adjoining City or unincorporated area, which shares common characteristics or is separated from another such district or section by significant streets or other physical features. The City Council of Atherton is authorized to determine neighborhood boundaries on a case-by-case basis.

**SECTION I: DETERMINING WHETHER THE LOCATION OF THE TRAFFIC ISSUE IS PROPERLY ADDRESSED BY A TRAFFIC MANAGEMENT PROJECT**

A. General Provisions

1. Rules

This Section shall be used by the Town to determine whether the traffic issue in the particular location is appropriately addressed by a proposed or existing traffic management project.

2. Objectives

A traffic management project is appropriate for:

- a. Local streets when the benefits normally derived by residents are significantly diminished by an unreasonable amount of through traffic;
- b. Local streets where at least 50% of the total daily traffic volume is identified as through traffic; or
- c. Local streets where over 50% of the vehicles using the street are exceeding the speed limit by more than 20%.
- d. A traffic management project addressing through traffic is appropriate for streets with daily traffic volumes of less than 2,500 vehicles per day. A traffic management project addressing excessive traffic speeding may be considered on streets with daily traffic volumes of up to 5,000 vehicles per day.

B. Factors for Consideration

1. Circulation Element, General Plan

In considering a traffic management project, the Town will reach a determination consistent with the goals, objectives, definitions and policies of the General Plan Circulation Element.

2. Community Character

The character of the Atherton community is described by the following General Plan objectives, policies and statements:

- a. "To retain the high quality of maintenance and living environment existing in the Town's residential neighborhoods."

- b. "To preserve the streets of Atherton as scenic routes."
- c. "To minimize the encroachment of the circulation network on the residential and open space uses which prevail throughout most of the community."
- d. "Carrying traffic is a secondary function of local streets and they should be designed to discourage through-traffic."
- e. "No street under the jurisdiction of the Town shall be more than two lanes in width."
- f. "Meandering street lines shall be preserved consistent with traffic safety."

In considering all of the factors concerning a determination of whether the traffic issue in the particular location is appropriately addressed by a traffic management project, the Town shall make its determination consistent with the protection of community character.

Community character is the qualitative atmosphere and experience of the community resulting from the interactive elements of the natural environment and the infrastructure of the community.

While certain aspects of community character can be common among various communities, ultimately each community and neighborhood has a character which is unique.

One of the important elements of community character is the qualitative and quantitative characteristics of the layout and traffic on the neighborhood streets.

The design, the volume of vehicular, bicycle and pedestrian traffic, the automobile noise and emission levels all help define the atmosphere and experience of the community. Local streets provide a significant part of the fabric of the community and how well they function can determine the quality of the neighborhood.

Policies outlined in the General Plan and in the Rules and Regulations have the overall goal of seeing that street improvements have the effect of being consistent with, and enhancing, the prevailing desirable community character, rather than detrimental to that character. Street design and traffic control should therefore serve neighborhood protection and quality of life objectives.

A traffic management project is supportable when it is demonstrated that the project is consistent with and enhances the community character of Atherton as described in the General Plan.

### 3. Traffic Volumes

Traffic consists of two types:

- a. Through traffic consists of trips having both ends outside the street or portion of the street under consideration.

b. Local traffic can be divided into five subcategories, as follows:

- (1) Traffic produced by residents of the street under consideration.
- (2) Traffic attracted to residences in the neighborhood such as visitors, domestic employees, and so forth.
- (3) Traffic generated by non-neighborhood land uses which may exist in the area.
- (4) Sequential trips to service the area such as postal and other deliveries, refuse pickups, police patrols, and so forth.
- (5) Traffic generated by occasional activity within the neighborhood such as construction projects, utility repair, emergencies, and so forth.

For the purpose of this Traffic Management Policy, the terms local traffic and through traffic are used to define the two types of neighborhood traffic. All of the five sub-categories of local traffic may be evaluated when estimating the number of daily trips in the neighborhood or street under consideration.

A traffic management plan is supportable when it is demonstrated that the project will further the traffic and circulation goals, objectives and policies of the General Plan.

#### 4. Speed

Section 22352 of the Vehicle Code provides that the prima facie speed limit in a residential district is 25 miles per hour unless a different speed is determined by local authority. Most local streets in Atherton have a speed limit of 25 or 30 miles per hour.

However, on some streets the prevailing critical speed (that speed at or below which 85% of vehicles travel) may be higher than the 25 mile per hour speed limit.

It is essential to require that there is a demonstrated "excessive speed" problem as evidenced by the percent of vehicles exceeding the speed limit. Accurate documentation is particularly important in the use of traffic management measures so that they are used for the purpose as recommended in the State Traffic Manual or the Manual on Uniform Traffic Control Devices (MUTCD). The actual speeds can be recorded by radar or other appropriate management techniques.

A traffic management project is supportable when it is demonstrated that over 50% of the vehicles using the street are exceeding the posted speed limit by more than 20%.

A speed-related traffic management project, consisting of traffic calming measures designed to slow the existing traffic volume, may be considered on a case-by-case basis for any street (local or collector) with a daily traffic volume of less than 5,000 vehicles per day. Such traffic management projects shall only be considered on streets with a posted speed limit of 25 miles per hour or less.

5. Air Quality

The California air quality standards will be considered in determining whether a traffic management project is an appropriate method of addressing the traffic issue.

A traffic management project is supportable when it is demonstrated that the project improves overall air quality, or retains air quality at existing levels.

6. Noise

Section 23130 (a) of the Vehicle Code states: "No person shall operate either a motor vehicle or combination of vehicles of a type subject to registration at any time or under any condition of grade, load, acceleration, or deceleration in such a manner as to exceed the following noise limits for the category of motor vehicles within a speed limit of 35 miles per hour or less:

Motorcycles	82 dBA
Any motor vehicle with a manufacturer's gross vehicle weight rating of 10,000 pounds or less	76 dBA

Under Section 23130 (a), noise measurements are made at mid-block and not within 200 feet of any intersection or within 200 feet of the beginning or end of any grade.

A traffic management project is supportable when it is demonstrated that the project achieves compliance with the noise standards as contained in the Noise Element of the General Plan.

SECTION II: SELECTING A DEVICE OR MEASURE FOR A TRAFFIC MANAGEMENT PROJECT

A. Introduction

Once it is determined that a traffic management project is appropriate for a particular location, the selection of the appropriate device/measure shall be made in accordance with this Section.

It is the general policy of the Town that the selection of the devices/measures shall be based on sound traffic engineering principles to assure traffic safety and to preserve community character.

The following traffic management devices/measures are authorized: cul-de-sacs, chokers, diverters, median barriers, one-way streets, turning restriction signs, "Do Not Enter" signs, curbs, barricades, gates, and islands (concrete, asphalt or striped), and all devices and measures authorized by the California Vehicle Code to manage traffic.

For the purpose of this Program, the traffic management devices/measures have been divided into two categories:

1. Traffic Signs that communicate specific regulatory, warning or guiding messages to the motorist, cyclists or pedestrian. Among the most common of these signs for use on local streets are turning restriction signs and one-way street signs.
2. Geometric Design Features that guide or restrict the physical movement of vehicles or pedestrians, defining and allocating various parts of the public right-of-way. Included in this category are cul-de-sacs, chokers, semi-diverters and median barriers. Other design features which may be considered are traffic circles, diagonal diverters, mid-block cul-de-sacs, barricades, islands (concrete, asphalt or striped), curbs, and gates.

The City Council may consider the devices and/or measures that will accomplish the purposes of the Program at the site of the proposed project and has the least adverse impact on community character, noise, air quality, traffic circulation, public services and safety.

B. Traffic Signs

1. Turn Prohibition Signs

Turn prohibitions involve the use of standard "No Right Turn" or "No Left Turn" signs, with or without peak hour limitations to prevent undesired turning movements onto residential streets. They are best used on minor arterial or collector streets at the periphery of a neighborhood to prevent traffic from entering a neighborhood altogether.

Turn prohibitions can be promulgated to be effective only during specified hours of the day, if this is desired. If shortcutting is occurring only in peak periods, restricting turns only during these periods can allow residents full accessibility during the remainder of the day.

Since turn prohibitions are clearly a passive device, their success will depend on their general acceptance by the affected drivers. In areas where regulations are frequently flaunted or poorly enforced, they will have relatively little effect. Their effectiveness may also be reduced if they seem illogical to drivers, especially when convenient alternatives to the prohibited turns are not provided.

Effect on traffic volume: Turn prohibition signs have been shown to have a significant effect in reducing turning volumes, though some violation may be expected. The effect of turn prohibition signs is, however less significant than that of physical barriers. Actual traffic reduction potential depends on the percentage of total traffic on the street which the turning movement to be prohibited comprises.

Effect on traffic speed: To the extent that elimination of turns increases capacity on the street from which the turn is prohibited (as often would be expected), the result might be higher speeds on that street. If the movement being prohibited had formerly been used by a driver population as a speedy through route, significant reductions in speeds experienced are possible.

Effect on noise, air quality, and energy consumption: Noise reductions are proportional to reductions in volume. Effects on air quality and energy consumption can be presumed to be negligible.

Effect on traffic safety: The traditional rationale for turn prohibitions has been to improve traffic flow and safety along minor arterial and collector street corridors. There is no reason to believe the device's site safety performance differs from when it is used for conventional traffic control purposes.

However, as with conventional applications, there is the possibility that the prohibitions will force motorists to make turns at less safe locations. Hence, in considering any installation of turn prohibitions, whether for conventional traffic engineering purposes or for traffic management, the analysis should determine that safe and reasonable alternatives to the proposed prohibited movement do exist.

Uniform standards and warrants: Turn prohibition signs (right and left) are officially recognized devices.

## 2. One-Way Street Signs

One-way streets can be used in several ways to protect a residential area. The traditional technique is to develop a major one-way couplet to increase capacity in a corridor. If

effective, the improved operations can draw some traffic formerly using local streets onto the major streets. In a residential area, however, this technique is rarely appropriate, since there is seldom a second, parallel major street available and since upgrading a parallel local street to major street status is usually inconsistent with the land uses along that street. Such a one-way street treatment, therefore, would simply transfer traffic impacts from one or more lightly traveled residential streets to the selected one which may become severely impacted depending on the trips diverted. This may or may not be an acceptable choice.

Another, more successful, technique is creating a maze of one-way streets to make travel through a neighborhood difficult, if not impossible. This is done by designating selected blocks of local streets for one-way operation, making through routes difficult to find. One-way designation may also be used for very narrow streets, or to solve an intersection capacity problem by operating the local street one-way away from such an intersection. While this technique significantly reduces through traffic in a neighborhood, residents generally experience longer trip lengths.

The use of one-way streets has the great advantage of being a standard control that is well accepted by the public. It also provides a minimum impedance to emergency vehicles, which can travel "wrong way" when necessary. When converted to one-way operation, narrow streets where parking had been prohibited can often gain a parking lane, thus providing an added benefit to residents.

As with many nonphysical controls, one-way street systems are subject to deliberate violation, but experience shows a rather low violation rate, perhaps due to the fact that any violation will occur over a period of several seconds or minutes whatever the time needed to traverse an entire block or blocks whereas other devices require only a short and fast period of violation. Violation of one-way streets is more likely to be pointed out to the motorist by residents and pedestrians than are violations of other devices.

Effect on traffic volume: One-way streets used to create discontinuities in a street system have shown a high level of effectiveness in reducing through traffic. However, careful evaluation should be made regarding the impact of through traffic on other nearby streets.

