



Item No. 22 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

THROUGH: MICHAEL KASHIWAGI, COMMUNITY SERVICES DIRECTOR

FROM: STEVE TYLER, PUBLIC WORK SUPERINTENDENT

DATE: OCTOBER 19, 2016

**SUBJECT: APPEAL OF THE STAFF DECISION TO ISSUE AN
ENCORACHMENT PERMIT FOR A DRIVEWAY AT 38
SUTHERLAND DRIVE**

RECOMMENDATION

- 1) Conduct a public hearing and deny the appeal, thereby upholding staff's decision to issue an encroachment permit for the driveway approach at 38 Sutherland and in front of the property at 26 Sutherland.

BACKGROUND

On August 25, 2016, the Atherton Public Works Department approved an encroachment permit for work in the right of way for a driveway replacement at 38 Sutherland Drive. Staff approved the driveway approach based on the written request by Menlo Park Fire Department for minimum access requirements for their fire apparatus.

On September 6, 2016, an appeal was filed with the Atherton Planning Department following the outlined procedure for appeal of an encroachment permit.

ANALYSIS

The house remodel of 38 Sutherland began in December of 2012 (date of new residence permit).

The original set of plans for the building permit indicated driveway detail as plans show it today. These plans were reviewed by the Menlo Park Fire Department (MPFD) and met their requirements including a 44' turn radius requirement.

Google Street View images, shown below, from October 2007 and an annotated version from April 2011 depict a similar, brick paver driveway approach in existence within the right-of-way.



Following the issuance of the building permit, the paver driveway was removed and a temporary construction driveway was installed in accordance with the sites grading and drainage plan. The gate pillars to the property were left in place.



The plan for the driveway necessitated the use of a driveway flare which occupies approximately 32 square feet of the right of way in front of 26 Sutherland Drive. By all accounts (resident plans, google maps, and fire department testimony) this driveway flare existed prior to the site development and its reinstatement is in as exact a location as possible to the original.

The adjacent property owner at 26 Sutherland Drive filed an appeal of the issuance of the encroachment permit for the driveway approach. The appellant states the following reasons for the appeal followed by Staff's response (in italics):

1. The driveway does not comply with the Town of Atherton's Standard Specifications including but not limited to, the Town's General Encroachment Provisions.

The driveway approach complies with the Town's encroachment permit guidelines for access.

2. The subject permit is not, for any recognized health or safety reason necessary.

As indicated by MPFD, the design of the driveway approach is necessary for fire apparatus access to the residence at 36 Sutherland.

3. The subject permit unreasonably encroaches into the Town's right-of-way directly in front of the home at 26 Sutherland.

The driveway flare was approved in the same historic location within the public right-of-way. The portion of the driveway flare fronting the property at 26 Sutherland Drive is a triangle shape of approximately 32 square feet in area and does not impact the adjacent property owner's enjoyment of their property.

The flare in question is required by the Menlo Park Fire District for fire apparatus access onto the property at 38 Sutherland. On August 24, 2016, staff met with the property owner and MPFD at 38 Sutherland. The purpose of this meeting was to assess the need for this driveway flare and to see if a reasonable alternative might be possible.

Following that meeting, MPFD Fire Marshall Jon Johnston provided Town staff with the following written determination:

“The access driveway for the home located at 38 Sutherland has an approved site access plan from the Menlo Park Fire District. This is to replace/repair an existing driveway, which accommodates the Fire District requirements of a minimum 44' turn radius to gain access to the structure. Part of the required access is on Town of Atherton ROW, which was an existing condition”

Staff reviewed alternative locations for the driveway approach to remove the flare in front of the neighboring property. The adjustment of the driveway flare results in the following issues:

- Gates would need to be removed and replaced to accommodate the new driveway location.
- Major regrade of the hillside to the south side of the driveway entrance would need to be completed. This would more than likely necessitate construction of a retaining wall.

- At least one Heritage Oak tree would need to be removed (Removal of this tree would require approval by the Planning Commission).

Staff reviewed arguments from the appellant and would like to clarify to the City Council these points:

- Staff was asked by the appellant for copies of the improvement plans for the driveway as well as drawings made by the MPFD of their review criteria for the driveway radius. After obtaining appropriate legal copyright approvals, staff provided the information.
- Scaled plans rarely survive the digital process of a scan/email without distortion. There is no single area in the driveway under 16' in width. The driveway plan is 100% accurate provided copies are re-scaled for size. When the encroachment permit process takes place, it is not uncommon for a builder to “expand” a section of his permitted building plans to base their plan for work in the right of way. Staff scales this plan prior to the plan check.
- When processing an Encroachment Permit, staff’s focus when reviewing the improvements is the right-of way section of the plan – not behind the property line. If improvements in the right of way meet the Town’s standard to build, they are approved for construction.
- Staff had concern regarding the driveway flare in the front of the property of the neighbor. Staff met with the MPFD on site to review the necessity of this access issue. The MPFD stated then (and later in writing) that for the driveway to exist in that location, the flare would need to be approved. Staff as well as MPFD personnel had knowledge that the flare had existed there prior to the placement of the construction driveway and the homeowner of 38 Sutherland provided visual proof (pictures).
- The driveway exists as part of the approved building plan from 2012. Only the last 10' of the driveway is in the right of way, and that connector is the basis for this encroachment permit. The actual placement of the driveway on the property is reviewed by the Town’s Planning Department and questions and concerns regarding its placement and access points are properly addressed during the planning review process which has now expired.
- Trees – a lot of questions regarding trees next to the driveway (south side). The plan shows existence of three trees (11”, 12” and 15”). The 11” and 12” trees were removed by the homeowner (non-heritage) to provide a better site for the success of the remaining 15” heritage Oak tree. That remaining Oak is just over 6’ away from the south edge of the driveway. Staff does not recommend moving the driveway any closer to the tree to allow for its best chance to thrive.
- Nonconforming location – this is where the Council really needs to decide whether the emergency access need for 38 Sutherland requires an allowance for the homeowner to use an approximate 32 square foot piece of right-of-way in front of an adjacent property at 26 Sutherland. While not very common, this type of coexistence does exist in Town. It is the Towns right-of-way to administer and “access to a property” is certainly a criteria of its use.

POLICY FOCUS

The right-of-way is an easement for public travel, which includes streets and driveways. Echoing this fact, the Town’s Encroachment Permit is intended to facilitate use of the public right-of-way for “drainage, *parking, access and other similar uses.*” (12.06.020, emphasis added). While driveways are usually constructed within the right of way adjacent to a specific property, there are circumstances that may necessitate use of the right of way adjacent to a neighbor’s property. Driveways serve a well-recognized and legitimate public purpose and therefore the Town has discretion to permit construction of a driveway utilizing a portion of the right of way adjacent to a neighboring property, as the City Manager has done here.

