



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
October 17, 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**

**Charles W. King III and Leslie King v. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461513**

**Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899**

**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

☛ 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
OCTOBER 17, 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**
- REPORT FROM LAFCo – Martha Poyatos**
- 7:20 P.M. 4. **PUBLIC COMMENTS** (only for items which are not on the agenda –
limit of three minutes per person)
- 7:35 P.M. 5. **STAFF REPORTS**
- 7:50 P.M. 6. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed
by Resolution No. 99-6)
- Victoria Manor Homeowners’ Association – James Yoshida**
- 8:00 P.M. **CONSENT CALENDAR** (Items 7– 14)
7. **APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL
CLOSED SESSION MEETINGS OF SEPTEMBER 4 AND
SEPTEMBER 12, 2007; THE SPECIAL CITY COUNCIL CLOSED
SESSIONS OF SEPTEMBER 19, 2007; AND THE REGULAR CITY
COUNCIL MEETING OF SEPTEMBER 19, 2007**
8. **APPROVAL OF BILLS AND CLAIMS FOR SEPTEMBER IN THE
AMOUNT OF \$ 742,509**
9. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JULY,
AUGUST, AND SEPTEMBER**

10. **ACCEPTANCE OF QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2007**
11. **REVIEW AND APPROVAL OF RESOLUTION ACKNOWLEDGING PARTICIPATION IN THE SAN MATEO COUNTY SUB-REGION FOR THE REGIONAL HOUSING NEEDS ALLOCATION PROCESS (RHNA) AND ACCEPTANCE OF THE ASSIGNED HOUSING SHARE**

Recommendation: Review and adopt the attached Resolution acknowledging participation in the San Mateo County Sub-region for the Regional Housing Needs Allocation (RHNA) Process and acceptance of the assigned housing share in accordance with the Sub-regional Technical Advisory Committee and Policy Advisory Committee recommendations.

12. **APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH HEXAGON TRANSPORTATION CONSULTANTS TO PREPARE A TRAFFIC STUDY FOR SACRED HEART SCHOOLS**

Recommendation: Approve the attached Professional Services Agreement with Hexagon Transportation Consultants to prepare a traffic study to be used as part of an Initial Study and Draft Negative Declaration for Sacred Heart School.

13. **APPROVAL OF CONTRACT FOR TEMPORARY SERVICES, SUSAN TSAI, STAFF MEMBER, FINANCE DEPARTMENT**

Recommendation: Approve contract with Susan Tsai for services in connection with the Town's Finance and Building Departments. The contract envisions the performance of services by Ms. Tsai as a Staff Member in the Department of Finance.

14. **APPROVAL OF CONSULTANT CONTRACT, WILLIAM H. "BILL" YEOMANS, TEMPORARY FINANCE OFFICER SERVICES**

Recommendation: Approve agreement with Mr. William H. Yeomans for services in connection with the Town's Finance Department. The agreement envisions Mr. Yeomans' services on a 3-day per week basis. Mr. Yeomans has previously served as Acting Director of Finance for the Town.

PUBLIC HEARINGS (Items 15-17)

- 8:10 P.M. 15. A. **APPEAL OF THE PLANNING COMMISSION DECISION DENYING A CONDITIONAL USE PERMIT FOR 94 TALLWOOD** *(Continued from the September 19, 2007, City Council meeting.) (Due to the length of some attachments, they will be available for review at the library and/or Town Hall.)*

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) (Continued from the September 19, 2007, City Council meeting.)*

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

- 8:45 P.M. 16. **APPEAL OF THE PLANNING COMMISSION DECISION DENYING APPLICATION FOR HERITAGE TREE REMOVAL AT 44 TUSCALOOSA** *(Continued from the September 19, 2007, City Council meeting.)*

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.

- 9:15 P.M. 17. **INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8 OF THE ATHERTON MUNICIPAL CODE REGULATING DRAINAGE** *(Continued from the September 19, 2007, City Council meeting.) (Due to the length of some attachments, they will be available for review at the library and/or Town Hall.)*

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 18-22)

9:45 P.M. 18. COMMITTEE AND COMMISSIONS MASTER SCHEDULE

Recommendation: Review resolution which is designed to provide one master document governing all Town committees with the exception of the Planning Commission.

- A. ARTS COMMITTEE**
- B. AUDIT COMMITTEE DISCUSSION REGARDING ITS CHARTER** *(Continued from the September 19, 2007, City Council meeting.)*
- C. FINANCE COMMITTEE**
- D. PARKS AND RECREATION COMMISSION**

10:15 P.M. 19. CITIZEN REQUEST TO MODIFY TRAFFIC PROGRAM TO ALLOW SPEED HUMPS *(Continued from the September 19, 2007, City Council meeting.)*

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.

10:35 P.M. 20. ABSENCE OF OVERCHARGES IN BUILDING PERMIT FEES UNIFORM BUILDING CODE TABLE 1-A/ CALIFORNIA BUILDING CODE TABLE 1-A

Recommendation: Direct Staff to take necessary action to recover under charges for building permit fees.

10:50 P.M. 21. REQUEST FROM SUSTAINABLE SAN MATEO COUNTY FOR \$3,000 TO ASSIST IN THE PRODUCTION OF THE INDICATORS FOR A SUSTAINABLE SAN MATEO COUNTY, 2008 REPORT CARD

Recommendation: The City Council consider the request from Sustainable San Mateo County for a grant in the amount of \$3,000 and provide direction to staff if appropriate.

11:00 P.M. 22. DISCUSSION REGARDING JOINT MEETING WITH MENLO PARK CITY COUNCIL REGARDING GRADE SEPERATION AND QUIET ZONES

Recommendation: The City Council to consider a joint meeting with Menlo Park's City Council to discuss grade separation and quiet zones for the two cities.

- 11:15 P.M. 23. COUNCIL REPORTS
- 11:30 P.M. 24. PUBLIC COMMENTS
- 11:45 P.M. 25. ADJOURNMENT

*Agendas and staff reports may be accessed on the Town website at: 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's Office at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
TUESDAY, SEPTEMBER 4, 2007
7:30 PM
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 p.m.

ROLL CALL

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

ABSENT: Kathy McKeithen (excused)

PUBLIC COMMENTS

The following Atherton residents spoke regarding the Finance Director.

John Sisson
John Rugeiro
Jim Dobbie
Melinda Tevis

CLOSED SESSION

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

One (1) potential case

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported out of Closed Session that there was no reportable action.

ADJOURNMENT

The meeting was adjourned by Mayor Alan Carlson at 10:02 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
WEDNESDAY, SEPTEMBER 12, 2007
6:30 PM
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California

SPECIAL MEETING

The meeting was called to order by Mayor Alan Carlson at 6:30 p.m.

ROLL CALL

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

PUBLIC COMMENTS

CLOSED SESSION

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

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

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes indicated there was no reportable action taken.

ADJOURNMENT

The meeting was adjourned by Mayor Alan Carlson at 8:30 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
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

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

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

RECONVENE TO OPEN SESSION

Report of action taken.

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

With respect to Item A, Lambs vs. the Town of Atherton, et al., direction was given to Council; Town of Atherton vs. Sequoia Union High School District, et al., there was no reportable action; Charles W. King, III, and Leslie King vs. the Town of Atherton, et al., direction was given to Council.

Item B was continued at 7:20 p.m. to the end of the Regular City Council Meeting that evening.

The Continued Closed Session was reconvened at 11:25 p.m.

**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

Report of action taken.

City Attorney Hynes indicated there was no reportable action taken.

Mayor Carlson adjourned the *Continued Closed Session* at 12:25 a.m.

Respectfully submitted,

**Alan B. Carlson
Mayor**

**Minutes Prepared by:
Kathi Hamilton**



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
September 19, 2007
5:01 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 5:01 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

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Government Code Section 54957

Title: City Manager

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes indicated there was no reportable action taken.

Mayor Carlson adjourned the Closed Session at 7:20 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
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

Mayor Alan Carlson called the meeting to order at 7:27 p.m.

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL

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

Interim City Manager Wendé Protzman and City Attorney Marc Hynes were also present.

3. PRESENTATIONS

- A. Certificates of Appreciation for Outgoing Members of the Park and Recreation Commission

Mayor Alan Carlson presented Certificates of Appreciation to outgoing Park and Recreation Commissioners Mike McPherson, Etta Mae Bauer, Jim Massey, and Paul Tonelli (not present) and thanked them for their service to the Town.

- B. SBWMA –Presentation by Kevin McCarthy – Draft Request for Proposals for Collection Services

Mayor Alan Carlson anticipated that the SBWMA item on the Consent Calendar would be passed by Council and dispensed with the presentation. Mr. McCarthy answered Council Members' questions.

4. PUBLIC COMMENTS

Philip Lively, Atherton, spoke regarding the Special Events Permit process, the Lindenwood Homes' Association, and the Pop Warner Football League.

Dr. Sam Goodman, Atherton, asked for clarification as to whether Item Nos. 31 and 35 would be heard that evening. Mayor Carlson noted that Item No. 31 would be continued to the October City Council meeting and Item No. 35 would be heard.

Peter Carpenter, Atherton, distributed to Council a Citizens' Guide regarding the potential threat of a pandemic. Additionally, he noted he emailed a report to Council (not yet available to the public) regarding the fire storms in Southern California in 2003. He believed the information was pertinent to areas of Atherton.

Bob Jenkins, Atherton, gave a brief update regarding the Disaster Preparedness Committee.

John Sisson, Atherton, spoke regarding disaster preparedness in Lloyd Park.

5. STAFF REPORTS

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

Direction was given to Council.

Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899

There was no reportable action.

Charles W. King III and Leslie King v. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461513

Direction was given to Council
 - 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

The matter was under discussion and the item was continued to the end of the Regular meeting.

City Attorney Hynes discussed a Zoning Code issue regarding the Mayor's house. The Town Code of Conduct and Procedures provided that if the attorney performed a service giving a legal opinion that required more than 30 minutes of his time, a majority vote of the Council was needed. City Attorney Hynes provided an opinion as a follow-up to a previous discussion at the City Council meeting of June 20, 2007, which took approximately 45 minutes to prepare. He notified the Mayor that in the future, Council action would be necessary. The Mayor paid Mr. Hynes for his time.

- Public Works Director Duncan Jones noted the new audience chairs in the Council Chambers. The old chairs were dispersed throughout the Town. The Valparaiso project was delayed for one week for utility corrections and corrections to the asphalt. The Atherton Channel remediation in the red-legged frog pond was completed in three days. Three red-legged frogs were found in the pond and relocated. He announced that Assistant Engineer Jenny Nair was leaving for a new position in the San Jose.
- City Attorney Marc Hynes responded to Council Member McKeithen, regarding a potential claim against P.G.& E., that he had no report at the present time. He would go forward with filing a suit.

6. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

A. Holbrook-Palmer Park Foundation

Etta Mae Bauer, President Holbrook-Palmer Park Foundation (Foundation), gave an update on the Foundation. The purpose of the Foundation was to receive, administer, and expend funds for charitable, scientific, educational and literary purposes. The park was to be a public, recreational park. Resources depended upon membership, fundraising, and capital improvements for the park. She gave an update of the Foundation's ongoing plans to beautify the park.

B. Atherton Dames (The Atherton Dames requested continuance of their report to the December City Council meeting.)

CONSENT CALENDAR (Items 7–25)

Council Member McKeithen requested that Item Nos. 9 and 10 be continued to the City Council meeting of October 17, 2007. Regarding Item No. 14, she asked the City Attorney to produce an abbreviated document. Regarding Item No. 15, she did not agree, in part, to the response. Regarding Item No. 17, the date should be changed to September. Regarding Item No. 19, she noted minor language changes to the resolution. Regarding Item No. 21, she asked for clarification on asphalt failures.

PREVENTION CODE PERTAINING TO AUTOMATIC FIRE SPRINKLER SYSTEM REQUIREMENTS IN THE TOWN OF ATHERTON.”

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

Accepted the proposal and authorized 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**

Received response to Grand Jury report on the subject of electronic mail.

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

Approved response to Grand Jury report.

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

Approved extending 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**

Approved 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**

Adopted Resolution No. 07-21, "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."

- 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**

Adopted Resolution No. 07-22, A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AUTHORIZING INVESTMENT OF FUNDS WITH THE STATE TREASURER."

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

Awarded the contract for the Street Patching Project, Project No. 07-005, to G. Bortolotto & Co., the low bidder on the 12th 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**

Adopted Resolution No. 07-23, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RATIFYING ACCEPTANCE OF DEDICATION OF DRAINAGE EASEMENT FOR THE ORCHARD HILLS SUBDIVISION."

- ~~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**

Adopted Resolution No. 07-24, "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."

25. ADOPTION OF A RESOLUTION REGARDING AMERICA SUPPORTING AMERICANS

Adopted Resolution No. 07-25, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON SUPPORTING THE ADOPT-A-UNIT PROGRAM CREATED BY AMERICANS SUPPORTING AMERICANS."

PUBLIC HEARINGS (Items 26-29)

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

The item was resolved and not heard.

27. A. APPEAL OF THE PLANNING COMMISSION DECISION DENYING A CONDITIONAL USE PERMIT FOR 94 TALLWOOD

MOTION – to continue the item (by mutual agreement between the property owner and the City Council) to the City Council meeting of October 17, 2007

M/S McKeithen/Janz Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

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

MOTION – to continue the item (by mutual agreement between the property owner and the City Council) to the City Council meeting of October 17, 2007

M/S McKeithen/Janz Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

28. APPEAL OF THE PLANNING COMMISSION DECISION DENYING APPLICATION FOR HERITAGE TREE REMOVAL AT 44 TUSCALOOSA

MOTION – to continue the item (by request of the property owner) to the City Council meeting of October 17, 2007

M/S Janz/J.Carlson Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

29. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8 OF THE ATHERTON MUNICIPAL CODE REGULATING DRAINAGE

Public Works Director Duncan Jones gave a brief staff report and clarified that the ordinance adopting the Drainage Criteria (Criteria) would allow the Criteria to be updated by resolution in the future. The documents before the Council were

adopting the latest NPDES criteria, e.g., the design criterion for a house to be subject to drainage design was 5,000 square feet. Currently, the Building Department was using 1,000 square feet; however, the grading ordinance required ¼ acre. Staff was making them all consistent at 5,000 square feet, which was what the Municipal Regional Permit would require in the future. One key provision being retained was the detention requirement in the Town, which was to prevent flooding in the downstream properties in the City of Menlo Park, unincorporated San Mateo County, and Redwood City.

Mayor Alan Carlson suggested highlighting what would be required in the future that was not presently required and whether anything presently required would not be required in the future.

Council Member McKeithen also wanted to know how difficult the Criteria would be to comply with for the property owner, what were the additional costs, what were the advantages for the Town, and were the Criteria relatively standard for the conditions found in the Town.

Ed Boscacci, BKF Engineers, said the major area where the Criteria were stricter than other cities/towns was in the interpretation of new Municipal Regional Permit that would probably go into effect in January 2008 which said the Town was responsible for any dirt leaving a construction site. Outside of the detention criteria, everything else included in the packet was standard material. One other exception related to storm water runoff. Because the Town maintained a rural quality, much of the runoff went through the Town following natural historic paths which resulted in houses being subject to water going through them on a periodic basis. Annual reporting for water quality measures would be required in January. Mr. Boscacci responded to Council questions.

Mayor Carlson opened the public hearing.

Jeff Wise, Atherton, said his civil engineer was dismayed by the amount of paperwork required by the new Drainage Criteria. His civil engineering costs would be doubled. BKF said \$20,000 was a typical fee for civil engineering drawings in Atherton. He queried what was being accomplished when most of the Town was flat.

Carol Flaherty, Atherton, was very concerned about the additional costs that would be incurred by the property owner to comply with the Criteria. She was particularly concerned over the Monitoring and Maintenance Program that would be recorded in the County property rolls, which would show up on the Title Insurance. She believed the Town needed additional opinions as whether these requirements were absolutely essential.

Mayor Carlson closed the public hearing.

Mayor Alan Carlson explained that one of the conditions approving the backstop installation was that it would be taken down at the end of the season. Little League was requesting to leave the backstop in place.

A short discussion ensued regarding the types of comments/concerns that were raised with respect to other sports using the area, as well as leaving it as open space.

Bob Crowe, President of M-A Little League, said there was a cost to the Little League to take down and put up the backstop, as well as the useful life was reduced by taking it down and storing it. A more important point was the benefit to children to play in the off season. He urged Council to reconsider and allow the backstop to be left in place year round.

The following Atherton residents spoke in support of leaving the backstop in place.

Jeff Morris

John Davey, Chair, Park and Recreation Commission

Jonathan Tiemann

Michelle Dollinger

David Wright

Nicki Papadakis

Pamela Silvaroli

Jim Lemmons, Triple A Coach for M-A Little League, a Menlo Park resident, submitted 94 e-mails to Council, with only two in opposition to leaving the backstop in place.

Shirley Carlson, Park and Recreation Commission, spoke in opposition to leaving the backstop in place. She noted that no one from the Little League attended the Park and Recreation Commission meeting when the item was being discussed. Additionally, she raised the possibility of a liability issue if left in place.

The following Atherton residents spoke in opposition to leaving the backstop in place.

Mike McPherson, former Park and Recreation Commission Member

Sandy Crittenden, Hollbrook-Palmer Park Foundation Member

Bill Awbrey, Park and Recreation Commission Member

Jean Schaaf

Council Member Marsala said throughout history things changed, policies changed, etc. He suggested that perhaps the Little League should have a seat on the Park and Recreation Commission. There were pluses and minuses to the issue. He also believed those who used the field could become benefactors of the park. He saw it as an evolution of the Town and was in favor of allowing the backstop to stay in place.

Council Member McKeithen said Council referred the item to the Park and Recreation Commission as the people who were given the job of looking after the park. The Commission's recommendation was to deny the request. She thought anyone who had an interest in the park, the Little League included, should come forward to become a member of the Commission. The community's interests needed to be balanced and other uses needed to be considered. She was concerned that there was no representative from Little League at the Commission meeting. She supported continuing with the terms of the contract.

Mayor Carlson was on the Council when the contract was negotiated and gave a brief history of how the baseball field came to be. Some of the same arguments being heard that evening were said originally. There was a great resistance to having the backstop and field. Throughout the years, there had never been a problem. The park Master Plan actually incorporated the baseball field. He saw no rational reason for the backstop to be taken down. He believed Little League made a mistake by not attending the Park and Recreation Commission meeting. He supported leaving the backstop in place.

Vice Mayor Janz clarified that the contract stated that the insurance coverage was for Little League authorized activities and events and did not cover third party activities and events.

Council Member Jerry Carlson said the basic question was whether a portion of the park should be dedicated for a single use. He expressed his concern for the fact that Little League did not participate in the process at the Park and Recreation Commission. He believed the contract should stand as it was and be reviewed when at the time of renewal. The liability issued needed to be addressed.

Vice Mayor Janz was particularly bothered by the fact that the Little League did not go to the Park and Recreation Commission meeting. As a first choice, he suggested referring the item back to the Park and Recreation Commission to give Little League the opportunity to provide information and to pay due respect to the Commission. His second choice would be to grant a one year waiver on the condition that the liability insurance be increased to \$2 million and that the insurance applied to anything that occurred as a consequence of the backstop.

Discussion regarding referral to the Park and Recreation Commission and the issue of liability ensued.

MOTION – to grant a one-year waiver on removal of the backstop; to require liability insurance increased to \$2 million and to insure any accident/injuries resulting from use of the backstop; the Interim City Manager and City Attorney are directed to meet with Little League to negotiate an agreement within these parameters; at the end of the one-year waiver, the Park and Recreation Commission is directed to evaluate the one-year waiver and make a recommendation to the Council in conjunction with Little League; additionally, the maintenance obligation needs to be reviewed to cover the one-year waiver

31. AUDIT COMMITTEE DISCUSSION REGARDING ITS CHARTER

Mayor Alan Carlson continued the item to the City Council meeting of October 17, 2007.

32. APPROVAL TO EXTEND THE LEASE FOR CINGULAR’S USE OF POLICE COMMUNICATION TOWER

City Attorney Marc Hynes gave a brief staff report. Cingular Wireless requested an extension of its lease of the Police Communication Tower. The original lease was amended shortly after its approval and continued with an annual “built-in” increase in rent. Cingular was requesting a second amendment to extend its lease for an initial 5-year term with five 5-year options for a total of 30 years. He informed Cingular that the liability insurance would be increased to \$2 million and if the extension was granted it would be with the understanding that a Conditional Use Permit would be required. Cingular was agreeable to the conditions.

Discussion ensued regarding the elimination of the 30-day right to terminate, reducing the terms, and clarifying the expansion of permitted use and the Conditional Use Permit.

John Fennel, Atherton, gave a background of the initial lease and various studies that had been performed. He asked that any public hearing notice for a Conditional Use Permit specify that the terms and conditions terminate with the new lease.

MOTION – to approve the amendment to the lease with the terms changed to a 5-year term with two 5-year options; that paragraph 2: Termination, be stricken; that paragraph 3: Expansion of Permitted Use, be clarified that it is subject to a Conditional Use Permit and any modifications are subject to the CUP regardless of the lease; Further, that the public notice for the CUP hearing specify that the terms and conditions of the existing CUP, as written, would be extended to remain coterminous with the term of the lease

33. CITIZEN REQUEST TO MODIFY TRAFFIC PROGRAM TO ALLOW SPEED HUMPS

Mayor Alan Carlson continued the item to the City Council meeting of October 17, 2007.

34. COMMENTS ON DRAFT PROGRAM EIR/EIS BAY AREA TO CENTRAL VALLEY HIGH-SPEED TRAIN PROGRAM

Vice Mayor Janz gave a brief presentation regarding the Draft Program EIR/EIS Bay Area to Central Valley High-Speed Train. The initial plan was to bring the train from the south through Henry Miller State Park, Gilroy, Morgan Hill, to San Jose, continuing up the Caltrain corridor to San Francisco. There was opposition to this proposal, and the Sierra Club proposed the Altamont route. A separate study was conducted which was the Draft EIR/EIS Bay Area to Central Valley High-Speed Train Program. Comments regarding the draft EIR/EIS were due by September 28. He requested Council approve the resolution and authorize the Town to prepare a letter along the comments included in the resolution and signed by the Mayor.

MOTION – to adopt Resolution No. 07-26, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REGARDING THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT FOR BAY AREA TO CENTRAL VALLEY HIGH SPEED TRAIN,” and to authorize the Mayor to sign a letter on behalf of the Council conveying comments regarding the draft EIR/EIS

M/S McKeithen/J.Carlson Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

35. DISCUSSION ON SIGNATURE FOR THE 2007 FINANCIAL AUDIT MANAGEMENT LETTER

Interim City Manager Wendé Protzman explained the need to authorize the Mayor to sign the Financial Audit Management Letter due to the absence of the former City Manager and the Finance Director. The auditor stated that the Mayor could sign the letter. Additionally, he suggested the Chairs of the Audit and Finance Committees, along with the Mayor, could sign the letter.

Mayor Alan Carlson indicated he was willing to sign the letter.

MOTION – to authorize Mayor Alan Carlson to sign the 2007 Financial Audit Management Letter

M/S J.Carlson/Marsala Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

36. REVIEW OF CALENDAR OF CITY COUNCIL MEETINGS FOR THE REMAINDER OF 2007

MOTION – to cancel the Regular City Council meeting of November 21, 2007, and schedule a Special City Council meeting for November 14, 2007

M/S McKeithen/Marsala Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

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

City Council Member McKeithen clarified that all the benefits remained the same as the existing terms of Ms. Protzman’s agreement as Assistant to the City Manager with the exception of compensation and responsibilities.

MOTION—to adopt Resolution No. 07-27, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF ATHERTON AND WENDÉ PROTZMAN”

M/S McKeithen/Marsala Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

23. REQUEST FROM THE GENERAL PLAN COMMITTEE

Council Member Marsala suggested that the Environmental Programs Committee (EPC) have a joint meeting with the General Plan Committee before the Green Building item was returned to Council to allow the EPC input.

Deputy Town Planner Lisa Costa Sanders suggested that once the General Plan Committee made a recommendation the item go to the EPC as a next step.

Council Member McKeithen suggested if the EPC recommended changes to the General Plan Committee’s recommendations, the item would go back to the General Plan Committee before going to Council.

MOTION – to authorize the General Plan Committee to act as the lead committee to review and provide recommendations relating to Green Building; the recommendations would be reviewed by the Environmental Programs Committee and returned to the General Plan Committee before going to the City Council

M/S Marsala/McKeithen Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

37. COUNCIL REPORTS

- Council Member Jerry Carlson asked the status of the City Manager search and suggested that someone from Council be appointed to interface with William Avery. Council Member McKeithen was so appointed. Additionally, he suggested that the Buildings/Facilities Committee should play an active role in how funds were spent to update the Town home. He was concerned about the disaster preparedness area. Mayor Carlson said the Council should have a link between the Menlo Park Fire Protection District and the neighborhood groups.
- Vice Mayor Janz gave an update on the CETS Committee. The last time CETS met with Caltrain, the committee asked that one more stop be added to the 96 trains each day. On August 29, a meeting was held which ultimately resulted in no additional local service at the present time. CETS was reconvening via a conference call next Tuesday to discuss next steps.

- **Council Member Marsala said in May 2007, Interim Building Official Mike Culley informed him of possible overcharging for building permits due to the fee tables. He has researched the issue and asked for an item to be placed on the October City Council agenda for Council to consider investigating the issue.**
- **Council Member McKeithen spoke with Bill Avery who indicated the process for the City Manager recruitment was moving forward. Mr. Avery wished to extend the period of accepting resumes one or two weeks. Council concurred.**

38. PUBLIC COMMENTS

There were no public comments.

39. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting to a *Continued* Closed Session at 11:19 p.m.

The Continued Closed Session was reconvened at 11:25 p.m. City Attorney Marc Hynes indicated there was no reportable action taken. The Continued Closed Session was adjourned at 12:25 a.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**

TOWN OF ATHERTON
CLAIMS LIST
September, 2007

Payroll Checks	10242 - 10322	\$ 12,340
Electronic Transfers		100,824
A/P Checks	24723 - 24883	629,345
TOTAL		\$ 742,509

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 10242 - 10322 (payroll) and 24723 - 24883 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$742,509; are true and correct, and that there are sufficient funds for payment.

Wende' Protzman
Interim City Manager

The above claims, check numbers 10242 - 10322 (payroll) and 24723 - 24883 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$742,509; are true and correct, and are authorized for payment.

Alan Carlson
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$368,555
105	Tennis Fund	688
201	Special Parcel Tax	-
202	Transportation	-
203	Gas Tax Fund	-
210	Road Construction Impact Fees	232,733
211	Park Grants Fund	-
213	Library Special Revenue Fund	1,341
401	General Capital Projects	-
402	Storm Drainage	-
403	Atherton Channel District	6,405
406	Facilities Construction	-
411	Park Well	-
610	Vehicle Replacement	-
611	Computer Maint. & Replacement	14,402
612	Administrative Services	2,664
715	Evans Estate	1,815
740	Tree Committee	742
TOTAL		\$629,345



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: PAULA PIERCE, ASST. FINANCE DIRECTOR

DATE: FOR THE MEETING OF OCT 17, 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 1, 2007.