Effect on traffic speed: Speeds tend to be higher on one-way streets. On major one-way couplets developed to attract traffic away from residential streets, this is a desirable result. In residential street applications, the tendency toward higher speeds can be counteracted by limiting the number of blocks with one-way continuity. Use of one-way streets to eliminate shortcuts may exclude a driver population which formerly used the streets as speedy through routes. Hence, speed reductions may be realized.

Effect on noise, air quality, and energy consumption: On major one-way couplets, good traffic engineering practices (such as good signal progression) can minimize stops and starts and can thus reduce noise, emission of pollutants, and energy consumption. In residential street applications, to the extent that one-way maze schemes increase path lengths and necessitate slowing and stopping at turns, they may have undesired effects on air quality and energy consumption. Noise reductions can be expected to parallel traffic volume reductions.

Effect on safety: One-way streets tend to be inherently safer than two-way streets, because the "friction" from an opposing traffic stream has been removed. But in residential areas, where irregular patterns of one-way streets are used, careful treatment is essential at intersections where one-way blocks signed in facing directions meet and where a two-way street faces a one-way block in the opposite direction.

Uniform standards and warrants: One-way streets are a traditional traffic engineering measure and signs and markings related to one-way operation are included in the State Traffic Manual.

#### Desirable design features for one-way streets in neighborhoods

Street grid discontinuity.

Maintenance of reasonable access routes for local residents and visitors.

Preservation of emergency vehicle access.

Minimizing of the length of one-way continuity to reduce speeding.

Use of "No Thru Traffic" signs to prevent inadvertent entry of through traffic.

Limited channelization (paint or paint and bars) at the point where opposing one-way streets meet.

#### Undesirable features

Generally longer trip lengths; confusing for occasional visitors; may have more stops and starts.

#### C. Geometric Design Features

##### 1. Cul-de-sacs at Intersections or Mid-block

An intersection cul-de-sac is a complete barrier of a street at an intersection or mid-block, leaving the block open to local traffic at one end, but physically barring the other (Exhibit 1). As such, a cul-de-sac represents the most extreme technique for deterring traffic short of barring all traffic from the street in question.

Since a cul-de-sac is completely effective at its task of preventing through traffic, the choice of where and whether or not to use it depends largely on other aspects of traffic movement.

In locations near major traffic generators, a full barrier may be the only method of preventing shortcutting. On the other hand, the design of the cul-de-sac must often allow side or rear access from a local residential street to a high traffic volume generator fronting on a major street; in this case, a mid-block cul-de-sac, may be more appropriate. A cul-de-sac may be desirable adjacent to a park or school where the vacated street can be converted into additional play space. Finally, a cul-de-sac may be considered as a last resort in locations where obstinate drivers violate other less effective devices.

Effect on traffic volume: Cul-de-sacs are extremely effective at limiting traffic volume and normally reduce traffic to that generated in the immediate local vicinity. Exceptions are the occasional vehicle which unknowingly enters a blocked street and then must maneuver to leave it, and those few vehicles which deliberately violate the barrier. Signing described below should be used to reduce such incidents.

Effect on speed: A cul-de-sac is not a speed attenuating device. However, if the device eliminates a driver population which previously had used the street as a speedy through route, its ultimate effects on traffic speeds experienced on the street may be substantial.

Effect on noise, air quality, and energy consumption: Noise has been found to be reduced as a function of the reduction in traffic volume and speed. Air quality and energy consumption effects are negligible.

Effect on traffic safety: Evaluations of accident experience before and after the installation of cul-de-sacs show a significant reduction in the number of accidents in the neighborhood. Accidents generally are shifted to major streets where traffic is diverted. (A more effective program for minimizing accidents may be possible along major streets).

Uniform standards: Permanent cul-de-sacs are a standard treatment in the design of new residential developments. Basic traffic engineering reference texts acknowledge the use of retrofit cul-de-sacs for residential traffic management.

Community reactions: Communities have generally responded positively to cul-de-sacs, particularly where a number of such treatments have been installed in a neighborhood. They have been less well received where they merely shift traffic from one street to another.

Some resentment occurs if a long detour for access is caused by a series of barriers.

Effect on emergency and service vehicle access: The cul-de-sac or complete barrier of a street is the neighborhood protective device most objectionable to emergency and service personnel. While traversable barriers can accommodate emergency vehicles, even these can be rendered ineffective by cars parked in front of the opening. More so than a diagonal diverter, a complete barrier can cause considerable interference in the proper placement of vehicles combating a fire.

Enforcing agency vehicles giving chase to a pedestrian suspect can occasionally be inhibited by a cul-de-sac with or without an emergency vehicle passage. However, some cul-de-sac designs will stop the suspect as effectively as they will stop the enforcing agency vehicle.

## 2. Chokers

A choker or curb bulb is a narrowing of a street, either at an intersection (Exhibit 2) or mid-block, in order to reduce the width of the traveled way. While the term usually is applied to a design which widens a sidewalk at the point of crossing, it also includes the use of islands which force traffic toward the curb while reducing the roadway width.

Streets narrowed at the crosswalk reduce the distance over which pedestrians are exposed to vehicular traffic. Bulbs provide safe areas for people to walk or play, or may provide added area for landscape or gateway features, thereby improving the appearance of the neighborhood.

Effects on traffic volume: Studies to date have shown that curb bulbs reduce traffic volume only when they either reduce the number of lanes of travel or add friction to a considerable length of street.

Effects on speed: Curb bulbs appear to have insignificant effect on speed.

Effects on noise, air quality, and energy conservation: No significant effects have been identified.

Effects on traffic safety: Curb bulbs can improve the safety of an intersection by providing pedestrians and drivers with an improved view of one another. They also reduce pedestrian crossing distance, thereby lowering their exposure time to vehicles.

Uniform standards: Chokers or curb bulbs can be considered to be either normal extensions of the existing curb or channelizing islands as defined in the state traffic manual.

### 3. Semi-Diverters

A semi-diverter is a barrier to traffic in one direction of a street which permits traffic in the opposite direction to pass through (Exhibit 2). In a sense, it is a physical reinforcement to a regulatory "Do Not Enter" sign and is normally accompanied by such a device, as well as by turn prohibition signs on the crossing street. It is an alternative to using a one-way street designation for the same block, and allows residents on the block limited two-way travel opportunity.

Because they block only half of a street, half-closures can be violated, particularly on low volume streets. Their advantages over full barriers or cul-de-sacs are that they provide a minimal impediment to emergency vehicles and cause less interference to local traffic. Experience has shown that they work best in areas where neighborhood traffic management is generally well accepted by the public.

Effect on traffic volume: Half-closures can make significant reductions in volume, though residents may often focus on the violation level rather than the reduction level. Traffic reductions of 40 percent of the prior two-way volume are common, implying violation rate of 10 percent of the former volume. However, higher percentages of traffic reduction may occur if a residential street has been serving excessive commuter traffic.

Effect on traffic speed: A semi-diverter does not reduce speed per se. However, if it diverts drivers who formerly used the street as a speedy through route or shortcut, the actual change in speed experienced after installation may be substantial.

Effect on noise, air quality, and energy consumption: Effects on noise levels are directly related to the reduction in traffic volume. As with most devices considered here, the air quality changes in the microenvironment are minuscule since most auto-related pollutants which affect the neighborhoods are responsive to changes in emissions on a regional basis rather than that in a small, localized area. Energy consumption can be assumed to be somewhat increased due to slightly longer distances and added stops on major streets.

Effect on traffic safety: Half-closures appear to shift locations where accidents occur to other streets rather than reducing overall accident experience unless diverters preclude a movement that warrants mitigation, i.e., sight obstruction, or traffic is shifted to a street having better design or improvement. (A more effective program for minimizing accidents may be possible along major streets).

Uniform standards: Half-closures are not included in the Traffic Manual. Like other geometric features they define an area which is not in the traveled way and can be comprised of

elements included in other design manuals. Half-closures are recognized as residential traffic control treatments in some basic traffic engineering reference texts.

Community reactions: People living on streets with a half-closure have been generally favorable to them. The major negative reactions have been due to the observed violations and lack of enforcement to prevent them. However, residents of parallel streets where traffic increased as a result of half-closures have unfavorable reactions.

#### 4. Median Barriers

The median barrier is a standard traffic engineering installation generally used to improve flow on a major street. In the context of the neighborhood traffic management, it is used at the intersection of a major and a minor street to make all left turns and the through movements on the minor street impossible. A median island is constructed across the intersection on a major street; if the major street has a mid-block median, this median is extended through the intersection. Left turns can then be concentrated at places where they can be better controlled, often with turn pockets and signals.

The median barrier is one of the few control techniques which can aid major street flow and enhance neighborhood protection at the same time. By restricting the movements mentioned above, the barrier can be as effective as a full or partial barrier or diverter in reducing traffic on residential streets. Since the median barrier is an accepted arterial treatment, it is less likely to arouse opposition than some other physical treatments. A median barrier is most effective if applied at all local street intersections along the major street; otherwise, the effect may be to merely shift traffic from one local street to another.

Effect on traffic volume: The use of the median barrier can result in significant volume reduction on local streets.

Effect on traffic speed: Median barriers which reduce accessibility to neighborhood streets may exclude driver population which formerly used the streets as speedy shortcuts. In this sense they might substantially change speeds experienced along residential streets.

Effect on noise, air quality, and energy conservation: To the extent that they reduce traffic volume and speed, median barriers are also likely to reduce noise. The use of median barriers has a marginally positive effect on air quality and energy conservation when they improve the quality of flow along a major street. Some of these benefits can be lost, however, if turning movements become so concentrated at specific locations that excessive delay and waiting time occurs to turning vehicles.

Effect on traffic safety: Studies of median barriers have shown that they improve the safety of the major street, and that the improvement is inversely proportional to the number of openings permitted in the median. The effect of safety of local streets has not been quantified, but a reduction in accidents proportional to reductions in traffic can be presumed.

Uniform standards: Median barriers are a recognized traffic engineering device and are provided for in the Traffic Manual.

### SECTION III: ENVIRONMENTAL CONSIDERATIONS

#### A. General Rule

This section of the Traffic Management Program presents rules and regulations for protection of environmental quality. In other jurisdictions it has been found that the erection, modification, or removal of a traffic management device/measure may have a significant effect on air quality, noise, traffic circulation, and public services and safety.

The selection of project sites and the selection of management devices/measures to be installed, modified or removed shall be based on environmental considerations to ensure that the traffic management project does not result in a significant impact on the environment which cannot be mitigated to a level of insignificance.

#### B. Air Quality

1. Rule The following regulations shall be met to protect air quality when implementing traffic management devices/measures.
2. Regulations
  - a. An air quality study shall be conducted for projects where the City Engineer determines that a measurable, significant adverse change in air quality could result from implementation of the project.
  - b. Any required air quality study shall encompass the affected street and all other streets which could be affected. The study shall include existing air quality levels, project emissions (carbon monoxide, hydrocarbons, nitrogen oxides, and particulates) and diverted traffic emissions (Carbon Monoxide, hydrocarbons, Nitrogen Oxide and particulates), and mitigation.
  - c. All projects shall comply with both California and national Ambient Air Quality Standards.

#### C. Noise

1. Rule The following regulations shall be met to ensure an acceptable noise environment when implementing traffic management devices/measures.
2. Regulations
  - a. A noise study shall be conducted for projects where the City Engineer determines that a measurable, significant adverse change in noise could result from implementation of the project.