The maintenance of this small section of right of way used for driveway access would need to be maintained by the resident of 38 Sutherland per record of the approved encroachment permit. The Town could also require the property owner at 38 Sutherland to execute the Town’s Revocable License to indemnify the Town and the adjacent property owner with respect to liability with respect to the improvement (see attached).

FISCAL IMPACT

The cost of the issuance of the encroachment permit was paid for by the applicant. The appellant paid the \$750 appeal fee.

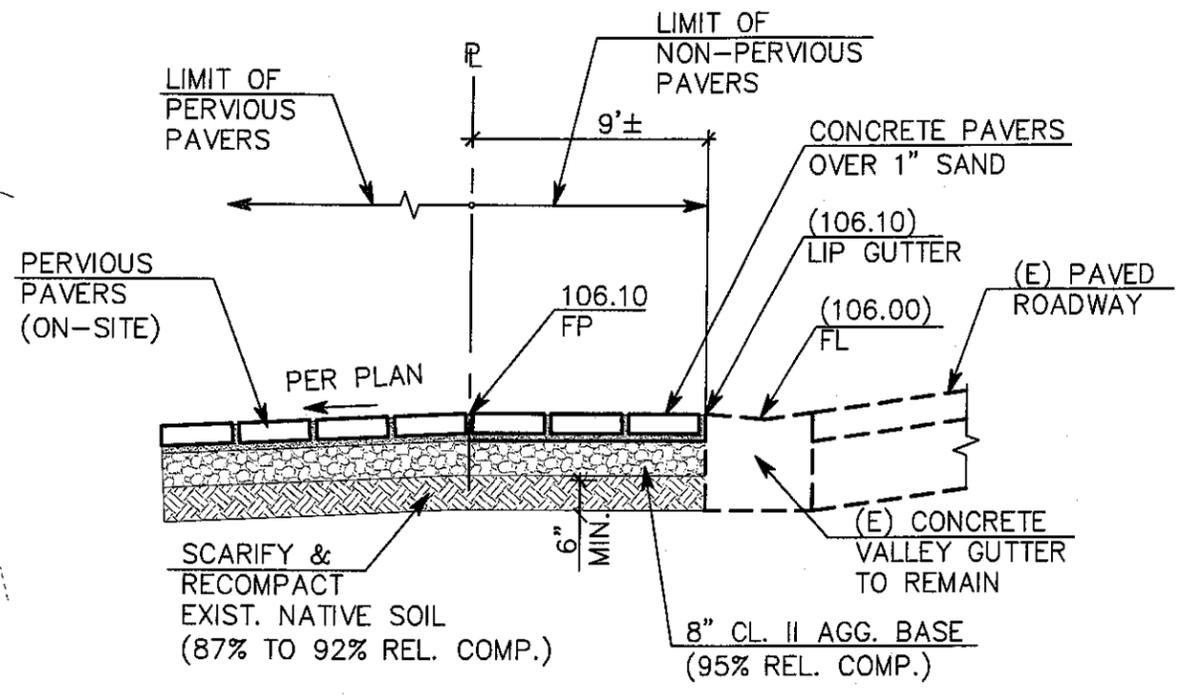
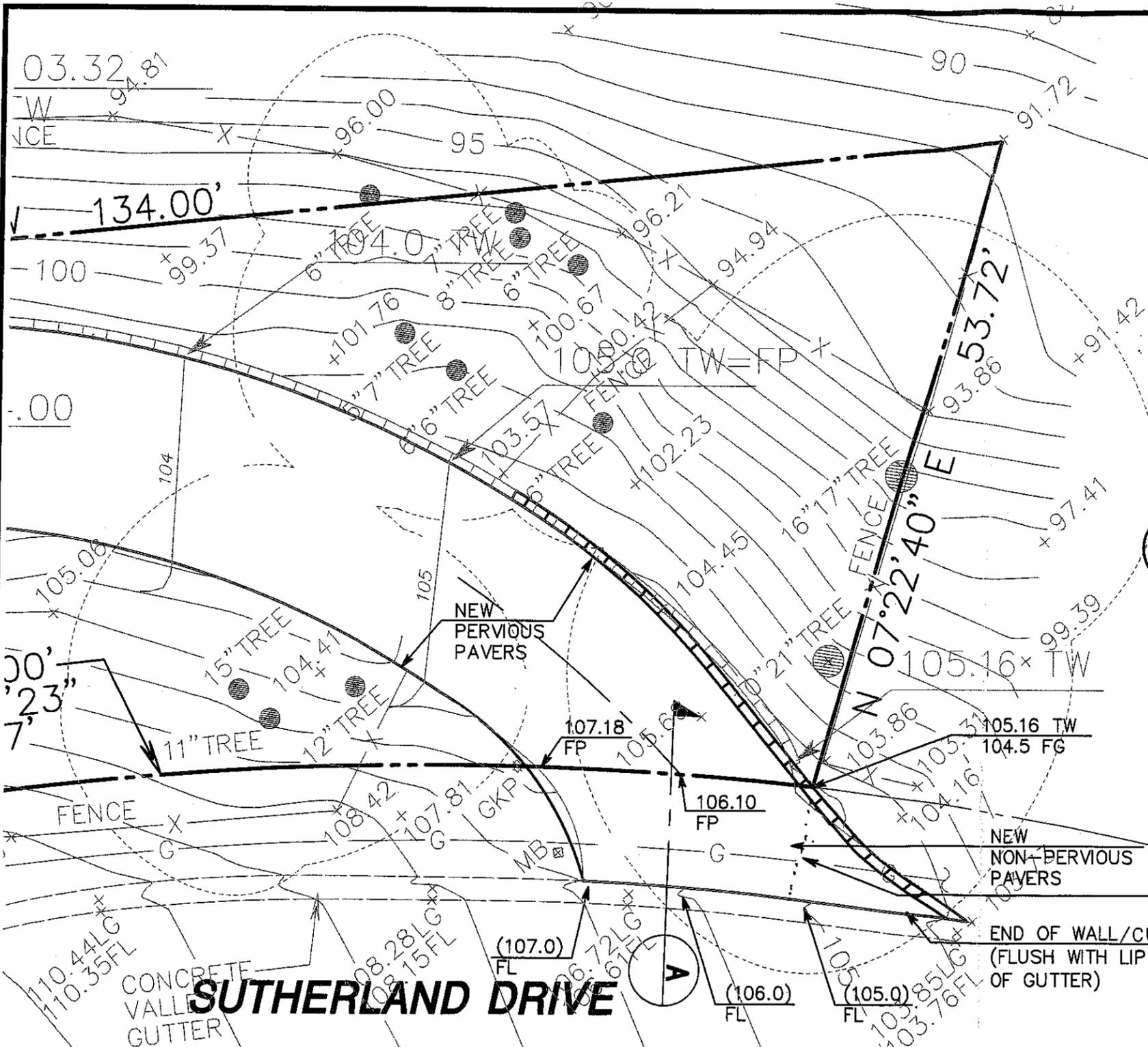
PUBLIC NOTICE

Public notice of the appeal and the City Council hearing was mailed to all property owners within 500’ of the subject site and posted on the Town’s bulletin boards at least 10-days prior to the hearing.