HIGHLIGHTS

General Fund expenditures for the month ended July 31, 2007, have amounted to \$726,860, or 11% of the \$10,044,194 budgeted for the fiscal year. For the month ended July 31, 2007, General Fund revenues amounted to \$234,953, or 6% of the \$8,962,807 estimated for the year.

FISCAL IMPACT:

None

Prepared by:

Paula Pierce
Asst. Finance Director

Approved by:

/s/ Wendé Protzman
Wende' C. Protzman
InterimCity Manager

TOWN OF ATHERTON
Revenue Summary
for the Month ended July 31, 2007

Fund	Revenue source	2007-08 Estimate	Current Period Revenue	Year to date Revenues	% received
	Property Tax	4,286,303			0%
	Sales & Use Tax	147,756	12,447	12,447	8%
	Other Taxes	1,162,774	525	525	0%
	License & Permits	2,128,188	139,184	139,184	7%
	Fines & Forfeitures	35,000	4,871	4,871	14%
	Revenue from Other Agencies	190,500	31,482	31,482	17%
	Charges for Services	293,808	24,917	24,917	8%
	Investment & Rental Income	489,478	11,509	11,509	2%
	Other Revenues	229,000	20	20	0%
	Total General Fund Revenues	8,962,807	224,955	224,955	6%
	Interfund (Operating Transfers In				
101	General Fund Total	8,962,807	224,955	224,955	
	Special Revenue Funds				
105	Tennis	8,000	155	155	2%
201	Special Parcel Tax	1,858,000			0%
202	Transportation	265,000	18,068	18,068	7%
203	Street Improvement (Gas Tax)	150,000	14,505	14,505	10%
209	Law Enforcement	100,000			0%
210	Road Construction Impact Fees	1,132,102	21,153	21,153	2%
211	State Park Grants Fund	104,800			0%
212	Library	284,000			0%
	Total	3,901,902	53,881	53,881	3%
	Capital Project Funds:				
401	Capital Improvement	2,000			0%
402	Storm Drainage	1,000			0%
403	Channel Drainage District	46,000	119	119	0%
406	Facilities Construction				
	Total	49,000	119	119	0%
	Internal Service Funds:				
610	Vehicle Replacement	104,049			0%
611	Information Technology	109,637			0%
612	Administrative Services	312,599			0%
614	Workers Compensation Insurance				
	Total	526,285	0	0	0%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500			0%
740	Tree Committee	1,400			0%
	Total	15,900	0	0	0%
	Total Revenue	13,455,894	278,955	278,955	2%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended July 31, 2007

Fund	Description	2007-08 Estimate	Current Period Expenditures	Year to date Expenditures	% spent
101	General Fund				
	11 City Council	24,122	7,280	7,280.00	30%
	12 City Manager	565,205	35,722	35,722.00	6%
	16 City Attorney	197,728	40,447	40,447.00	20%
	18 Finance	445,756	43,380	43,380.00	10%
	25 Building	1,487,473	60,277	60,277.00	4%
	40 Police	4,886,586	350,376	350,376.00	7%
	50 Public Works	2,217,324	189,378	189,378.00	9%
	Contingency	100,000		-	0%
	Total General Fund Expenditure	9,924,194	726,860	726,860.00	11%
	Interfund (Operating Transfers Out)				
101	General Fund Total	9,924,194	726,860	726,860.00	
	Special Revenue Funds				
	105 Tennis	5,522	155	155.00	3%
	201 Special Parcel Tax	1,506,535			0%
	202 Transportation	229,500	18,068	18,068.00	8%
	203 Street Improvement (Gas Tax)	145,000	14,505	14,505.00	10%
	209 Law Enforcement	100,000			0%
	210 Road Construction Impact Fees	1,000,000	21,153	21,153.00	2%
	211 State Park Grants Fund	306,710			0%
	212 Library	78,326			0%
	Total	3,371,593	53,881	53,881.00	3%
	Capital Project Funds:				
	401 Capital Improvement	67,755			0%
	402 Storm Drainage	21,394			0%
	403 Channel Drainage District	55,000			0%
	406 Facilities Construction				
	Total	144,149	0	-	0%
	Internal Service Funds:				
	610 Vehicle Replacement	64,060			0%
	611 Information Technology	108,304			0%
	612 Administrative Services	351,532			0%
	614 Workers Compensation Insurance				
	Total	523,896	0	-	0%
	Trust and Agency Funds:				
	715 Evans Creative Design	11,500			0%
	740 Tree Committee	0			
	Total	11,500	0	-	0%
	Total Expenditures	13,975,332	780,741	780,741.00	3%



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: PAULA PIERCE, ASST. FINANCE DIRECTOR

DATE: FOR THE MEETING OF OCT 17, 2007

SUBJECT: MONTHLY FINANCIAL REPORT, AUGUST 2007

RECOMMENDATION:

Receive the Monthly Financial Report for August 2007.

INTRODUCTION:

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

HIGHLIGHTS

General Fund expenditures for the two months ended August 31, 2007, have amounted to \$1,679,624, or 19% of the \$9,924,194 budgeted for the fiscal year. For the two months ended August 31, 2007, General Fund revenues amounted to \$562,716, or 12% of the \$8,962,807 estimated for the year.

FISCAL IMPACT:

None

Prepared by:

Paula Pierce
Asst. Finance Director

Approved by:

/s/ Wendé Protzman
Wende' C. Protzman
InterimCity Manager

TOWN OF ATHERTON
Revenue Summary
for the Month ended August 31, 2007

Fund	Revenue source	2007-08 Estimate	Current Period Revenue	Year to date Revenues	% received
	Property Tax	4,135,402.00	9,608	9,608	0%
	Sales & Use Tax	157,500.00	14,347	26,794	17%
	Other Taxes	1,111,546.00	75,241	75,766	7%
	License & Permits	1,466,200.00	178,516	317,700	22%
	Fines & Forfeitures	35,000.00	1,041	5,911	17%
	Revenue from Other Agencies	176,500.00	5,063	36,545	21%
	Charges for Services	307,852.00	40,181	65,098	21%
	Investment & Rental Income	395,215.00	8,759	20,268	5%
	Other Revenues	229,000.00	5,007	5,027	2%
	Total General Fund Revenues	8,014,215.00	337,763	562,716	12%
	Interfund (Operating Transfers In	100,000.00			
101	General Fund Total	8,114,215.00	337,763	562,716	
	Special Revenue Funds				
105	Tennis	8,000.00	155	155	2%
201	Special Parcel Tax	1,858,000.00			0%
202	Transportation	265,000.00	18,068	36,136	14%
203	Street Improvement (Gas Tax)	150,000.00	11,973	26,478	18%
209	Law Enforcement	100,000.00			0%
210	Road Construction Impact Fees	1,132,102.00	103,113	124,266	11%
211	State Park Grants Fund	104,800.00			0%
212	Library	284,000.00			0%
	Total	3,901,902.00	133,309	187,035	6%
	Capital Project Funds:				
401	Capital Improvement	2,000.00			0%
402	Storm Drainage	1,000.00			0%
403	Channel Drainage District	46,000.00	119	119	0%
406	Facilities Construction				
	Total	49,000.00	119	119	0%
	Internal Service Funds:				
610	Vehicle Replacement	104,049.00			0%
611	Information Technology	109,637.00			0%
612	Administrative Services	312,599.00			0%
614	Workers Compensation Insurance				
	Total	526,285.00	0	0	0%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500.00			0%
740	Tree Committee	1,400.00			0%
	Total	15,900.00	0	0	0%
	Total Revenues	12,607,302.00	471,191	749,870	4%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended August 31, 2007

Fund	Description	2007-08 Estimate	Current Period Expenditures	Year to date Expenditures	% spent
101	General Fund				
	11 City Council	24,122	5,557	12,837	53%
	12 City Manager	565,205	110,414	146,137	26%
	16 City Attorney	197,728	18,587	21,859	11%
	18 Finance	445,756	50,427	81,732	18%
	25 Building	1,487,473	135,459	195,736	13%
	40 Police	4,886,586	519,711	872,873	18%
	50 Public Works	2,217,324	176,104	348,449	16%
	Disaster Preparedness	120,000		0	
	Contingency	100,000	0	0	0%
	Total General Fund Expenditures	10,044,194	1,016,260	1,679,624	19%
	Interfund (Operating Transfers out				
101	General Fund Total	10,044,194	1,016,260	1,679,624	
	Special Revenue Funds				
	105 Tennis	5,522	473	628	11%
	201 Special Parcel Tax	1,506,535	178,450	272,497	18%
	202 Transportation	229,500	0	0	0%
	203 Street Improvement (Gas Tax)	145,000	28,765	28,765	20%
	209 Law Enforcement	100,000	0	0	0%
	210 Road Construction Impact Fees	1,000,000	84,780	85,845	9%
	211 State Park Grants Fund	306,710	0	0	0%
	213 Library	78,326	141	1,855	2%
	Total	3,371,593	292,609	389,590	8%
	Capital Project Funds:				
	401 Capital Improvement	67,755	0		0%
	402 Storm Drainage	21,394	0		0%
	403 Channel Drainage District	55,000	2,982		0%
	406 Facilities Construction	-			
	Total	144,149	2,982	0	0%
	Internal Service Funds:				
	610 Vehicle Replacement	64,060	8,397		0%
	611 Information Technology	108,304	8,522		0%
	612 Administrative Services	351,532	127,058		0%
	614 Workers Compensation Insurance				
	Total	523,896	143,977	0	0%
	Trust and Agency Funds:				
	715 Evans Creative Design	11,500			0%
	740 Tree Committee	-			0%
	Total	11,500	0	0	0%
	Total Expenditures	14,095,332	1,455,828	2,069,214	6%



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: PAULA PIERCE, ASST. FINANCE DIRECTOR

DATE: FOR THE MEETING OF OCT 17, 2007

SUBJECT: MONTHLY FINANCIAL REPORT, SEPTEMBER 2007

RECOMMENDATION:

Receive the Monthly Financial Report for September 2007.

INTRODUCTION:

The attached schedules show revenues, expenditures and fund balance for all funds as of September 30, 2007.

HIGHLIGHTS

General Fund expenditures for the three months ended September 30, 2007, have amounted to \$12,443,614, or 27% of the \$9,924,194 budgeted for the fiscal year. For the three months ended September 30, 2007, General Fund revenues amounted to \$785,696, or 20% of the \$8,962,807 estimated for the year.

FISCAL IMPACT:

None

Prepared by:

Paula Pierce
Asst. Finance Director

Approved by:

/s/ Wendé Protzman
Wende' C. Protzman
InterimCity Manager

TOWN OF ATHERTON
Revenue Summary
for the Month ended Sept 30, 2007

Fund	Revenue source	2007-08 Estimate	Current Period Revenue	Year to date Revenues	% received
	Property Tax	4,286,303	6,838	16,446	0%
	Sales & Use Tax	147,756	19,479	46,273	31%
	Other Taxes	1,162,774	24,656	99,897	9%
	License & Permits	2,128,188	77,373	395,073	19%
	Fines & Forfeitures	35,000	6,954	12,865	37%
	Revenue from Other Agencies	190,500	55,120	91,664	48%
	Charges for Services	293,808	26,184	91,282	31%
	Investment & Rental Income	489,478	6,720	26,988	6%
	Other Revenues	229,000	181	5,208	2%
	Total General Fund Revenues	8,962,807	223,505	785,696	20%
	Interfund (Operating Transfers) In				
101	General Fund Total	8,962,807	223,505	785,696	
	Special Revenue Funds				
105	Tennis	8,000	425	580	7%
201	Special Parcel Tax	1,858,000			0%
202	Transportation	265,000	51,717	87,853	33%
203	Street Improvement (Gas Tax)	150,000	0	26,478	18%
209	Law Enforcement	100,000			0%
210	Road Construction Impact Fees	1,132,102	24,490	148,756	13%
211	State Park Grants Fund	104,800			0%
212	Library	284,000			0%
	Total	3,901,902	76,632	263,667	10%
	Capital Project Funds:				
401	Capital Improvement	2,000			0%
402	Storm Drainage	1,000			0%
403	Channel Drainage District	46,000	83	202	0%
406	Facilities Construction				
	Total	49,000	83	202	0%
	Internal Service Funds:				
610	Vehicle Replacement	104,049			0%
611	Information Technology	109,637			0%
612	Administrative Services	312,599			0%
614	Workers Compensation Insurance				
	Total	526,285	0	0	0%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500			0%
740	Tree Committee	1,400			0%
	Total	15,900	0	0	0%
	Total Revenues	13,455,894	300,220	1,049,565	6%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended Sept 30, 2007

Fund	Description	2007-08 Estimate	Current Period Expenditures	Year to date Expenditures	% spent
101	General Fund				
	11 City Council	24,122	30	12,867	53%
	12 City Manager	565,205	27,158	173,295	31%
	16 City Attorney	197,728	46,180	68,039	34%
	18 Finance	445,756	31,255	112,987	25%
	25 Building	1,487,473	100,545	296,281	20%
	40 Police	4,886,586	359,288	1,232,161	25%
	50 Public Works	2,217,324	199,535	547,984	25%
	Contingency	100,000	0	0	0%
	Total General Fund Expenditures	9,924,194	763,991	2,443,614	27%
	Interfund (Operating Transfers) out				
101	General Fund Total	9,924,194	763,991	2,443,614	
	Special Revenue Funds				
	105 Tennis	5,522	688	1,316	24%
	201 Special Parcel Tax	1,506,535	0	272,497	18%
	202 Transportation	229,500	0	0	0%
	203 Street Improvement (Gas Tax)	145,000	0	28,765	20%
	209 Law Enforcement	100,000	0	0	0%
	210 Road Construction Impact Fees	1,000,000	232,215	318,060	32%
	211 State Park Grants Fund	306,710	0	0	0%
	213 Library	78,326	1,341	3,196	4%
	Total	3,371,593	234,244	623,834	13%
	Capital Project Funds:				
	401 Capital Improvement	67,755	0		0%
	402 Storm Drainage	21,394	0		0%
	403 Channel Drainage District	55,000	6,405	9,387	17%
	406 Facilities Construction	-			
	Total	144,149	6,405	9,387	6%
	Internal Service Funds:				
	610 Vehicle Replacement	64,060	0	8,397	13%
	611 Information Technology	108,304	14,402	22,924	21%
	612 Administrative Services	351,532	15,671	142,729	41%
	614 Workers Compensation Insurance				
	Total	523,896	30,073	174,050	25%
	Trust and Agency Funds:				
	715 Evans Creative Design	11,500	1,817	1,817	16%
	740 Tree Committee	-	742	742	0%
	Total	11,500	2,559	2,559	16%
	Total Expenditures	13,975,332	1,037,272	3,253,444	17%



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: PAULA PIERCE, ASST. FINANCE DIRECTOR

DATE: FOR THE MEETING OF OCTOBER 17, 2007

SUBJECT: QUARTERLY INVESTMENT REPORT, JUNE 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 **\$15,058,751**. 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).

During the second quarter of 2007, the (SMCIP) reported a gross pool rate earnings of 4.72% percent. The Local Agency Investment Fund (LAIF) reported an average interest rate of 5.23%.

The interest income and effective yields reported by the San Mateo County Treasurer and by the State of California Treasurer include 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.

To account for the increase or decrease in the economic value of fixed income securities (unrealized gains or losses) held directly or indirectly through investment pools, Governmental Accounting Standards Board Statement Number 31 requires municipalities to report such unrealized gains or losses separately at year end. This “mark to market” accounting entry is recorded on the financial statements as current year income. Additionally, fund balance is reserved in an amount that is equivalent to the amount of the unrealized gain that has been recorded as current year income.

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 and an average duration of 256 days. 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.

Attachment 1 to this staff report provides a summary of the investment earnings and investment holdings for the San Mateo County Investment Pool as of June 30, 2007.

Investment in LAIF: Local Agency Investment Fund (LAIF) is created and managed by the California State Treasurer. As of June 30, LAIF had total assets of \$59 billion and an average duration to maturity of about 271 days. The Town’s investment with LAIF as of June 30, 2007 amounted to \$5,526,039 or 35 percent of the total funds invested.

Attachment 2 to this report provides a summary of the composition of the LAIF according to investment fund.

FISCAL IMPACT:

Informational only.

Prepared by:

Approved by:

Paula Pierce
Asst. Finance Director

/s/ Wendé Protzman
Wendé Protzman
Interim City Manager

ATTACHMENTS:

1. Quarterly investment summary, San Mateo County Investment Pool
2. Quarterly investment summary, State of California Local Agency Investment Fund

SAN MATEO COUNTY TREASURER'S OFFICE
FIXED INCOME DISTRIBUTION - SETTLED TRADES
SAN MATEO COUNTY POOL

June 29, 2007

Summary Information

Totals		Weighted Averages	
Par Value	2,796,800,000	Average YTM	5.2
Market Value	2,793,370,833.99	Average Maturity (yrs)	1.0
Total Cost	2,797,895,734.24	Average Coupon (%)	3.574
Net Gain/Loss	-4,524,900.25	Average Duration	0.9
Annual Income	99,905,384.50	Average Moody Rating	Aa2
Accrued Interest	19,008,002.62	Average S&P Rating	AA
Number of Issues	98		

Distribution by Maturity

Maturity	Number	Mkt Value	% Bond Holdings	Average Y T M	Average Coupon	Average Duration
Under 1 Yr	70	2,014,170,833.07	72.1	5.3	3.375 %	0.2
1 Yr - 3 Yrs	21	491,919,329.93	17.6	5.1	3.798 %	1.8
3 Yrs - 5 Yrs	5	268,319,897.09	9.6	5.0	4.606 %	4.1
5 Yrs - 7 Yrs	2	18,960,773.89	0.7	5.4	4.253 %	5.4

Distribution by Coupon

Coupon %	Number	Mkt Value	% Bond Holdings	Average Y T M	Average Coupon	Average Duration
Under 1%	3	569,746,683.47	20.4	5.3	0.000 %	0.0
1% - 3%	7	296,018,425.87	10.6	5.1	2.629 %	1.0
3% - 5%	35	803,339,778.88	28.8	5.1	3.991 %	2.3
5% - 7%	53	1,124,265,945.77	40.2	5.3	5.353 %	0.3

Distribution by Duration

Duration	Number	Mkt Value	% Bond Holdings	Average Y T M	Average Coupon	Average Duration
Under 1 Yr	70	2,014,170,833.07	72.1	5.3	3.375 %	0.2
1 Yr - 3 Yrs	21	491,919,329.93	17.6	5.1	3.798 %	1.8
3 Yrs - 5 Yrs	5	268,319,897.09	9.6	5.0	4.606 %	4.1
5 Yrs - 7 Yrs	2	18,960,773.89	0.7	5.4	4.253 %	5.4

Distribution by Moody Rating

Rating	Number	Mkt Value	% Bond Holdings	Average Y T M	Average Coupon	Average Duration
Aaa	46	1,798,710,453.88	64.4	5.2	3.002 %	1.3
Aa1	8	146,808,565.25	5.3	5.4	4.952 %	0.4
Aa2	7	95,032,126.25	3.4	5.8	4.096 %	0.5

Portfolio as of 9-30-07

Pooled Money Investment Account

PAR VALUES MATURING BY DATE AND TYPE Maturities in Millions of Dollars

ITEM	1 day to 30 days	31 days to 60 days	61 days to 90 days	91 days to 120 days	121 days to 150 days	151 days to 180 days	181 days to 210 days	211 days to 270 days	271 days to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	4 years to 5 years/out
TREASURY			\$ 1,800	\$ 200		\$ 200							
REPO													
TDS	\$ 2,971	\$ 2,446	\$ 1,824	\$ 472	\$ 793	\$ 549							
AGENCY	\$ 981	\$ 1,355	\$ 950	\$ 500	\$ 1,239	\$ 434	\$ 540	\$ 4,375	\$ 1,449	\$ 1,521	\$ 403	\$ 772	\$ 776
BAS													
CP	\$ 8,063	\$ 1,520	\$ 1,115	\$ 115		\$ 300							
CDs + BNS	\$ 5,098	\$ 3,400	\$ 2,115	\$ 400	\$ 900								
CORP BND				\$ 25	\$ 15	\$ 60	\$ 33	\$ 45	\$ 71	\$ 113	\$ 15		
TOTAL	\$ 17,112	\$ 8,721	\$ 7,804	\$ 1,712	\$ 2,947	\$ 1,543	\$ 573	\$ 4,420	\$ 1,519	\$ 1,633	\$ 418	\$ 772	\$ 776
PERCENT	34.3%	17.5%	15.6%	3.4%	5.9%	3.1%	1.1%	8.8%	3.0%	3.3%	0.8%	1.5%	1.6%

Notes:

1. SBA Floating Rate Securities are represented at coupon change date.
2. Mortgages are represented at current book value.
3. Figures are rounded to the nearest million.
4. Does not include AB55 and General Fund loans



**LOCAL AGENCY INVESTMENT FUND
QUARTERLY APPORTIONMENT RATES**

	MARCH	JUNE	SEPTEMBER	DECEMBER
1977	5.68	5.78	5.84	6.45
1978	6.97	7.35	7.86	8.32
1979	8.81	9.10	9.26	10.06
1980	11.11	11.54	10.01	10.47
1981	11.23	11.68	12.40	11.91
1982	11.82	11.99	11.74	10.71
1983	9.87	9.64	10.04	10.18
1984	10.32	10.88	11.53	11.41
1985	10.32	9.98	9.54	9.43
1986	9.09	8.39	7.81	7.48
1987	7.24	7.21	7.54	7.97
1988	8.01	7.87	8.20	8.45
1989	8.76	9.13	8.87	8.68
1990	8.52	8.50	8.39	8.27
1991	7.97	7.38	7.00	6.52
1992	5.87	5.45	4.97	4.67
1993	4.64	4.51	4.44	4.36
1994	4.25	4.45	4.96	5.37
1995	5.76	5.98	5.89	5.76
1996	5.62	5.52	5.57	5.58
1997	5.56	5.63	5.68	5.71
1998	5.70	5.66	5.64	5.46
1999	5.19	5.08	5.21	5.49
2000	5.80	6.18	6.47	6.52
2001	6.16	5.32	4.47	3.52
2002	2.96	2.75	2.63	2.31
2003	1.98	1.77	1.63	1.56
2004	1.47	1.44	1.67	2.00
2005	2.38	2.85	3.18	3.63
2006	4.03	4.53	4.93	5.11
2007	5.17	5.23		

Portfolio as of 6-30-07

Pooled Money Investment Account

PAR VALUES MATURING BY DATE AND TYPE Maturities in Millions of Dollars

ITEM	1 day to 30 days	31 days to 60 days	61 days to 90 days	91 days to 120 days	121 days to 150 days	151 days to 180 days	181 days to 210 days	211 days to 270 days	271 days to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	4 years to 5 year/out
TREASURY	\$ 800	\$ 800	\$ 600			\$ 1,200							
REPO													
TDs	\$ 2,339	\$ 2,540	\$ 2,422	\$ 988	\$ 316	\$ 135							
AGENCY	\$ 1,035	\$ 849	\$ 1,900	\$ 198	\$ 684	\$ 1,100	\$ 100	\$ 1,339	\$ 4,415	\$ 2,419	\$ 503	\$ 772	\$ 378
BAS													
CP	\$ 7,670	\$ 2,803	\$ 1,345	\$ 2,375	\$ 359								
CDS + BNS	\$ 4,860	\$ 4,179	\$ 4,435	\$ 870	\$ 1,435	\$ 1,115							
CORP BND	\$ 10						\$ 25	\$ 75	\$ 87	\$ 162	\$ 27		
TOTAL	\$ 16,715	\$ 11,171	\$ 10,702	\$ 4,431	\$ 2,794	\$ 3,550	\$ 125	\$ 1,414	\$ 4,502	\$ 2,582	\$ 530	\$ 772	\$ 378
PERCENT	28.0%	18.7%	17.9%	7.4%	4.7%	5.9%	0.2%	2.4%	7.5%	4.3%	0.9%	1.3%	0.6%

Notes:

1. SBA Floating Rate Securities are represented at coupon change date.
2. Mortgages are represented at current book value.
3. Figures are rounded to the nearest million.
4. Does not include AB55 and General Fund loans



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: NEAL J. MARTIN, TOWN PLANNER

DATE: FOR THE MEETING OF OCTOBER 17, 2007

**SUBJECT: REVIEW AND APPROVAL OF RESOLUTION ACKNOWLEDGING
PARTICIPATION IN THE SAN MATEO COUNTY SUB-REGION FOR THE
REGIONAL HOUSING NEEDS ALLOCATION PROCESS (RHNA) AND
ACCEPTANCE OF THE ASSIGNED HOUSING SHARE**

RECOMMENDATION:

Review and adopt the attached Resolution acknowledging participation in the San Mateo County Sub-region for the Regional Housing Needs Allocation (RHNA) Process and acceptance of the assigned housing share in accordance with the Sub-regional Technical Advisory Committee and Policy Advisory Committee recommendations.

BACKGROUND:

Pursuant to Government Code Sections 65584-65584.05, the 20 cities of San Mateo County and the County of San Mateo have become a member of a countywide "sub-region," an ad hoc joint powers authority formed specifically to locally administer ABAG's Regional Housing Needs Allocation (RHNA) process. A Policy Advisory Committee comprised of one representative from each of the 21 jurisdictions acts as the governing board of the Sub-region. Council Member Janz is the Atherton representative to the Policy Advisory Committee. The Sub-region was approved by ABAG in September 2006. The City/County Association of Governments (C/CAG) has been selected to represent the Sub-region.

The Final Methodology for Determining Housing Needs Shares was submitted to ABAG on March 27, 2007. In accordance with this Methodology, a proposed Draft Allocation of Housing Shares for the jurisdictions in the San Mateo County Sub-region was developed. The proposed allocation was reviewed by the RHNA TAC on June 7, 2007, and by the RHNA PAC on June 14, 2007. At the TAC and PAC meetings in June, staff presented a preview of possible adjustments (along with the Final Allocation that would result) based on discussions with member jurisdictions. Both

committees unanimously approved the proposal; hence, it was formally adopted as the Draft Allocation. This was submitted to ABAG on June 21, 2007.

The Proposed Final Housing Allocation for the Town of Atherton during the planning period 2007 – 2014 is 83 units. The total allocation is divided into the affordability levels listed below.