- b. Any required study shall encompass the affected street and all other streets which could be affected.
- c. The study shall include existing noise levels, future noise levels, project-created traffic noise, and mitigation.
- d. All projects shall comply with the Town Noise standards as stated in the General Plan.

D. Traffic Circulation

1. Rule The following regulations shall be met to ensure efficient traffic circulation when implementing traffic management devices/measures.
2. Regulations
  - a. A traffic study of each traffic management project shall be conducted by the City Engineer or a qualified consultant.
  - b. Any required study shall encompass the affected street and all other streets which could be affected. Any study shall include traffic volume counts, an estimate of the amount of future traffic conditions, the impacts of the project, and mitigation.

E. Public Services and Safety

1. Rule The following regulations shall be met to ensure adequate public service and safety when implementing traffic management devices/measures.
2. Regulations
  - a. The City Engineer shall consult with the Fire Protection District, ambulance service providers, Atherton Police Department, and other effected emergency service providers during evaluation of each proposed traffic management project.
  - b. A traffic management project should be carefully considered where the project would significantly impede emergency service response.
  - c. The City Engineer may consult with the Sequoia Union High School District, Menlo Park School District, Redwood City School District, Las Lomas School District, and County Transit District and other interested agencies during the evaluation of each proposed traffic management project within their jurisdiction.

- d. No project shall substantially interfere with the ability of an affected school district, transit district, and other interested district to adequately serve the neighborhood within which a project is located.

SECTION IV: PROCEDURES FOR ADMINISTERING PROGRAM

A. New Developments

Traffic management devices and measures that are part of a proposed development project will be processed as part of the land use approval process and not in accordance with the procedures of Section IV of this Program.

B. Town-Initiated Consideration

The consideration of implementing a traffic management device or measure may be initiated and approved for further processing by a majority vote of the City Council.

C. Citizen-Initiated Consideration

The consideration of implementing a traffic management device or measure may be initiated by citizen request in accordance with the following procedures.

1. All requests shall be made by formal petition. Forms will be supplied by the Town. A separate petition shall be used for each street.
2. Completed petitions shall be delivered or mailed to:  
  
City Clerk  
Town of Atherton  
91 Ashfield Road  
Atherton, California 94027
3. After a petition is received, the City Clerk will:
  - a. Verify each petition to determine if it contains the requisite number of signatures. Each petition must contain either (1) the signatures of residents representing at least 67 percent of the residences fronting on the street, or (2) the signatures of residents representing at least 67 percent of the residences fronting on streets impacted by the proposed project.
  - b. If the number of citizen requests is in excess of staff resources to concurrently process them, staff will prepare a listing of requests, prioritized by date of receipt.
  - c. Staff will obtain preliminary traffic data including traffic volumes, traffic speeds, and accident history.
  - d. Staff will prepare a recommendation to the City Council as to whether the request initially appears to be consistent with this Program.

- e. The City Clerk shall notice a public hearing at the next regular meeting of the City Council which the Council will consider the citizen request. All persons signing a petition will be notified of this meeting. Notices shall be published in a local newspaper serving the area at least 10 days prior to the public hearing.
4. The citizen request to initiate the consideration of a traffic management project will be presented to the City Council at the meeting. After receiving public input and considering the staff report, City Council will decide if the citizen request is approved for further processing.

#### D. Post-Initiation Processing

If a Town or citizen request for consideration is approved by the City Council for further processing:

1. A full evaluation shall be made by the Town to include traffic volume counts, estimate of the amount of through traffic road conditions, speed survey, accident history, an estimate of the future traffic conditions and the impacts of the project.

2. An initial review of the project shall be conducted in accordance with the California Environmental Quality Act and subsequent review shall be conducted as required by the Act.

3. The Menlo Park Fire Protection District and the Atherton Police Department shall be consulted during the evaluation process for each project. Other agencies interested in the project may be consulted.

4. The City Council shall direct the staff to submit the request and appropriate information to the Council's Transportation Committee or Planning Commission for review and recommendation to City Council.

5. The City Clerk shall notice a public hearing at the next regular meeting of the City Council which the Council will consider the citizen request. All persons signing a petition will be notified of this meeting. Notices shall be published in a local newspaper serving the area at least 10 days prior to the public hearing.

6. The traffic management project will be presented to the City Council at the noticed, public hearing. After receiving public input and considering the staff report, City Council will determine whether the traffic management project is approved, approved as modified or disapproved.

7. Prior to adoption of any proposed action which would affect a state highway, the Town must obtain approval of the State Department of Transportation. When an action could effect another jurisdiction, the Town may consult with the other affected jurisdictions related to the proposal.

8. Any traffic management project approved under this Program shall be adopted by resolution.

9. If the traffic management project is approved by City Council, the project will be placed on a priority list.

10. Unfunded projects shall be placed on a prioritized list, awaiting funding.

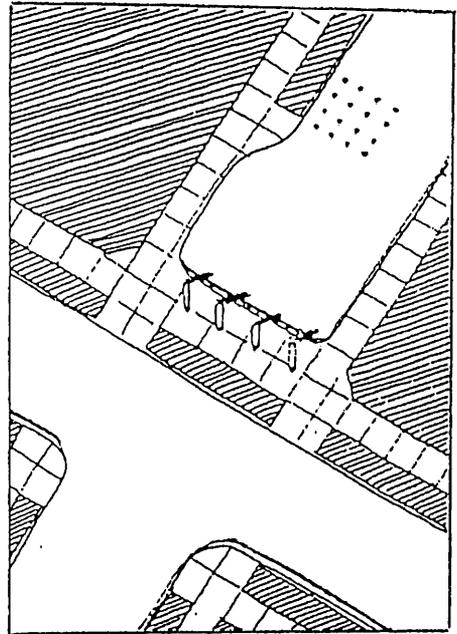
11. Funded projects will be designed and installed.

12. Regulations to divert traffic shall not be enforceable until signs giving notice of the regulation are posted at all entrances to the highway, street, or part thereof affected.

## EXHIBIT 1 TYPICAL CUL-DE-SACS

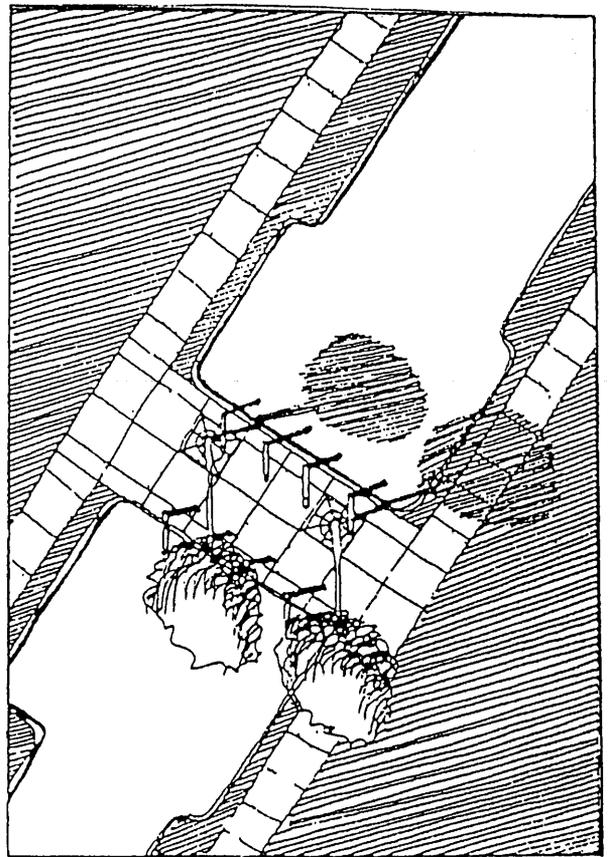
### INTERSECTION CUL-DE-SAC

By definition, an intersection cul-de-sac is a complete barrier of a street at an intersection leaving the block open to local traffic at one end, but physically barring the other. As such, a cul-de-sac represents the most extreme technique for deterring traffic short of barring all traffic from the street in question.



### MIDBLOCK CUL-DE-SAC

A cul-de-sac place within a block, rather than at one end, performs the same function as an intersectional cul-de-sac with two small differences. A midblock location can be chosen so that the residence at a corner will have easy access to the attached garage without the need to travel several blocks to avoid the barrier. Midblock cul-de-sacs shorten the distance a large vehicle which can't turn around would have to back-up as compared to intersection cul-de-sacs applied to the same streets. It has the disadvantage of being less apparent to the motorist on the through streets, so that occasional vehicles will turn into the blocked street and then have to work their way out. Traffic effects, design features, typical construction materials and costs, and legal status are similar to those listed in the previous section.

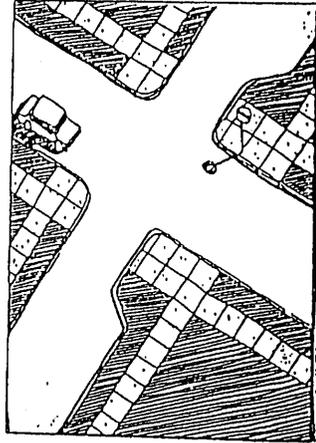


Source: Residential Street Design and Traffic Control,  
Institute of Transportation Engineers, 1989

## EXHIBIT 2 TYPICAL CHOKERS AND DIVERTERS

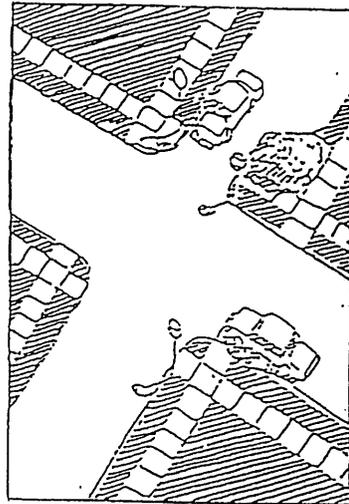
### CHOKERS

A choker is a narrowing street, either at an intersection or midblock, in order to reduce the width of the traveled way. While the term usually is applied to a design which widens a sidewalk, it also includes the use of islands which forces traffic toward the curb while reducing the roadway width. Observations have shown that a choker's greatest value may be in the psychological or perceptual area rather than in its direct effect on traffic. Widened sidewalks increase pedestrian crossing safety and safe areas for people to walk or play, or they may provide added are for landscaping. Often their greatest impact is in improving the appearance of the neighborhood, rather than reducing traffic.



### SEMI-DIVERTER

A semi-diverter is a barrier to traffic in one direction of a street which permits traffic in the opposite direction to pass through. In a sense, it is a "Do Not Enter" signal to drivers, providing an added level of warning and physical reinforcement to motorists beyond what a simple sign would do. Because they block only half of a street, semi-diverters are easily violated, particularly on low volume streets. At the same time, they provide a minimal impediment to emergency vehicles. Experience has shown that they work best in areas where neighborhood traffic management is generally well-accepted by the public.



### DIAGONAL DIVERTERS

A diagonal diverter is a barrier placed diagonally across an intersection to, in effect, convert the intersection into two unconnected streets, each making a sharp turn. As such, its primary purpose is to make travel through a neighborhood difficult, while not actually preventing it. In actual application, this device is often best used as part of a system of devices which discourage or preclude travel through a neighborhood. Used alone, they will affect only the two specific streets involved.



Source: Residential Street Design and Traff Control,  
Institute of Transportation Engineers, 1989



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**DATE: FOR THE CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: COMMENTS ON DRAFT PROGRAM EIR/EIS BAY AREA TO  
CENTRAL VALLEY HIGH-SPEED TRAIN PROGRAM**

Attached is the Draft Program EIR/EIS Bay Area to Central Valley High Speed Train Program for Council's review.