Public notification was also achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

ATTACHMENTS

Driveway plan 38 Sutherland
Fire Department radius – 38 Sutherland
Appeal request 26 Sutherland
Meier Encroachment Opposition
38 Sutherland – Siltan – Encroachment exhibits final
Sample Revocable License



A DRIVEWAY SECTION

SCALE: (NOT TO SCALE)

DEMOLISH 26 SUTHERLAND'S FENCE & GARDEN AS NEEDED

MacLEOD AND ASSOCIATES

CIVIL ENGINEERING • LAND SURVEYING
965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580

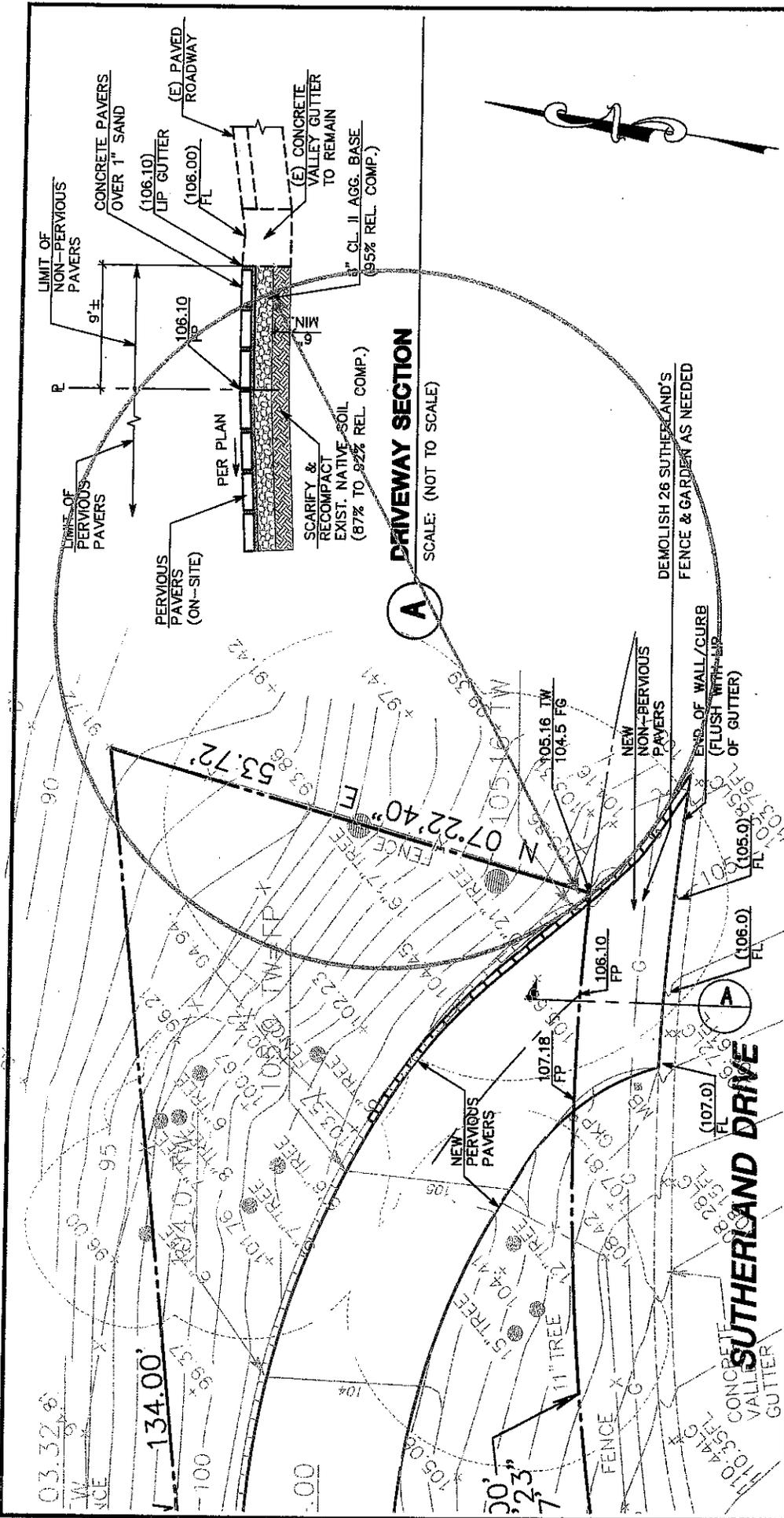
**DRIVEWAY INSTALLATION PLAN
WITHIN PUBLIC RIGHT-OF-WAY**

A.P.N. 073-202-420
38 SUTHERLAND DRIVE

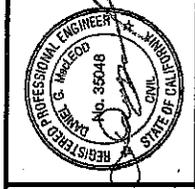
ATHERTON SAN MATEO COUNTY CALIFORNIA



PREPARED FOR: PETER SILTEN	
DRAWN BY: AAP	DESIGNED BY: VPG
CHECKED BY: DGM	DATE: 07/26/16
SCALE: 1"=10'	DRAWING NO. 3515-11



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**DRIVEWAY INSTALLATION PLAN
WITHIN PUBLIC RIGHT-OF-WAY**

A.P.N. 073-202-420
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SAN MATEO COUNTY CALIFORNIA

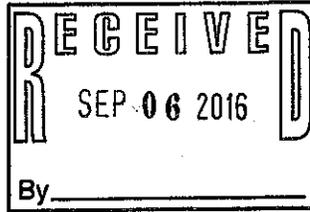
ATHERTON

MACLEOD AND ASSOCIATES
CIVIL ENGINEERING • LAND SURVEYING
965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580

APL-16-00002

**TOWN OF ATHERTON
PLANNING APPLICATION**

93 STATION LANE
ATHERTON, CA 94027
(650) 752-0544



SITE ADDRESS 38 Sutherland Drive APN 073-202-240

Provide a brief description of the proposed project: Appeal of Approval of Encroachment
Permit into Town's Right-of-Way

PROPERTY OWNER:

Name: Peter Sitten
Mailing Address: 38 Sutherland Dr, Atherton CA 94027
Phone: (650) 303-1262
Email: _____

ARCHITECT:

Name: _____
Mailing Address: _____
Phone/Fax: _____
Email: _____

APPLICANT:

Name: ERINIA MEIER c/o David M Sloan, Esq.
Mailing Address: 2400 Broadway Street, Suite 230, Redwood City, CA
Phone/Fax: (650) 299-9655 (phone) ; (650) 299-9129 (fax)
Email: sloandavid99@gmail.com

Notice: You may protest any of the fees assessed for this permit in accordance with California Government Code 66020(a). The protest must satisfy requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of this notice. In addition, you must tender payment of the protested fees at the time of protest, or provide evidence of arrangements to pay the protested fees or exactions at the time they are due if they are not already due.