Above Moderate	36	(41.62%)
Moderate	16	(19.21%)
Low	14	(16.55%)
Very Low	19	(22.62%)

The adopted methodology included an opportunity for the cities and the County to negotiate additional trades between willing partners. A letter was sent to all agencies suggesting that during July and August, members of the Sub-region that wish may discuss and negotiate trades to the Draft Allocation that will be incorporated in the Proposed Final Allocation (August 30, 2007). To date no additional trades have been identified. A trade between the City of Redwood City and Woodside is still pending.

Town Staff has been exploring the possibility of trades with neighboring jurisdictions; however, no concrete proposals have been developed yet.

DISCUSSION:

Consistent with the guidelines, methodology, and schedule established by the State and ABAG, the San Mateo County Sub-region adopted the Proposed Final Allocation of Housing Shares for the jurisdictions in the San Mateo County Sub-region. See the attached Proposed Final Allocation. The proposed Final Allocation was reviewed by the RHNA TAC on August 23, 2007 and by the RHNA PAC on August 30, 2007. Both committees unanimously approved the proposal. This was submitted to ABAG on August 31, 2007.

The Sub-region hereby opens an appeal period, pursuant to CGC 65584.05(d), that shall run through October 30, 2007, during which period any member jurisdiction of the Sub-region may appeal the proposed Final Allocation. In November, the Sub-Region will adopt the Final Allocation, including a provision that the Sub-Region consents *a priori* to any subsequent zero-sum trades between consenting jurisdictions. The Sub-region requests that the option for trades between any agencies be allowed up through August 31, 2008, when ABAG formally adopts the Sub-regional Allocation for San Mateo County.

ALTERNATIVES:

1. Review and adopt the Resolution as recommended.
2. Review and adopt the Resolution with modifications.
3. Take no action.

FINANCIAL IMPACT:

Costs associated with this project are budgeted under account 3108, Contract Planner. This process is part of the 2009 Housing Element Update Process.

RECOMMENDATION:

It is requested the each City and the County adopt a resolution acknowledging participation in the Sub-region and acceptance of the assigned housing share. Attached is a proposed Resolution. Town Planner Neal Martin was the representative on the Technical Advisory Committee and Council Member Jim Janz was the representative on the Policy Advisory Committee. The process was inclusionary and allowed issues to be addressed that may not have been possible in the ABAG regional process. Therefore staff recommends the adoption of the Resolution.

FORMAL MOTION:

I move adoption of the Resolution entitled “A Resolution of the City Council of the Town of Atherton, State of California, recognizing the participation of the Town of Atherton in the San Mateo County Subregion for the Regional Housing Needs Allocation process and acceptance of the assigned housing share for the Town of Atherton”.

Prepared by:

Approved by:

Neal J. Martin
Town Planner

Wendé C. Protzman
Interim City Manager

Attachments:

1. Draft Resolution
2. Proposed Final Allocation
3. Letter from C/CAG to City Managers and Planning Directors regarding support for the proposed final allocation of housing shares for the San Mateo County Sub-region, September 4, 2007
4. Sub-region Resolution issuing Final Allocation and opening appeal period through October 30, 2007

C/CAG

CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

Atherton • Belmont • Brisbane • Burlingame • Colma • Daly City • East Palo Alto • Foster City • Half Moon Bay • Hillsborough • Menlo Park • Millbrae • Pacifica • Portola Valley • Redwood City • San Bruno • San Carlos • San Mateo • San Mateo County • South San Francisco • Woodside

September 4, 2007

City Manager and Planning Directors
{Merge Letter}

Reference: **Resolution of Support for the Proposed Final Allocation of Housing Shares for the San Mateo County Sub-region**

Dear {Sal} {Lname}:

Consistent with the guidelines and the schedule established by the State of California and the Association of Bay Area Governments (ABAG), the San Mateo County Sub-region adopted the Proposed Final Allocation of Housing Shares for the jurisdictions in the San Mateo County Sub-region. See the attached Proposed Final Allocation and Resolution 07-01. The Proposed Final Allocation of Housing Shares was unanimously adopted by the Technical Advisory Committee and Policy Advisory Committee and submitted to ABAG on 8/31/07.

It is requested that each City and the County adopt a resolution acknowledging participation in the Sub-region and acceptance of the assigned housing share. Attached is a draft Resolution and sample staff report. Please **adopt the resolution and provide to C/CAG by 10/30/07.**

The Sub-region hereby opens an appeal period, pursuant to CGC 65584.05(d), that shall run through October 30, 2007, during which period any member jurisdiction of the Sub-region may appeal the proposed Final Allocation. In November the Sub-Region will adopt the Final Allocation, including a provision that the Sub-Region consents *a priori* to any subsequent zero-sum trades between consenting jurisdictions. The Sub-region requests that the option for trades between any agencies be allowed up through 3/31/08 when ABAG formally adopts the Sub-regional Allocation for San Mateo County. This has been agreed to by ABAG.

We want to thank all the City and County staff for their continued support in the Sub-regional process. We look forward to working with you and your staff over the upcoming months to make this process a true success. If there are any questions or additional information needed please contact me at 650-599-1420.

Regards,



Richard Napier
Executive Director
C/CAG

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON, STATE OF CALIFORNIA, RECOGNIZING THE PARTICIPATION OF THE TOWN OF ATHERTON IN THE SAN MATEO COUNTY SUBREGION FOR THE REGIONAL HOUSING NEEDS ALLOCATION PROCESS AND ACCEPTANCE OF THE ASSIGNED HOUSING SHARE FOR THE TOWN OF ATHERTON

WHEREAS, the Association of Bay Areas Governments (ABAG) is required by State law to administer the Regional Housing Needs Allocation (RHNA) process in the Bay Area; and,

WHEREAS, ABAG has begun preliminary work on developing the program with the objective of completing the program in August of 2008; and,

WHEREAS, changes to the Housing Element law in 2004 allow ABAG to transfer administration of the program to local jurisdictions who create sub-regions for the purposes of distributing housing need allocations among the members of the sub-region; and,

WHEREAS, all the Cities and the County adopted resolutions to form a Sub-region that was approved by ABAG in September 2006; and,

WHEREAS, the Sub-region has completed the process to a proposed Final Allocation,

NOW, THEREFORE, BE IT RESOLVED that the **Town of Atherton** acknowledges its participation in the San Mateo County Sub-regional Housing Needs Allocation Process and support for the Proposed Final Housing Allocation for the **Town of Atherton**

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Atherton City Council at a regular meeting thereof held on the 17th day of October, 2007, by the following vote:

AYES	COUNCIL MEMBERS:
NOES	COUNCIL MEMBERS:
ABSENT	COUNCIL MEMBERS:
ABSTAIN	COUNCIL MEMBERS:

Alan B. Carlson, MAYOR

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

RESOLUTION NO. 07-01

**SAN MATEO COUNTY
REGIONAL HOUSING NEEDS ALLOCATION SUB-REGION**

**RESOLUTION ADOPTING PROPOSED FINAL REGIONAL HOUSING NEEDS
ALLOCATION (I.E., REVISED DRAFT ALLOCATION) FOR THE SAN
MATEO COUNTY SUB-REGION, AND OPENING A SIXTY (60) DAY PERIOD
DURING WHICH MEMBER JURISDICTIONS MAY APPEAL SUCH
ALLOCATION.**

WHEREAS, the San Mateo County Regional Housing Needs Allocation Sub-Region (“Sub-Region”) was formed pursuant to CGC 65584.03(a); and

WHEREAS, the Sub-Region issued a Draft Allocation on June 14, 2007, pursuant to CGC 65584.05(a); and

WHEREAS, the Sub-Region opened a public comment period, running through August 30, 2007, during which any member jurisdiction of the Sub-region could request revisions to the Draft Allocation; and

WHEREAS, through an iterative dialogue process facilitated by Sub-region administrative staff, various member jurisdictions of the Sub-region requested revisions pursuant to CGC 65584.05(b), and the Sub-region responded to such request pursuant to CGC 65584.05(c); and

WHEREAS, all such revisions are incorporated into the proposed Final Allocation; and

WHEREAS, such proposed Final Allocation was discussed in full, and public comment was heard in full at a duly noticed public hearing conducted by the governing board of the Sub-region on August 30, 2007;

NOW, THEREFORE, BE IT RESOLVED that the Sub-region hereby issues the proposed Final Allocation set forth in Attachment A hereto; and further,

BE IT RESOLVED that the Sub-region hereby opens an appeal period, pursuant to CGC 65584.05(d), that shall run through October 30, 2007, during which period any member jurisdiction of the Sub-region may appeal the proposed Final Allocation.

Tom Kasten
Chair

August Proposed Final Allocation

SAN MATEO COUNTY SUBREGION'S FINAL SHARES OF REGIONAL HOUSING NEEDS ALLOCATION										
JURISDICTION	Weighted Share (per adopted formula)		Technical adjustments to ABAG Projections			FORMULA ALLOCATION	Negotiated Adjustments - Staff & Jurisdiction Proposals			PROPOSED FINAL ALLOCATION
	Before Technical Adjustment		BETWEEN jurisdictions (x)	AMONG jurisdictions (x)		After Technical Adjustment	BETWEEN jurisdictions	AMONG jurisdictions		A,B Deadline: 8/31/07
ATHERTON	0.53%	83	83	0	83	83	83		83	83
BELMONT	2.99%	471	471	0	471	471	(72)	399	399	399
BRISBANE	2.55%	401	401	0	401	401		401	401	401
BURLINGAME	4.55%	717	717	0	717	717	(67)	650	650	650
COLMA	0.63%	100	100	0	100	100	(35)	65	65	65
DALY CITY	7.76%	1,222	1,222	0	1,222	1,222	(15)	1,207	1,207	1,207
EAST PALO ALTO	4.00%	630	630	0	630	630		630	630	630
FOSTER CITY	3.09%	486	486	0	486	486		486	486	486
HALF MOON BAY	1.76%	276	276	0	276	276		276	276	276
HILLSBOROUGH	0.55%	86	86	0	86	86		86	86	86
MENLO PARK	6.31%	993	993	0	993	993		993	993	993
MILLBRAE	2.87%	452	452	0	452	452		452	452	452
PACIFICA	1.75%	275	275	0	275	275		275	275	275
PORTOLA VALLEY	0.47%	74	74	0	74	74		74	74	74
REDWOOD CITY	10.83%	1,704	1,704	0	1,704	1,704	128	1,832	1,832	1,832
SAN BRUNO	6.74%	1,061	1,061	0	1,061	1,061	(88)	973	973	973
SAN CARLOS	4.58%	720	720	0	720	720	(121)	599	599	599
SAN MATEO	18.22%	2,868	2,868	0	2,868	2,868	183	3,051	3,051	3,051
SOUTH SAN FRANCISCO	10.39%	1,635	1,635	0	1,635	1,635		1,635	1,635	1,635
WOODSIDE	0.41%	65	65	0	65	65		65	65	65
UNINCORPORATED	9.02%	1,420	0 1,420	0	1,420	1,420	86	1,506	1,506	1,506
SAN MATEO COUNTY	100%	15,738	0 15,738	0	15,738	15,738	0	15,738	0 15,738	15,738

SAN MATEO COUNTY SUBREGION'S FINAL SHARES OF REGIONAL HOUSING NEEDS ALLOCATION

- A. Woodside and Redwood City are in the process of agreeing to move their common boundary to facilitate development of 60 units of affordable housing. These adjustments have no impact on other jurisdictions' shares. Upon reaching agreement the appropriate housing shares will be reflected as part of the final allocation.
- B. The Sub-region should preserve the option for trades between any agencies up through 3/31/08 when ABAG formally adopts the Sub-regional Allocation for San Mateo County.



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: NEAL J. MARTIN, TOWN PLANNER

DATE: FOR THE MEETING OF OCTOBER 17, 2007

**SUBJECT: APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH
HEXAGON TRANSPORTATION CONSULTANTS TO PREPARE A
TRAFFIC STUDY FOR SACRED HEART SCHOOLS**

RECOMMENDATION:

Approve the attached Professional Services Agreement with Hexagon Transportation Consultants to prepare a traffic study to be used as part of an Initial Study and Draft Negative Declaration for Sacred Heart School.

BACKGROUND:

Sacred Heart Schools is in the process of applying for a Conditional Use Permit for the construction of a new Science and Student Life Building to be located to the southwest of the historic Main Building in the central portion of the campus. Due to past growth in student enrollment, the City Planner has determined that an environmental document will need to be prepared and considered by the Planning Commission at the time it holds a public hearing on this project. The most likely potential environmental impact associated with the project relates to traffic. Proposals for a traffic study were solicited from two qualified consulting firms. Only Hexagon Transportation Consultants submitted a proposal. The cost to take new traffic counts and to prepare the study is estimated to be \$23,000.

Sacred Heart Schools has agreed to the study and the consultant. They have already deposited \$11,500 with the Town and will deposit the remaining \$11,500 during the month of October. Therefore the entire cost of the work will be paid for by Sacred Heart Schools.

Work is expected to begin immediately.

DISCUSSION:

Since the cost of the proposed work exceeds the limit that the City Manager can authorize, the City Council will need to approve the Professional Services Agreement before work can begin.

The City Attorney has reviewed the proposed Professional Services Agreement and has approved it as to form.

ALTERNATIVES:

1. Approve the Professional Services Agreement.
2. Approve the Professional Services Agreement with modifications.
3. Take no action.

FINANCIAL IMPACT:

All costs associated with this project are paid for by the applicant.

RECOMMENDATION:

It is requested the City Council approve the attached Professional Services Agreement with Hexagon Transportation Consultants to prepare a traffic study to be used as part of an Initial Study and Draft Negative Declaration for Sacred Heart School.

FORMAL MOTION:

I move that the City Council approve the attached Professional Services Agreement with Hexagon Transportation Consultants to prepare a traffic study to be used as part of an Initial Study and Draft Negative Declaration for Sacred Heart School.

Prepared by:

Approved by:

Neal J. Martin
Town Planner

Wendé C. Protzman
Interim City Manager

Attachments:

1. Proposed Professional Services Agreement



September 26, 2007

Mr. Neal Martin, AICP
Town Planner
Town Administrative Offices
91 Ashfield Road
Atherton, CA 94027

Re: *Proposal to Prepare a Traffic Study for the Sacred Heart Schools 2007 Master Plan*

Dear Mr. Martin:

Hexagon Transportation Consultants, Inc. is pleased to submit this proposal to prepare a traffic study to be used in conjunction with the preparation of an Initial Study and Mitigated Negative Declaration for the implementation of the remaining components of the Sacred Heart Schools (SHS) 2007 Master Plan. Sacred Heart Schools is located at 150 Valparaiso Avenue, Atherton, California. The school has three divisions: Sacred Heart Preparatory (grades 9-12) St. Joseph's School of the Sacred Heart (grades 1-8), and St. Joseph's School of the Sacred Heart Preschool and Kindergarten (P-K). The 64-acre campus is bounded by Park Lane, Elena Avenue, Valparaiso Avenue, and Emile Avenue.

The SHS 2007 Master Plan consists of demolition and renovation of existing buildings, construction of new buildings as replacements for demolished buildings, relocation of parking and other facilities, as well as reconfiguration of drop off/pick up area. The Master Plan is to be implemented in three phases, from 2007 to 2013 and beyond. From the standpoint of increased traffic generation, the key component of the Master Plan is the projected increase in student enrollment.

Scope of Work

The purpose of the traffic study is to satisfy the requirements of the Town of Atherton. The study will determine the traffic impacts of the implementation of the SHS 2007 Master Plan on the eight entrances/exits to the site and four key roadway segments surrounding the site.

The key intersections are:

1. Montessori/St. Joseph's School South Driveway/Emilie Avenue
2. Montessori/St. Joseph's School North Driveway/Emilie Avenue
3. SH School Driveway (closest to Park Lane)/Emilie Avenue
4. SH School Driveway/Park Lane
5. SH School Driveway/Elena Avenue (North Driveway)
6. SH School Driveway/Elena Avenue (Middle Driveway)
7. SH School Driveway/Elena Avenue (South Driveway)
8. Sh School Main Driveway/Valparaiso Avenue

The key roadway segments are:

1. Park Lane
2. Elena Avenue



3. Valparaiso Avenue
4. Emilie Avenue

The tasks to be included in the analysis are:

1. **Site Reconnaissance and Observations.** The physical characteristics of the site and the surrounding roadway network will be reviewed to identify existing roadway cross-sections, intersection lane configurations, traffic control devices, and surrounding land uses. Observations of existing traffic conditions will be made in order to identify any operational deficiencies and to confirm the accuracy of calculated levels of service. During the site observations Hexagon will also identify any existing problems related to site circulation and access, including locations of pedestrian-vehicle conflict points, J-walking and illegal turn movements around the campus. Overflow parking on the adjacent streets, in any, will be noted.
2. **Data Collection.** Existing AM and PM peak hour traffic volumes will be obtained from new manual turning-movement counts at each of the eight entrances/exits to the site. Because the project is a school, the AM peak hour is defined as the period between 7AM and 9AM while the PM peak hour is the period between 2PM and 4PM. In addition, 24-hour tube counts will be conducted on each of the four streets surrounding the campus. These counts will be conducted in fall after school begins and after the Valparaiso Avenue reconstruction project is completed.
3. **Evaluation of Existing Conditions.** The existing operations of the key intersections will be evaluated with a level of service analysis using current AM and PM peak hour volumes. The TRAFFIX Software will be used to perform the level of service calculations for all the signalized intersections. The Town of Atherton level of service guidelines will be followed for all intersections.
4. **Evaluation of Background Conditions.** A list of approved developments located within the study area will be obtained from the Town of Atherton. Projected traffic volumes associated with these approved developments will be obtained from the Town's approved trip inventory (ATI). Approved trips will be added to the existing AM and PM peak hour volumes to obtain traffic volumes for background conditions. Improvements associated with approved developments will be included at the guidance of the Town. Intersection level of service calculations will be performed to evaluate background conditions using the TRAFFIX software.
5. **School Traffic Projections.** Based on the projected school enrollment for the next six years, site-generated traffic will be estimated using the vehicular trip generation rates derived from the counts of the existing school driveways.
6. **Traffic Distribution and Assignment.** The directional distribution of site-generated traffic will be forecast based on existing travel patterns and relative locations of complementary land uses in the area. The site-generated traffic will be added to the roadway network based on the estimated trip distribution pattern.
7. **Evaluation of Project Conditions.** Project-generated traffic will be added to background traffic volumes. Intersection level of service calculations will be conducted to estimate the operating levels of the key intersections during the AM and PM peak hours after the implementation of the SHS 2007 Master Plan. The TRAFFIX Software will be used to perform the level of service calculations for all the signalized intersections.
8. **Description of Impacts and Recommendations.** Based on the results of the level of service calculations, any impacts created by the implementation of the SHS 2007 Master Pan will be identified



and described. Recommendations will be formulated that identify the locations and types of improvements or modifications necessary to mitigate significant project impacts. Improvements could include street widenings, lane additions, addition of traffic signals, or modifying existing traffic signals. Concept drawings will be prepared, as appropriate, for recommended improvements. The drawings will consist of hand sketches of road improvements on aerial photographs.

9. ***Evaluation of Vehicle Queuing.*** For selected intersection locations where the implementation of the SHS 2007 Master Plan would add a significant number of left-turning vehicles, the adequacy of existing storage at turn pockets will be assessed by means of comparison with expected maximum vehicle queues.
10. ***Site Access, Circulation and Parking.*** A site circulation and access review will be conducted to determine the adequacy of the proposed site plan in accordance with generally accepted traffic engineering standards. This will include a quantitative analysis of the anticipated traffic volumes at the school's drop-off locations, as well as a qualitative analysis of the proposed site circulation and parking layout. The review will be based on the specific trip generation of each division of SHS (the preparatory school, the elementary and middle school, and the preschool and kindergarten), since that is the most important factor affecting the traffic flow at each drop-off location. The review will consider the following: sight distance, vehicle queuing, traffic control requirements, saturation flow rate of drop-off areas, and truck access. Any existing problems identified in Task #1 will also be considered. Pedestrian and bicycle travel access also will be evaluated. Where possible, Hexagon will develop potential solutions to address any problems identified.
11. ***Meetings.*** The fee estimate includes attendance at two meetings with Town staff and/or Sacred Heart Schools in conjunction with this study. This proposal does not include, however, any appearances or presentations at public hearings, including Planning Commission or City Council meetings.
12. ***Reports and Response to Comments.*** Our findings and recommendations will be summarized in a draft traffic report. Hexagon Transportation Consultants will respond to editorial comments, prepare a Final Report, and submit the number of requested copies.

Additional Services

Any work not specifically referenced in the above Scope of Services—for example, conducting additional intersection counts, analyzing additional intersections, analyzing project alternatives, and attending additional meetings—shall be considered additional services.

Cost of Services

The total fee for the Scope of Services rendered under this agreement is quoted on a time and materials basis for a not to exceed amount of \$23,000 for Work Items 1 through 12. This budget estimate includes \$5,000 for new intersection turning-movement counts and 24-hour tube counts. This price quote is good for 30 days from the date of this letter. After that time, please contact us for an updated proposal. Additional Services shall be provided upon authorization and will be billed separately.

Time of Performance

Barring any unforeseen delays, a draft traffic report will be submitted three weeks after completion of the new intersection and tube counts. The final traffic report will be delivered one week after receipt of all



Mr. Neal Martin
September 26, 2007
Page 4 of 4

review comments. We will try our best to complete the study and report by November 9, 2007.

We look forward to working with you and appreciate your consideration of Hexagon Transportation Consultants, Inc. for this assignment. If you have any questions, please do not hesitate to call. Thank you.

Sincerely,

HEXAGON TRANSPORTATION CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read "Gary Black", with a long horizontal flourish extending to the right.

Gary Black
President

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into as of the 20th day of September, 2007 by and between the **TOWN OF ATHERTON**, hereinafter referred to a "TOWN" and Hexagon Transportation Consultants, Inc. hereinafter referred to as "CONSULTANT".

RECITALS

THIS AGREEMENT is entered into with reference to the following facts and circumstances:

- A. That TOWN desires to engage CONSULTANT to render certain professional services to the TOWN;
- B. That CONSULTANT is qualified to provide such services to the TOWN; and
- C. That TOWN has elected to engage the services of CONSULTANT upon the terms and conditions as hereinafter set forth

TERMS AND CONDITIONS

1. Services

The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is by this reference incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term of Agreement

Said services shall commence on execution and shall continue until completion of the task set forth in Exhibit A as described in the preceding section, or until terminated by ten (10) days written notice by either party.

3. Compensation

Payment under this agreement shall be as per Exhibit A.

4. Authorization and Termination

This Agreement becomes effective when endorsed by both parties in the space provided below.

5. Reliance of Professional Skill of Consultant

CONSULTANT represents that it has the necessary professional skills to perform the services required and TOWN shall rely on such skills of the CONSULTANT to do and perform the work.

6. Relationship of Parties

It is understood that the relationship of CONSULTANT to TOWN is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of TOWN.

7. Non-assignment

This Agreement is not assignable either in whole or in part.

8. Amendments

This Agreement may be amended or modified only by written agreement signed by both parties.

9. Validity

The invalidity, in whole or in part, of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

10. Governing Law/Litigation

This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable expenses of litigation of the successful party.

11. Mediation

Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs.

12. Entire Agreement

This Agreement, including Exhibit A, comprises the entire Agreement.

13. Indemnity

CONSULTANT shall defend, indemnify and hold TOWN and its officers and employees harmless from any and all claims and liabilities related to or as a result of CONSULTANT's performance of this Agreement.

14. **Insurance**

CONSULTANT shall not commence work under this Agreement until all insurance required under this Paragraph has been obtained. CONSULTANT shall furnish TOWN with certificates of insurance evidencing the required coverage. The TOWN will be named as additional insured in the policy. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the TOWN office of any pending change in the limits of liability or of any cancellation or modification of the policy.

a) **Workers' Compensation and Employers' Liability Insurance**

CONSULTANT shall have in effect during the entire life of this Agreement Workers' Compensation and Employers' Liability Insurance providing full statutory coverage. In signing this Agreement, CONSULTANT makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 37900 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

b) **Liability Insurance**

CONSULTANT shall take out and maintain during the life of this Agreement such bodily injury liability and property damage liability insurance as shall protect CONSULTANT while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims from property damage which may arise from CONSULTANT's work under this Agreement, whether such work be by CONSULTANT or by any subcontractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be Two Million and no/100 Dollars (\$2,000,000.00) combined single limit bodily injury and property damage for each occurrence. The TOWN, its officers, employees and agents shall be maintained as additional insureds on said policy, and a certificate of said coverage shall be delivered to the TOWN before any work commences. All insurance shall be with insurance carriers licensed in the State of California and in good standing with the California Department of Insurance.

15. **Notice**

All notices required by this Agreement shall be given to TOWN and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

TOWN:

Town Manager

Town of Atherton

91 Ashfield Road
Atherton, CA 94027

CONSULTANT:

President

Hexagon Transportation Consultants, Inc.

40 South Market St., Suite 600
San Jose, CA 95113

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first written by their respective officers duly authorized in that behalf.

TOWN OF ATHERTON

BY: _____

Date: _____

Wendé Protzman, Interim City Manager

APPROVED AS TO FORM:

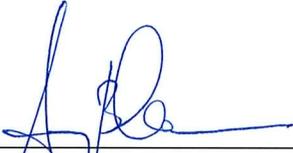
BY: _____

Date: _____

Marc Hynes, City Attorney

CONSULTANT:

HEXAGON TRANSPORTATION CONSULTANTS

BY:  _____
Gary Black, President

Date: Sept. 20, 2007



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF OCTOBER 17, 2007

**SUBJECT: APPROVAL OF CONTRACT FOR TEMPORARY SERVICES
SUSAN TSAI, Staff Member, Finance Department**

RECOMMENDATION:

Approve contract with Susan Tsai for services in connection with the Town's Finance Department and Building Department. The contract envisions the performance of services by Ms. Tsai as a Staff Member in the Department of Finance.

BACKGROUND:

Ms. Tsai has previously provided services to the Town under purchase orders. In view of the amount incurred by the Town to date (\$22,275.00) for Ms. Tsai's services, it is appropriate that her work be approved under a separate contract.

FISCAL IMPACT:

Funds are available for contract staff services.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes
City Attorney

Wendé C. Protzman
Interim City Manager

Attachment

CONTRACTOR AGREEMENT BETWEEN THE TOWN OF ATHERTON AND
SUSAN TSAI

This Contractor Agreement ("Agreement") is entered into between the Town of Atherton ("Town") and Susan Tsai ("Contractor").

1. Services of Contractor. Contractor agrees to perform accounting services as a staff member of the Town's Finance Department and Building Department. The contract envisions the performance of services by Ms. Tsai as a Staff member in the Department of Finance under the direction of the City Manager, Interim City Manager or designee.

2. Compensation. The Town agrees to pay Contractor \$50.00 per hour based upon a monthly itemized invoice Contractor provides to the Town. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation, including all estimated taxes, and shall provide the Town with proof of payment on demand. Contractor indemnifies Town for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Town arising out of Contractor's breach of this provision. Contractor shall be responsible for all expenses incurred in association with the performance of Services.