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## HIGH-SPEED TRAIN ALIGNMENT ALTERNATIVES AND POTENTIAL STATION LOCATION OPTIONS

Informed by previous studies and the scoping process, the California High Speed Rail Authority (Authority) and the Federal Railroad Administration (FRA) have evaluated potential High Speed Train (HST) corridor alignments alternatives and station location options and defined those that best met the project purpose, which is to provide a reliable high-speed electrified train system that links the major Bay Area cities to the Central Valley, Sacramento, and Southern California, and that delivers predictable and consistent travel times. Further objectives are to provide an interface between the HST and major commercial airports, mass transit, and the highway network, and to relieve capacity constraints of the existing transportation system in a manner sensitive to and protective of the Bay Area's and California's unique natural resources. Based on the HST Alternative selected in the Final Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Proposed California HST System (Authority and FRA, 2005), reasonable and feasible alignment and station alternatives in the Bay Area to Central Valley corridor have been identified for analysis in this Program EIR/EIS. These general HST alignment options and potential station locations are shown in Figure 1.

### Performance Criteria

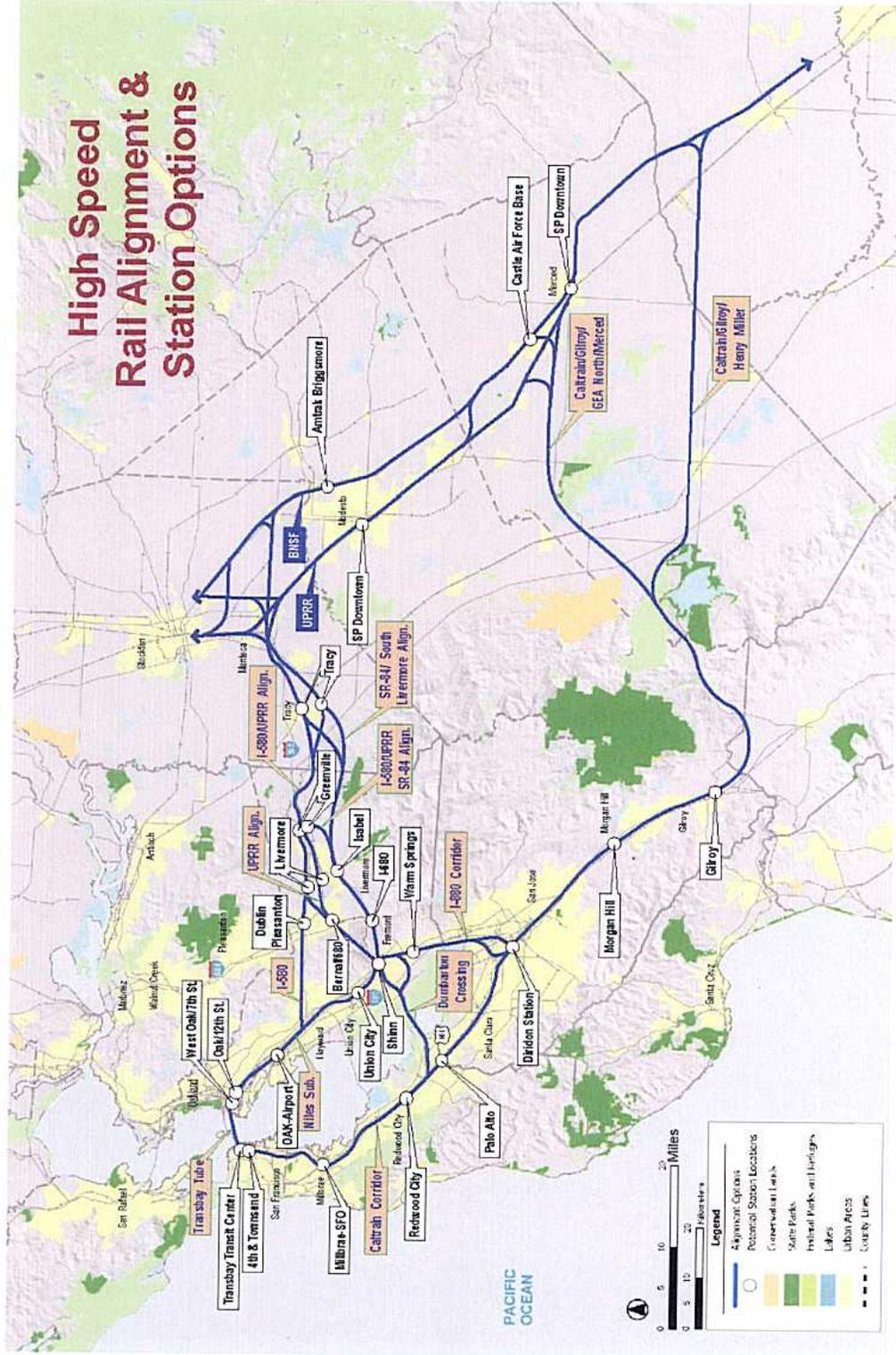
The Authority and the FRA previously defined performance criteria for the HST in the Program EIR/EIS for the HST system (Authority and FRA, 2005), drawing upon many prior feasibility and corridor evaluation studies. To meet the travel time and service quality goals, the statewide HST system will be capable of speeds in excess of 200 mph (320 kph) on fully grade-separated tracks with state-of-the-art safety, signaling, and automated train control systems. These performance criteria are summarized in Table 1.

To satisfy the travel time, service quality, and expected ridership (representative demand) developed for the Authority's June 2000 Business Plan, and accounting for the general characteristics of the corridors considered, the conceptual service plan must provide a wide variety of service options. A mix of express, semi-express, local, and regional trains would serve both intercity passengers and long-distance commuters. In order for HST service to be economically viable, train operations must be frequent and efficient.

The safe operation of the HST system is of the utmost importance. To this end, the HST would be fully grade-separated and would have fully access-controlled guideway with intrusion monitoring systems. This means that the HST infrastructure (e.g., mainline tracks and maintenance and storage facilities) would be designed to prevent access by unauthorized vehicles, persons, animals, and objects. The capital cost estimates include allowances for appropriate barriers (fences and walls), state-of-the-art communication, access-control, and monitoring and detection systems. All aspects of the HST system would conform to the latest Federal requirements regarding transportation security as developed and implemented. The HST trainsets (train cars) would be pressure sealed to maintain passenger comfort regardless of aerodynamic changes along the line.

The Authority does not anticipate the construction of a separate power source for the HST. The Authority's previous analysis concluded that sufficient electricity is expected to be available to power the proposed HST, as segments are constructed and begin operating, since commercially provided power generation is expected to grow to meet increased demand in the state and the power needs of the proposed HST system represent a small part of that overall increase in demand.

Figure 1: Alignment Alternatives and Station Location Options



**Table 1  
HST Performance Criteria**

Category	Criteria
System Design Criteria <sup>1</sup>	Electric propulsion system. Fully grade-separated guideway. Fully access-controlled guideway with intrusion monitoring systems. Track geometry must maintain passenger comfort criteria (smoothness of ride, lateral acceleration less than 0.1 g).
System Capabilities	All-weather/all-season operation. Capable of sustained vertical gradient of 3.5% without considerable degradation in performance. Capable of operating parcel and special freight service as a secondary use. Capable of safe, comfortable, and efficient operation at speeds over 200 mph. Capable of maintaining operations at 3-minute headways. Capable of traveling from San Francisco to Los Angeles in approximately 2.5 hrs. Equipped with high-capacity and redundant communications systems capable of supporting fully automatic train control.
System Capacity	Fully dual track mainline with off-line station stopping tracks. Capable of accommodating a wide range of passenger demand (up to 26,000 passengers per hour per direction). Capable of accommodating normal maintenance activities without disruption to daily operations.
Level of Service	Capable of accommodating a wide range of service types (express, semi-express/limited stop, and local).

The HST system could be used to carry small packages, parcels, letters, or any other freight that would not exceed typical passenger loads. This service could be provided either in specialized freight cars on passenger trains or on dedicated lightweight freight trains. A high-speed freight service might also be provided on specialized, medium-weight freight trains. This specialized freight equipment would have limited axle loads (19 metric tons compared to the conventional freight standard of 27 metric tons per axle), would operate at speeds of up to 125 mph (200 kph), and would be scheduled at night to avoid conflict with passenger or maintenance operations.

**Description of High-Speed Train Technology**

The selected HST technology (Authority and FRA, 2005) consists of steel-wheel-on-steel-rail trains capable of meeting the Authority’s performance criteria (as summarized in Table 1) that would be able to share tracks at reduced speeds with other compatible services. All existing systems with this very high-speed capability use electric propulsion. This state-of-the-art, high-speed, steel-wheel-on-steel-rail technology would operate in the majority of the statewide system in dedicated (exclusive track) configuration. However, where the construction of new separate HST infrastructure would be infeasible, shared track operations would use improved rail infrastructure and electrical propulsion. Shared-use corridors would be limited to sections of the statewide system with extensive urban constraints.

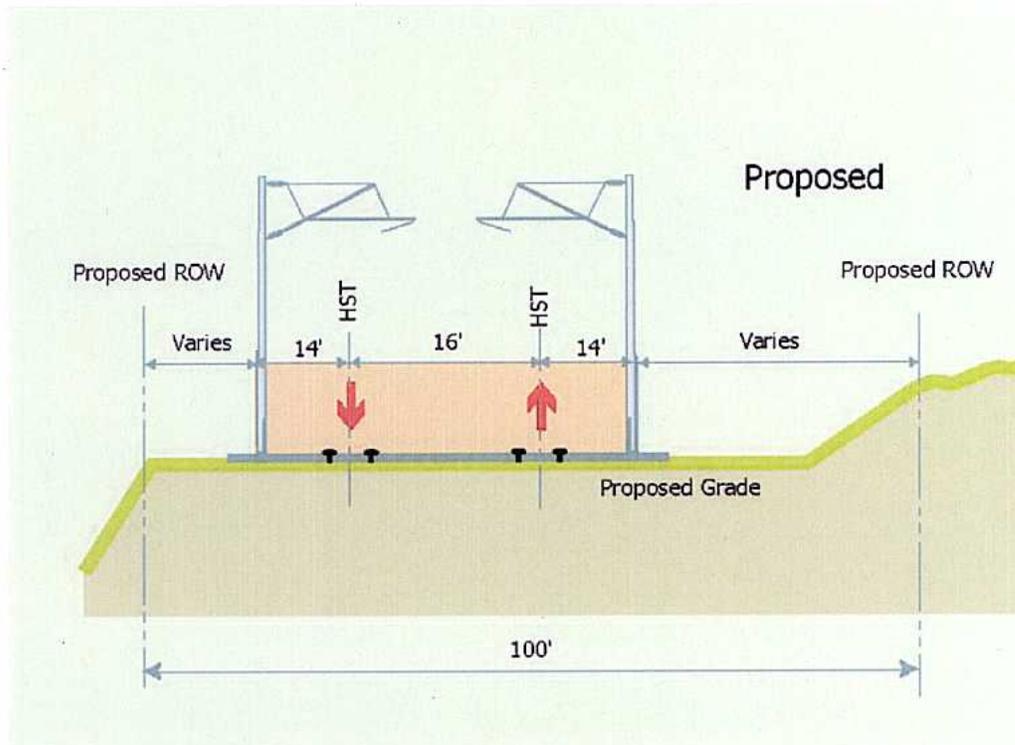
<sup>1</sup> Engineering Criteria, January 2004

Shared-use corridors would meet the following general criteria in addition to the performance criteria.