Deb L Sloan for Erinia Meier

9/6/16

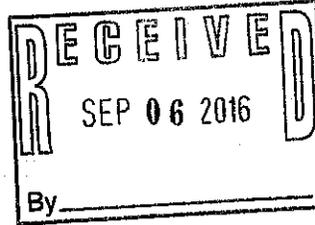
Applicant's Signature

Date

DAVID M. SLOAN

ATTORNEY AT LAW

2400 BROADWAY STREET, SUITE 230
REDWOOD CITY, CA 94063
TELEPHONE: 650•299•9655
sloandavid99@gmail.com



September 6, 2016

Town of Atherton
Planning Department
91 Ashfield Road
Atherton, CA 94027

Re: Our Client: Erminia Meier
Client's Home: 26 Sutherland Drive, Atherton

Appeal of Approval of Encroachment Permit
(Permit Number APW16-00156) re 38 Sutherland Drive, Atherton

Dear Sirs:

Please consider this communication our client's appeal of the decision of the Town of Atherton to approve the encroachment permit for the property located at 38 Sutherland Drive which premises are located adjacent to our client's home.

Our client's appeal is based upon our position that the subject permit 1) does not comply with the Town of Atherton's Standard Specifications including, but not limited to, the Town's General Encroachment Permit Provisions; 2) the subject permit is not, for any recognized health or safety reason, necessary; and 3) the subject permit unreasonably encroaches into the Town's right-of-way directly in front of our client's home.

We enclose herewith our client's filing fee for this appeal in the sum of \$750.00.

If you have any questions or concerns, please direct them to this office.

Very truly yours,

A handwritten signature in black ink that reads "David M. Sloan".

DAVID M. SLOAN, ESQ.

enc.

DAVID M. SLOAN

ATTORNEY AT LAW

2400 BROADWAY STREET, SUITE 230
REDWOOD CITY, CA 94063
TELEPHONE: 650•299•9655
sloandavid99@gmail.com

October 11, 2016

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

Re: Appeal of Erminia Meier to Approval of Encroachment Permit With Driveway Flare at 38 Sutherland Drive

Honorable Council Members:

We represent Mrs. Erminia Meier, a resident of the Town of Atherton (the “Town”) who has continuously resided at 26 Sutherland Drive for more than 45 years (the “Meier Property”). The Meier Property shares a common boundary line with the property located at 38 Sutherland Drive (the “Subject Property”), and both properties have street frontage along Sutherland Drive. On August 25, 2016, we were informed by Steven Tyler, the Town’s Public Works Superintendent, that the Town had approved an encroachment permit for the Subject Property, and that the encroachment would include a “driveway flare” into the public-right-of-way in front of the Meier Property. It is this driveway flare to which my client objects, and her objection is the basis for her appeal of the approval of the encroachment permit. Our client continues to believe that the driveway flare is not necessary or appropriate.

1) The Town’s Approval of the Encroachment Permit:

It is the Town Staff’s stated basis for approval of the encroachment permit with the driveway flare that the “public safety officials’ (request for the driveway flare) is the sole reason for granting this request for encroachment.” (Email of Steven Tyler dated 08/25/16 attached hereto as Exhibit “A”). At our request, the Town Staff has shared the Plan with our office and again stated that Menlo Fire District’s required turn radius of 44’ for its equipment was the sole issue upon which the “approval of this encroachment was based.” (Email of Steven Tyler dated 09/16/16, also attached as a portion of Exhibit “A”). The materials included in Exhibit “A” are the only materials we have received from the Town Staff concerning this matter and the stated basis for the Town Staff’s decision to approve the driveway flare.

2) Driveway Installation Plan Is Inaccurate:

The Driveway Installation Plan purportedly dated 07/26/16 (the “Plan”) is inaccurate. In fact, it appears to be nothing more than a portion of the original plans for the construction of the entire home originally submitted for the Town’s approval several years ago. The issues raised by this old map are significant.

The Plan identifies three (3) trees near the front of the Subject Property, each within

approximately six feet (6') of one another, (assuming the Scale of the Plan [1"=10'] is correct), and they are located in the vicinity of the proposed driveway. (The trees are circled in red on the Plan which is attached hereto as a portion of Exhibit "B".) There are no measurements provided or descriptions given for the driveway other than what may be estimated using the Scale set forth in the Plan, and we are left to estimate all distances based upon the representation from the Subject Property owner that the Scale set forth on the Plan is correct.

We expect the Town's Staff to assert that the location of these trees is one of the reasons the subject driveway could not be moved further down the property line of the Subject Property and away from the Meier Property. (The Subject Property has a street frontage along Sutherland Drive over one hundred twenty feet (120'). See the Parcel Map attached hereto as Exhibit "C".)

The issue is raised here because three (3) trees do not exist in that location; there is but one single tree. (See the photos of the site attached as a portion of Exhibit "B".) Based upon the location of the sole remaining tree, and its approximate distance from the fence identified on the Plan, it is apparent that the "12" TREE" and the "11" TREE" identified on the Plan have both been removed by the Subject Property's owner.

Further, the Plan fails to depict the excavation and grading the property owner has already undertaken on the site. Given the extensive work completed, it's impossible to believe that the elevations on the site have not changed significantly since the completion of the partial work performed, and the Plan (created years ago) fails to address the changes in elevation or grade.

Also, the concrete curb and the base material for the proposed driveway have already been installed to within a distance of approximately fifteen feet (15') of the boundary line at the street. What has already been installed has a width of seventeen feet (17') *without* taking into account the width of the concrete curbs located on both sides of the base material. (See the photos in Exhibit B.) The excavation and grading for that work continued up the driveway on the Subject Property to the street level such that, without any further excavation or grading work, the existing driveway at the edge of the concrete valley gutter at the paved street is approximately twenty-three-feet (23') wide on the Subject Property. (See the photos in Exhibit "D" attached hereto.) Much like the non-existent trees, the actual driveway to be installed at the Subject Property will be seventeen feet (17') wide *instead* of the represented ten feet (10') width contained in the Plan. Further, rather than being twenty feet (20') wide at the street, the actual driveway will be twenty-three feet (23') wide and this calculation is *without* the driveway flare. Based upon the excavation and grading work already undertaken and completed by the Subject Property owner, the actual driveway to be installed will be wider than the total driveway described in the Plan (again without taking into account the width or length of the driveway flare.). A *revised* plan showing the actual width of the driveway as currently designed and partially constructed is attached hereto as Exhibit "E".