3. Term of Agreement. This Agreement will be effective as of October 22, 2007. This Agreement will terminate on November 22, 2007, at which time, it may be renewed on a month to month basis by the Interim City Manager. Prior to the termination date, either party may terminate this Agreement by giving 10 days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination shall be effective on receipt of the notice, or 5 days from mailing the notice, whichever comes first. "Material breach" shall include, but not be limited to, the following: a) Town's failure to pay compensation for 20 days after a demand for payment; or b) failure of Contractor to perform the Services to the satisfaction of the Town.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor look to Town as her employer, or as a partner, agent or principal. Contractor shall not be entitled to any benefits accorded to Town employees, such as workers' compensation, disability insurance, vacation, sick pay, holiday pay, medical insurance, retirement benefits, or any other employee benefit. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, disability, workers' compensation or other insurance as well as licenses and permits usual or necessary for performing the Services. Contractor agrees to perform the Services as needed, but that no more than 1000 hours will be devoted to performance of the Services in any Town fiscal year (e.g., July 1 to June 30). Consistent with this requirement, Contractor may represent, perform services for, or be employed by any additional persons, or companies as Contractor sees fit.

5. Contractor's Representations. Contractor represents that she has the qualifications and ability to perform Services in a professional manner.

6. Indemnities. Except as set forth below, Contractor shall and does hereby indemnify, defend and hold harmless Town, and Town's Council members, managers, and department heads from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that Town may incur or suffer and that result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties and agreements contained in this Agreement.

Town shall provide legal defense to Contractor in connection with claims related to the exercise of discretion by Contractor in the performance of duties hereunder to the same extent as a regular employee of the Town under the provisions of California Government Code sections 810 through 825.6.

7. Notices. All notices to Town shall be directed to: City Clerk, Town of Atherton, 91 Ashfield Road, Atherton, California, 94027. All notices to Contractor shall be directed to:

Susan Tsai
3806 Ross Road
Palo Alto, CA 94303

8. Mediation. Should any dispute rise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs and fees. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.

9. Attorneys' Fees. In the event of litigation between the parties to enforce any provision of the Agreement, the unsuccessful party shall pay the costs of litigation including reasonable attorneys' fees of the successful party.

10. Conflict of Interest. Contractor may serve other clients, but none who are active within the Town or who conduct business that would place Contractor in a "conflict of interest" as the term is defined and understood in State law.

11. Entire Agreement. This Agreement and Exhibit A hereto constitute the entire agreement between the parties. All prior agreements, written or oral, are hereby superseded by this Agreement.

12. Amendment. This Agreement can only be amended by a writing that is signed and dated by both parties and approved by the Town's City Council.

The foregoing is agreed to by:

Dated: October _____, 2007.

*

Wendé Protzman, Interim City Manager

Dated: October _____, 2007.

Susan Tsai, Contractor

Approved as to Form:

Dated: October _____, 2007.

Marc G. 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 OCTOBER 17, 2007

**SUBJECT: APPROVAL OF CONSULTANT CONTRACT
WILLIAM H. "BILL" YEOMANS
TEMPORARY FINANCE OFFICER SERVICES**

RECOMMENDATION:

Approve agreement with Mr. William H. Yeomans for services in connection with the Town's Finance Department. The agreement envisions Mr. Yeomans' services on a 3-day per week basis. Mr. Yeomans has previously served as Acting Director of Finance for the Town.

BACKGROUND:

The Town has need of temporary management services for the Finance Department. The Town has previously contracted with Mr. William Yeomans to provide these services on a part-time basis. Mr. Yeomans is available to perform services for the Town on the basis of three days per week. Mr. Yeomans previously provided these services and comes well recommended. A copy of his resume is attached. The attached consultant agreement will confirm that Mr. Yeomans will provide services as described in the agreement. Mr. Yeomans will bill for his services at the rate of \$80.00 per hour plus travel expenses to and from his home in Pasadena to the Town.

FISCAL IMPACT:

Funds are available for contract staff services.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc Hynes
City Attorney

Wendé C. Protzman
Interim City Manager

Attachments

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE TOWN OF
ATHERTON AND WILLIAM H. "BILL" YEOMANS

This Independent Contractor Agreement ("Agreement") is entered into between the Town of Atherton ("Town") and William H. Yeomans ("Contractor").

1. Services of Contractor. Contractor agrees to perform services relating to the management and operation of the Town's Finance Department serving in the capacity of temporary Finance Director. Contractor will determine the method, details, and means of performing the Services.

2. Compensation. The Town agrees to pay Contractor Eighty Dollars (\$80.00) per hour based upon a monthly itemized invoice Contractor provides to the Town. In addition, Town agrees to reimburse Contractor for travel expenses to and from his home in Pasadena, California, to the Town at those times and dates when such expenses are incurred in connection with the performance of the services. Expenses shall be documented and submitted to the Town at least monthly. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation, including all estimated taxes, and shall provide the Town with proof of payment on demand. Contractor indemnifies Town for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Town arising out of Contractor's breach of this provision. Except as otherwise set out above, Contractor shall be responsible for all expenses incurred in association with the performance of Services.

3. Term of Agreement. This Agreement will be effective as of October 22, 2007. This Agreement will terminate on November 22, 2007, at which time, it may be renewed on a month to month basis by the Interim City Manager. Prior to the termination date, either party may terminate this Agreement by giving 10 days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination shall be effective on receipt of the notice, or 5 days from mailing the notice, whichever comes first. "Material breach" shall include, but not be limited to, the following: a) Town's failure to pay compensation for 20 days after a demand for payment; or b) failure of Contractor to perform the Services to the satisfaction of the Town.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor look to Town as his employer, or as a partner, agent or principal. Contractor shall not be entitled to any benefits accorded to Town employees, such as workers' compensation, disability insurance, vacation, sick pay, holiday pay, medical insurance, retirement benefits, or any other employee benefit. Contractor agrees to perform the Services as needed, but that no more than 1,000 hours will be devoted to performance of the Services in any Town fiscal year (e.g., July 1 to June 30). Consistent with this requirement, Contractor may represent, perform services for, or be employed by any additional persons, or companies as Contractor sees fit.

5. Contractor's Representations. Contractor represents that he has the qualifications and ability to perform Services in a professional manner, without the advice, control or supervision of the Town. Contractor shall be solely responsible for the professional performance of the Services. Contractor shall have sole discretion and control of Contractor's services and the manner in which performed.

6. Indemnities. Except as set out below, Contractor shall and does hereby indemnify, defend and hold harmless Town, and Town's Council members, managers, and department heads from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that Town may incur or suffer and that result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties and agreements contained in this Agreement.

Town shall provide legal defense to Contractor in connection with claims related to the exercise of discretion by Contractor in the performance of duties hereunder to the same extent as a regular employee of the Town under the provisions of California Government Code sections 810 through 825.6.

The parties understand and agree that Contractor shall in no event be liable for any actions taken by Town's Councilmembers, managers and department heads and any Town employee prior to Contractor's commencement of services under this agreement.

7. Notices. All notices to Town shall be directed to: City Clerk, Town of Atherton, 91 Ashfield Road, Atherton, California, 94027. All notices to Contractor shall be directed to:

William H. Yeomans
527 California Terrace
Pasadena, CA 91105

8. Mediation. Should any dispute rise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs and fees. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.

9. Attorneys' Fees. In the event of litigation between the parties to enforce any provision of the Agreement, the unsuccessful party shall pay the costs of litigation including reasonable attorneys' fees of the successful party.

10. Conflict of Interest. Contractor may serve other clients, but none who are active within the Town or who conduct business that would place Contractor in a "conflict of interest" as the term is defined and understood in State law.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties. All prior agreements, written or oral, are hereby superseded by this Agreement.

12. Amendment. This Agreement can only be amended by a writing that is signed and dated by both parties and approved by the Town's City Council.

The foregoing is agreed to by:

Dated: October _____, 2007.

Wendé Protzman, Interim City Manager

Dated: October _____, 2007.

William H. Yeomans, Contractor

Approved as to Form:

Dated: October _____, 2007.

Marc G. Hynes, City Attorney

WILLIAM H. "BILL" YEOMANS

527 California Terrace
Pasadena, CA 91105
(626)440-9091
(626)437-2649 cell
yeomans527@earthlink.net

RESUME

Summary

Twenty years in City Financial Administration, including sixteen years as Finance Director. Since retirement, Interim Finance Director in four cities. Skills encompass computer installations, budget and report preparation, revenue and financial analysis, treasury management and risk management.

Professional Experience

March 2005 –
Sept. 2006

Interim Finance Director, City of National City.
Managed Finance Department after loss of three top finance managers; incorporated Community Development finance function into City Finance.

January 2003 –
December 2003

Interim Finance Director, City of Calabasas.
Supervised conversion of CAFR to GASB 34 standard.

April 2002 –
June 2003

Interim Finance Director, City of Goleta.
Set up entire Finance function for new City incorporated February 2002.

March 2001 –
December 2001

Interim Finance Director, Town of Atherton.
Prepared budgets, annual financial reports. Supported successful parcel tax campaign and capital program.

1999 – 2001

Finance Director, City of La Puente.
Installed new parking system increasing collections.
Updated fee study.

1995 – 1999

Director of Finance, City of South Pasadena.
Installed Unix hardware and City-wide e-mail system.

1989 – 1995

Finance Director, City of Palos Verdes Estates.
Managed Finance, Risk, and Recreation programs.
Prepared award-winning Budget and CAFR. Prepared successful financings of assessment bond and TRAN.

WILLIAM H. "BILL" YEOMANS

(continued)

Education

1976

M.S. in Administration,
University of California, Irvine

1967

A.B. in History, Occidental College, Los Angeles

Activities

California Society of Municipal Finance Officers
Chair, South Bay Section, 1988-1989

California Joint Powers Insurance Authority
Chair, Finance Officers Committee, 1995-1998

League of California Cities Policy Committee.
Community Services, 1999

References

Lin Wurbs, Assistant City Manager, National City
1243 National City Blvd., National City, CA 91950
(619)336-4220

James Robinson, City Manager, Atherton, CA
91 Ashfield Road, Atherton CA 94027
(650)752-0500

Linda Holmes, City Manager (retired)
501 N. Phillips Road, Palm Springs, CA 92262
(760)323-1181

ITEM 15A

APPEAL REGARDING 94 TALLWOOD

The attached staff report is the original staff report submitted to the City Council at its September 19, 2007, meeting.



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

William D. Ross
Kypros G. Hostetter
Joseph Bakshandeh
Karin A. Briggs

RECEIVED
TOWN OF ATHERTON
2007 AUG -2 A 9:50

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 17.36.190.¹

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

¹All 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:

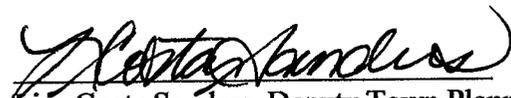
The applicant paid the Conditional Use Permit fee of \$750 for the processing of this application. Any additional expenses are borne by the Town.

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.

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

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)¹.

¹ 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 house². 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 feet³; and

² Based on audit report dated September 25, 2006.

³ 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 feet⁴. 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 feet⁵. 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 analysis⁶ 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.

⁴ Calculated on the basis of 1.42 acres multiplied by 43,560 SF/acre times 0.075.

⁵ 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.

⁶ 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

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
Total	12,709

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 site⁷, 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

⁷ 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:

Factor	Calculation	Excess
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

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

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.

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	Minimum Width	Minimum Depth
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

$S = 100 \frac{I L}{A H}$

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:

Category A	Category 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 1.¹

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).

¹See, 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)

PROPERTY OWNER(S)	Charles King		
PROPERTY ADDRESS	94 Tallwood Court		
CALCULATED BY	Darren Bunting	DATE	May 23, 2007
REFERENCE MAP:	Partial Topo by Lea & Braze	JOB#	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)

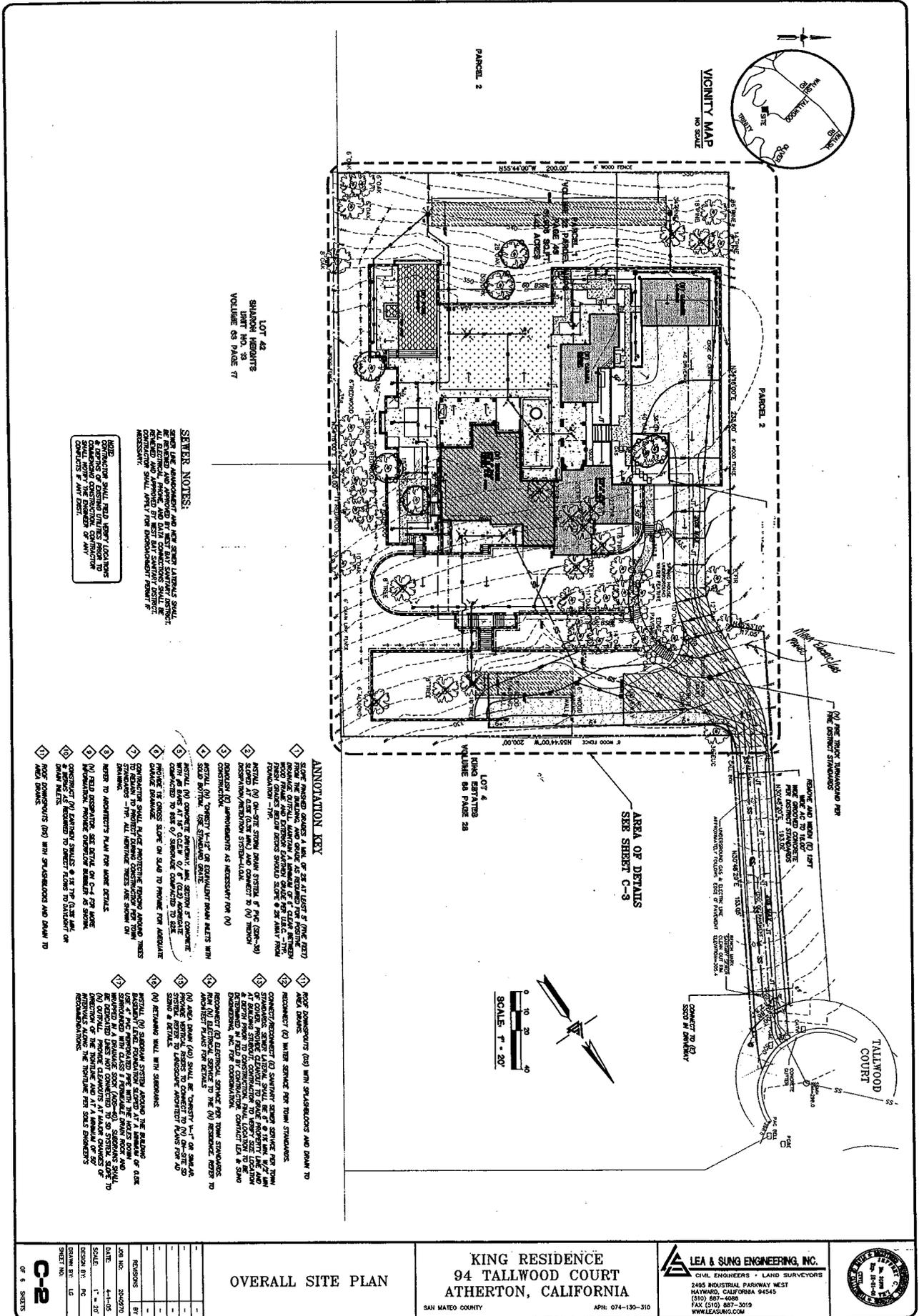
CONTOUR	LENGTH (INCHES)	CONTOUR	LENGTH (INCHES)	CONTOUR	LENGTH (INCHES)	CONTOUR	LENGTH (INCHES)
302	0.7	322	1.0	342	20.7	362	0.0
304	1.2	324	1.0	344	20.8	0	0.0
306	1.1	326	0.0	346	20.7	0	0.0
308	1.1	328	8.2	348	21.0	0	0.0
310	1.0	330	13.0	350	21.4	0	0.0
312	1.0	332	17.0	352	23.3	0	0.0
314	1.1	334	19.1	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
						TOTAL	287.7

CONVERT INCHES TO FEET (MULTIPLY BY MAP SCALE) = (L) = 5754.0 FT.

E. AVERAGE SLOPE WITHIN NET AREA OF LOT

$$S = \frac{(2.0 \text{ FT}) (5754 \text{ FT}) \# (100\%)}{(1.42) \ 43560} = \underline{\underline{18.6\%}}$$

EXHIBIT 2



OVERALL SITE PLAN

KING RESIDENCE
94 TALLWOOD COURT
ATHERTON, CALIFORNIA

SAN MATEO COUNTY

APR. 074-130-510

LEA & SUNG ENGINEERING, INC.
CIVIL ENGINEERS • LAND SURVEYORS
2495 INDUSTRIAL PARKWAY WEST
MAYNARD, CALIFORNIA 94545
(916) 851-8877
FAX (916) 887-3019
WWW.LEASUNG.COM



C-2
OF 6 SHEETS

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

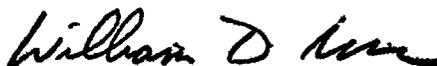
Re: Charles W. King, III and Leslie King v. Town of Atherton, et al., San Mateo Superior Court Case No. CIV 461513; Conditional Use Permit

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 17.36.190¹ 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.²

¹ All section references are to the Municipal Code unless otherwise noted.

² See for example, *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657.

The Applicant has conducted additional line of site slope evaluations³ 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.

³ See enclosed Attachment A.

Accordingly, the supplemental information in conjunction with the initial Application constitute substantial evidence in support of the Hillside CUP application.⁴

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

⁴ "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.

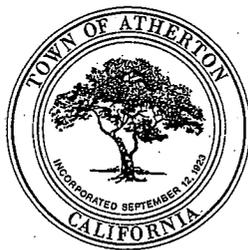
Respectfully submitted,

Lisa Costa Sanders, Deputy Town Planner

ITEM 15B

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.3rd 822; Anderson v. City of La Mesa (1981) 118 Cal.App.3d 657 ; and Ciraulo v. City of Newport Beach (2007) 147 Cal.App.4th 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 of Mike Wasmann]

(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.

Office
copy

I served the document by enclosing a copy
placing them for collection and mailing following our
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 follows:
Via Certified First Class Mail, Return Receipt Required
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 & (650) 614-1224

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\Wassmann (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 appeal¹, 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.

¹Atherton 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

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 Buildings 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 repeal 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.

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.

1. The property owned by the city and county of San Francisco, known as the Hetch Hetchy property, over which the owner of

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 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 st Floor	3,658 sqft
2 nd 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
Amount in Excess of Allowed	1,183 sqft

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	NUMBER	STREET	DATE REQUESTED	STAT
36824	94	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	ROUGHES, FRAMING	NO LEFT COREECTION LI	
MCW	5-8-2006	ROUGHES, 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 18TH, 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 16th, 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 16th, 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"> • Plan check turnaround times; • Complaint tracking/incident reporting; and, • Number and duration of field inspections conducted by building inspectors.

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 16th 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 18th, 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 17th, 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 17th 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:

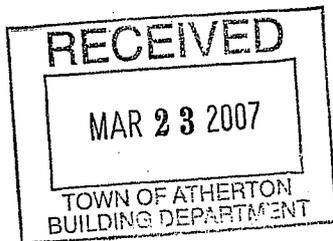
Marc G. Hynes, City Attorney

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 & (650) 614-1224

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 appeal¹, 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.*).

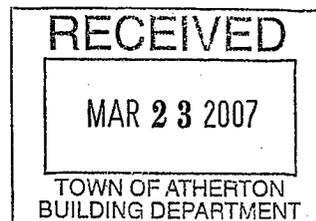
Very truly yours,



William D. Ross

WDR:mgl

cc: Charles W. King, III
Michael Weed, Esq.
Marc Hynes, Esq.



¹Atherton 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

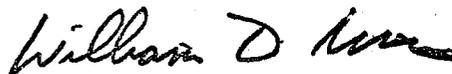
Re: Charles W. King, III and Leslie King v. Town of Atherton, et al., San Mateo Superior Court Case No. CIV 461513; Communication of Marc Hynes dated March 20, 2007

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

⑈020960⑈ ⑆122000247⑆0784355240⑈

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

ITEM 16

APPEAL REGARDING 44 TUSCALOOSA

The attached staff report is the original staff report submitted to the City Council at its September 19, 2007, meeting.



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

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

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.4th 49; Burchette v. City of Newport Beach (1995) 33 Cal.App.4th 1472.)

Respectfully,

MGH:cwb
C Interim City Manager

MARC G. HYNES

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

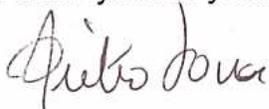
RE: 44 Tuscaloosa Avenue
Appeal of July 25, 2007 Planning Commission decision to deny application
for heritage tree removal.

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 27th, 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 2nd 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.



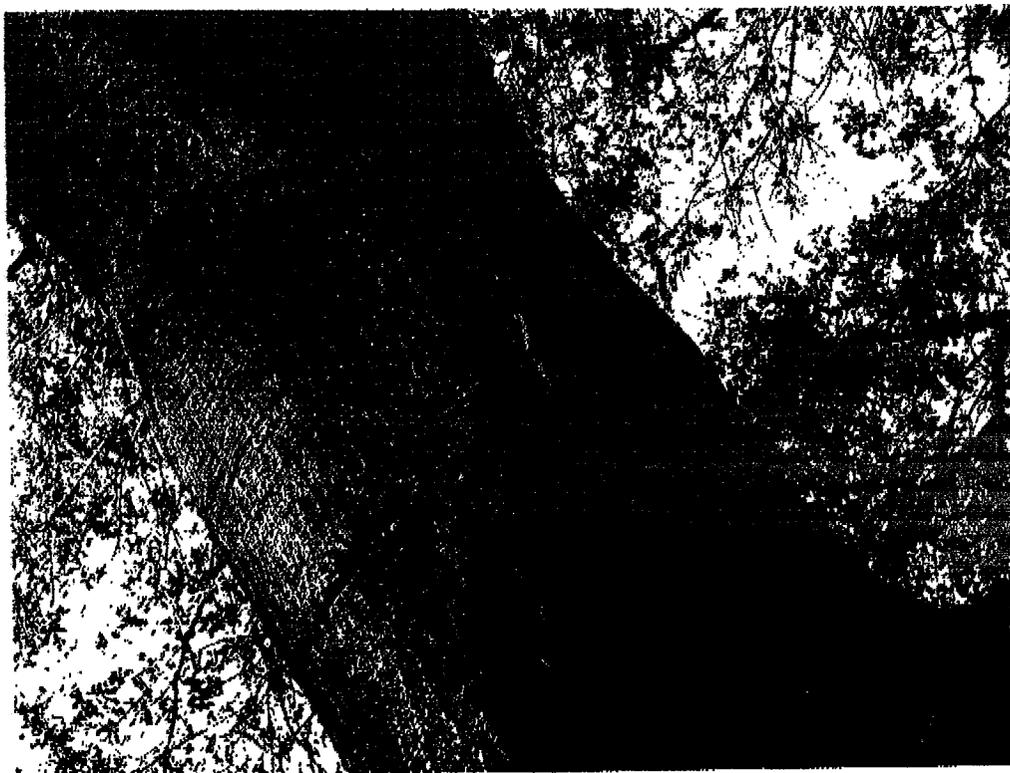
Photo 2 : Root collar buttress, and stem bifurcation.



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.

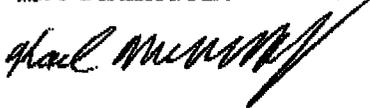
Final Statements

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.

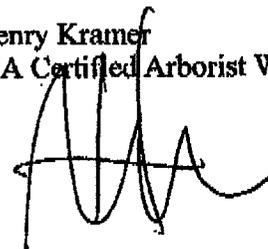
If you have any questions or are in need of any assistance performing the work detailed in this report please let us know.

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.

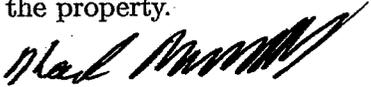
Discussion \ Recommendation:

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,

Lisa Costa Sanders, Deputy Town Planner



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 OCTOBER 17, 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 and address specific concerns of the Town. BKF has completed their scope of work and compiled detailed Drainage Criteria.

BKF held public meetings and made presentations to the City Council of their findings and the concept for the proposed Drainage Criteria. BKF and staff, including CSG 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 amending Chapter 17 regulating basements. That ordinance goes into effect when the Drainage Criteria are adopted by ordinance. Section 8.50 of the Municipal Code regulates storm water, and the proposed ordinance 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 permits with the Regional Water Quality Control Board (RWQCB). Provisions have been inserted in the Drainage Criteria to track changes to the RWQCB permits, particularly because changes are currently proposed.

Other provisions of the Drainage Criteria are designed to protect downstream properties in the two stream systems in Atherton, Redwood Creek and the Atherton Channel. 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 projects 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. These provisions were the driving concern resulting in the BKF drainage study. 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.

In September 2007 this Drainage Criteria was submitted to Council for approval. Council requested the criteria be footnoted with the source of the requirements contained in the criteria. The attached criteria now contain a comment line after each provision giving these references. Many of the current criteria are based on existing criteria for storage of stormwater to avoid flooding in the Atherton Channel and Redwood Creek. Other criteria were developed in order to comply with the Regional Water Quality Control Board (RWQCB) Municipal Regional Permit (MRP) and the State Water Resources Control Board (SWRCB) General Construction Permit (GCP), as well as FEMA standards for flood protection. New requirements were developed based on the various concerns of the Town that resulted in this study being undertaken. Most of these are the minimum practical applications to assure the concern is addressed and does not cause a problem for the property owner or their neighbors in the future.

With regard to a reduction in the requirements, the consultant was referring to the Town's current requirement that a grading and drainage permit be required for all properties creating or replacing 5,000 square feet of impervious area. This requirement is contained in the Municipal Code at Section 8.54. The requirement of a permit has been the trigger for requiring detention to protect from downstream flooding for many years. The new MRP will initially require runoff treatment for projects creating over 10,000 square feet of impervious area, with this level dropping to 5,000 square feet in four (4) years. It is recommended by staff that Atherton's threshold remain at 5,000 square feet because it is the current Atherton code requirement, and because the MRP will soon match the current Atherton code requirement.

Atherton Municipal Code Section 8.54 also requires a permit if grading disturbs more than one-quarter acre. The GCP requires a Notice of Intent be filed with the State if over one acre is disturbed, but requires all dischargers to comply with the regulations, and makes the Town responsible for enforcement of the requirements. Staff recommends maintaining the existing threshold of one-quarter acre of disturbed area for requiring a grading and drainage permit, which triggers the provisions of the GCP, referenced in the Drainage Criteria. Projects below one-quarter acre have reduced requirements. These are maintained in the Drainage Criteria.