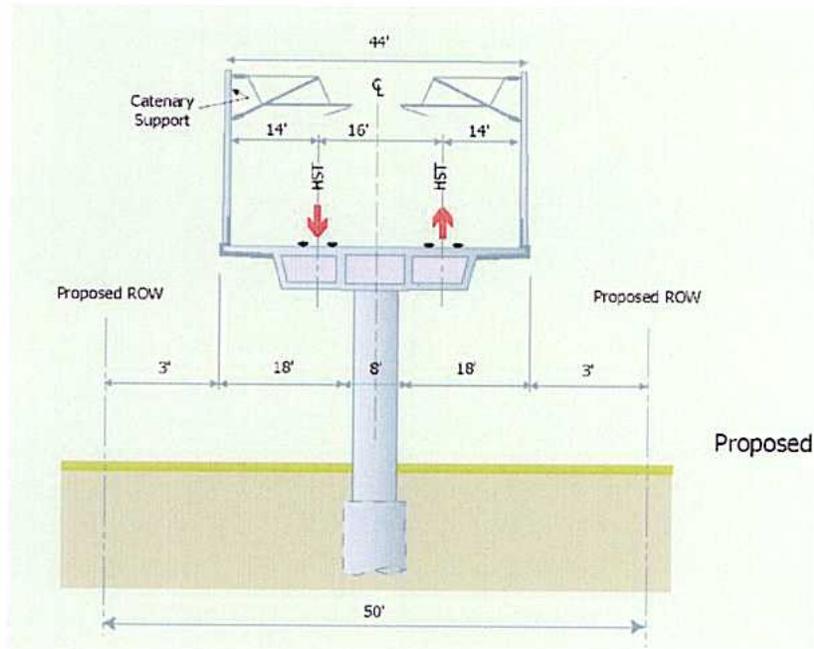
- Uniform control/signal system.
- Four tracks at stations (to allow for through/express services and local stopping patterns).
- May require three to six mainline tracks (depending on capacity requirements and combination of HST and other services).
- Physical or temporal separation from conventional freight traffic.

Using the selected technology, the HST system would be constructed with consistent dual track in a variety of construction sections (e.g., at grade, elevated structure, tunnel), as appropriate for the constraints of each specific section. These typical construction sections are illustrated in Figures 2, 3, and 4.

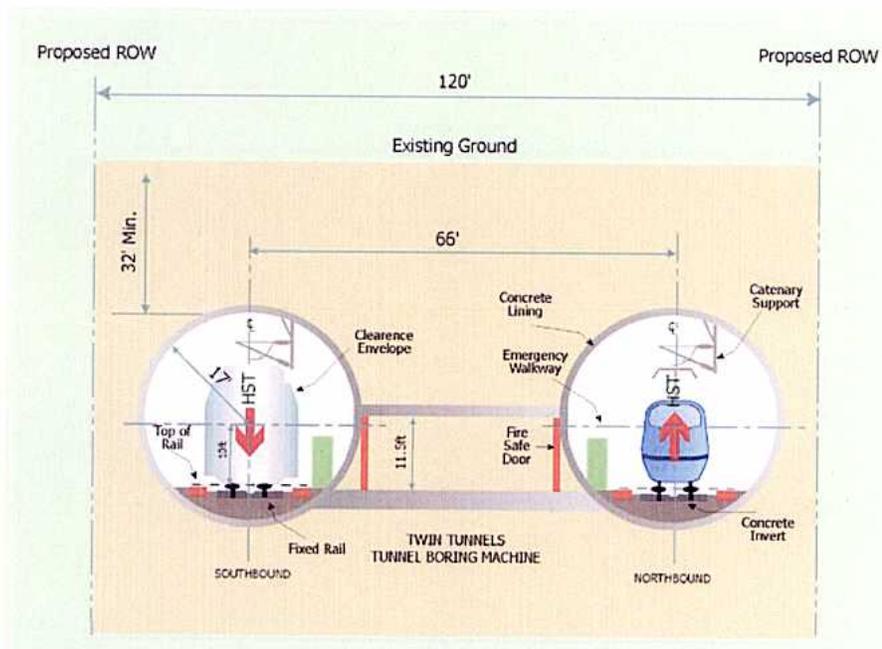
**Figure 2**  
**At-Grade Section**



**Figure 3  
Elevated Structure**



**Figure 4  
Twin Tunnels**



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## Alternative HST Alignment and Station Alternatives

The Authority has developed a range of potential HST Alternative alignments and station location options through review of the Program EIR/EIS for the HST system (Authority and FRA, 2005), previous studies, and scoping comments, as well as an engineering evaluation of alignment alternatives and station location options within the most promising potential routes through the Bay Area to Central Valley corridor. This range of HST alignment alternatives and station location options have been evaluated to identify practicable alternatives and options that best meet the purpose and need of the proposed action.

Proposed HST alignment alternatives are generally configured along or adjacent to existing rail transportation facilities or highways instead of creating new transportation corridors. Previous corridor evaluations and the extensive analysis in the Program EIR/EIS for the HST system (Authority and FRA, 2005) have consistently shown a potential for fewer substantial environmental impacts along existing highway and rail facilities than on new alignments through both developed and undeveloped areas. Although increasing the overall width of existing facilities could have similar potential impact on the amount of land disturbed as creating new facilities, creating new facilities would also introduce potential incompatibility and severance issues in both urban communities and rural settings (farmlands, open spaces).

The general station locations described in this section represent the most likely sites based on current knowledge, consistent with the objective to serve the state's major population centers. There is a critical tradeoff between accessibility of the system to potential passengers and the resulting HST travel times (i.e., more closely spaced stations will lengthen the travel times for local service as well as express services). The station locations shown here are spaced approximately 50 mi (80 km) apart in rural areas and 15 mi (24 km) apart in the metropolitan areas. Additional or more closely spaced stations would negatively affect travel times and the ability to operate both express and local services.

Several key factors were considered in identifying potential stations, including: speed, cost, local access times, potential connections with other modes of transportation, ridership potential, and the distribution of population and major destinations along the route. The ultimate locations and configurations of stations would be determined during future project-level environmental review. The alignment alternatives and station location options are described below.

Included as part of the Alignments is the consideration of regional "overlay" services using the high-speed statewide infrastructure with additional investments in facilities (e.g., non-HST regional rail stations along the HST alignment) and compatible rolling stock necessary to support all of the proposed services. These "regional rail" stations would be designed in a manner that would not introduce delays in HST schedules and at the same time would allow for more regionally-oriented long-distance commuter services. This could involve four and/or six track stations, for example. If designed appropriately, regional rail service could be provided at the potential HST stations or at locations not shown on Figure 1. The regional rail stations could be less distance apart than the HST stations.

### Bay Area to Central Valley Options Carried Forward

The following alignment alternatives and stations location options are analyzed in this Bay Area to Central Valley HST Program EIR/EIS (see Figure 1). A number of operating scenarios for combinations of terminus stations will be investigated with options ranging from one to three (San Francisco, Oakland, and San Jose) termini for direct HST service to the Bay Area.

**San Francisco to San Jose:** The alignment alternatives and station location options in this segment carried forward for further consideration are illustrated in Figure 1 and discussed below.

- Caltrain Corridor (Shared-Use Four-Track Alignment): From San Francisco, this alignment would follow south along the Caltrain rail alignment to San Jose. This option assumes that the HST system would share tracks with Caltrain commuter trains. The entire alignment would be grade separated. Station options would include a station in the lower level of the proposed new Transbay Terminal in San Francisco, or station at 4th and King Streets, a station in Millbrae to serve SFO, and a station in either Redwood City or Palo Alto.

For HST service on the San Francisco Peninsula, sharing track with Caltrain is the only realistic alternative for a direct link to San Francisco because of the lack of sufficient available right-of-way along the Peninsula and the high cost of acquiring additional right-of-way. Sharing track with Caltrain requires use of steel-wheel-on-rail HST technology if the HST system is to serve San Francisco without a transfer. Unlike the dedicated (exclusive guideway) options, which would require tall elevated structures along the Caltrain or US-101 rights-of-way and extensive purchases of additional right-of-way, the Caltrain corridor shared-use option would take advantage of the existing rail infrastructure and would provide service mostly at grade.

#### Station Locations Carried Forward

##### *San Francisco:*

- Transbay Transit Center: This potential station would serve the Caltrain shared-use option as a downtown terminal station, or
- 4th and King (Caltrain): This potential station would serve the Caltrain shared-use four-track option as a downtown terminal station.

##### *San Francisco International Airport (SFO):*

- Millbrae: This potential station would serve as a connection with San Francisco International Airport.

##### *Mid-Peninsula:*

- Redwood City (Caltrain): This potential station would provide accessibility and serve the populations between San Jose and San Francisco, or
- Palo Alto (Caltrain): This potential station would provide accessibility and serve the populations between San Jose and San Francisco.

**Oakland to San Jose:** The alignment alternatives and station location options in this segment carried forward for further consideration are illustrated in Figure 1 and discussed below:

- Niles Subdivision Line to I-880 (Niles/I-880): From Oakland, this alignment would travel south following the UPRR's Niles Subdivision Line ("Hayward Line") and then transition to I-880. Station options include Oakland, Oakland Airport, and Union City or Fremont.

The alignment would be at grade along the Niles Subdivision Line and on an aerial structure in the median of I-880. (The I-880 HST portion would mostly be on an aerial configuration from San Jose to Fremont.) This option would require the construction of columns and footings in the wide median of I-880 and a tunnel under the lake in Fremont Central Park.

#### Station Locations Carried Forward

##### *Oakland:*

- West Oakland: This potential station would serve Oakland the Niles/I-880 Line, or
- 12th Street/City Center: This potential station would serve Oakland from the Niles/I-880 Line.

##### *Oakland International Airport:*

- Coliseum BART Station: This potential station would serve the Oakland Airport from the Niles/I-880 Line.

##### *Southern Alameda County:*

- Union City (BART): This potential station would serve the population centers between Oakland and San Jose from the Niles/ I-880 Line, or
- Union City (Shinn): This potential station would serve the population centers between Oakland and San Jose from the Niles/ I-880 Line, or
- Fremont (Warm Springs): This potential station would serve the population centers between Oakland and San Jose from the Niles/ I-880 Line.

**San Jose to Central Valley:** The alignment alternatives and station location options in this segment carried forward for further consideration are illustrated in Figure 1 and discussed below.

- Pacheco Pass Options:
  - Caltrain/Gilroy/Henry Miller Avenue: This alignment would extend south along the Caltrain/UPRR rail corridor through the Pacheco Pass and then the San Joaquin Valley. Station options include the existing San Jose (Diridon) Station, and Gilroy (near the existing Caltrain Station), or Morgan Hill (near the existing Caltrain Station).
  - Caltrain/Gilroy/GEA North/Merced: This alignment would extend south along the Caltrain/UPRR rail corridor through the Pacheco Pass, pass through the northern portion of the Grasslands Ecological Area (GEA) and then across the San Joaquin Valley. Station options include the existing San Jose (Diridon) Station, and Morgan Hill (near the existing Caltrain Station) or Gilroy (near the existing Caltrain Station).

#### Station Locations Carried Forward

##### *San Jose:*

- San Jose (Diridon): This potential station would serve all alignment options (Caltrain/Monterey Highway rights-of-way) out of San Jose.