The Plan likewise misrepresents the location of the mailbox at the site. While not significant in and of itself, the Plan represents that the mailbox will be approximately twelve feet (12') from the boundary separating the Subject Property and the Meier Property. Anyone looking solely at the Plan, rather than the conditions on the ground, will be given the mistaken belief that the proposed

driveway with the driveway flare will have a width of only twenty feet (20').

3) The Driveway Proposed:

The Plan describes a driveway with a ten foot (10') width down the Subject Property *except* for the last five feet (5') or so of the Subject Property where the driveway flares to the common boundary between the Subject Property and the Meier Property. Then the "described driveway" enters into the public right-of-way and the driveway flares further to a total width of approximately twenty feet (20') when finished. Of that distance, approximately one half of that width, ten feet (10'), is in front of the Meier Property.

The Menlo Park Fire District's Guideline for Private Roads and Driveways requires a minimum of sixteen feet (16') for driveways (see the highlighted portion of Exhibit F" attached hereto). Apparently the Subject Property owner learned of the requirement when he began the installation of the curbs and base material for the actual driveway to be installed. However, in order to obtain the driveway flare in front of the Meier Property which he desires, the matter was never addressed in the Plan reviewed by the Town's Staff and the Fire District.

My client submits that the actual driveway to be installed provides adequate access by the Fire District and other safety personnel *without* the installation of the driveway flare in front of the Meier Property. Had an accurate Plan been submitted for review by the Town's Staff, and to the Fire District, a driveway flare in front of the Meier Property would not have been necessary or approved. The sole remaining tree is located approximately six feet (6') from the edge of the concrete curb installed on the Subject Property for the driveway. (See the photographs in Exhibit B.) Therefore, implicit in the approval of the encroachment permit received from the Town's Staff is that the location of that single tree in relation to the actual driveway to be installed is acceptable to the Town Staff. One would also expect that the excavation and grading work already completed at the Subject Property has also been implicitly approved by the Town's Staff given their approval of the encroachment permit as submitted.

The Town's Staff has stated that it was only the requirement of the Fire District, in order to gain adequate access for its equipment, that the driveway flare in front of the Meier Property was approved. But that "requirement" as alleged by the Town Staff is not accurate either.

Instead, when a driveway plan is submitted to the Fire District for its review, the review is limited to the plan proposed. There may be an unlimited number of ways to design a driveway in this matter which would satisfy the requirements of the Fire District for adequate access, especially given that the Subject Property has over 120' of street frontage. However, it is not the Fire District's intent or desire under the guidelines established by the State of California, and/or its own district, to design any particular driveway, but only to either approve or disapprove the driveway plan proposed. When the Fire District received the Plan in this matter, the Plan represented the conditions on the ground and the intended driveway to be installed. The Fire District reviewed the Plan to determine whether *if* an actual driveway were to be installed according to the representations in the Plan, would that design satisfy the requirements of the State of California and the Fire District itself to allow adequate access to the Subject Property for the Fire District's equipment. Based upon the representations from the Subject Property owner

Atherton City Council

Re: Meier Appeal of Approval of Encroachment Permit With Driveway Flare

Date: October 11, 2016

as to the conditions on the grounds and the intended driveway to be constructed, the Fire District approved the Plan which included the driveway flare. But now we are all certain the conditions on the ground ***are not*** as represented in the Plan and the actual driveway to be installed ***is not*** as described in the Plan. Had the Fire District not been misled, while the actual driveway to be installed would likely be approved, (given that it will be even wider than the driveway proposed), the approval would not include the driveway flare in front of the Meier Property as it is neither necessary nor appropriate.

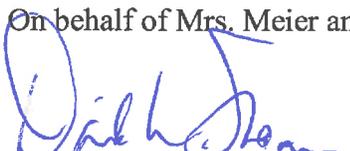
4) Non-Conforming Condition:

Lastly, while it is not anywhere mentioned as a basis upon which the Town's Staff approved the driveway flare, it is anticipated that the Subject Property owner will argue that a similar driveway flare was in existence before the new construction began, and that he should be entitled to re-install whatever was there previously. But that argument fails as well. Laws change over time and that is especially the case with health or safety matters. The requirements for access by the Fire District are to be complied with on the site of the construction. While my client denies that such a driveway flare ever existed over the course of the last 45 years, the real issue is the Town's obligation to recognize the goals of the State of California and to enforce it's current laws as they change over time. There is no exception to the laws requiring a property owner to provide access to the Fire District over his own property sufficient to allow the Fire District's equipment adequate access. There is no necessity in this matter to make an exception because once the actual driveway as actually designed and partially installed is reviewed by the Fire District, adequate access can be established within the boundaries of the Subject Property *without* extending into the public's right-of-way in front of the Meier Property.

The materials included in Exhibit "A" are the only materials we received from the Town concerning this matter. We understand that the Town's Staff will be submitting a report to you and that this Opposition will be part of that report. However, should that report contain materials other than those included in Exhibit "A", in order to assure a fair and open proceeding, we wish to reserve an opportunity to submit a Supplemental Opposition to address any matters offered by the Town's Staff for your consideration to address those materials not previously shared with our offices (and which therefore could not be addressed in this Opposition.)

We would encourage the Council members to visit the site before the hearing of the appeal. Please look at the conditions on the ground, bring the Plan submitted to the Town's Staff and Fire District for their review and judge for yourselves if the Plan accurately describes either the conditions on the ground or the actual driveway to be installed. We would agree to attend any inspection to further explain our position if that would be helpful to the Council.

On behalf of Mrs. Meier and myself, we thank you for your time and consideration.



DAVID M. SLOAN, ESQ.

EXHIBIT "A"



David Sloan <sloandavid99@gmail.com>

Encroachment permit application - 38 Sutherland

Steven Tyler <styler@ci.atherton.ca.us>

Thu, Aug 25, 2016 at 8:53 AM

To: David M Sloan <sloandavid99@gmail.com>

Cc: George Rodericks <grodericks@ci.atherton.ca.us>, Theresa DellaSanta <tdellasanta@ci.atherton.ca.us>, Michael Kashiwagi <mkashiwagi@ci.atherton.ca.us>, Marty Hanneman <mhanneman@ci.atherton.ca.us>, Contact-Bill Connors <bslawstuff@yahoo.com>, Jennifer Larson <jlarson@ci.atherton.ca.us>, Lisa Costa Sanders <lcostasanders@ci.atherton.ca.us>

Dear Mr. Sloan,

I write to inform you that the encroachment permit request for 38 Sutherland has been approved for build by the Town of Atherton. You had requested from us that you be made aware of this decision as soon as possible.