In addition, a resident/developer verbally presented a series of questions at the September Council meeting. Council requested the resident/developer submit the question to staff in writing and directed that staff and consultants respond to those questions. These questions were not received before this staff report was prepared, but will be responded to by separate report to be distributed at the meeting, if received before the Council meeting.

FISCAL IMPACT:

There will be no fiscal impact to the Town based on these Drainage Criteria. The scope of grading and drainage review will increase under these criteria, causing permit fees for grading and drainage reviews to increase to recover costs. We anticipate a full review of these costs and the associated increase in permit fees next spring after CSG has a few months experience reviewing plans under the new criteria and the new RWQCB permit (the MRP).

There will be an additional fiscal impact to the residents and developers in Atherton. There will be ongoing costs for the required annual reporting on maintenance and operation of storm water facilities constructed on developed properties. The cost will depend on the size and complexity of the system, and will increase with inflation in future years. An inspection by a registered professional civil engineer to assure that the system is functioning and not clogged could take as little as one hour for a well designed and easily accessible system, such as a surface system or a system with manholes and cleanouts built in. The cost for this in 2007 dollars should be less than \$300. However, a complex system with difficult access, such as those requiring remote controlled robot cameras to see inside, could cost 3 to 4 times that amount annually.

Prepared by:

Approved by:

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

Wendé C. Protzman
Interim City Manager

Attachments: Ordinance Amendment Section 8.50.050
Drainage Criteria
Draft Municipal Regional Permit
General Construction Permit

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.

Comment: Consistent with existing practices.

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.

Comment: Drainage Report is a current practice and is equal to a Drainage Area Master Plan. Collecting the information requested in the Storm Water Management Plan is necessary for the Town to comply with MRP C.3.b.iv. Storm Water Pollution Prevention Plan (SWPPP) is required by the General Construction Permit (GCP) (attached) Section A. 2.a if more than one acre of land is disturbed by grading, clearing or other similar activity. The SWPPP assures that the Town has the required authority and receives the necessary information to implement Municipal Code (MC) 8.54 and Municipal Regional Permit (MRP) C.6.a. Note the exemptions in MC 8.54 are for ¼ acre of disturbed or filled land areas and 5,000 square feet impervious area.

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.

Comments: Documents current requirements.

2) A second map of appropriate scale, preferably 1"= 100' scale, as necessary to show large offsite drainage basins.

Comments: New requirement to assist Town review.

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.

Comments: Documents current requirements.

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.

Comments: Documents current requirements.

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.

Comments: Documents current requirements. 100-year event added. See also California Model Floodplain Management Ordinance, Section 5.1.C.(1), where Zone A and AO are defined as areas within the 100-year flood zone.

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.

Comments: Documents current requirements.

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.

Comments: New requirements added in response to complaints about increased runoff during 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 may be used. For areas west of Alameda de las Pulgas, a Geotechnical investigation is required that includes depth to groundwater.

Comments: New requirements added in response to complaints about impacts of construction projects on groundwater levels.

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.

Comments: New requirements added in response to complaints about impacts of construction projects on groundwater levels.

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.

Comments: New requirements added in response to complaints that arborist recommendations are ignored in drainage planning and implementation.

c) Storm Water Management Plans shall include the following information:

1) A project description including graphics from the Drainage Area Master Plan.

Comment: Reiterates information provided in drainage plan. Required by MRP C.3.j.

2) The hydrologic setting of the site including flows from the Drainage Area Master Plan.

Comment: Reiterates information provided in drainage plan. Required by MRP C.3.j.

3) A listing of stormwater quality opportunities and constraints.

Comment: Required as a part of MRP C.3.a.i.(8) through (12). MRP C.3.a.i (8) and (9) apply to all projects, MRP C.3.a.i.(10) and (11) apply to regulated projects. MRP C.3.a.i (12) is a combination of both.

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.

Comment: Required by MRP C.3.a.i (9) for all projects.

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.

Comment: For Single Family Residence, treatment of site runoff is required by MRP C.3.c. For other development, such as school sites, treatment is required per MRP C.3.d

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.

Comment: Monitoring and Maintenance is required per MRP C.3.e

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:

Comment: MC 8.54 is the primary source. MRP C.6.a states that the Town is responsible for any sediment leaving any construction site, “regardless of size”. The SWPPP assures that the Town

has the required authority and receives the necessary information to implement MC 8.54 and MRP C.6.a. SWPPP and NOI to the SWRCB are required for projects greater than 1 acre by the GCP C.2. Note that GCP C.2 references Section A, which starts on page 9 of the GCP. Requirements of Section A of the GCP are referenced as GCP Section A, x.x.

1) A project description including graphics from the Drainage Area Master Plan.

Comment: Reiterates information provided in drainage plan. Required by MRP C.3.j.

2) The hydrologic setting of the site including flows from the Drainage Area Master Plan.

Comment: Reiterates information provided in drainage plan. Required by MRP C.3.j.

3) A listing of pollutants at the site during construction.

Comment: GCP Section A. 5.c.(1) and (2).

4) Best Management Practices for Source Control that will be implemented during construction.

Comment: GCP C.3

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.

Comment: GCP Section A (8)

6) A schedule stating dates or actions that trigger the need for source control and treatment measures.

Comment: GCP Section A (2)

7) If applicable based on the area of the project, the Notice of Intent and WDID Number for the project.

Comment: GCP C.1.

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.

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.

Comment: Provides reasonable level of protection to protect Town from actions where Creek and drainage system maintenance is alleged to be a contributing factor.

- 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.

Comment: Provides reasonable level of protection to protect Town from actions where Town approval is alleged to cause flooding on adjacent parcels.

- 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.

Comment: Current requirement.

- 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.

Comment: 10' limitation and water supply limitation based on MRP C.3.i. (3) & (5) Concerns about increased seepage to adjoining properties based on citizen comments at meetings.

- 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.

Comment: Calculation methodology

- 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.

Comment: Calculation methodology

- 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.

Comment: Calculation methodology

- 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.
T_c = the time of concentration, in minutes.

Comment: Calculation methodology

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.

Comment: Section added to clarify reasonable discharge from site.

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.

Comment: Calculation methodology

- 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.

Comment: Calculation methodology. Simplifying assumptions provided to simplify calculations.

- 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.

Comment: Calculation methodology. Standard practice.

- b) The effect of debris, erosion, and channel bedload during flood flows shall be considered in the design of culverts and bridge structures.

Comment: Calculation methodology. Standard practice.

- 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.

Comment: Standard Town practice .

- 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.

Comment: Current recommendation from Mosquito Abatement District

- 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.

Comment: Standard Town practice.

- 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.

Comment: Calculation methodology. Standard practice.

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).

Comment: Required in San Mateo County to collect information for MRP C.3.j. reporting.

2. Projects with a disturbed land area (graded, cleared, or otherwise impacted) 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.

Comment: Required by GCP Finding #2.

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).

Comment: Required by MRP C.3.e

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.

Comment: Required by MRP C.3.e.ii (3)

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.

Comment: Comment based on request at meetings within Town.

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.

Comment: Based on request at meetings within Town. The two week period is discretionary and based on reasonable impact to others in the Town.

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.

Comment Based on request at meetings within Town.

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.

Comment: Based on reasonableness, public safety, and protecting Town against damage claims based on an allegation of inadequate drainage system maintenance. See also California Model Floodplain Management Ordinance, Section 5.1.C.(1), where Zone A and AO are defined as areas within the 100-year flood zone.

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.

Comment: Added to allow light and ventilation in basement areas.

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.

Comment: Standard practice.

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

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

1
2
3
4

CALIFORNIA MODEL FLOODPLAIN MANAGEMENT ORDINANCE

5
6
7

JUNE 1999

8

Contents

9 SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS
10 OF FACT, PURPOSE AND METHODS

11 SECTION 2.0 DEFINITIONS

12 SECTION 3.0 GENERAL PROVISIONS

13 SECTION 4.0 ADMINISTRATION

14 SECTION 5.0 PROVISIONS FOR FLOOD HAZARD
15 REDUCTION

16 SECTION 6.0 VARIANCE PROCEDURES

17
18

ZONE AR ADDENDUM TO THE CALIFORNIA MODEL ORDINANCE

19
20

21 SECTION 2.0 DEFINITIONS

22 SECTION 4.3 DUTIES AND RESPONSIBILITIES OF THE
23 FLOODPLAIN ADMINISTRATOR

24 SECTION 5.1 B.

25 SECTION 5.1 C.

26 SECTION 5.7 ZONE AR AREAS

1 **Notice to all Communities planning to adopt this Ordinance in its entirety:**

- 2 1. Your community's name or address, or name of the responsible party, as appropriate, must be
3 inserted where [BRACKETS] occur;
- 4 2. If the higher standards, i.e. the State of California recommendations in Section 5, are adopted
5 the community can receive credit under the Community Rating System (CRS) program;
- 6 3. Communities with a "basement exemption" in accordance with Section 60.6 (b) or (c) of the
7 National Flood Insurance Program regulations as revised October 1, 1988, should revise
8 Section 5.1 C.1 appropriately;

- 9 4. Communities that do not have certain special flood hazard area zones identified on their Flood
10 Insurance Rate Map(s) (FIRM's) may find it necessary to modify the model ordinance as
11 follows:

12 ***-- with no erosion-prone areas (Zone E):***

13 -- in Section 2, delete the definitions "area of special flood-related erosion hazard",
14 "flood-related erosion", "flood-related erosion area", and flood-related erosion area
15 management".

16 -- in Section 2, delete the words "flood-related erosion hazards" from the definition of
17 "special flood hazard area".

18 -- delete Section 5.9 in its entirety.

19 ***-- with no mudslide (i.e., mudflow)-prone areas (Zone M):***

20 -- delete the definitions of "area of special mudslide (i.e., mudflow) hazard", "mudslide",
21 and "mudslide prone area" in Section 2.

22 -- delete Sections 4.3 D.7 and 5.8.

23 ***-- with no coastal areas (Zone V, VE, or VI-V30):***

24 -- in Section 2, in the definition of "special flood hazard area" delete the words "V1-30,
25 VE, or V"; delete the definitions of "breakaway walls", "coastal high hazards area",
26 "primary frontal dune", "sand dunes" and "Zone V".

27 -- delete Section 4.3 D.6 and renumber 4.3 D.7.

28 -- delete Section 5.4 B and "V1-30, V, and VE" from Section 5.4 C and renumber.

29 -- delete Sections 5.5 B and 5.7 and renumber 5.8 and 5.9

1 **SECTION 1.0**

2 **STATUTORY AUTHORIZATION, FINDINGS OF FACT,**
3 **PURPOSE AND METHODS**

4 **1.1 STATUTORY AUTHORIZATION.** The Legislature of the State of
5 California has in Government Code Sections 65302, 65560, and 65800
6 conferred upon local government units' authority to adopt regulations
7 designed to promote the public health, safety, and general welfare of its
8 citizenry. Therefore, the [GOVERNING BODY] of [COUNTY OR MUNICIPALITY]
9 does hereby adopt the following floodplain management regulations.

10 **1.2 FINDINGS OF FACT.**

11 A. The flood hazard areas of [COUNTY OR MUNICIPALITY] are subject
12 to periodic inundation which results in loss of life and property,
13 health and safety hazards, disruption of commerce and
14 governmental services, extraordinary public expenditures for flood
15 protection and relief, and impairment of the tax base, all of which
16 adversely affect the public health, safety, and general welfare.

17 B. These flood losses are caused by uses that are inadequately
18 elevated, flood proofed, or protected from flood damage. The
19 cumulative effect of obstructions in areas of special flood hazards
20 that increase flood heights and velocities also contribute to the
21 flood loss.

22 **1.3 STATEMENT OF PURPOSE.** It is the purpose of this ordinance to
23 promote the public health, safety, and general welfare, and to minimize
24 public and private losses due to flood conditions in specific areas by
25 provisions designed to:

26 A. protect human life and health;

27 B. minimize expenditure of public money for costly flood control
28 projects;

29 C. minimize the need for rescue and relief efforts associated with
30 flooding and generally undertaken at the expense of the general
31 public;

32 D. minimize prolonged business interruptions;

33 E. minimize damage to public facilities and utilities such as water
34 and gas mains; electric, telephone and sewer lines; and streets and
35 bridges located in areas of special flood hazard;

1 F. help maintain a stable tax base by providing for the sound use
2 and development of areas of special flood hazard so as to minimize
3 future blighted areas caused by flood damage;

4 G. ensure that potential buyers are notified that property is in an
5 area of special flood hazard; and

6 H. ensure that those who occupy the areas of special flood hazard
7 assume responsibility for their actions.

8 **1.4 METHODS OF REDUCING FLOOD LOSSES.** In order to accomplish
9 its purposes, this ordinance includes methods and provisions to

10 A. restrict or prohibit uses which are dangerous to health, safety,
11 and property due to water or erosion hazards, or which result in
12 damaging increases in erosion or flood heights or velocities;

13 B. require that uses vulnerable to floods, including facilities which
14 serve such uses, be protected against flood damage at the time of
15 initial construction;

16 C. control the alteration of natural floodplains, stream channels, and
17 natural protective barriers, which help accommodate or channel
18 flood waters;

19 D. control filling, grading, dredging, and other development which
20 may increase flood damage; and

21 E. prevent or regulate the construction of flood barriers which will
22 unnaturally divert flood waters or which may increase flood hazards
23 in other areas.

24 **SECTION 2.0**

25 **DEFINITIONS**

26 Unless specifically defined below, words or phrases used in this ordinance
27 shall be interpreted so as to give them the meaning they have in common
28 usage and to give this ordinance its most reasonable application.

29 "**Accessory use**" means a use that is incidental and subordinate to the
30 principal use of the parcel of land on which it is located.

31 "**Alluvial fan**" means a geomorphologic feature characterized by a cone
32 or fan-shaped deposit of boulders, gravel, and fine sediments that have
33 been eroded from mountain slopes, transported by flood flows, and then
34 deposited on the valley floors, and which is subject to flash flooding, high

1 velocity flows, debris flows, erosion, sediment movement and deposition,
2 and channel migration.

3 "**Apex**" means the point of highest elevation on an alluvial fan, which on
4 undisturbed fans is generally the point where the major stream that formed
5 the fan emerges from the mountain front.

6 "**Appeal**" means a request for a review of the Floodplain Administrator's
7 interpretation of any provision of this ordinance.

8 "**Area of shallow flooding**" means a designated as Zone AO or AH on
9 the Flood Insurance Rate Map (FIRM). The base flood depths range from
10 one to three feet; a clearly defined channel does not exist; the path of
11 flooding is unpredictable and indeterminate; and velocity flow may be
12 evident. Such flooding is characterized by ponding or sheet flow.

13 "**Area of special flood hazard**" - See "Special flood hazard area."

14 "**Area of special flood-related erosion hazard**" is the land within a
15 community that is most likely to be subject to severe flood-related erosion
16 losses. The area may be designated as Zone E on the Flood Insurance
17 Rate Map (FIRM).

18 "**Area of special mudslide (i.e., mudflow) hazard**" is the area subject to
19 severe mudslides (i.e., mudflows). The area is designated as Zone M on
20 the Flood Insurance Rate Map (FIRM).

21 "**Base flood**" means a flood which has a one percent chance of being
22 equaled or exceeded in any given year (also called the "100-year flood").
23 Base flood is the term used throughout this ordinance.

24 "**Basement**" means any area of the building having its floor subgrade -
25 i.e., below ground level - on all sides.

26 "**Breakaway walls**" are any type of walls, whether solid or lattice, and
27 whether constructed of concrete, masonry, wood, metal, plastic or any
28 other suitable building material which is not part of the structural support of
29 the building and which is designed to break away under abnormally high
30 tides or wave action without causing any damage to the structural integrity
31 of the building on which they are used or any buildings to which they might
32 be carried by flood waters. A breakaway wall shall have a safe design
33 loading resistance of not less than ten and no more than twenty pounds
34 per square foot. Use of breakaway walls must be certified by a registered
35 engineer or architect and shall meet the following conditions:

36 1. breakaway wall collapse shall result from a water load
37 less than that which would occur during the base flood, and

1 2. the elevated portion of the building shall not incur any
2 structural damage due to the effects of wind and water loads
3 acting simultaneously in the event of the base flood.

4 "**Building**" - see "**Structure**".

5 "**Coastal high hazard area**" means an area of special flood hazard
6 extending from offshore to the inland limit of a primary frontal dune along
7 an open coast and any other area subject to high velocity wave action
8 from storms or seismic sources. It is an area subject to high velocity
9 waters, including coastal and tidal inundation or tsunamis. The area is
10 designated on a Flood Insurance Rate Map (FIRM) as Zone V1-V30, VE,
11 or V.

12 "**Development**" means any man-made change to improved or unimproved
13 real estate, including but not limited to buildings or other structures,
14 mining, dredging, filling, grading, paving, excavation or drilling operations
15 or storage of equipment or materials.

16 "**Encroachment**" means the advance or infringement of uses, plant
17 growth, fill, excavation, buildings, permanent structures or development
18 into a floodplain, which may impede or alter the flow capacity of a
19 floodplain.

20 "**Existing manufactured home park or subdivision**" means a
21 manufactured home park or subdivision for which the construction of
22 facilities for servicing the lots on which the manufactured homes are to be
23 affixed (including, at a minimum, the installation of utilities, the
24 construction of streets, and either final site grading or the pouring of
25 concrete pads) is completed before the effective date of the floodplain
26 management regulations adopted by a community.

27 "**Expansion to an existing manufactured home park or subdivision**"
28 means the preparation of additional sites by the construction of facilities
29 for servicing the lots on which the manufactured homes are to be affixed
30 (including the installation of utilities, the construction of streets, and either
31 final site grading or the pouring of concrete pads).

32 "**Flood, flooding, or flood water**" means:

33 1. a general and temporary condition of partial or complete
34 inundation of normally dry land areas from the overflow of
35 inland or tidal waters; the unusual and rapid accumulation or
36 runoff of surface waters from any source; and/or mudslides
37 (i.e., mudflows); and

38 2. the condition resulting from flood-related erosion

1 **"Flood Boundary and Floodway Map (FBFM)"** means the official map on
2 which the Federal Emergency Management Agency or Federal Insurance
3 Administration has delineated both the areas of special flood hazards and
4 the floodway.

5 **"Flood Hazard Boundary Map"** means the official map on which the
6 Federal Emergency Management Agency or Federal Insurance
7 Administration has delineated the areas of flood hazards.

8 **"Flood Insurance Rate Map (FIRM)"** means the official map on which the
9 Federal Emergency Management Agency or Federal Insurance
10 Administration has delineated both the areas of special flood hazards and
11 the risk premium zones applicable to the community.

12 **"Flood Insurance Study"** means the official report provided by the
13 Federal Insurance Administration that includes flood profiles, the Flood
14 Insurance Rate Map, the Flood Boundary and Floodway Map, and the
15 water surface elevation of the base flood.

16 **"Flood-related erosion"** means the collapse or subsidence of land along
17 the shore of a lake or other body of water as a result of undermining
18 caused by waves or currents of water exceeding anticipated cyclical level
19 or suddenly caused by an unusually high water level in a natural body of
20 water, accompanied by a severe storm, or by an unanticipated force of
21 nature, such as a flash flood or an abnormal tidal surge, or by some
22 similarly unusually and unforeseeable event which results in flooding.

23 **"Flood-related erosion area" or "Flood-related erosion prone area"**
24 means a land area adjoining the shore of a lake or other body of water,
25 which due to the composition of the shoreline or bank and high water
26 levels or wind-driven currents, is likely to suffer flood-related erosion
27 damage.

28 **"Flood-related erosion area management"** means the operation of an
29 overall program of corrective and preventive measures for reducing flood-
30 related erosion damage, including but not limited to emergency
31 preparedness plans, flood-related erosion control works, and floodplain
32 management regulations.

33 **"Floodplain or flood-prone area"** means any land area susceptible to
34 being inundated by water from any source - see "**Flood, flooding, or**
35 **flood water."**

36 **"Floodplain Administrator"** is the individual appointed to administer and
37 enforce the floodplain management regulations.

38 **"Floodplain management"** means the operation of an overall program of
39 corrective and preventive measures for reducing flood damage and

1 preserving and enhancing, where possible, natural resources in the
2 floodplain, including but not limited to emergency preparedness plans,
3 flood control works, floodplain management regulations, and open space
4 plans.

5 "**Floodplain management regulations**" means this ordinance and other
6 zoning ordinances, subdivision regulations, building codes, health
7 regulations, special purpose ordinances (such as grading and erosion
8 control) and other application of police power which control development
9 in flood-prone areas. This term describes federal, state or local regulations
10 in any combination thereof that provide standards for preventing and
11 reducing flood loss and damage.

12 "**Flood proofing**" means any combination of structural and nonstructural
13 additions, changes, or adjustments to structures which reduce or eliminate
14 flood damage to real estate or improved real property, water and sanitary
15 facilities, structures, and their contents. (Refer to FEMA Technical
16 Bulletins TB 1-93, TB 3-93, and TB 7-93 for guidelines on dry and wet
17 flood proofing.)

18 "**Floodway**" means the channel of a river or other watercourse and the
19 adjacent land areas that must be reserved in order to discharge the base
20 flood without cumulatively increasing the water surface elevation more
21 than one foot. Also referred to as "Regulatory Floodway".

22 "**Floodway fringe**" is that area of the floodplain on either side of the
23 "Regulatory Floodway" where encroachment may be permitted.

24 "**Fraud and victimization**" as related to Section 6, **Variance Procedure**,
25 of this ordinance, means that the variance granted must not cause fraud
26 on or victimization of the public. In examining this requirement, the
27 [COMMUNITY GOVERNING BODY] will consider the fact that every newly
28 constructed building adds to government responsibilities and remains a
29 part of the community for fifty to one-hundred years. Buildings that are
30 permitted to be constructed below the base flood elevation are subject
31 during all those years to increased risk of damage from floods, while future
32 owners of the property and the community as a whole are subject to all the
33 costs, inconvenience, danger, and suffering that those increased flood
34 damages bring. In addition, future owners may purchase the property,
35 unaware that it is subject to potential flood damage, and can be insured
36 only at very high flood insurance rates.

37 "**Functionally dependent use**" means a use that cannot perform its
38 intended purpose unless it is located or carried out in close proximity to
39 water. The term includes only docking facilities, port facilities that are
40 necessary for the loading and unloading of cargo or passengers, and ship

1 building and ship repair facilities, and does not include long-term storage
2 or related manufacturing facilities.

3 "**Governing body**" is the local governing unit, i.e. county or municipality,
4 which is empowered to adopt and implement regulations to provide for the
5 public health, safety and general welfare of its citizenry.

6 "**Hardship**" as related to Section 6, **Variance Procedure**, of this
7 ordinance means the exceptional hardship that would result from a failure
8 to grant the requested variance. The [GOVERNING BODY] requires that the
9 variance be exceptional, unusual, and peculiar to the property involved.
10 Mere economic or financial hardship alone is not exceptional.
11 Inconvenience, aesthetic considerations, physical handicaps, personal
12 preferences, or the disapproval of one's neighbors likewise cannot, as a
13 rule, qualify as an exceptional hardship. All of these problems can be
14 resolved through other means without granting a variance, even if the
15 alternative is more expensive, or requires the property owner to build
16 elsewhere or put the parcel to a different use than originally intended.

17 "**Highest adjacent grade**" means the highest natural elevation of the
18 ground surface prior to construction next to the proposed walls of a
19 structure.

20 "**Historic structure**" means any structure that is

21 1. listed individually in the National Register of Historic
22 Places (a listing maintained by the Department of Interior) or
23 preliminarily determined by the Secretary of the Interior as
24 meeting the requirements for individual listing on the
25 National Register;

26 2. certified or preliminarily determined by the Secretary of
27 the Interior as contributing to the historical significance of a
28 registered historic district or a district preliminarily
29 determined by the Secretary to qualify as a registered
30 historic district;

31 3. individually listed on a state inventory of historic places in
32 states with historic preservation programs which have been
33 approved by the Secretary of Interior; or

34 4. individually listed on a local inventory of historic places in
35 communities with historic preservation programs that have
36 been certified either by an approved state program as
37 determined by the Secretary of the Interior or directly by the
38 Secretary of the Interior in states without approved
39 programs.

1 "Levee" means a man-made structure, usually an earthen embankment,
2 designed and constructed in accordance with sound engineering practices
3 to contain, control or divert the flow of water so as to provide protection
4 from temporary flooding.

5 "**Levee system**" means a flood protection system that consists of a levee,
6 or levees, and associated structures, such as closure and drainage
7 devices, which are constructed and operated in accord with sound
8 engineering practices.

9 "**Lowest floor**" means the lowest floor of the lowest enclosed area,
10 including basement (see "**Basement**" definition).

11 1. An unfinished or flood resistant enclosure below the
12 lowest floor that is usable solely for parking of vehicles,
13 building access or storage in an area other than a basement
14 area, is not considered a building's lowest floor provided it
15 conforms to applicable non-elevation design requirements,
16 including, but not limited to:

- 17 a. the wet flood proofing standard in section 5.1 C.3.
- 18 b. the anchoring standards in section 5.1 A.
- 19 c. the construction materials and methods standards in section 5.1 B.
- 20 d. the standards for utilities in section 5.2.

21 2. For residential structures, all subgrade-enclosed areas are
22 prohibited as they are considered to be basements (see
23 "**Basement**" definition). This prohibition includes below-
24 grade garages and storage areas.

25 "**Manufactured home**" means a structure, transportable in one or more
26 sections, which is built on a permanent chassis and is designed for use
27 with or without a permanent foundation when attached to the required
28 utilities. The term "manufactured home" does not include a "recreational
29 vehicle".

30 "**Manufactured home park or subdivision**" means a parcel (or
31 contiguous parcels) of land divided into two or more manufactured home
32 lots for rent or sale.

33 "**Market Value**" shall be determined by estimating the cost to replace the
34 structure in new condition and adjusting that cost figure by the amount of
35 depreciation, which has accrued since the structure was constructed. The
36 cost of replacement of the structure shall be based on a square foot cost
37 factor determined by reference to a building cost estimating guide
38 recognized by the building construction industry. The amount of
39 depreciation shall be determined by taking into account the age and
40 physical deterioration of the structure and functional obsolescence as

1 approved by the floodplain administrator, but shall not include economic or
2 other forms of external obsolescence. Use of replacement costs or
3 accrued depreciation factors different from those contained in recognized
4 building cost estimating guides may be considered only if such factors are
5 included in a report prepared by an independent professional appraiser
6 and supported by a written explanation of the differences.

7 "**Mean sea level**" means, for purposes of the National Flood Insurance
8 Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other
9 datum, to which base flood elevations shown on a community's Flood
10 Insurance Rate Map are referenced.

11 "**Mudslide**" describes a condition where there is a river, flow or inundation
12 of liquid mud down a hillside, usually as a result of a dual condition of loss
13 of brush cover and the subsequent accumulation of water on the ground,
14 preceded by a period of unusually heavy or sustained rain.