##### *South Santa Clara County:*

- Morgan Hill (Caltrain): This potential station would serve all the Pacheco Pass alignment options, or
- Gilroy (Caltrain): This potential station would serve all the Pacheco Pass alignment options.

**East Bay to Central Valley:** The alignment alternatives and station location options in this segment carried forward for further consideration are illustrated in Figure 1 and discussed below.

- Altamont Pass:
  - UPRR: This alignment would extend east via a relatively direct routing (mostly in tunnel) between Niles Junction and I-680 then utilize the UPRR alignment through Pleasanton and Livermore before transitioning to the I-580 corridor through the Altamont Pass to Tracy. Station options include the Pleasanton (Bernal/I-680) Station, or Livermore (near downtown), or Livermore (Greenville Rd.), and Tracy (downtown) or Tracy (ACE).
  - I-580: This alignment would extend east along the I-580/BART corridor through the Altamont Pass and then to Tracy and the San Joaquin Valley. Station options include the Pleasanton (BART) Station, or Livermore (I-580), or Livermore (Greenville Rd.), and Tracy (downtown) or Tracy (ACE).

- I-580/UPRR. This alignment would extend east via a relatively direct routing (mostly in tunnel) between Niles Junction and I-680 then utilize the UPRR alignment through Pleasanton before transitioning I-580 corridor through Livermore and the Altamont Pass to Tracy. Station options include the Pleasanton (Bernal/I-680) Station, or Livermore (I-580), or Livermore (Greenville Rd.), and Tracy (downtown) or Tracy (ACE).
- SR-84/South of Livermore: This alignment would extend east near the UPRR alignment through Niles Canyon then follow the SR-84 corridor south of Pleasanton and Livermore and continue east (south of Livermore) to the Patterson Pass corridor and to Tracy. Station options include the Pleasanton (I-680/SR-84) Station, or Livermore (South Isabel), and Tracy (downtown) or Tracy (ACE).
- SR-84/I-580/UPRR. This alignment would extend east near the UPRR alignment through Niles Canyon then follow the SR-84 corridor south of Pleasanton and Livermore and turn north to connect to the I-580/UPRR Alignment through the Altamont Pass to Tracy. Station options include the Pleasanton (I-680/SR-84) Station, or Livermore (Greenville), and Tracy (downtown) or Tracy (ACE).

#### Station Locations Carried Forward

##### *Tri-Valley:*

- Pleasanton (I-680/Bernal Road): This potential station would serve the Altamont I-580/UPRR alignment option and the Altamont UPRR alignment, or
- Pleasanton (I-680/SR-84): This potential station would serve the Altamont SR-84/South of Livermore alignment option or the SR-84/I-580/UPRR alignment, or
- Pleasanton (BART): This potential station would serve the Altamont I-580 alignment option, or
- Livermore (Downtown): This potential station would serve the Altamont UPRR alignment option, or
- Livermore (I-580): This potential station would serve the Altamont I-580 alignment option and the Altamont I-580/UPRR alignment, or
- Livermore (Isabel): This potential station would serve the Altamont SR-84/South of Livermore alignment option and the Altamont SR-84/I-580/UPRR alignment, or
- Livermore (Greenville Road/UPRR): This potential station would serve the Altamont UPRR alignment option, or
- Livermore (Greenville Road/I-580): This potential station would serve the Altamont I-580 alignment option and the Altamont I-580/UPRR alignment, or
- Livermore (Greenville Road/SR-84/UPRR): This potential station would serve the Altamont SR-84/I-580/UPRR.

##### *Tracy:*

- Tracy (Downtown): This potential station would serve all Altamont Pass alignment options, or
- Tracy (ACE): This potential station would serve all Altamont Pass alignment options.

**San Francisco Bay Crossings:** The alignment alternatives carried forward in this segment for further consideration are illustrated in Figure 1 and discussed below.

- **New Transbay Tube:** This alignment would connect the Oakland (West Oakland or 12<sup>th</sup> Street City Center) and San Francisco (Transbay Transit Center or 4<sup>th</sup> and King) HST stations via a new transbay tube. This alignment could serve either Altamont Pass or Pacheco Pass alignment options.
- **Dumbarton Rail Crossing:** This alignment would serve Altamont Pass alignment options and link the East Bay to the Peninsula in the vicinity of the existing Dumbarton Rail Bridge. Design options for this alignment include use of an improved Dumbarton Rail Bridge (low level), a new high-level bridge, and a new transbay tube.

**Central Valley Alignment:** The alignment alternatives and station location options in this segment carried forward for further consideration are illustrated in Figure 1 and discussed below.

- **BNSF Rail Line:** This alignment would connect with either the Altamont or Pacheco Pass alignment options. This north-south alignment would link the Bay Area to Central Valley population centers, Sacramento, and Southern California. Potential stations within the study area are at Modesto (Briggsmore) and Merced (Downtown, and Castle ARB).
- **UPRR Line:** This alignment would connect with either the Altamont or Pacheco Pass alignment options. This north-south alignment would link the Bay Area to Central Valley population centers, Sacramento, and Southern California. Potential stations within the study area are at Modesto (Downtown) and Merced (Downtown, and Castle ARB).

#### Station Locations Carried Forward

##### *Modesto:*

- **Downtown Modesto:** This potential station would serve Altamont Pass and Pacheco Pass alignment options using the UPRR alignment, or
- **Briggsmore (Amtrak):** This potential station would serve Altamont Pass and Pacheco Pass alignment options using the BNSF alignment.

##### *Merced:*

- **Downtown Merced:** This potential station would serve all Altamont Pass and Pacheco Pass alignment options, or
- **Castle ARB:** This potential station would serve all Altamont Pass and Pacheco Pass alignment options.

### **Previously Considered Alternative Corridor Options Reconsidered and Rejected**

The following HST Alternative alignment and station options were considered but rejected from further consideration in the Program EIR/EIS for the Proposed California HST System (Authority and FRA, 2005). The reasons for elimination of each of the corridor options evaluated in the

previous studies are categorically summarized below in Table 2 and further described in Appendix A. The reasons for elimination of these conceptual alternatives were described in the Final Program EIR/EIS for the Proposed California HST System (November 2005) and are further supported by the scoping comments received for this Bay Area to Central Valley Program EIR/EIS.

**Table 2  
Bay Area to Merced: High-Speed Train Alternative Alignment and Station Options Considered and Eliminated**

Alignment or Station	Reason for Elimination							Environmental Concerns
	Construction	Incompatibility	Right-of-Way	Connectivity/Accessibility	Revenue/Ridership	Alignment Eliminated*	Environment	
<b>San Francisco to San Jose</b>								
US-101 Alignment (exclusive guideway)	P	S	P				P	Visual, land use (right-of-way acquisition)
Caltrain Corridor (exclusive guideway)	P	P	P				P	Visual, land use (right-of-way acquisition), cultural resources
Interstate 280 Alignment	P		P				P	Visual, land use (right-of-way acquisition)
<i>Station Locations</i>								
Millbrae–San Francisco Airport (US-101)						P		
Redwood City (US-101)						P		
Santa Clara (Caltrain)					P			Station area would be served by Diridon Station only 3 miles away
<b>Oakland to San Jose</b>								
Mulford Line	P	P	P				P	Visual, land use, wetlands, parklands impacts
I-880 (Note: only Oakland to Fremont portion to be eliminated)	P		P					
Former WPRR Rail Line through Niles Junction to Mulford Line (WPRR/Niles/Mulford alignment)	P						P	Wetlands, parklands impacts
Hayward Line via tunnel to Mulford Line (Hayward/Tunnel/Mulford alignment)	P	S	P				P	Wetlands, parklands, land use, seismic constraints
Former WPRR Rail Line via tunnel to Mulford Line (WPRR/Tunnel/Mulford alignment)	P	S	P				P	Wetlands, parklands, land use, seismic constraints
Former WPRR Rail Line to Hayward Line to I-880 (WPRR/Hayward/I-880)	P							

Alignment or Station	Reason for Elimination							Environmental Concerns
	Construction	Incompatibility	Right-of-Way	Connectivity/Accessibility	Revenue/Ridership	Alignment Eliminated*	Environment	
Former WPRR ( Warm Springs to San Jose)	P		P					
<i>Station Locations</i>								
Lake Merritt		P		P				
Jack London Square	P			P				
I-880 Hegenberger						P		
Coliseum BART (WPRR)						P		
Mowry Avenue	P					P		
<b>San Jose to Central Valley</b>								
Merced Southern alignment (Central Valley Portion of San Jose-Merced section for Diablo Range Direct options)							P	San Luis National Wildlife Refuge impacts
Direct Tunnel Alignment (Northern or Southern Connection to Merced)	P						S	Seismic constraints
Diablo Range Direct Options (Northern Option and options through Henry Coe State Park)	P						P	Parklands, habitat fragmentation, high value aquatic resources, visual and noise
Caltrain/Morgan Hill/Foothill/Pacheco Pass Alignment	P	P		P			P	Visual, land use
Caltrain/Morgan Hill/East US-101/Pacheco Pass Alignment		P		P				
Caltrain/Morgan Hill/Pacheco Pass Alignment	P		P					
<i>Station Locations</i>								
Morgan Hill (Foothills)				P		P		
Morgan Hill (East of US-101)				P		P		
Los Banos					P		P	Water resources, T&E species, growth related impacts

Alignment or Station	Reason for Elimination							Environmental Concerns
	Construction	Incompatibility	Right-of-Way	Connectivity/Accessibility	Revenue/Ridership	Alignment Eliminated*	Environment	
<b>Central Valley Alignments</b>								
West of SR-99				P			P	Farmlands, water resources, floodplains, severance impacts
East of SR-99				P			P	Farmlands, water resources, floodplains, severance impacts
BART = San Francisco Bay Area Rapid Transit District.								
Definitions:								
Reason: Primary (P) and secondary (S) reasons for elimination.								
Construction: Engineering and construction complexity, initial and/or recurring costs that would render the project impracticable and logistical constraints.								
Environment: High potential for considerable impacts to natural resources, including waters, streams, floodplains, wetlands, and habitat of threatened or endangered species that would fail to meet project objectives.								
Incompatibility: Incompatibility with current or planned local land use as defined in local plans that would fail to meet project objectives.								
Right-of-Way: Lack of available rights-of-way or extensive right-of-way needs would result in high acquisition costs and/or delays that would render the project impracticable.								
Connectivity/Accessibility: Limited connectivity with other transportation modes (aviation, highway and/or transit systems) would impair the service quality, could reduce ridership of the HST system, and would fail to meet the project purpose.								
Ridership/Revenue: The alignment/station would result in longer trip times and/or have suboptimal operating characteristics and would have low ridership and revenue and would fail to meet the project purpose.								
Alignment Eliminated: Station or connection eliminated because the connecting alignment option was eliminated.								
* Alignment Eliminated column only applies to station locations. If an alignment is eliminated, a specific station location may no longer be necessary.								

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## APPENDIX A

**San Francisco to San Jose:** The alignment alternatives and station options eliminated from further consideration in this segment are described below.

- US-101 Alignment: From San Francisco (Transbay Terminal or 4th and King Terminal Station), this alignment would follow south along the US-101 freeway alignment to San Jose and be on an exclusive guideway in the US-101 corridor.

This exclusive guideway alignment would have major construction issues involving the construction of an aerial guideway adjacent to and above an active existing freeway facility while maintaining freeway traffic. Limited right-of-way in this corridor would require the extensive purchase of additional right-of-way and nearly exclusive use of an aerial structure between San Francisco and San Jose. In San Francisco, major new tunnel construction would be required.