As you are well aware, this permit will allow for access to the driveway at 38 Sutherland utilizing approximately 32 square feet of public right of way which partially fronts your clients property at 26 Sutherland. This small "driveway flare" is required by the Menlo Park Fire Department for their access to the property by their fire apparatus. This request (see attached email statement from Fire Marshall Jon Johnstone) by our public safety officials is the sole reason for granting this request for encroachment.

Per your request, I have outlined the appeal process in a previous e-mail, but will again provide it to you (below). If no appeal has been filed by September 8, 2016, staff will finalize the permit and allow construction to begin at the site. We will work with the property owner to assure any plant material you wish to keep at the site is carefully removed and made available to you should you choose to keep it.

Please contact me if you have any further questions. For legal discussion, please contact our city attorney (William B. Connors or Jennifer Larson) at (650) 752-0546 or at the following e-mail addresses:

William B. Connors

bslawstuff@yahoo.com

Jennifer Larson

jlarson@ci.atherton.ca.us

Below is the muni code. <http://ca-atherton.civicplus.com/DocumentCenter/View/463>

Encroachments

12.06.110 Appeals.

Any person affected by a decision of the city manager to grant, conditionally grant, deny or revoke any encroachment permit shall have the right to appeal such decision in accordance with the provisions of Chapter 17.06 of this code. (Ord. 503 § 1 (part), 1999)

17.06.100 Appeals.

A. Purpose. This section identifies the procedures for filing and processing an appeal consistent with California Government Code Section 65900 et seq. The appeal provisions of this section shall govern appeals of all planning and zoning matters, and other entitlement procedures in this title.

B. Appeal Applicability and Authority. Any person dissatisfied with a determination or action of the town planner or planning commission made pursuant to this title may appeal such action to the city council within ten days from the date of the action. Actions by the city council are final and no further administrative appeals are available.

C. Filing an Appeal. All appeals shall be submitted in writing, identifying the determination or action being appealed and specifically stating the basis or grounds of the appeal. Appeals shall be filed with the city clerk within ten days following the date of determination or action for which an appeal is made and be accompanied by a filing fee established by city council resolution. The filing of an appeal shall stay the issuance of any necessary subsequent permit(s) associated with any right or entitlement that will be the subject of the appeal (e.g., building permits).

D. Notice and Schedule of Appeal Hearings. Unless otherwise agreed upon by the person filing the appeal and the applicant, appeal hearings should be conducted within forty days from the date of appeal submittal. Notice of hearing for the appeal shall be provided pursuant to the noticing requirements of section 17.06.080 (Public Notices).

E. Appeal Hearing and Action. Each appeal shall be considered a de novo (new) hearing and the city council may reverse, modify, or affirm the decision in whole or in part. In taking its action on an appeal, the city council shall state the basis for its action. The city council may modify, delete, or add such conditions as it deems necessary. The city council may also refer the matter back to the original approval authority (as described in Table 17.06.070-1) for further action. The action of the city council is final on the date of decision and, unless otherwise expressly provided by this title, may not be further appealed. A person may seek judicial review of a final decision of the town in accordance with applicable sections of the California Government Code or Code of Civil Procedure. (Ord. 582 § 1 (Exh. A) (part), 2009)

Don't forget that an appeal must be accompanied by a \$750 filing fee and turned in to the Atherton Planning Department.

Regards,

Steve Tyler

Town of Atherton

Public Works Superintendent

Certified Arborist #WE 6704 A

650 752-0541 Office

650 576-1655 Cell

650 752-0591 FAX

PUBLIC DISCLOSURE NOTICE:

This email and any attached files were sent from an email account assigned to a public official for the Town of Atherton. This email, replies to this email, or emails sent directly to this email account may constitute a public record and, if retained during the normal course of business, may be subject to disclosure to any person upon request.

----- Forwarded message -----

From: "Johnston, Jon" <JonJ@menlofire.org>

To: "Marty Hanneman" <mhanneman@interwestgrp.com>

Cc: Marty Hanneman <mhanneman@ci.atherton.ca.us>, Steven Tyler <styler@ci.atherton.ca.us>
Date: Wed, 24 Aug 2016 22:57:22 +0000
Subject: RE: 38 Sutherland Driveway

The access driveway for the home located at 38 Sutherland has an approved site access plan from the Menlo Park Fire District. This is to replace/repair an existing driveway, which accommodates the Fire District requirements of a minimum 44' turn radius to gain access to the structure. Part of the required access is on Town of Atherton ROW, which was an existing condition.

Thank you!

Jon Johnston



Jon Johnston

Fire Marshal

Menlo Park Fire Protection District | 170 Middlefield Road | Menlo Park, CA 94025

(650) 688-8431 | (650) 323-9129 FAX

Jonj@menlofire.org | www.menlofire.org

Mission Statement: To protect and preserve life and property from the impact of fire, disaster, injury and illness.

From: Marty Hanneman [mailto:mhanneman@interwestgrp.com]

Sent: Wednesday, August 24, 2016 2:45 PM

To: Johnston, Jon

Cc: Marty Hanneman; Marty Hanneman; Steven Tyler

Subject: 38 Sutherland Driveway

Hi Jon,

It was nice meeting you today at 38 Sutherland Drive to discuss the proposed driveway into the property. Per our discussion with the home owner Peter Silten, builder Tom Sagi, Steve Tyler, Town of Atherton, please send me Menlo Park Fires position on the proposed curved driveway entrance that requires Town of Atherton ROW.

Thank you.

Marty Hanneman, P.E., T.E.

Town of Atherton

91 Ashfield Road

Atherton, CA 94027

Cell: (916) 804-0336

Email: mhanneman@ci.atherton.ca.us

 **noname.eml**
28K

#3

ENCROACHMENT PERMIT
TOWN OF ATHERTON
PUBLIC WORKS DEPARTMENT
 91 Ashfield Road
 Atherton, CA. 94027

Ph 650 752-0570 Fax 650 688-6539

Permit Number	APW16-00156
Location of Encroachment	38 Sutherland Drive
Description of Encroachment	New driveway approach in the town right of way
THIS IS NOT A VALID PERMIT UNTIL SIGNED BY A TOWN OFFICIAL	

APPLICANT	
Name	Tom Sagi
Company	Exact Builders, Inc.
Address	P.O. Box 60864 Palo Alto, CA 94308
Day Phone	24 Hour Phone 650-303-1262
OWNER	
Name	Peter Silten
Address	38 Sutherland Drive Atherton, CA 94027
Phone	650-303-1262

CONTRACTOR	
Name	Larry Bragato
Company	Bragato Paving Company, Inc.
Address	500 Bragato Road San Carlos, CA 94002
Day Phone	24 Hour Phone 650-303-1262
Contractor's License No.	CSLB A-711832 ✓
Town Business License No.	6491 ✓
Worker's Comp. Certificate	Attached On File ✓
Gen. & Auto Liability Insurance Naming Town	Attached On File ✓

Estimated Starting Date	08/01/2016	Estimated Completion Date	07/31/2017
Estimated Cost of Construction	\$3,500	Based on	<input checked="" type="checkbox"/> Bid or Contract <input type="checkbox"/> Engineer's Estimate <input type="checkbox"/> Attached <input type="checkbox"/> Checked By
Number of Driveways	1	Length of Trench in Public Right-of-Way	None
Plans Required	<input checked="" type="checkbox"/>	Plans Attached	<input checked="" type="checkbox"/>

I hereby agree to accept and abide by the General Encroachment Permit Conditions on the back of this permit, The Town of Atherton Stormwater Pollution Prevention and Erosion Control Requirements, the Town of Atherton Standard Specifications and Details, approved plans and conditions shown on the face of this permit or attached hereto.