15 "**Mudslide (i.e., mudflow) prone area**" means an area with land surfaces
16 and slopes of unconsolidated material where the history, geology, and
17 climate indicate a potential for mudflow.

18 "**New construction**", for floodplain management purposes, means
19 structures for which the "start of construction" commenced on or after the
20 effective date of floodplain management regulations adopted by this
21 community, and includes any subsequent improvements to such
22 structures.

23 "**New manufactured home park or subdivision**" means a manufactured
24 home park or subdivision for which the construction of facilities for
25 servicing the lots on which the manufactured homes are to be affixed
26 (including at a minimum, the installation of utilities, the construction of
27 streets, and either final site grading or the pouring of concrete pads) is
28 completed on or after the effective date of floodplain management
29 regulations adopted by this community.

30 "**Obstruction**" includes, but is not limited to, any dam, wall, wharf,
31 embankment, levee, dike, pile, abutment, protection, excavation,
32 channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel,
33 refuse, fill, structure, vegetation or other material in, along, across or
34 projecting into any watercourse which may alter, impede, retard or change
35 the direction and/or velocity of the flow of water, or due to its location, its
36 propensity to snare or collect debris carried by the flow of water, or its
37 likelihood of being carried downstream.

38 "**One-hundred-year flood**" or "100-year flood" - see "**Base flood.**"

39 "**Primary frontal dune**" means a continuous or nearly continuous mound
40 or ridge of sand with relatively steep seaward and landward slopes

1 immediately landward and adjacent to the beach and subject to erosion
2 and overtopping from high tides and waves during major coastal storms.
3 The inland limit of the primary frontal dune occurs at the point where there
4 is a distinct change from a relatively mild slope.

5 "**Public safety and nuisance**" as related to Section 6, **Variance**
6 **Procedure**, of this ordinance means that the granting of a variance must
7 not result in anything which is injurious to safety or health of an entire
8 community or neighborhood, or any considerable number of persons, or
9 unlawfully obstructs the free passage or use, in the customary manner, of
10 any navigable lake, or river, bay, stream, canal, or basin.

11 "**Recreational vehicle**" means a vehicle that is

- 12 1. built on a single chassis;
- 13 2. 400 square feet or less when measured at the largest
14 horizontal projection;
- 15 3. designed to be self-propelled or permanently towable by a
16 light-duty truck; and
- 17 4. designed primarily not for use as a permanent dwelling
18 but as temporary living quarters for recreational, camping,
19 travel, or seasonal use.

20 "**Regulatory floodway**" means the channel of a river or other watercourse
21 and the adjacent land areas that must be reserved in order to discharge
22 the base flood without cumulatively increasing the water surface elevation
23 more than one foot.

24 "**Remedy a violation**" means to bring the structure or other development
25 into compliance with State or local floodplain management regulations, or,
26 if this is not possible, to reduce the impacts of its noncompliance. Ways
27 that impacts may be reduced include protecting the structure or other
28 affected development from flood damages, implementing the enforcement
29 provisions of the ordinance or otherwise deterring future similar violations,
30 or reducing State or Federal financial exposure with regard to the structure
31 or other development.

32 "**Riverine**" means relating to, formed by, or resembling a river (including
33 tributaries), stream, brook, etc.

34 "**Sand dunes**" mean naturally occurring accumulations of sand in ridges
35 or mounds landward of the beach.

36 "**Sheet flow area**" - see "**Area of shallow flooding**".

1 **"Special flood hazard area (SFHA)"** means an area in the floodplain
2 subject to a 1 percent or greater chance of flooding in any given year. It is
3 shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, AH, V1-
4 V30, VE or V.

5 **"Start of construction"** includes substantial improvement and other
6 proposed new development and means the date the building permit was
7 issued, provided the actual start of construction, repair, reconstruction,
8 rehabilitation, addition, placement, or other improvement was within 180
9 days from the date of the permit. The actual start means either the first
10 placement of permanent construction of a structure on a site, such as the
11 pouring of slab or footings, the installation of piles, the construction of
12 columns, or any work beyond the stage of excavation; or the placement of
13 a manufactured home on a foundation. Permanent construction does not
14 include land preparation, such as clearing, grading, and filling; nor does it
15 include the installation of streets and/or walkways; nor does it include
16 excavation for a basement, footings, piers, or foundations or the erection
17 of temporary forms; nor does it include the installation on the property of
18 accessory buildings, such as garages or sheds not occupied as dwelling
19 units or not part of the main structure. For a substantial improvement, the
20 actual start of construction means the first alteration of any wall, ceiling,
21 floor, or other structural part of a building, whether or not that alteration
22 affects the external dimensions of the building.

23 **"Structure"** means a walled and roofed building that is principally above
24 ground; this includes a gas or liquid storage tank or a manufactured home.

25 **"Substantial damage"** means damage of any origin sustained by a
26 structure whereby the cost of restoring the structure to its before damaged
27 condition would equal or exceed 50 percent of the market value of the
28 structure before the damage occurred.

29 **"Substantial improvement"** means any reconstruction, rehabilitation,
30 addition, or other proposed new development of a structure, the cost of
31 which equals or exceeds 50 percent of the market value of the structure
32 before the "start of construction" of the improvement. This term includes
33 structures that have incurred "substantial damage", regardless of the
34 actual repair work performed. The term does not, however, include either

- 35 1. any project for improvement of a structure to correct
- 36 existing violations or state or local health, sanitary, or safety
- 37 code specifications which have been identified by the local
- 38 code enforcement official and which are the minimum
- 39 necessary to assure safe living conditions, or

1 2. any alteration of a "historic structure", provided that the
2 alteration will not preclude the structure's continued
3 designation as a "historic structure".

4 "V zone" - see "Coastal high hazard area."

5 "Variance" means a grant of relief from the requirements of this
6 ordinance, which permits construction in a manner that would otherwise
7 be prohibited by this ordinance.

8 "Violation" means the failure of a structure or other development to be
9 fully compliant with this ordinance. A structure or other development
10 without the elevation certificate, other certifications, or other evidence of
11 compliance required in this ordinance is presumed to be in violation until
12 such time as that documentation is provided.

13 "Water surface elevation" means the height, in relation to the National
14 Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where
15 specified) of floods of various magnitudes and frequencies in the
16 floodplains of coastal or riverine areas.

17 "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel
18 or other topographic feature on or over which waters flow at least
19 periodically. Watercourse includes specifically designated areas in which
20 substantial flood damage may occur.

21 **SECTION 3.0**

22 **GENERAL PROVISIONS**

23 **3.1 LANDS TO WHICH THIS ORDINANCE APPLIES.** This ordinance
24 shall apply to all areas of special flood hazards within the jurisdiction of
25 [COUNTY OR MUNICIPALITY].

26 **3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD**
27 **HAZARD.** The areas of special flood hazard identified by the Federal
28 Insurance Administration (FIA) of the Federal Emergency Management
29 Agency (FEMA) in the Flood Insurance Study (FIS) dated [DATE] and
30 accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary
31 and Floodway Maps (FBFMs), dated [DATE], and all subsequent
32 amendments and/or revisions, are hereby adopted by reference and
33 declared to be a part of this ordinance. This FIS and attendant mapping is
34 the minimum area of applicability of this ordinance and may be
35 supplemented by studies for other areas which allow implementation of
36 this ordinance and which are recommended to the [GOVERNING BODY] by
37 the Floodplain Administrator. The study, FIRMs and FBFMs are on file at

1 [ADDRESS OF CITY HALL, COUNTY ADMINISTRATION BUILDING, DEPARTMENT OF
2 PLANNING OR PUBLIC WORKS, OR OTHER].

3 **3.3 COMPLIANCE.** No structure or land shall hereafter be constructed,
4 located, extended, converted, or altered without full compliance with the
5 term of this ordinance and other applicable regulations. Violation of the
6 requirements (including violations of conditions and safeguards
7 established in connection with conditions) shall constitute a misdemeanor.
8 Nothing herein shall prevent the [GOVERNING BODY] from taking such lawful
9 action as is necessary to prevent or remedy any violation.

10 **3.4 ABROGATION AND GREATER RESTRICTIONS.** This ordinance is
11 not intended to repeal, abrogate, or impair any existing easements,
12 covenants, or deed restrictions. However, where this ordinance and
13 another ordinance, easement, covenant, or deed restriction conflict or
14 overlap, whichever imposes the more stringent restrictions shall prevail.

15 **3.5 INTERPRETATION.** In the interpretation and application of this
16 ordinance, all provisions shall be

17 A. considered as minimum requirements;

18 B. liberally construed in favor of the governing body; and

19 C. deemed neither to limit nor repeal any other powers granted
20 under state statutes.

21 **3.6 WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood
22 protection required by this ordinance is considered reasonable for
23 regulatory purposes and is based on scientific and engineering
24 considerations. Larger floods can and will occur on rare occasions. Flood
25 heights may be increased by man-made or natural causes. This ordinance
26 does not imply that land outside the areas of special flood hazards or uses
27 permitted within such areas will be free from flooding or flood damages.
28 This ordinance shall not create liability on the part of [GOVERNING BODY],
29 any officer or employee thereof, the State of California, or the Federal
30 Insurance Administration, Federal Emergency Management Agency, for
31 any flood damages that result from reliance on this ordinance or any
32 administrative decision lawfully made hereunder.

33 **3.7 SEVERABILITY.** This ordinance and the various parts thereof are
34 hereby declared to be severable. Should any section of this ordinance be
35 declared by the courts to be unconstitutional or invalid, such decision shall
36 not affect the validity of the ordinance as a whole, or any portion thereof
37 other than the section so declared to be unconstitutional or invalid.

38 SECTION 4.0

1 **ADMINISTRATION**

2 **4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT.** A development
3 permit shall be obtained before any construction or other development
4 begins within any area of special flood hazard established in Section 3.2.
5 Application for a development permit shall be made on forms furnished by
6 the Floodplain Administrator and may include, but not be limited to: plans
7 in duplicate drawn to scale showing the nature, location, dimensions, and
8 elevation of the area in question; existing or proposed structures, fill,
9 storage of materials, drainage facilities; and the location of the foregoing.
10 Specifically, the following information is required.

11 A. Site plan, including but not limited to:

- 12 1. for all proposed structures, spot ground elevations at
13 building corners and 20-foot or smaller intervals along the
14 foundation footprint, or one foot contour elevations
15 throughout the building site; and
- 16 2. proposed locations of water supply, sanitary sewer, and
17 utilities; and
- 18 3. if available, the base flood elevation from the Flood
19 Insurance Study and/or Flood Insurance Rate Map; and
- 20 4. if applicable, the location of the regulatory floodway; and

21 B. foundation design detail, including but not limited to:

- 22 1. proposed elevation in relation to mean sea level, of the
23 lowest floor (including basement) of all structures; and
- 24 2. for a crawl-space foundation, location and total net area of
25 foundation openings as required in Section 5.1.C.3 of this
26 ordinance and FEMA Technical Bulletins 1-93 and 7-93; and
- 27 3. for foundations placed on fill, the location and height of fill,
28 and compaction requirements (compacted to 95 percent
29 using the Standard Proctor Test method); and

30 C. proposed elevation in relation to mean sea level to which any
31 nonresidential structure will be flood proofed, as required in Section
32 5.1 C.2 of this ordinance and FEMA Technical Bulletin TB 3-93;
33 and

34 D. all appropriate certifications listed in Section 4.3 D of this
35 ordinance; and

36 E. description of the extent to which any watercourse will be altered
37 or relocated as a result of proposed development.

38 **4.2 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.** The [CITY
39 MANAGER, DIRECTOR OF PLANNING, PUBLIC WORKS, BUILDING INSPECTION,
40 ETC.] is hereby appointed to administer, implement, and enforce this

1 ordinance by granting or denying development permits in accord with its
2 provisions.

3 **4.3 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN**

4 **ADMINISTRATOR.** The duties and responsibilities of the Floodplain
5 Administrator shall include, but not be limited to the following.

6 A. Permit Review. Review all development permits to determine
7 that

- 8 1. permit requirements of this ordinance have been satisfied,
- 9 2. all other required state and federal permits have been obtained,
- 10 3. the site is reasonably safe from flooding, and
- 11 4. the proposed development does not adversely affect the carrying
12 capacity of areas where base flood elevations have been determined but a
13 floodway has not been designated. For purposes of this ordinance,
14 "adversely affects" means that the cumulative effect of the proposed
15 development when combined with all other existing and anticipated
16 development will increase the water surface elevation of the base flood
17 more than one foot at any point.

18 B. Review, Use and Development of Other Base Flood Data.

19 1. When base flood elevation data has not been provided in accordance
20 with Section 3.2, the Floodplain Administrator shall obtain, review, and
21 reasonably utilize any base flood elevation and floodway data available
22 from a federal or state agency, or other source, in order to administer
23 Section 5. Any such information shall be submitted to the [GOVERNING
24 BODY] for adoption; or

25 2. If no base flood elevation data is available from a federal or state
26 agency or other source, then a base flood elevation shall be obtained
27 using one of two methods from the FEMA publication "Managing
28 Floodplain Development in Approximate Zone A Areas – A Guide for
29 Obtaining and Developing Base (100-year) Flood Elevations" dated July
30 1995 in order to administer Section 5:

31 a. Simplified method

- 32 i. 100 year or base flood discharge shall be obtained using the
33 appropriate regression equation found in a U.S. Geological Survey
34 publication, or the discharge-drainage area method; and
- 35 ii. base flood elevation shall be obtained using the Quick-2
36 computer program developed by FEMA; or

37 b. Detailed method

- 38 i. 100 year or base flood discharge shall be obtained using the U.S.
39 Army Corps of Engineers' HEC-HMS computer program; and
- 40 ii. base flood elevation shall be obtained using the U.S. Army Corps
41 of Engineers' HEC-RAS computer program.

1 C. Notification of Other Agencies. In alteration or relocation of a
2 watercourse:

- 3 1. notify adjacent communities and the California
4 Department of Water Resources prior to alteration or
5 relocation;
- 6 2. submit evidence of such notification to the Federal
7 Insurance Administration, Federal Emergency
8 Management Agency; and
- 9 3. assure that the flood carrying capacity within the
10 altered or relocated portion of said watercourse is
11 maintained.

12 D. Documentation of Floodplain Development. Obtain and maintain
13 for public inspection and make available, as needed, the following:

- 14 1. certification required by Section 5.1 C.1 and 5.4 (lowest floor
15 elevations),
- 16 2. certification required by Section 5.1 C.2 (elevation or flood
17 proofing of nonresidential structures),
- 18 3. certification required by Sections 5.1 C.3 (wet floodproofing
19 standard),
- 20 4. certification of elevation required by Section 5.3 B
21 (subdivision standards),
- 22 5. certification required by Section 5.6 A (floodway
23 encroachments),
- 24 6. information required by Section 5.7 F (coastal construction
25 standards), and
- 26 7. reports required by Section 5.8C (mudflow standards).

27 E. Map Determinations. Make interpretations where needed, as to
28 the exact location of the boundaries of the areas of special flood
29 hazard. Where there appears to be a conflict between a mapped
30 boundary and actual field conditions, grade and base flood
31 elevations shall be used to determine the boundaries of the special
32 flood hazard area. The person contesting the location of the
33 boundary shall be given a reasonable opportunity to appeal the
34 interpretation as provided in Section 6.

35 F. Remedial Action. Take action to remedy violations of this
36 ordinance as specified in Section 3.3.

37 **4.4 APPEALS.** The [GOVERNING BODY] of [COUNTY OR MUNICIPALITY] shall
38 hear and decide appeals when it is alleged there is an error in any
39 requirement, decision, or determination made by the Floodplain
40 Administrator in the enforcement or administration of this ordinance.

1 **SECTION 5.0**

2 **PROVISIONS FOR FLOOD HAZARD REDUCTION**

3 **5.1 STANDARDS OF CONSTRUCTION.** In all areas of special flood
4 hazards the following standards are required:

5 A. Anchoring

- 6 1. All new construction and substantial improvements shall be adequately
7 anchored to prevent flotation, collapse or lateral movement of the structure
8 resulting from hydrodynamic and hydrostatic loads, including the effects of
9 buoyancy.
10 2. All manufactured homes shall meet the anchoring standards of Section
11 5.4.

12 B. Construction materials and methods. All new construction and
13 substantial improvement shall be constructed

- 14 1. with flood resistant materials as specified in FEMA Technical Bulletin
15 TB 2-93, and utility equipment resistant to flood damage;
16 2. using methods and practices that minimize flood damage;
17 3. with electrical, heating, ventilation, plumbing and air conditioning
18 equipment and other service facilities that are designed and/or located so
19 as to prevent water from entering or accumulating within the components
20 during conditions of flooding; and if
21 4. within Zone AH or AO, so that there are adequate drainage paths
22 around structures on slopes to guide flood waters around and away from
23 proposed structures.

24 C. Elevation and flood proofing. (See Section 2 definitions for
25 "basement," "lowest floor," "new construction," "substantial
26 damage" and "substantial improvement".)

- 27 I. Residential construction, new or substantial improvement, shall have the
28 lowest floor, including basement,
29 a. in a Zone AO, elevated above the highest adjacent grade to a height
30 equal to or exceeding the depth number specified in feet on the FIRM,
31 or elevated at least two feet above the highest adjacent grade if no
32 depth number is specified. (*The State of California recommends that in*
33 *Zone AO without velocity, the lowest floor be elevated above the*
34 *highest adjacent grade to a height exceeding the depth number*
35 *specified in feet on the FIRM by at least two feet, or elevated at least*
36 *four feet above the highest adjacent grade if no depth number is*
37 *specified.*)
38 b. in a Zone A, elevated to or above the base flood elevation; said
39 base flood elevation shall be determined by one of the methods in
40 Section 4.3 B of this ordinance. (*The State of California recommends*

1 *the lowest floor be elevated at least two feet above the base flood*
2 *elevation, as determined by the community.)*

3 c. in all other zones, elevated to or above the base flood elevation.
4 *(The State of California recommends the lowest floor be elevated at*
5 *least two feet above the base flood elevation.)*

6 Upon the completion of the structure, the elevation of the lowest floor
7 including basement shall be certified by a registered professional engineer or
8 surveyor, and verified by the community building inspector to be properly
9 elevated. Such certification and verification shall be provided to the Floodplain
10 Administrator.

11 2. Nonresidential construction, new or substantial
12 improvement, shall either be elevated to conform with
13 Section 5.1 C.1 or together with attendant utility and sanitary
14 facilities

- 15 a. be flood proofed below the elevation recommended under Section
16 5.1 C.1 so that the structure is watertight with walls substantially
17 impermeable to the passage of water;
18 b. have structural components capable of resisting hydrostatic and
19 hydrodynamic loads and effects of buoyancy; and
20 c. be certified by a registered professional engineer or architect that
21 the standards of this section (5.1 C.2) are satisfied. Such certification
22 shall be provided to the Floodplain Administrator.

23 3. All new construction and substantial improvement with
24 fully enclosed areas below the lowest floor (excluding
25 basements) that are usable solely for parking of vehicles,
26 building access or storage, and which are subject to
27 flooding, shall be designed to automatically equalize
28 hydrostatic flood forces on exterior walls by allowing for the
29 entry and exit of floodwater. Designs for meeting this
30 requirement shall follow the guidelines in FEMA Technical
31 Bulletins TB 1-93 and TB 7-93, and must exceed the
32 following minimum criteria:

33 a. have a minimum of two openings having a total net
34 area of not less than one square inch for every square
35 foot of enclosed area subject to flooding. The bottom
36 of all openings shall be no higher than one foot above
37 grade. Openings may be equipped with screens,
38 louvers, valves or other coverings or devices provided
39 that they permit the automatic entry and exit of
40 floodwater; or

41 b. be certified by a registered professional engineer or
42 architect.

1 4. Manufactured homes shall also meet the standards in
2 Section 5.4.

3 **5.2 STANDARDS FOR UTILITIES.**

4 A. All new and replacement water supply and sanitary sewage
5 systems shall be designed to minimize or eliminate:

- 6 1. infiltration of flood waters into the systems, and
- 7 2. discharge from the systems into flood waters.

8 B. On-site waste disposal systems shall be located to avoid
9 impairment to them, or contamination from them during flooding.

10 **5.3 STANDARDS FOR SUBDIVISIONS.**

11 A. All preliminary subdivision proposals shall identify the special
12 flood hazard area and the elevation of the base flood.

13 B. All subdivision plans will provide the elevation of proposed
14 structure(s) and pad(s). If the site is filled above the base flood
15 elevation, the lowest floor and pad elevations shall be certified by a
16 registered professional engineer or surveyor and provided to the
17 Floodplain Administrator.

18 C. All subdivision proposals shall be consistent with the need to
19 minimize flood damage.

20 D. All subdivision proposals shall have public utilities and facilities
21 such as sewer, gas, electrical and water systems located and
22 constructed to minimize flood damage.

23 E. All subdivisions shall provide adequate drainage to reduce
24 exposure to flood hazards.

25 **5.4 STANDARDS FOR MANUFACTURED HOMES.**

26 A. All manufactured homes that are placed or substantially
27 improved, within Zones A1-30, AH, and AE on the community's
28 Flood Insurance Rate Map, on sites located

- 29 1. outside of a manufactured home park or subdivision,
- 30 2. in a new manufactured home park or subdivision,
- 31 3. in an expansion to an existing manufactured home park or subdivision,
- 32 or

1 4. in an existing manufactured home park or subdivision on a site upon
2 which a manufactured home has incurred "substantial damage" as the
3 result of a flood,

4 shall be elevated on a permanent foundation such that the lowest
5 floor of the manufactured home is elevated to or above the base
6 flood elevation (*the State of California recommends at least two*
7 *feet above the base flood elevation*) and be securely fastened to an
8 adequately anchored foundation system to resist flotation, collapse,
9 and lateral movement.

10 B. All manufactured homes that are placed or substantially
11 improved on sites located within Zones V1-30, V, and VE on the
12 community's Flood Insurance Rate Map will meet the requirements
13 of Section 5.4 A and Section 5.7.

14 C. All manufactured homes to be placed or substantially improved
15 on sites in an existing manufactured home park or subdivision
16 within Zones A1-30, AH, AE, V1-30, V, and VE on the community's
17 Flood Insurance Rate Map that are not subject to the provisions of
18 paragraph 5.4 A will be securely fastened to an adequately
19 anchored foundation system to resist flotation, collapse, and lateral
20 movement, and be elevated so that either the

- 21 1. lowest floor of the manufactured home is at or above the base flood
22 elevation (*the State of California recommends at least two feet above the*
23 *base flood elevation*), or
- 24 2. manufactured home chassis is supported by reinforced piers or other
25 foundation elements of at least equivalent strength that are no less than
26 36 inches in height above grade.

27 Upon the completion of the structure, the elevation of the lowest floor
28 including basement shall be certified by a registered professional engineer
29 or surveyor, and verified by the community building-inspector to be
30 properly elevated. Such certification and verification shall be provided to
31 the Floodplain Administrator.

32 **5.5 STANDARDS FOR RECREATIONAL VEHICLES.**

33 A. All recreational vehicles placed on sites within Zones A1-30, AH,
34 and AE on the community's Flood Insurance Rate Map will either:

- 35 1. be on the site for fewer than 180 consecutive days, and be fully
36 licensed and ready for highway use – a recreational vehicle is ready for
37 highway use if it is on its wheels or jacking system, is attached to the site
38 only by quick disconnect type utilities and security devices, and has no
39 permanently attached additions, or

1 2. meet the permit requirements of Section 4 of this ordinance and the
2 elevation and anchoring requirements for manufactured homes in Section
3 5.4 A.

4 B. Recreation vehicles placed on sites within Zones V1-30, V, and
5 VE on the community's Flood Insurance Rate Map will meet the
6 requirements of Section 5.5 A and Section 5.7.

7 **5.6 FLOODWAYS.** Located within areas of special flood hazard
8 established in Section 3.2 are areas designated as floodways. Since the
9 floodway is an extremely hazardous area due to the velocity of
10 floodwaters, which carry debris, potential projectiles, and erosion potential,
11 the following provisions apply.

12 A. Prohibit encroachments, including fill, new construction,
13 substantial improvement, and other new development unless
14 certification by a registered professional engineer is provided
15 demonstrating that encroachments shall not result in any increase
16 in the base flood elevation during the occurrence of the base flood
17 discharge.

18 B. If Section 5.6 A is satisfied, all new construction, substantial
19 improvement, and other proposed new development shall comply
20 with all other applicable flood hazard reduction provisions of
21 Section 5.

22 **5.7 COASTAL HIGH HAZARD AREAS.** Within coastal high hazard areas
23 as established under Section 3.2, the following standards shall apply.

24 A. All new construction and substantial improvement shall be
25 elevated on adequately anchored pilings or columns and securely
26 anchored to such pilings or columns so that the lowest horizontal
27 portion of the structural members of the lowest floor (excluding the
28 pilings or columns) is elevated to or above the base flood level. The
29 pile or column foundation and structure attached thereto is
30 anchored to resist flotation, collapse, and lateral movement due to
31 the effects of wind and water loads acting simultaneously on all
32 building components. Water loading values used shall be those
33 associated with the base flood. Wind loading values used shall be
34 those required by applicable state or local building standards.

35 B. All new construction and other development shall be located on
36 the landward side of the reach of mean high tide.

37 C. All new construction and substantial improvement shall have the
38 space below the lowest floor free of obstructions or constructed
39 with breakaway walls as defined in Section 2 of this ordinance.
40 Such enclosed space shall not be used for human habitation and

1 will be usable solely for parking of vehicles, building access or
2 storage.

3 D. Fill shall not be used for structural support of buildings.

4 E. Man-made alteration of sand dunes that would increase potential
5 flood damage is prohibited.

6 F. The Floodplain Administrator shall obtain and maintain the
7 following records.

8 1. Certification by a registered engineer or architect that a proposed
9 structure complies with Section 5.7 A.

10 2. The elevation (in relation to mean sea level) of the bottom
11 of the lowest structural member of the lowest floor (excluding
12 pilings or columns) of all new and substantially improved
13 structures, and whether such structures contain a basement.

14 **5.8 MUDSLIDE (i.e., MUDFLOW) PRONE AREAS**

15 A. The Floodplain Administrator shall review permits for proposed
16 construction of other development to determine if it is proposed
17 within a mudslide area.

18 B. Permits shall be reviewed to determine that the proposed site
19 and improvement will be reasonably safe from mudslide hazards.
20 Factors to be considered in making this determination include but
21 are not limited to the

- 22 1. type and quality of soils,
23 2. evidence of ground water or surface water problems,
24 3. depth and quality of any fill,
25 4. overall slope of the site, and
26 5. weight that any proposed development will impose on the
27 slope.