The US-101 alignment would require many sections of high-level structures to pass over existing overpasses and connector ramps, resulting in high construction costs and constructability issues that would make this option impracticable. This alignment would also require relocating and maintaining freeway access and capacity during construction. The aerial portions would introduce a major new visual element along the US-101 corridor that would have visual impacts (intrusion/shade/shadow) on the residential portions for this alignment. In addition, the freeway has substandard features (e.g., medians and shoulders) in many places, and it is assumed that any room that might be available for HST facilities likely would be used by Caltrans to upgrade the freeway in these areas. Construction of the tunnel in San Francisco from the Transbay Terminal site to 17th Street would be difficult because most of the tunnel would need to be constructed using compressed air techniques in very soft Bay-fill ground.

- Caltrain Corridor (Exclusive Guideway): From San Francisco (Transbay Terminal or 4th and King Terminal Station), this alignment would follow south along the Caltrain rail alignment to San Jose. This alignment would be on an exclusive guideway within the Caltrain corridor.

An exclusive guideway alignment would be impracticable in this area because it would have major construction issues and high capital costs involving the construction of an aerial guideway adjacent to and above an active existing transportation facility, while maintaining rail traffic. It would require the extensive purchase of additional right-of-way and nearly exclusive use of an aerial structure between San Francisco and San Jose.

The aerial portions of this alignment would introduce a new visual element along the Caltrain corridor that would have visual impacts (intrusion/shade/shadow) on the residential portions of this alignment. For the Caltrain exclusive guideway option, introduction of the elevated structure (for the high-speed tracks and stations) would also have adverse impacts on the suburban town centers along the Caltrain corridor (San Mateo, San Carlos, Redwood City, Menlo Park, Palo Alto, and Mountain View). Although the structure would generally be in a commercial area in these centers, it would represent a physical barrier for land use and urban design. Construction of the tunnel in San Francisco from the Transbay Terminal site to 17th Street would be particularly difficult because most of the tunnel would need to be constructed using

compressed air techniques in very soft Bay-fill ground. Although the Caltrain exclusive guideway alignment would provide faster potential travel times than any of the other alignment options in this section, this alternative would have the most impacts on cultural resources and would be the least compatible with the existing and planned development on the Peninsula. Samtrans has formally commented that this alternative would not be compatible with its existing and planned Caltrain services and would not be feasible in its existing right-of-way.

- I-280 Alignment (Exclusive Guideway): From San Francisco (Transbay Terminal or 4th and King Terminal Station), this alignment would follow south along the I-280 freeway alignment to San Jose and be on an exclusive guideway in the I-280 corridor.

This exclusive guideway alignment would have major construction issues involving the construction of an aerial guideway adjacent to and above an active existing freeway facility while maintaining freeway traffic. Limited right-of-way in this corridor would require the extensive purchase of additional right-of-way and nearly exclusive use of an aerial structure between San Francisco and San Jose. The portion within the City and County of San Francisco is fully developed, and connecting the alignment to Diridon Station in San Jose would require a guideway passing through developed portions of downtown San Jose. These areas would require considerable property acquisition.

The I-280 alignment would require many sections of high-level structures to pass over existing overpasses and connector ramps (in particular at interchanges with routes 17 (580), 85, and 92), resulting in high construction costs and constructability issues that would make this option impracticable. This alignment would also require relocating and maintaining freeway access and capacity during construction. The aerial portions would introduce a major new visual element along the I-280 corridor that would have visual impacts (intrusion/shade/shadow) on the residential portions, nature preserves and scenic areas for this alignment. In addition, the freeway has substandard features (e.g., medians and shoulders) in many places, and it is assumed that any room that might be available for HST facilities likely would be used by Caltrans to upgrade the freeway in these areas. The considerable earthwork and retaining walls needed through Palo Alto and Woodside would have potentially significant impacts to nature preserves. The I-280 corridor would not allow a convenient connection to San Francisco International Airport from the south – the alignment would have to leave the freeway corridor and pass through Hillsborough and Burlingame to provide access to the airport. For these reasons the I-280 corridor is not considered to be a practicable alternative for HST service between San Jose and San Francisco.

Station Locations: The following station locations were considered and eliminated because they were located on alignments that were eliminated.

- Millbrae–San Francisco International Airport (US-101).
- Redwood City (US-101).
- Santa Clara: A potential link to San Jose International Airport would be at Santa Clara less than three miles north of the potential downtown San Jose station. Because the downtown San Jose (Diridon) station site would provide sufficient

connectivity to San Jose airport for the foreseeable future the Authority has determined that the HST system would have no HST station at Santa Clara.

**Oakland to San Jose:** The alignment alternatives and station options eliminated from further consideration in this segment are described below.

- **Mulford Line:** From Oakland, this alignment would follow south along Union Pacific Railroad's (UPRR's) entire Mulford Line.

Using the most northern portion of the Mulford Line would be impracticable, having high capital costs and construction issues, because it is an existing narrow rail line whose use would need to be expanded to accommodate a proposed HST system. It would create substantial environmental impacts and have considerable potential for effects on social and economic resources and minority populations while being the least compatible with existing and planned development. This alignment would require a portion of the UPRR corridor (that is generally 60 ft or 18.3 km wide) for aerial structure foundations and for an aerial easement over the tracks that would result in high visual impacts. In addition, a 50-ft (15.3-km) right-of-way strip would be needed from the residential, commercial, and light industrial areas to the east of the alignment.

The southern portion of this alignment goes through the Don Edwards National Wildlife Refuge, which would result in high potential for environmental impacts (hydrology and water resources, biology and wetlands, visual impacts, and Section 4(f) and 6(f) parkland impacts).

- **I-880:** From Oakland, this alignment would follow I-880 south to San Jose.<sup>2</sup>

The I-880 alignment would require acquisition of considerable right-of-way in the more northern area to be able to expand the highway sufficiently to allow for high-speed tracks in the median. The I-880 alignment would be mostly an aerial configuration requiring construction of footings within the highway right-of-way and lane closures during construction. This likely would require off-peak construction, which is time consuming and costly. Where the highway is narrow (Oakland to Fremont), adding high-speed rail would require full median widening and would present right-of-way issues similar to major highway reconstruction (demolition of existing adjacent property, new noise walls, demolition of existing noise walls, construction of new highway lanes, and maintenance of traffic). This alternative would have high capital costs and substantial right-of-way constraints, making it impracticable.

- **Former WPRR Rail Line through Niles Junction to Mulford Line (WPRR/Niles/Mulford alignment):** From Oakland, this alignment would follow the former WPRR Rail Line onto the UPRR's Hayward Line, to UPRR's Niles Line, and then UPRR's Mulford Line.

This alternative would be nearly entirely on an aerial structure that would create substantial visual impact. The WPRR alignment would have major construction issues making it impracticable, including rearrangement of BART foundations to allow

<sup>2</sup> Only the Oakland to Fremont segment of the I-880 option would be eliminated since the Fremont to San Jose portion is part of the Hayward/I-880 option carried forward for further evaluation.

for the high-speed alignment to pass from one side of BART to the other. In contrast, the proposed alignment along the UPRR Hayward Line would be at grade and would follow the existing freight and commuter railroad.

The southern portion of this alignment goes through the Don Edwards National Wildlife Refuge, which would result in high potential for environmental impacts (hydrology and water resources, biology and wetlands, visual impacts, and Section 4(f) and 6(f) parkland impacts).

- Hayward Line via tunnel to Mulford Line (Hayward/Tunnel/Mulford alignment): From Oakland, this alignment would follow south along UPRR's Hayward Line (Niles Subdivision) to a tunnel leading to UPRR's Mulford Line.

The tunnel alternatives in Fremont have high projected costs, and the tunnel section would result in considerable right-of-way constraints, making this option impracticable. The purpose of a tunnel would be to improve travel times and eliminate tight curves. However, eliminating tight curves would result in tunnel alignments through the City of Fremont that do not follow under existing transportation rights-of-way. This alternative would not be compatible with the existing development and would have considerable seismic constraints.

The southern portion of this alignment goes through the Don Edwards National Wildlife Refuge, which would result in high potential for environmental impacts (hydrology and water resources, biology and wetlands, visual impacts, and Section 4(f) and 6(f) parkland impacts).

- Former WPRR Rail Line via tunnel to Mulford Line (WPRR/Tunnel/Mulford alignment): From Oakland, this alignment would follow the former WPRR rail line, transitioning to UPRR's Hayward Line, then to a tunnel leading to UPRR's Mulford Line.

The tunnel alternatives in Fremont have high projected costs, and the tunnel section would result in considerable right-of-way constraints making this option impracticable. The purpose of a tunnel would be to improve travel times and eliminate tight curves. However, eliminating tight curves would result in tunnel alignments through the City of Fremont that would not follow under existing transportation right-of-way. This alternative would not be compatible with the existing development and also has considerable seismic constraints.

- Hayward Branch through Niles to Mulford Line (Hayward Line/Niles/Mulford Alignment): From Oakland, this alignment would travel south along UPRR's Hayward Line to UPRR's Niles Line and then onto UPRR's Mulford Line.

This alignment goes through the Don Edwards National Wildlife Refuge, which would result in high potential for environmental impacts (hydrology and water resources, biology and wetlands, visual impacts, and Section 4(f) and 6(f) parkland impacts). This option would also require tight curves that would greatly limit operational speeds between Union City and Newark – with express travel times at least 6 minutes longer than the Hayward Line/I-880 option.

- Former Western Pacific Railroad (WPRR) Rail Line to Hayward Line to I-880 (WPRR alignment/Hayward/I-880): From Oakland, this alignment would follow the UPRR

(former WPRR) rail line transition to UPRR's Hayward Line and then transition to I-880.

This alignment option would be nearly entirely on an aerial structure that would create substantial visual impacts. The WPRR alignment would have considerable construction issues making it impracticable, including the rearrangement of San Francisco Bay Area Rapid Transit (BART) foundations to allow for the high-speed alignment to pass from one side of BART to the other. In contrast, a proposed alignment along the UPRR Hayward Line (Niles Subdivision) would be at grade and would follow the existing freight and commuter railroad.

- Former WPRR Rail Line (Warm Springs to San Jose): The former WPRR has been sold to Santa Clara Valley Transportation Authority (VTA) for the BART link between Warm Springs to San Jose. Purchasing the ROW necessary to widen the corridor sufficiently for all planned uses and providing full grade separation would result in significant impacts to industrial and residential properties and would not be practicable.

Station Locations: The following station locations were considered and eliminated in the Oakland to San Jose section.

- Oakland Terminus Stations
  - Lake Merritt: The Lake Merritt Station would result in a high level of potential adverse effects in residential areas. Residential uses would be proximate to this potential station site, whereas land uses adjacent to the potential Jack London Square and the City Center station sites are more commercial in nature. The Lake Merritt Station and alignment would require construction of a tunnel or subway through the campus of Laney College adjacent to the BART alignment. The Lake Merritt alternative does not meet the program objectives since it would not be compatible with existing development, and would not provide sufficient connectivity and accessibility to serve the East Bay.
  - Jack London Square: The Jack London Square Station and alignment leading to and from it would be in bored tunnels in the bay mud underneath the Embarcadero and the active UPRR tracks. Relocating the railroad even temporarily is probably not an option. A cut-and-cover access would need to be constructed within the Amtrak parking lot and a concourse would need to be excavated over the bored tunnels. This station option would have the most considerable geologic challenges and soils constraints of the Oakland terminus alternatives. A terminus HST station at Jack London Square would be difficult to construct and would be the most costly alternative to serve Oakland. Although the Jack London Square location would serve a thriving commercial center and could provide a direct link to Amtrak, this terminus would not provide a connection with BART. This option is impracticable because of logistical constraints and would not meet program objectives because it would not connect with BART to provide accessibility and connectivity for the East Bay.
- Oakland Airport/Coliseum Stations
  - I-880 Hegenberger: This potential station site would only serve the I-880 (entire segment) alignment that has been eliminated from further investigation.