28 C. Within areas which may have mudslide hazards, the floodplain
29 Administrator shall require that

- 30 1. a site investigation and further review be made by persons
31 qualified in geology and soils engineering;
32 2. the proposed grading, excavation, new construction, and
33 substantial improvement be adequately designed and
34 protected against mudslide damages;
35 3. the proposed grading, excavations, new construction, and
36 substantial improvement not aggravate the existing hazard
37 by creating either on-site or off-site disturbances; and
38 4. drainage, planting, watering, and maintenance not endanger
39 slope stability.

1 **5.9 FLOOD-RELATED EROSION-PRONE AREA**

- 2 A. The Floodplain Administrator shall require permits for
3 proposed construction and other development within all
4 flood-related erosion-prone areas as known to the
5 community.
- 6 B. Permit applications shall be reviewed to determine whether
7 the proposed site alterations and improvements will be
8 reasonably safe from flood-related erosion and will not cause
9 flood-related erosion hazards or otherwise aggravate the
10 existing hazard.
- 11 C. If a proposed improvement is found to be in the path of
12 flood-related erosion or would increase the erosion hazard,
13 such improvement shall be relocated or adequate protective
14 measures shall be taken to avoid aggravating the existing
15 erosion hazard.
- 16 D. Within Zone E on the Flood Insurance Rate Map, a setback
17 is required for all new development from the ocean, lake,
18 bay, riverfront or other body of water to create a safety buffer
19 consisting of a natural vegetative or contour strip. This buffer
20 shall be designated according to the flood-related erosion
21 hazard and erosion rate, in relation to the anticipated “useful
22 life” of structures, and depending upon the geologic,
23 hydrologic, topographic, and climatic characteristics of the
24 land. The buffer may be used for suitable open space
25 purposes, such as for agricultural, forestry, outdoor
26 recreation and wildlife habitat areas, and for other activities
27 using temporary and portable structures only.

28 **SECTION 6.0**

29 **VARIANCE PROCEDURE**

30 **6.1 NATURE OF VARIANCES.** The variance criteria set forth in this
31 section of the ordinance are based on the general principle of zoning laws
32 that variances pertain to a piece of property and are not personal in
33 nature. A variance may be granted for a parcel of property with physical
34 characteristics so unusual that complying with the requirements of this
35 ordinance would create an exceptional hardship to the applicant or the
36 surrounding property owners. The characteristics must be unique to the
37 property and not be shared by adjacent parcels. The unique characteristic
38 must pertain to the land itself, not to the structure, its inhabitants, or the
39 property owners.

1 It is the duty of the [GOVERNING BODY] to help protect its citizens from
2 flooding. This need is so compelling and the implications of the cost of
3 insuring a structure built below flood level is so serious that variances from
4 the flood elevation or from other requirements in the flood ordinance are
5 quite rare. The long-term goal of preventing and reducing flood loss and
6 damage can only be met if variances are strictly limited. Therefore, the
7 variance guidelines provided in this ordinance are more detailed and
8 contain multiple provisions that must be met before a variance can be
9 properly granted. The criteria are designed to screen out those situations
10 in which alternatives other than a variance are more appropriate.

11 **6.2 APPEAL BOARD.**

12 A. In passing upon requests for variances, the [GOVERNING BODY]
13 shall consider all technical evaluations, all relevant factors,
14 standards specified in other sections of this ordinance, and the

- 15 1. danger that materials may be swept onto other lands to the injury of
16 others;
- 17 2. danger of life and property due to flooding or erosion damage;
- 18 3. susceptibility of the proposed facility and its contents to flood damage
19 and the effect of such damage on the existing individual owner and future
20 owners of the property;
- 21 4. importance of the services provided by the proposed facility to the
22 community;
- 23 5. necessity to the facility of a waterfront location, where applicable;
- 24 6. availability of alternative locations for the proposed use which are not
25 subject to flooding or erosion damage;
- 26 7. compatibility of the proposed use with existing and anticipated
27 development;
- 28 8. relationship of the proposed use to the comprehensive plan and
29 floodplain management program for that area;
- 30 9. safety of access to the property in time of flood for ordinary and
31 emergency vehicles;
- 32 10. expected heights, velocity, duration, rate of rise, and sediment
33 transport of the flood waters expected at the site; and
- 34 11. costs of providing governmental services during and after flood
35 conditions, including maintenance and repair of public utilities and facilities
36 such as sewer, gas, electrical, and water system, and streets and bridges.

37 B. Any applicant to whom a variance is granted shall be given
38 written notice over the signature of a community official that

- 39 1. the issuance of a variance to construct a structure below the base flood
40 level will result in increased premium rates for flood insurance up to
41 amounts as high as \$25 for \$100 of insurance coverage, and
- 42 2. such construction below the base flood level increases risks to life and
43 property. It is recommended that a copy of the notice shall be recorded by

1 the Floodplain Administrator in the Office of the [COUNTY] Recorder and
2 shall be recorded in a manner so that it appears in the chain of title of the
3 affected parcel of land.

4 C. The Floodplain Administrator will maintain a record of all
5 variance actions, including justification for their issuance, and report
6 such variances issued in its biennial report submitted to the Federal
7 Insurance Administration, Federal Emergency Management
8 Agency.

9 **6.3 CONDITIONS FOR VARIANCES.**

10 A. Generally, variances may be issued for new construction,
11 substantial improvement, and other proposed new development to
12 be erected on a lot of one-half acre or less in size contiguous to
13 and surrounded by lots with existing structures constructed below
14 the base flood level, providing that the procedures of Sections 4
15 and 5 of this ordinance have been fully considered. As the lot size
16 increases beyond one-half acre, the technical justification required
17 for issuing the variance increases.

18 B. Variances may be issued for the repair or rehabilitation of
19 "historic structures" (as defined in Section 2 of this ordinance) upon
20 a determination that the proposed repair or rehabilitation will not
21 preclude the structure's continued designation as a historic
22 structure and the variance is the minimum necessary to preserve
23 the historic character and design of the structure.

24 C. Variances shall not be issued within any mapped regulatory
25 floodway if any increase in flood levels during the base flood
26 discharge would result.

27 D. Variances shall only be issued upon a determination that the
28 variance is the "minimum necessary" considering the flood hazard,
29 to afford relief. "Minimum necessary" means to afford relief with a
30 minimum of deviation from the requirements of this ordinance. For
31 example, in the case of variances to an elevation requirement, this
32 means the [GOVERNING BODY] need not grant permission for the
33 applicant to build at grade, or even to whatever elevation the
34 applicant proposes, but only to that elevation which the [GOVERNING
35 BODY] believes will both provide relief and preserve the integrity of
36 the local ordinance.

37 E. Variances shall only be issued upon a
38 1. showing of good and sufficient cause;

1 2. determination that failure to grant the variance would result in
2 exceptional "hardship" (as defined in Section 2 of this ordinance) to the
3 applicant; and
4 3. determination that the granting of a variance will not result in increased
5 flood heights, additional threats to public safety, or extraordinary public
6 expense, create a nuisance (as defined in Section 2 - see "**Public safety
7 and nuisance**"), cause fraud or victimization (as defined in Section 2) of
8 the public, or conflict with existing local laws or ordinances.

9 F. Variances may be issued for new construction, substantial
10 improvement, and other proposed new development necessary for
11 the conduct of a functionally dependent use provided that the
12 provisions of sections 6.3 A through 6.3 E are satisfied and that the
13 structure or other development is protected by methods that
14 minimize flood damages during the base flood and does not result
15 in additional threats to public safety and does not create a public
16 nuisance.

17 G. Upon consideration of the factors of Section 6.2 A and the
18 purposes of this ordinance, the [GOVERNING BODY] may attach such
19 conditions to the granting of variances as it deems necessary to
20 further the purposes of this ordinance.

1

2 **ZONE AR ADDENDUM TO THE CALIFORNIA**

3 **MODEL ORDINANCE**

4

5 **PLEASE NOTE:** It may not be necessary for your community to adopt
6 all of the provisions below. The applicable provisions that your
7 community must adopt depends upon:

8 Which of the Zone AR designations are on the Flood Insurance Rate Map
9 (FIRM) for your community, and

10 Whether your community has designated only "developed areas" or a
11 combination of designated "developed areas" and areas that are not
12 developed.

13 If you need assistance in determining which provisions must be adopted,
14 please contact the California Department of Water Resources – Southern
15 District at (818) 543-4646, the National Flood Insurance Program (NFIP)
16 State Coordinator at (916) 653-6214, or the Federal Emergency
17 Management Agency's San Francisco office at (415) 923-7175.

18 **1. SECTION 2.0 DEFINITIONS**

19 a. Modify "**Area of shallow flooding**" to read: means a
20 designated Zone AO, AH, AR/AO, or AR/AH on the Flood
21 Insurance Rate Map (FIRM). The base flood depths range
22 from one to three feet; a clearly defined channel does not
23 exist; the path of flooding is unpredictable and indeterminate;
24 and velocity flow may be evident. Such flow is characterized
25 by ponding or sheet flow.

26 b. Modify "**Special flood hazard area (SFHA)**" to read:
27 means an area in the floodplain subject to a one percent or
28 greater chance of flooding in any given year. It is shown on a
29 FIRM as Zone A, AO, A1-A30, AE, A99, AR, AR/A1-A30,
30 AR/AE, AR/AO, AR/AH, AR/A, AH, V1-V30, VE or V.

31 c. Add: "**ZONE AR**" means a special flood hazard area that
32 results from the de-certification of a previously accredited
33 flood protection system that is determined to be in the
34 process of being restored to provide a 100-year or greater
35 level of flood protection.

36 d. Add "**Developed areas**" means an area of a community
37 that is:

1 1. A primarily urbanized, built-up area that is a
2 minimum of 20 contiguous acres, has basic urban
3 infrastructure, including roads, utilities,
4 communications, and public facilities, to sustain
5 industrial, residential, and commercial activities, and

6 a. within which 75 percent or more of the
7 parcels, tracts, or lots contain commercial,
8 industrial, or residential structures or uses; or

9 b. is a single parcel, tract, or lot in which 75
10 percent of the area contains existing
11 commercial or industrial structures or uses; or

12 c. is a subdivision developed at a density of at
13 least two residential structures per acre within
14 which 75 percent or more of the lots contain
15 existing residential structures.

16 2. Undeveloped parcels, tracts, or lots, the
17 combination of which is less than 20 acres and
18 contiguous on at least 3 sides to areas meeting the
19 criteria of paragraph 1.

20 3. A subdivision that is a minimum of 20 contiguous
21 acres that has obtained all necessary government
22 approvals, provided that the actual ²start of
23 construction² of structures has occurred on at least

24 a. 10 percent of the lots or remaining lots of a
25 subdivision or

26 b. 10 percent of the maximum building
27 coverage or remaining building coverage
28 allowed for a single lot subdivision

29 and construction of structures is underway.
30 Residential subdivisions must meet the density
31 criteria in paragraph 1.c.

32 **2. SECTION 4.3 DUTIES AND RESPONSIBILITIES OF THE**
33 **FLOODPLAIN ADMINISTRATOR**

34 Add:

35 G. Zone AR Duties.

36 1. use the adopted official map or legal description of
37 those designated developed areas within Zone AR,

1 AR/AR1-30, AR/AE, AR/AH, AR/A, or AR/AO as
2 defined in Section 2 to determine if a proposed project
3 is in a developed area.

4 2. determine the base flood elevation to be used for
5 individual projects within developed areas, areas not
6 designated as developed areas, and dual zone areas
7 (See Section 5.7).

8 3. require the applicable standards in Section 5.0.

9 4. provide written notification to the permit applicant
10 that the area has been designated as a Zone AR,
11 AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A and
12 whether the structure will be elevated or protected to
13 or above the AR base flood elevation.

14 **3. SECTION 5.1 B.**

15 a. Modify 4. to read:

16 4. within Zone AH, AO, AR/AH, or AR/AO, so that
17 there are adequate drainage paths around structures
18 on slopes to guide flood waters around and away
19 from the proposed structures.

20 **4. SECTION 5.1 C. Add: "For ZONE AR requirements, see**
21 **Section 5.7."**

22 **5. Add new SECTION 5.7 ZONE AR AREAS** and renumber
23 existing 5.7, 5.8, 5.9.

24 **5.7 ZONE AR AREAS** Within areas designated as Zone AR,
25 AR/A1-30, AR/AE, AR/AH, AR/AO. or AR/A as established
26 under Section 3.2, the following standards shall apply:

27 **A. Developed Areas.** All new construction in areas
28 designated as developed areas shall meet the
29 standards of Section 5.0 using the lower of either the
30 AR base flood elevation or the elevation that is 3 feet
31 above the highest adjacent grade.

32 **B. Areas Not Designated as Developed Areas.** All
33 new construction in areas that are not designated as
34 developed areas:

35 1. where the AR flood depth is equal to or less
36 than 5 feet above the highest adjacent grade,

1 shall meet the standards of Section 5.0 using
2 the lower of either the AR base flood elevation
3 or the elevation that is 3 feet above the highest
4 adjacent grade; or

5 2. where the AR flood depth is greater than 5
6 feet above the highest adjacent grade, shall
7 meet the standards of Section 5.0 using the AR
8 base flood elevation.

9 **C. Dual Zone Areas.**

10 1. All new construction in areas within Zone
11 AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A
12 shall meet the standards of Section 5.0 using
13 the higher of either the applicable Zone AR
14 elevation (as determined from Section 5.7.A or
15 B above) or the base flood elevation (or flood
16 depth) for the underlying Zone A1-30, AE, AH,
17 AO, or A.

18 2. All substantial improvements to existing
19 construction within Zone AR/A1-30, AR/AE,
20 AR/AH, AR/AO, or AR/A shall meet the
21 standards of Section 5.0 using the base flood
22 elevation (or flood depth) for the underlying
23 Zone A1-30, AE, AH, AO, or A.

24



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF OCTOBER 17, 2007

SUBJECT: MASTER RESOLUTION FOR COMMITTEES.

RECOMMENDATION.

Review resolution which is designed to provide one master document governing all Town committees with the exception of the Planning Commission. The Planning Commission has been created by ordinance in compliance with State law and terms of provisions related to the Planning Commission will remain in Chapter 2.36 of the Atherton Municipal Code. Accordingly, it is not part of the resolution.

BACKGROUND.

Fourteen committees have been created to assist the City Council in connection with matters affecting the Town. Atherton is a general law city in California. Power and authority is derived from state law. The Town has adopted a Council-Manager form of government authorized by state law. The City Council sets policy and appoints and directs the City Manager. The City Manager appoints and directs all other Town employees, except for the City Attorney who is appointed by and responsible to the City Council.

The committees are described alphabetically in the attached resolution. With the exception of the Arts Committee, the Crime Prevention Committee, the Park and Recreation Commission and the General Plan Committee, all other committees are presently described in the City Council Rules of Procedure. The Arts Committee was created by Resolution No. 98-06. The General Plan Committee and Parks and Recreation Commission were created by ordinances codified in the Atherton Municipal Code Chapters 2.37 and 2.40, respectively.

The Planning Commission is established and described in Chapter 2.36 of the Atherton Municipal Code. Under State Planning Law, Government Code section 65100 and following, the Planning Commission must be established by ordinance. There is no similar requirement for establishment of the Park and Recreation Commission or the General Plan Committee. Accordingly, these two may be removed from the Atherton Municipal Code and placed in the

resolution. Chapters 2.37 (General Plan Committee) and 2.40 (Park and Recreation Commission) will be rescinded as these entities will now be governed by the master resolution. Paragraph 9 of the City Council Rules of Procedure will be amended to provide that Town committees are described as governed by this master resolution. Resolution No. 98-06 regarding the Arts Committee will be rescinded.

In May, and again in August of 2007, I sent a draft of the master resolution to the Chairs of the Town's Committees and Commissions. I received responses from the Arts Committee, the Tree Committee, the Park and Recreation Commission, and, as may be seen from the attached Staff Report, the Audit Committee regarding its understanding of its duties.

I have incorporated the comments from the Arts Committee, and Park and Recreation Commission into the master resolution. The Tree Committee requested that it be allowed to continue as an informal committee. I have not adopted that recommendation, but, instead, have incorporated them into the master resolution and have incorporated its meeting schedule. I have confirmed that the Tree Committee consists of appointed members. Staffing of the Tree Committee is to be provided in accordance with direction of the City Manager.

I have incorporated recommendations provided by the Audit Committee, but again, have revised those recommendations to provide that their advice and counsel is provided to the City Manager, rather than to any other Town employee. The City Manager shall determine who provides staff services to the Audit Committee.

FISCAL IMPACT.

None.

Prepared By:

Approved By:

/s/ Marc Hynes
Marc G. Hynes
City Attorney

Wendé C. Protzman
Interim City Manager

RESOLUTION NO. 07-___

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ESTABLISHING TOWN COMMITTEES AND COMMISSIONS**

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

Section 1. Establishment of Committees.

The following committees are established for the Town of Atherton:

1. Arts Committee
2. Atherton Channel Drainage District Committee.
3. Atherton Rail Committee
4. Audit Committee
5. Budget and Finance Committee
6. Buildings and Facilities Committee
7. Crime Prevention Committee
8. Emergency Preparedness Committee
9. Environmental Programs Committee
10. General Plan Committee
11. Park and Recreation Commission
12. Screening Committee
13. Transportation Committee
14. Tree Committee

Section 2. Rules of Procedure. All committees of the Town shall follow the Rules of Procedure as adopted by and as amended by the City Council.

Section 3: Appointment of Voting Members to Committees – Powers and Duties.

Members other than City Council Members shall be appointed following recommendation of the City Council Screening Committee and approval by the City Council. All appointed members shall be registered voters in the Town. Members shall serve at the pleasure of the City Council, or until the terms as set out in the respective committees described below.

Section 4. Composition – Terms - Powers and Duties.

The composition, terms, and powers and duties of the Town's committees shall be as described below:

1. Arts Committee.

Consists of up to, but not exceeding, ten (10) members appointed by the City Council. The term of office shall be as follows: Five (5) of the members shall be appointed to a four (4) year term commencing 2007 and ending on April 30, 2011. The remaining members' terms shall be three (3) years commencing 2007 and ending on April 30, 2010. Thereafter, each term of office shall be for four (4) years. The Arts Committee meets on the 4th Tuesday of each month at 1:00 p.m. in the Holbrook-Palmer Park Garden Room. The Arts Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in matters regarding art awareness including, without limitation, the following goals and objectives:
 - i. Fulfill the requirements of the Rita Corbett-Evans estate;
 - ii. Develop a unique arts program specific to the needs of Atherton and the surrounding community;
 - iii. Provide a base and focal point for arts programs in Atherton;
 - iv. Include a multi-disciplinary range of artistic endeavors including fine, performing, and literary arts as well as crafts;
 - v. Attract and welcome all members of the community.

2. Atherton Channel Drainage District Committee.

Consists of three (3) members including two (2) Council Members, and one (1) resident of the Town. The committee meets on an as needed basis in the City Council Chambers. The term of office for Town resident members shall be a four (4) year term commencing 2007 and ending on April 30, 2011. Council representatives are selected by the City Council to serve a one (1) year term. The Atherton Channel Drainage District Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to the Atherton Channel Drainage District.

3. Atherton Rail Committee.

Consists of thirteen (13) members including two (2) Council Members and up to eleven (11) residents of the Town. The committee meets on the first Tuesday of each month at 6:00 p.m. in the City Council Chambers. The term of office for Town resident members shall be a four (4) year term commencing 2007 and ending on April 30, 2011. Council representatives are selected by the City Council to serve a one (1) year term. The Atherton Rail Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to rail service in and through the Town. The Atherton Rail Committee will research and address the specific impact of high-speed rail and other rail improvements may have on the Town.

4. Audit Committee.

Consists of seven members, including two Council Members of the Budget and Finance Committee, and five residents of the Town. The committee meets bi-annually in the Conference Room of the Town Administrative Offices. The term of office for three (3) Town resident members appointed in 2005 shall be for three years ending on April 20, 2008. The terms of two of the remaining two Town resident members shall be for four (4) years ending on April 30, 2009. Thereafter, the term of office shall be for four (4) years. Council representatives are selected by the City Council to serve a one (1) year term. The Audit Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to Town finances.
- b. Provide oversight of the annual audit.
- c. Assist in formulating a long-range financial plan.
- d. Identify alternative sources of funding for the parcel tax.

- e. Assist in evaluating the operational efficiency and effectiveness of selected programs and activities.
- f. Serve 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.
- g. Provide advice and counsel to the City Manager as necessary.

5. Budget and Finance Committee.

Consists of two (2) Council Members. The Members also serve on the Audit Committee. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices. The term of office is one (1) year. The Budget and Finance Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to Town finances.

6. Buildings and Facilities Committee.

Consists of two (2) Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices. The term of office is one (1) year. The Buildings and Facilities Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to Town buildings and facilities.

7. Crime Prevention Committee.

Consists of three (3) members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices. The term of office shall be a four (4) year term commencing 2007 and ending April 30, 2011. The committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to crime prevention in the Town.

8. Emergency Preparedness Committee.

Consists of two (2) Council Members. The committee meets on an as-needed basis in the Conference Room of the Town Administrative Offices. The term of office is one (1) year. The Emergency Preparedness Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to emergency preparedness in the Town.

9. Environmental Programs Committee.

Consists of twelve (12) members including two (2) Council Members and ten (10) residents of the Town. The committee also includes the City Manager, Town Arborist, a South Bay Waste Management Authority (SBWMA) representative, and a representative of the franchise waste hauler. The committee meets monthly on the first Wednesday of the month at 10:00 a.m. in the Conference Room of the Town Administrative Offices. The term of office shall be as follows: Five (5) of the Town resident members shall be appointed to a five-year term commencing 2007 and ending April 30, 2012. The remaining five (5) Town resident members' terms shall be four (4) years commencing 2007 and ending April 30, 2011. Thereafter, each term of office shall be for four (4) years. Council representatives are

selected by the City Council to serve a one (1) year term. The Environmental Programs Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to environmental issues, including:
 - i. Global warming and CO2 emissions
 - ii. Green Building
 - iii. Earth Day events
 - iv. ABAG/PG&E Energy Watch Partnership
 - v. E-Waste Collection Day
 - vi. Mayors Agreement on Climatic Change
 - vii. Energy Awards for Homeowners
 - viii. Energy Consumption Reduction in Town and School Buildings.

10. General Plan Committee.

Consists of two (2) Council Members, two (2) Planning Commissioners and up to five (5) residents of the Town. The committee meets quarterly on the first Wednesday of the month at 6:00 p.m. in the Town Council Chambers. The term of office for Town resident members appointed by the City Council shall be one four (4) year term. Council and Planning Commission representatives are selected by their respective bodies for a term of one (1) year. The General Plan Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to planning.
- b. Review the General Plan and make recommendations to the City Council, Planning Commission and Town Staff regarding the operation of the ordinances and policies in the community on the subject of planning.

11. Park and Recreation Commission.

Consists of seven (7) members. One shall be a representative of the Holbrook-Palmer Park Foundation. One member shall be a representative of the Atherton Dames. Each of the foregoing representatives shall serve a term of two (2) years and no more than two consecutive terms. The term of office for the two (2) members ending April 30, 2008 shall continue for one additional four (4) year term ending April 30, 2012. The terms of office for the remaining three (3) members shall be four (4) years for members appointed in 2007 with terms ending April 30, 2011, and five (5) years if the member was appointed in 2008 with terms ending April 30, 2013, and thereafter for a period of four (4) years. Thereafter, each term of office shall be for four (4) years. No member shall serve for more than two (2) full consecutive terms. The Park and Recreation Commission meets on the first Wednesday of each month at 6:30 p.m. in Holbrook-Palmer Park, 150 Watkins Avenue, Atherton, California. The Parks and Recreation Commission shall have the following powers and duties:

- a. Act in an advisory capacity to the city council in all matters pertaining to parks and public recreation and to cooperate with other governmental agencies and civic groups in the advancement of the park and recreation planning and programming; and
- b. Develop and maintain a master plan for park development for each park facility within the town and annually, in the month of April, present a report to the City Council detailing the changes to the plan enacted by the Council during the previous year and proposed study or change of the future year;

- and
- c. Consider the annual budget for parks and recreation during the process of its preparation and make recommendations with respect thereto to the City Council. The budget should contain estimates and recommendations for such long-term capital outlay projects as may be necessary to provide for an orderly development of park and recreation areas and facilities; and
- d. Study and make recommendation on the acquisition and development of recreation areas, activities and facilities such as playgrounds, parks, open space and other centers of recreation; and
- e. Assist in the planning of recreation programs for the community, promote and stimulate public interest therein, and to that end, solicit public and private agencies, interested therein.

12. Screening Committee.

Consists of two (2) Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices. The term of office is one (1) year. The Screening Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to the interview of all applicants for Town committees and the Planning Commission, and to make recommendations for appointment to the City Council.

13. Transportation Committee.

Consists of five (5) members including two (2) Council Members and three residents of the Town. The committee meets quarterly on the second Tuesday of the month at 6:00 p.m. in the City Council Chambers. The term of office for Town resident members shall be four (4) years. Council representatives are selected by the City Council to serve a one (1) year term. The Transportation Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to transportation.

14. Tree Committee.

Consists of twelve (12) members. The committee meets on the third Thursday of each month at 4 p.m. in the Conference Room of the Town Administrative Offices. The term of office for Town resident members shall be four (4) years. The Tree Committee shall have the following powers and duties:

- a. Act in an advisory capacity to the City Council in all matters pertaining to the Town's heritage trees.

This Resolution shall be effective immediately upon adoption. The operative date of this resolution or the General Plan Committee and the Park and Recreation Commission shall be thirty (30) days from and after the date of adoption of the Ordinance rescinding Chapters 2.37 and 2.40 of the Atherton Municipal Code. Resolution 98-06 is hereby rescinded.

* * * * *

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 _____, 2007, by the following vote.

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

ATTEST:

Alan Carlson, MAYOR
Town of Atherton

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

RESOLUTION NO. 07-___

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AMENDING CITY COUNCIL RULES AND REGULATIONS BY REVISING
PARAGRAPH 9 RELATING TO COMMITTEES OF THE TOWN**

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

Section 1. Section 9 "City Council Committees" is hereby amended by rescinding paragraph 9.4 "Committees of City Council" as the foregoing are the subject of a separate resolution and revising paragraphs 9.2, 9.3 and 9.5 to read as set forth herein.

"9. Town Committees

9.1 Establishment. At the regular meeting in January, the Mayor shall appoint Council members to serve on various committees for a one year term.

9.2 Appointment of Voting Members to City Council Committees. Appointment of voting members to City Council Committees shall proceed as provided by the terms and provisions of separate resolution and as amended. Committees shall be created and members appointed thereto in accordance with rules and regulations set out by the City Council by separate resolution and as amended.

9.3 City Council Review of Town Committee Decisions. City Council Members on Town committees may bring any decision of the committee to the full City Council for final determination. Pending such action by the full City Council, any such decision shall be suspended.

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 _____ days of _____, 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 G. Hynes, City Attorney

Alan B. Carlson, MAYOR
Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RESCINDING RESOLUTION NO. 98-06 PERTAINING TO THE ATHERTON ARTS COMMITTEE

WHEREAS, the City Council has adopted a master resolution pertaining to all of the Town's committees and commissions; and

WHEREAS, the foregoing action supersedes the provisions of Resolution No. 98-06 pertaining to the Atherton Arts Committee;

NOW, THEREFORE, the City Council of the Town of Atherton does hereby resolve as follows:

Section 1. Resolution No. 98-06 pertaining to the Atherton Arts Committee is hereby superseded and rescinded.

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 _____ day of _____, 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 G. Hynes, City Attorney



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 30th, 2001 to \$9.4 million for the year ended June 30th, 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,¹ 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.² 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.³

Recommendation. The Government Finance Officers Association (GFOA) makes the following recommendations regarding the establishment of audit committees by state and local governments:

- The governing body⁴ 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 responsible⁵ 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.⁶ 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;⁷

¹ 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.

² *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees*, “Overview and Recommendations.”

³ Securities and Exchange Commission (SEC) Regulation 33-8220, “Background and Overview of the New Rule and Amendments.”

⁴ 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.

⁵ Nothing in this recommended practice should be interpreted so as to limit the full governing body from exercising ultimate authority.

⁶ Sarbanes Oxley Act, Section 301.

⁷ *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.⁸ 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.⁹
- 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;¹⁰
- 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;¹¹
- 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 matters¹²;
- 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 responsibilities¹³; 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,¹⁴ and privately among

⁸ *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.

⁹ Sarbanes Oxley Act, Section 407.

¹⁰ 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.

¹¹ SEC Regulation 330-8220, "Background and Overview."

¹² Sarbanes Oxley Act, Section 301.

¹³ Nothing in this recommended practice should be interpreted so as to limit the full governing body from exercising ultimate authority.

committee members,¹⁵ 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.

¹⁴ 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.

¹⁵ 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
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF OCTOBER 17, 2007

**SUBJECT: CITIZEN REQUEST TO MODIFY TRAFFIC PROGRAM TO ALLOW
SPEED HUMPS**

RECOMMENDATION:

The City Council determine if modification to the Traffic Program policies 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.

ALTERNATIVES

1. Make no adjustments to the Traffic Control Program
2. Revise the Traffic Control Program modifying specific policies within the Traffic Control Program
3. Direct staff to study impacts of speed humps.
4. Return to the Transportation Subcommittee for further consideration

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

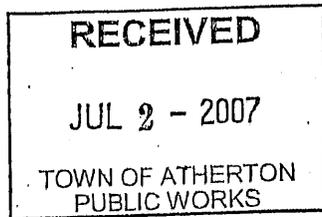
Prepared by:

Approved by:

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

Wendé 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 85th 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

TABLE OF CONTENTS

INTRODUCTION

SECTION I: DETERMINING WHETHER THE LOCATION OF THE TRAFFIC ISSUE IS PROPERLY ADDRESSED BY A TRAFFIC MANAGEMENT PROJECT

A. General Provisions

1. Rules
2. Objectives

B. Factors for Consideration

1. Circulation Element, General Plan
2. Community Character
3. Traffic Volumes
4. Speed
5. Air Quality
6. Noise

SECTION II: SELECTING A DEVICE OR MEASURES FOR A TRAFFIC MANAGEMENT PROJECT

A. Introduction

B. Traffic Signs

1. Turn Prohibition Signs
2. One-way Street Signs

C. Geometric Design Features

1. Cul-de-sacs at Intersections or Mid-block
2. Chokers
3. Semi-Diverter
4. Median Barriers

SECTION III: ENVIRONMENTAL CONSIDERATIONS

A. General Rule

B. Air Quality

C. Noise

D. Traffic Circulation

E. Public Services and Safety

SECTION IV: PROCEDURES FOR ADMINISTERING PROGRAM

- A. New Developments
- B. City Initiated Consideration
- C. Citizen Initiated Consideration
- D. Post Initiation Processing

EXHIBITS

- 1. Typical Cul-de-sacs E-1
- 2. Typical Chokers and Diverters E-2

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.

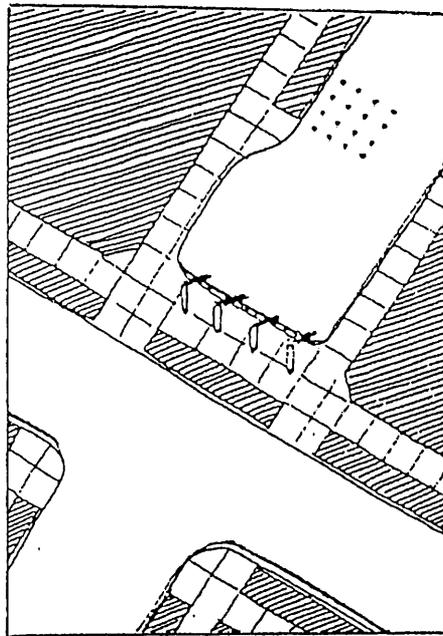
11. Funded projects will be designed and installed.

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

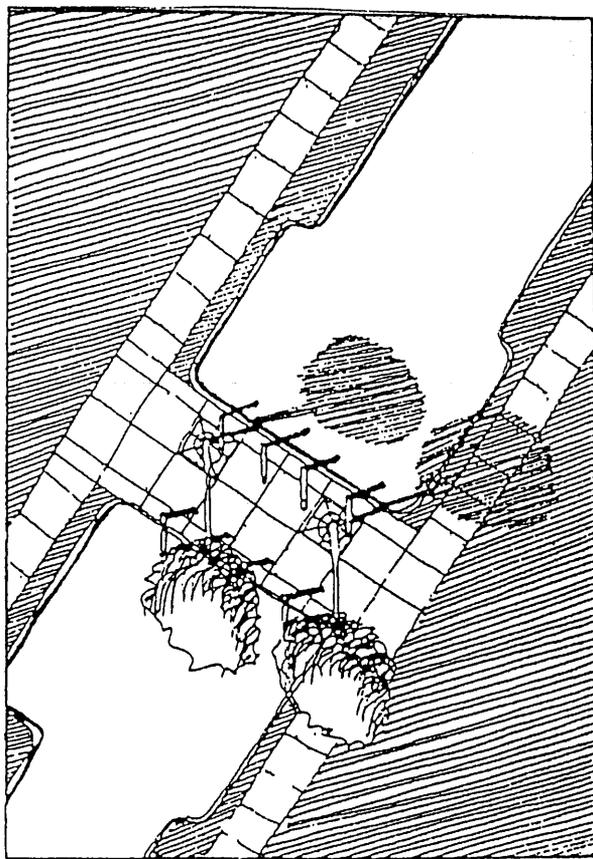
INTERSECTION CUL-DE-SAC

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.

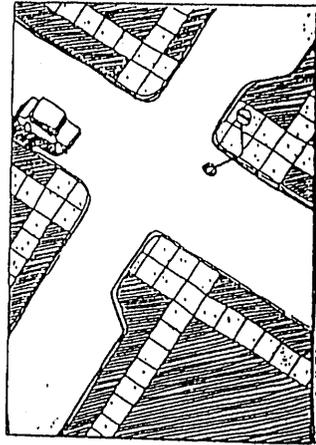


Source: Residential Street Design and Traffic Control,
Institute of Transportation Engineers, 1989

EXHIBIT 2 TYPICAL CHOKERS AND DIVERTERS

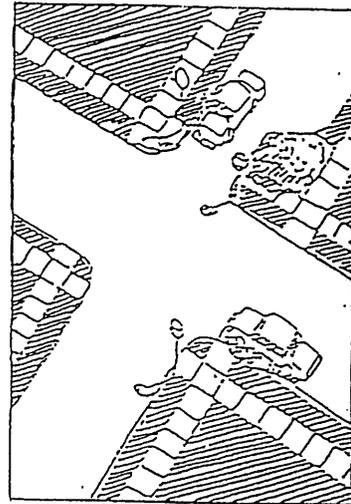
CHOKERS

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: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF OCTOBER 17, 2007

**SUBJECT: ABSENCE OF OVERCHARGES IN BUILDING PERMIT FEES
UNIFORM BUILDING CODE TABLE 1-A/ CALIFORNIA
BUILDING CODE TABLE 1-A**

RECOMMENDATION:

Direct Staff to take necessary action to recover under charges for building permit fees. An issue has arisen concerning the possible overcharge of building permit and inspection fees. As may be seen from the memorandum dated September 29, 2007, from the Building Official on the subject of charges for public services, building permit and inspection fees, it appears that the Town has not been overcharging for fees. In fact, the Town may have been collecting less than it was entitled to collect. It is my recommendation that efforts should be made to collect any charges which were not properly collected.

BACKGROUND:

The September 29, 2007, memorandum (Attachment A) shows the background behind collection for building permit and inspection fees. The Town based its collections on the 1997 Uniform Building Code, having initially adopted the schedule in 2000. It subsequently confirmed Tables in that code in 2003.

Beginning in 2001, the State of California began using the California Building Code instead of the Uniform Building Code. The Tables in the California Building Code (Table 1-A) were virtually identical with the Table utilized by the Uniform Building Code (Table 1-A) with one 50 cent difference. Table 1-A of the Uniform Building Code is attached as Attachment B. Table 1-A of the California Building Code is attached as Attachment C. The only difference occurs in projects valued at 1 million dollars and above and differs at a rate of 50 cents per thousand valuation.

Acting Building Official Mike Cully, looking at the California Building Code, understandable given his background and experience, and the fact that in 2001 California adopted the California Building Code in place of the Uniform Building Code, concluded that the Town was collecting charges to which it was not entitled based upon Attachment C. He was not correct in his assumption that the California Building Code Table controlled. A review of Section 107.1 in Attachment D reveals that fees are assessed in accordance with the California Building Code or, as set forth in fee schedules adopted by the local jurisdiction. Since the Town of Atherton adopted fees under the Uniform Building Code, 1997, edition, despite the fact that the Uniform Building Code was superseded in virtually every other respect by the California Building Code, the fees per the Uniform Building Code, 1997 edition, continue in effect.

The Town has collected fees from mid-October, 2006, to the present in line with the California Building Code. These are **under**, rather than over what should be charged. The Town has not over collected as Mr. Cully believed, but in fact has under collected because revisions were made by the Finance Department to match the California Building Code.

FISCAL IMPACT:

Dependent upon recovery of charges uncollected from mid-October, 2006 to date.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes
City Attorney

Wendé C. Protzman
Interim City Manager

Attachments:

Attachment A	Memorandum dated September 29, 2007
Attachment B	Table 1-A Uniform Building Code
Attachment C	Table 1-A California Building Code
Attachment D	California Building Code Section 107.1

reinspection fee in accordance with Table 1-A or as set forth in the fee schedule adopted by the jurisdiction.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

SECTION 109 — CERTIFICATE OF OCCUPANCY

109.1 Use and Occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein.

EXCEPTION: Group R, Division 3 and Group U Occupancies.

Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

109.2 Change in Use. Changes in the character or use of a building shall not be made except as specified in Section 3405 of this code.

109.3 Certificate Issued. After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the code enforcement agency, the building official shall issue a certificate of occupancy that shall contain the following:

1. The building permit number.
2. The address of the building.
3. The name and address of the owner.
4. A description of that portion of the building for which the certificate is issued.
5. A statement that the described portion of the building has been inspected for compliance with the requirements of this code for the group and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.

109.4 Temporary Certificate. If the building official finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, a temporary certificate of occupancy may be issued for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure.

109.5 Posting. The certificate of occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the building official.

109.6 Revocation. The building official may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this code whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

TABLE 1-A—BUILDING PERMIT FEES

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof
Other Inspections and Fees:	
1. Inspections outside of normal business hours (minimum charge—two hours)	\$47.00 per hour ¹
2. Reinspection fees assessed under provisions of Section 305.8	\$47.00 per hour ¹
3. Inspections for which no fee is specifically indicated (minimum charge—one-half hour)	\$47.00 per hour ¹
4. Additional plan review required by changes, additions or revisions to plans (minimum charge—one-half hour)	\$47.00 per hour ¹
5. For use of outside consultants for plan checking and inspections, or both	Actual costs ²

¹Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

²Actual costs include administrative and overhead costs.

TABLE 1-A—BUILDING PERMIT FEES

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.15 for each additional \$1,000.00, or fraction thereof
Other Inspections and Fees:	
1. Inspections outside of normal business hours (minimum charge—two hours)	\$47.00 per hour ¹
2. Reinspection fees assessed under provisions of Section 305.8	\$47.00 per hour ¹
3. Inspections for which no fee is specifically indicated (minimum charge—one-half hour)	\$47.00 per hour ¹
4. Additional plan review required by changes, additions or revisions to plans (minimum charge—one-half hour)	\$47.00 per hour ¹
5. For use of outside consultants for plan checking and inspections, or both	Actual costs ²

¹Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

²Actual costs include administrative and overhead costs.



Town of Atherton

91 Ashfield Road
Atherton, California 94027
650-752-0500
Fax 650-688-6528

Date: September 29, 2007

To: Wendé Protzman, Interim City Manager
Marc Hynes, City Attorney

From: Michael C. Wasmann, Building Official

Subject: Charges for Public Services, Building Permit and Inspection Fees

At the direction of the City Council, the Building Department has conducted in-depth studies of the receiving and calculating of building permit fees. The City Council has received reports that the building department may have been overcharging applicants for building permit fee.

Resolution No. 00-13 was adopted by the City Council of the Town of Atherton May 17, 2000. A. Building Permit and Inspection Fees: Fees calculated in accordance with Table 1-A of the 1997 Uniform Building Code, based on a valuation of new construction and of remodeling at \$250.00 per square foot.

Resolution No. 03-19 was adopted by the City Council of the Town of Atherton September 17, 2003 amending resolution No. 00-13 by modifying fees for services related to building and planning and confirming existing practice regarding building permit valuations. 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 gazebo, garage or similar type of structure that is not of the same complexity as a main building.

City Council staff report was prepared by John P. Johns, Finance Director, dated September 17, 2003 for the above resolution of modifying fees for services related to planning and building and confirming existing practice regarding building permit valuations. On page three, second paragraph, in order for the Building Department to meet this revenue requirement, we propose the following:

- That the City Council direct staff to calculate fees at 100 percent of the levels established in accordance with Table 1-A of the 1997 uniform building code, and

- Fees for planning related activities be established at actual costs with an initial non-refundable deposit in the amount of \$750.00 per application.

Resolution No. 07-17 was adopted by City Council of the Town of Atherton June 18, 2007 modifying fees for services related to building and planning.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ATHERTON, CALIFORNIA, that fees relating to building and planning be adjusted as set forth below. All other fees authorized by prior ordinances, resolutions or minute actions by the City Council shall remain in effect:

Building Permit and Plan Check Fees: In determining the permitted value of new residential construction, the Building Department shall use a standard factor of \$350 per square foot for habitable space and \$250 per square foot for non-habitable space. For residential remodeling projects, the Building Department shall use a value of \$350 per square foot for habitable space or \$250 for non-habitable space. However, for residential remodeling projects, the Building Department shall have the authority to adjust the permitted value to the actual cost of such remodeling activity provided that the applicant is able to demonstrate through presentation of an executed contract with a properly licensed contractor that the actual costs of said construction activity will be substantially less than the standard values established herein.

The Building Department has been determining the permit fee since May of 2000 consistent with resolution 00-13 through resolution 07-17. During the Phase II audit report the internal audit staff recommended to implement the use of computer-based algorithms, rather than pre-printed tables to calculate permit fees due and payable. In the middle of October acting building official Michael Cully implemented an electronic fee calculation form called Omni Form. Permit fees were calculated from the **California Building Code** using Table 1-A instead of Table 1-A in the **Uniform Building Code** which would have been consistent with the current resolution. All fees up to \$1,000,000.00 are correct only after \$1,000,000.00 is there a conflict with the fee resolution. Table 1-A in the Uniform Building Code \$1,000,001.00 and up charge \$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof. California Building Code factor changed for each additional \$1,000.00 to \$3.15 which calculates to a lesser figure of \$.50

Building Department has been collecting fewer fees than required from mid October 2006 to present than required by Town resolutions. Affected projects are those valued at \$1,000,000.00 and above.

Mike Wasmann
Building official

Attached: Resolutions: 00-13, 03-19 & 07-17
Uniform Building Code Table 1-A and California Building Code Table 1-A
City Council staff report prepared by John P. Johns, Finance Director

ITEM 21

**CONSIDERATION OF SUSTAINABLE SAN MATEO
COUNTY GRANT REQUEST**

The attached staff report is the original staff report submitted to the City Council at its September 19, 2007, meeting.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: WENDÉ C. PROTZMAN, INTERIM CITY MANAGER

DATE: FOR THE MEETING OF SEPTEMBER 19, 2007

SUBJECT: CONSIDERATION OF SUSTAINABLE SAN MATEO COUNTY GRANT REQUEST

RECOMMENDATION:

The City Council consider the request from Sustainable San Mateo County for a grant in the amount of \$3,000 and provide direction to staff if appropriate.

BACKGROUND:

Sustainable San Mateo County, a freestanding nonprofit public benefit corporation, has contacted the Town and is requesting a grant from the Town in the amount of \$3,000 (see attached letter). Sustainable San Mateo County is requesting the funding to support its production of the 12th edition of a report entitled *Indicators for a Sustainable San Mateo County: 2008 Report Card*. This report is made available on the organization's web site, and a few sample pages are attached. The report is made available for public review on the Sustainable San Mateo County website at no charge.

The current Fiscal Year 2007-08 Adopted Budget does not contain funds earmarked for the Sustainable San Mateo County grant request.

The following San Mateo County cities provided funding for this project in 2007:

Brisbane	Millbrae
Burlingame	Portola Valley
Colma	Redwood City
Foster City	San Mateo
Half Moon Bay	Redwood City
Menlo Park	South San Francisco

Some of the reasons provided by these cities for supporting the project included the value of the information in the report which was presented in an objective way and provided additional information for decision-making on County wide issues.

The following San Mateo County cities did not provide funding for this project in 2007:

Atherton	Pacifica
Belmont	San Bruno
Daly City	San Carlos
East Palo Alto	Woodside
Hillsborough	

One reason cited by these cities for not supporting the project I that the Council had other priorities.

It is recommended that the Council provide direction to staff regarding this request.

Attachments: Letter from Sustainable San Mateo County with Request for Support
Pages from Sustainable San Mateo County website regarding the Indicators Project

May 4, 2007

James Robinson, Town Manager
Town of Atherton
91 Ashfield Rd.
Atherton, CA 94027

Dear Mr. Robinson,

Public interest has never been stronger as it relates to sustainability in ensuring a healthy environment, society and economy for the long term. Sustainable San Mateo County (SSMC) is proud to fill the vital role of educating our community about what sustainability means by providing fact-based information about our county's environment, economy and society.

We are asking for your support by investing \$3,000 for the production of the *Indicators for a Sustainable San Mateo County, 2008 Report Card*. We believe this annual report is an invaluable resource to your city and community.

As Councilmember Coleman of Half Moon Bay stated in response to our request for funding at their 6/15/99 meeting: “ *I think that the report actually has saved us some money. We went over budget on our General Plan Review but I actually personally provided that report to the consultants who were doing the General Plan Review and I am sure that helped us to stay at \$400,000.00 instead of \$500,000.00. Thank you.*”

Peter Sharer, CEO of startup company Agilewaves recently said of the report: “*Agilewaves used the 2006 Indicators Report both as supporting documentation for the value of our home utility monitoring system and to identify our potential customer base.*”

Enclosed is SSMC's formal proposal for funding. Also included is an invoice as some cities have requested that we send an invoice in order to streamline the process.

Thank you for your consideration in this request. We look forward to hearing from you.

Sincerely,

Ruth Peterson
Board Chair

<p>Request for Support</p> <p><i>Indicators for a Sustainable San Mateo County, 2008 Report Card</i></p> <p>Amount Requested: \$3,000</p>	<p>Sustainable San Mateo County 177 Bovet Road, 6th Floor San Mateo, CA 94402 Contact: Tyler Hammer, Executive Admin. Ph: 650-638-2323 Email: advocate@sustainablesanmateo.org</p>
---	---

Mission

Sustainable San Mateo County (SSMC) is dedicated to the long-term health of our county’s economy, environment and social equity by educating about sustainability. Living sustainably means that we meet today’s needs without compromising the ability of future generations to meet their needs.

Organizational Overview

SSMC is a non-profit public benefit corporation, staffed primarily by volunteers that run our committees/board and research our Indicators Report. The board chair works closely with our one full-time paid staff person (Executive Administrator) to manage the office. SSMC also has two part-time consultants; the Indicators Project Coordinator manages the production of the Indicators Report and the Education Director provides outreach for the report. SSMC also has 5 volunteer committees (Management, Events, Communications, Fund Development & Indicators) that manage their respective areas of business for the organization.

Request

SSMC is requesting \$3,000 from the Town of Atherton in support of its 2008 Indicators for a Sustainable San Mateo County Report Card.

The Indicators Project is SSMC’s core program. The annual Report includes approximately 30 indicators of the County’s quality of life such as economic trends, unemployment, poverty, land use, transportation, housing affordability, per pupil funding and water quality. The Indicators Report compiles many interdependent issues into a single source for decision-makers and citizens to monitor progress toward sustainability or away from it in any given area. The research, writing, and editing are accomplished with community volunteers of all ages and backgrounds.

All donated funds for the Indicator Report will support:

1. The Project Coordinator and the Education Director for the Indicators Report

2. Administrative support associated with the Indicators Report
3. Printing the report
4. Postage to mail the report to community
5. Publicity for the report

SSMC is able to keep the cost of production for the Indicators Report *very low* due to our dedicated group of over 35 volunteers (whose contributions represent an annual value of over \$30,000 for an estimated 1,000 hours of work). However, in order to maintain the high quality of the report, SSMC must cover increases in costs; namely an increase in hours and rate of pay to retain core staff and an increase in the production costs for the report.

Benefit to Your City

The Indicator report has many benefits for the Town of Atherton:

1. The Indicator Report is the only comprehensive report in San Mateo County that evaluates the health of the county and Cities in terms of sustainability. It illustrates how each issue is linked to others and to sustainability. The report provides a means for city officials to make educated decisions when considering sustainable policies - what gets measure, gets managed.
2. This year more than 5,000 copies of the 2007 report will be distributed throughout the county to governments, chambers, businesses, SAMCAR, libraries and citizens (among others).
3. In the 2007 report, SSMC once again included a one-page report from the cities in our county detailing their sustainability efforts. We highlighted Atherton's sustainability successes in areas such as water use, recycling, green building and habitat protection efforts. This "best practices" section allows each city to promote their successes and learn from other cities and their successes. These city/county reports will be continued in the 2008 report.
4. The report is a great resource for area businesses and business groups to distribute to their clientele. For example, SSMC recently partnered with SAMCAR to distribute the reports to area realtors and prospective homebuyers to "show off" local sustainability efforts in the county and in each city. The response has been overwhelmingly positive.

INVOICE

May 4, 2007

James Robinson
Town Manager
Town of Atherton
91 Ashfield Rd.
Atherton, CA 94027

Requested Contribution for the Publication of: <i>Indicators for a Sustainable San Mateo County, 2008 Report Card:</i>	\$3,000.00
---	-------------------

Thank You

Sustainable San Mateo County (SSMC) is a 501(c)(3) California public benefit corporation. Contributions are tax deductible. SSSMC's federal tax identification number is 48-1265207.

Please make your check payable to *Sustainable San Mateo County* and send to:
Sustainable San Mateo County
177 Bovet Road, 6th Floor
San Mateo, CA 94402



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: WENDÉ C. PROTZMAN, INTERIM CITY MANAGER

DATE: FOR THE MEETING OF OCTOBER 17, 2007

SUBJECT: CONSIDERATION OF JOINT MEETING BETWEEN ATHERTON CITY COUNCIL AND MENLO PARK CITY COUNCIL REGARDING GRADE SEPERATION AND QUIET ZONES

RECOMMENDATION:

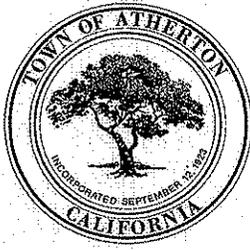
The City Council to consider a joint meeting with Menlo Park's City Council to discuss grade separation and quiet zones for the two cities.

BACKGROUND:

The Town of Atherton and the City of Menlo Park, with the help of Caltrain, underwent a study regarding grade separation to review all possible alternatives on this issue. The study was not completed due to Caltrain's need to first determine how many tracks will be required for future needs. This second "footprint" study is now complete and the findings are ready for presentation.

It is recommended that the Council provide direction to staff to arrange a joint meeting with Menlo Park's City Council to receive the findings of the footprint study and discuss grade separation and quiet zones.

Attachments: Letter to Menlo Park requesting joint meeting



Town of Atherton

91 Ashfield Road
Atherton, California 94027
650-752-0500
Fax 650-688-6528

October 10, 2007

VIA E-MAIL – kjfergusson@menlopark.org

Ms. Kelly Fergusson
Mayor, City of Menlo Park
168 Oak Court
Menlo Park, CA 94025-2837

Re: Joint Meeting to Discuss Grade Separations and Quiet Zones

Dear Kelly:

As we discussed, I think now would be an appropriate time to bring the City Councils of Atherton and Menlo Park together for a joint study session.

As you know, with the assistance of Caltrain, we had embarked on a study of grade separations involving our two cities which was to look at all possible alternatives: train up, train down, road up, road down, or a partial up and down combination. This study was interrupted because Caltrain wanted to undertake a “footprint” study first to determine how many tracks would be required, whether they would have inboard or outboard loading platforms, etc. That footprint study is now complete and Ian McAvoy from Caltrain is available to make a presentation on its findings. I think it would make sense for us to do that together. From there, we can discuss what we’d like to see in a grade separation analysis.

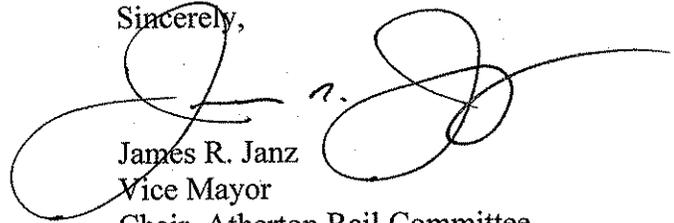
Also, a joint meeting would be an opportune time to discuss implementation of quiet zones along the railroad, and what we can do to achieve that.

I look forward to hearing from you at your earliest opportunity.

Ms. Kelly Fergusson
October 10, 2007
Page 2

Best regards.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a smaller 'R' and a long horizontal flourish extending to the right.

James R. Janz
Vice Mayor
Chair, Atherton Rail Committee

cc: Atherton City Council
Ms. Wendé C. Protzman, via e-mail (wprotzman@ci.atherton.ca.us)