- South Alameda County Stations
  - Mowry Avenue: This potential station site would only serve the I-880 (entire segment) alignment that has been eliminated from further investigation.

**San Jose to Merced:** The alignment alternatives and station options eliminated from further consideration in this segment are described below.

- Diablo Range Direct Options:
  - Merced Southern Alignment (Central Valley portion): This alignment would extend from the eastern base of the Diablo Range through the San Joaquin Valley to Merced (at a Merced Municipal Airport Station).

The southern variation of the Diablo Range direct alignment has been eliminated from further investigation for Diablo Range Direct options because of potential environmental impacts. The southern alignment option would pass through approximately 4.4 mi (7 km) of sensitive wetlands, including the San Luis National Wildlife Refuge. It would also pass through floodplains, farmlands of statewide importance, and sensitive habitats. Diablo Range Direct options would use an alignment north of the San Luis National Wildlife Refuge that would minimize environmental impact.

- Direct Tunnel Alignment (northern or southern connection to Merced): This alignment would have a station at the existing San Jose (Diridon) Station heading south on the Caltrain/UPRR just north of I-85, turning east into a long (31 mi [49.6 km]) tunnel to San Joaquin Valley to Merced (near Castle Air Force Base [AFB]).

The direct tunnel alignment option would cross three active and potentially active fault areas in a tunnel including the Ortigalita fault, the southern extension of the Greenville fault trend, and the Calaveras fault zone. The direct tunnel alignment is likely to cost at least \$3 billion more than the minimize tunnel option that would use a 3.5% gradient to minimize tunneling. This higher cost would be due largely to the long tunnel and the high unit cost per mile associated with tunnels that exceed 6 mi (9 km) in length. The direct tunnel concept would involve construction of a tunnel that would be among the longest in the world (31 mi [49.6 km]) through mixed soil and geology types. The results of the Authority's technical tunnel conference indicated that, while not impossible, a tunnel of this length in California would be extremely expensive to construct, operate, and maintain, and would therefore be impracticable.

- Diablo Range Direct Alignments (Northern Tunnel, Minimize Tunnel, & Tunnel Under Park): These alignment options would have a station at the existing San Jose (Diridon) Station heading south on the Caltrain/UPRR, just north of I-85 turning east through the Diablo Range to the San Joaquin Valley to reach Merced using the northern alignment (near Castle ARB). Three alignments were developed to better define this general corridor: the northern tunnel, minimize tunnel, and tunnel under park options.

HST alignments through (or under) Henry Coe State Park (which includes the Orestimba State Wilderness Preserve) would have greater potential

environmental impacts than alignment options that would avoid the park. Alignments through Henry Coe State Park would have the highest impacts to Section 4(f) and 6(f) Resources (both long-term and construction impacts). In addition, the considerable amount of public and agency input in regards to these alignment options has been overwhelmingly opposed to any construction through Henry Coe State Park.

The Northern Tunnel alignment would have high potential impacts to the natural environment, including potential impacts to high value aquatic resources, habitat fragmentation, visual and noise impacts. Construction of an alignment through this remote area would bisect sensitive eco-systems in an alignment that does not follow an existing transportation corridor across the Mt. Hamilton/Diablo Range. The USEPA's scoping comments recommend eliminating from further analysis "any alternatives that impact the designated aquatic resources of national importance in Del Puerto Creek, Salado Creek, Crow Creek, and Orestimba Creek watersheds in the Diablo Range". Any alignment through the Diablo Range north of Henry Coe State Park will impact these resources. The USEPA also stated, "Considering the high value aquatic resources and the potential for large scale habitat fragmentation, EPA continues to believe that the Diablo Direct alignments do not appear to exhibit characteristics of the least damaging practicable alternative (LEDPA), the only alternative that can be permitted under the CWA Section 404 regulations (40 CFR 230.10 (a) and (c))." Scoping comments from the California Department of State Parks state, "Habitat degradation and wildlife corridor fragmentation between SPS units and other open space lands, such as The Nature Conservancy's Mount Hamilton Project conservation lands, are two of our highest concerns". US Department of the Interior Fish and Wildlife Service scoping comments state, "The portion of the Diablo Range to be impacted by these proposed crossings has been recognized for its important natural resources" and "There are significant natural resource concerns related to the proposed Northern Mountain crossings. The Diablo Range alignments would result in substantial direct and indirect impacts to federally listed wildlife species in the region, including the endangered kit fox, the threatened California red-legged frog, the threatened bay checkerspot butterfly, and the threatened California tiger salamander, as well as various threatened and endangered plant species." In addition, the considerable amount of public input and input from organizations and other agencies in regards to this portion of the Diablo Range north of Henry Coe State Park has been overwhelmingly opposed to any construction through this area because of potential environmental impacts to this remote and environmentally sensitive area.

- Pacheco Pass Options:

- Caltrain/Morgan Hill/Foothill/Pacheco Pass Alignment: This alignment would extend south along the Caltrain/UPRR rail corridor, traveling south in the foothills east of US-101 through the Pacheco Pass and the San Joaquin Valley.

The Caltrain/Morgan Hill/Foothill/Pacheco Pass alignment is the least costly of all alignments in this section, primarily due to less tunneling and its shorter length compared to the other Pacheco Pass alignments. However, this alignment would have potentially substantial impacts on sensitive habitat (through the foothills)

and would have high visual impacts. This new transportation corridor through the foothills would not be compatible with existing and planned development; would result in potentially severe impacts on the existing suburban, rural, and open space areas in the foothills; and would provide minimal connectivity and accessibility. It would not link to the Caltrain commuter rail service south of San Jose.

- Caltrain/Morgan Hill/East 101/Pacheco Pass Alignment: This alignment would extend south along the Caltrain/UPRR rail corridor, transitioning to south US-101 east through the Pacheco Pass and the San Joaquin Valley.

The Caltrain/Morgan Hill/East 101/Pacheco Pass alignment option is similar to the Caltrain/Morgan Hill/Pacheco Pass option, with the exception that it would use the US-101 corridor to connect to the Caltrain corridor north of Morgan Hill as opposed to south of Morgan Hill. This option would not meet basic program objectives because it would have poor compatibility with development and insufficient connectivity and accessibility. This option would not provide a direct link to the Caltrain commuter rail service south of San Jose. This alignment would pass through the longest length of floodplain of all the Pacheco Pass options.

- Morgan Hill/Caltrain/Pacheco Pass Alignment: This alignment would extend south along the Caltrain/UPRR rail corridor through the Pacheco Pass and San Joaquin Valley. Station options include the existing San Jose (Diridon) Station, and Morgan Hill (near the existing Caltrain Station).

Although an alignment bypassing Gilroy to the east might have positive attributes, there is no existing transportation corridor or other useable undeveloped potential right-of-way linking the Pacheco Pass directly to Morgan Hill through the Santa Clara Valley east of the Caltrain alignment. Any alignment through this area would result in considerable property impacts with the development of a new HST corridor.

Station Locations: The following station locations were considered and eliminated in the San Jose to Merced section.

- Morgan Hill (Foothills): This potential station site would only serve the Pacheco Pass/Foothills/Morgan Hill/Caltrain alternative that has been eliminated from further investigation. This option would have poor connectivity and accessibility and not meet the basic program objectives.
- Morgan Hill (East of 101): This potential station would only serve the Pacheco Pass/East of 101/Caltrain alternative that has been eliminated from further investigation. This option would have poor connectivity and accessibility and not meet the basic program objectives.
- Los Banos: A HST station at Los Banos (Western Merced County) should not be pursued in subsequent environmental reviews because of low intercity ridership projections for this site, limited connectivity and accessibility, and potential impacts to water resources and threatened and endangered species. Although the City of Los Banos supports the Pacheco Pass alignment with a potential station at Los Banos, considerable public and agency opposition has been expressed about a potential Los Banos HST station because of its perceived potential to result in growth

related impacts. This station option (as well as the Visalia/Hanford option) has low ridership potential compared to other potential station locations investigated by the Authority. In 2020, this station is forecast to serve a population of only about 88,000 (forecast to only have between 155,000 and 190,000 annual total intercity boardings and alightings by 2020). Excluding this station is expected to slightly reduce the capital costs of the HST system and reduce potential environmental impacts at Los Banos.

**Central Valley Alignments:** The alignment alternatives and station options eliminated from further consideration in this segment are described below.

- West of State Route 99: Alignment options creating a “new” transportation corridor west of SR-99 through undeveloped land.

Creating a new transportation corridor to the west of SR-99 would require cutting through mostly agricultural lands 2-5 miles to the west of SR-99. These alignments would result in increased potential impacts on agricultural lands and natural resources (including wetlands, water resources, floodplains and habitat) and would have high severance impacts through the Central Valley. Comments received from federal, state, and local agencies as well as the public as part of the Authority’s and FRA’s certified statewide HST Program EIR/EIS support the concept of locating the HST system along an existing rail corridor to the greatest extent possible through the Central Valley. These same entities were generally opposed to the creation of a new transportation corridor in undeveloped portions of the Central Valley. Alignment options to the west of SR-99 (and any potential outlying stations associated with those alignments) should be eliminated from further consideration because they would not avoid or substantially reduce potential environmental impacts and because they would not meet basic project purpose and objectives.

- East of State Route 99: Alignment options creating a “new” transportation corridor east of SR-99 through undeveloped land.

Creating a new transportation corridor to the east of SR-99 would require cutting through mostly agricultural lands 2-5 miles to the east of SR-99. These alignments would result in increased potential impacts on agricultural lands and natural resources (including wetlands, water resources, floodplains and habitat) and would have high severance impacts through the Central Valley. Comments received from federal, state, and local agencies as well as the public as part of the Authority’s and FRA’s certified statewide HST Program EIR/EIS support the concept of locating the HST system along an existing rail corridor to the greatest extent possible through the Central Valley. These same entities were generally opposed to the creation of a new transportation corridor in undeveloped portions of the Central Valley. Alignment options to the east of SR-99 (and any potential outlying stations associated with those alignments) should be eliminated from further consideration because they would not avoid or substantially reduce potential environmental impacts and because they would not meet basic project purpose and objectives.

**THERE IS  
NO WRITTEN  
REPORT FOR  
ITEM NO. 35**



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**DATE: FOR THE CITY COUNCIL MEETING OF SEPTEMBER 19, 2007**

**SUBJECT: REVIEW OF CALENDAR OF CITY COUNCIL MEETINGS FOR THE REMAINDER OF 2007**

### **RECOMMENDATION:**

Review the calendar of City Council Meeting dates for the remainder of 2007, and consider changing the date of the November 21st meeting to November 14, 2007.

### **BACKGROUND:**

The Regular City Council Meetings for the remainder of 2007 are as follows:

October 17  
November 21  
December 19

Since November 21 is the day before Thanksgiving, the Council may want to consider moving this meeting to a Special Meeting date, such as November 14th, in order to accommodate Council Members' and the public's holiday plans.