Applicant (if not Contractor)	Tom Sagi	Contractor	Larry Bragato	Date	6/24/2016																							
<table border="1"> <tr> <th colspan="2">FEES AND CHARGES</th> <th colspan="2">SURETIES AND DEPOSITS</th> </tr> <tr> <td>Plan Check</td> <td>Amount \$</td> <td>Amount Required</td> <td>\$2,500.00</td> </tr> <tr> <td>Permit</td> <td>Amount \$</td> <td>Form</td> <td><input type="checkbox"/> Cash <input type="checkbox"/> Bond <input type="checkbox"/> Letter of Credit <input type="checkbox"/> Certificate of Deposit</td> </tr> <tr> <td>Penalty</td> <td>Amount \$</td> <td>Issuer Name</td> <td></td> </tr> <tr> <td>Standard Specifications</td> <td>Amount \$</td> <td>Issuer Address</td> <td></td> </tr> <tr> <td>TOTAL</td> <td>Amount \$ 565.32</td> <td>Issuer Phone</td> <td></td> </tr> </table>			FEES AND CHARGES		SURETIES AND DEPOSITS		Plan Check	Amount \$	Amount Required	\$2,500.00	Permit	Amount \$	Form	<input type="checkbox"/> Cash <input type="checkbox"/> Bond <input type="checkbox"/> Letter of Credit <input type="checkbox"/> Certificate of Deposit	Penalty	Amount \$	Issuer Name		Standard Specifications	Amount \$	Issuer Address		TOTAL	Amount \$ 565.32	Issuer Phone			
FEES AND CHARGES		SURETIES AND DEPOSITS																										
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Permit	Amount \$	Form	<input type="checkbox"/> Cash <input type="checkbox"/> Bond <input type="checkbox"/> Letter of Credit <input type="checkbox"/> Certificate of Deposit																									
Penalty	Amount \$	Issuer Name																										
Standard Specifications	Amount \$	Issuer Address																										
TOTAL	Amount \$ 565.32	Issuer Phone																										

APPROVAL

THIS PERMIT IS TO BE STRICTLY CONSTRUED AND NO WORK OTHER THAN THAT SPECIFICALLY STATED ABOVE IS AUTHORIZED HEREBY. THIS PERMIT WILL EXPIRE 90 DAYS FROM THE DATE OF ITS ISSUANCE IF WORK IS NOT STARTED. EXTENSION REQUESTS MUST BE RECEIVED PRIOR TO EXPIRATION DATE.

Date Approved	Date Expires	Approved by
Extension Applied for (date)	Approved (by)	Date Extended to (date)

ATTACHED TO AND MADE PART OF THIS APPROVAL

Plans Filed:

Stormwater Pollution Prevention and Erosion Control Requirements Trench Detail Driveway Detail

Other (list)

SPECIAL CONDITIONS APPLICABLE TO THIS PERMIT

Soils Engineer's Testing Required

RECORD OF INSPECTIONS			
Date	By	Kind	Pass/Fail - Notes



David Sloan <sloandavid99@gmail.com>

Requested plans - Driveway plans at 38 Sutherland

Steven Tyler <styler@ci.atherton.ca.us>

Fri, Sep 16, 2016 at 3:17 PM

To: David M Sloan <sloandavid99@gmail.com>

Cc: Jennifer Larson <jlarson@ci.atherton.ca.us>, Lisa Costa Sanders <lcostasanders@ci.atherton.ca.us>

Mr. Sloan,

Attached is the information you requested regarding the approved driveway plans for 38 Sutherland Drive. The attachments include:

1. The plan for the driveway attachment to Sutherland Drive and its location in the right of way.
2. **Menlo Fires plan depicting their required turn radius of 44' (by which the approval of this encroachment was based).**

Please let me know of anything else I might be able to help you with. The date of your appeal to the approval of the encroachment is scheduled for 10/19/2016. Please refer to our website as the date gets closer for its location on the agenda. <http://www.ci.atherton.ca.us/>

Regards,

Steve Tyler

Town of Atherton

Public Works Superintendent

Certified Arborist #WE 6704 A

650 752-0541 Office

650 576-1655 Cell

650 752-0591 FAX

PUBLIC DISCLOSURE NOTICE:

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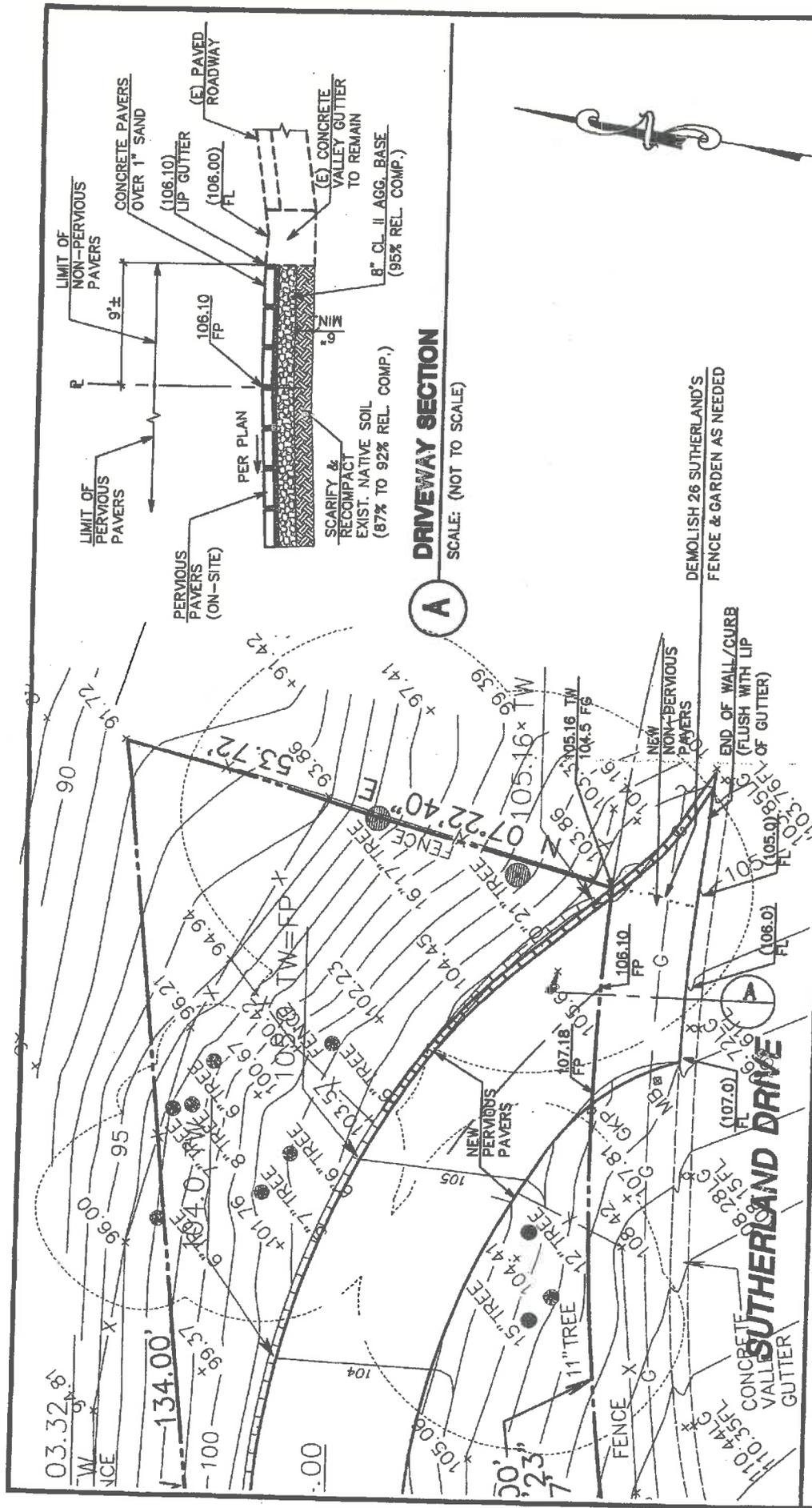
2 attachments**Driveway plan - 38 Sutherland.pdf**

80K



Fire Department radius - 38 Sutherland.pdf

58K



PREPARED FOR:	PETER SILTEN
DRAWN BY:	AAP
CHECKED BY:	DCM
SCALE:	1"=10'
DESIGNED BY:	VFG
DATE:	07/26/16
DRAWING NO.	3515-11



**DRIVEWAY INSTALLATION PLAN
WITHIN PUBLIC RIGHT-OF-WAY**

A.P.N. 073-202-420
38 SUTHERLAND DRIVE
SAN MATEO COUNTY
CALIFORNIA

MACLEOD AND ASSOCIATES
CIVIL ENGINEERING • LAND SURVEYING
965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580

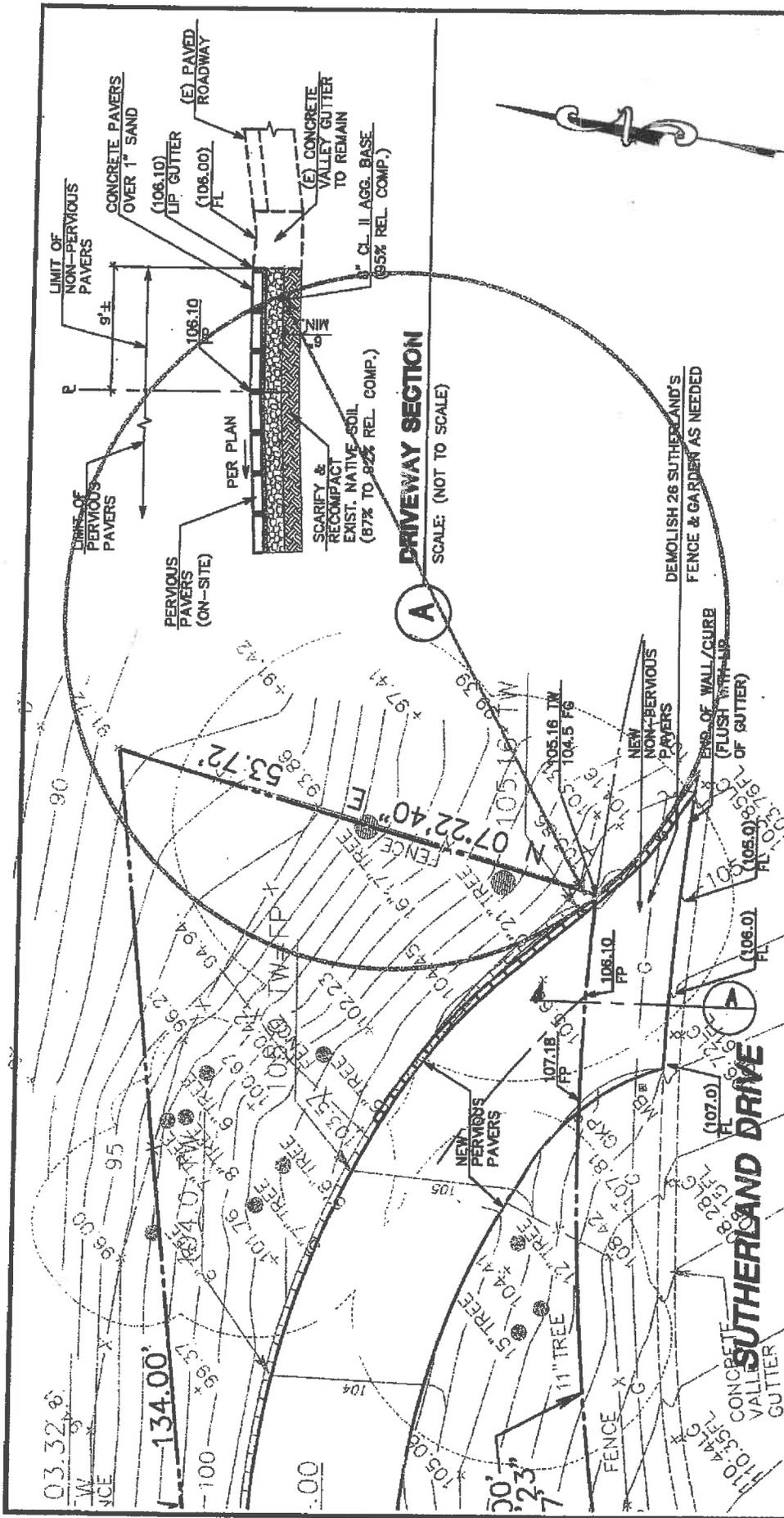
A
DRIVEWAY SECTION
SCALE: (NOT TO SCALE)

DEMOLISH 26 SUTHERLAND'S
FENCE & GARDEN AS NEEDED

END OF WALL/CURB
(FLUSH WITH LIP
OF GUTTER)

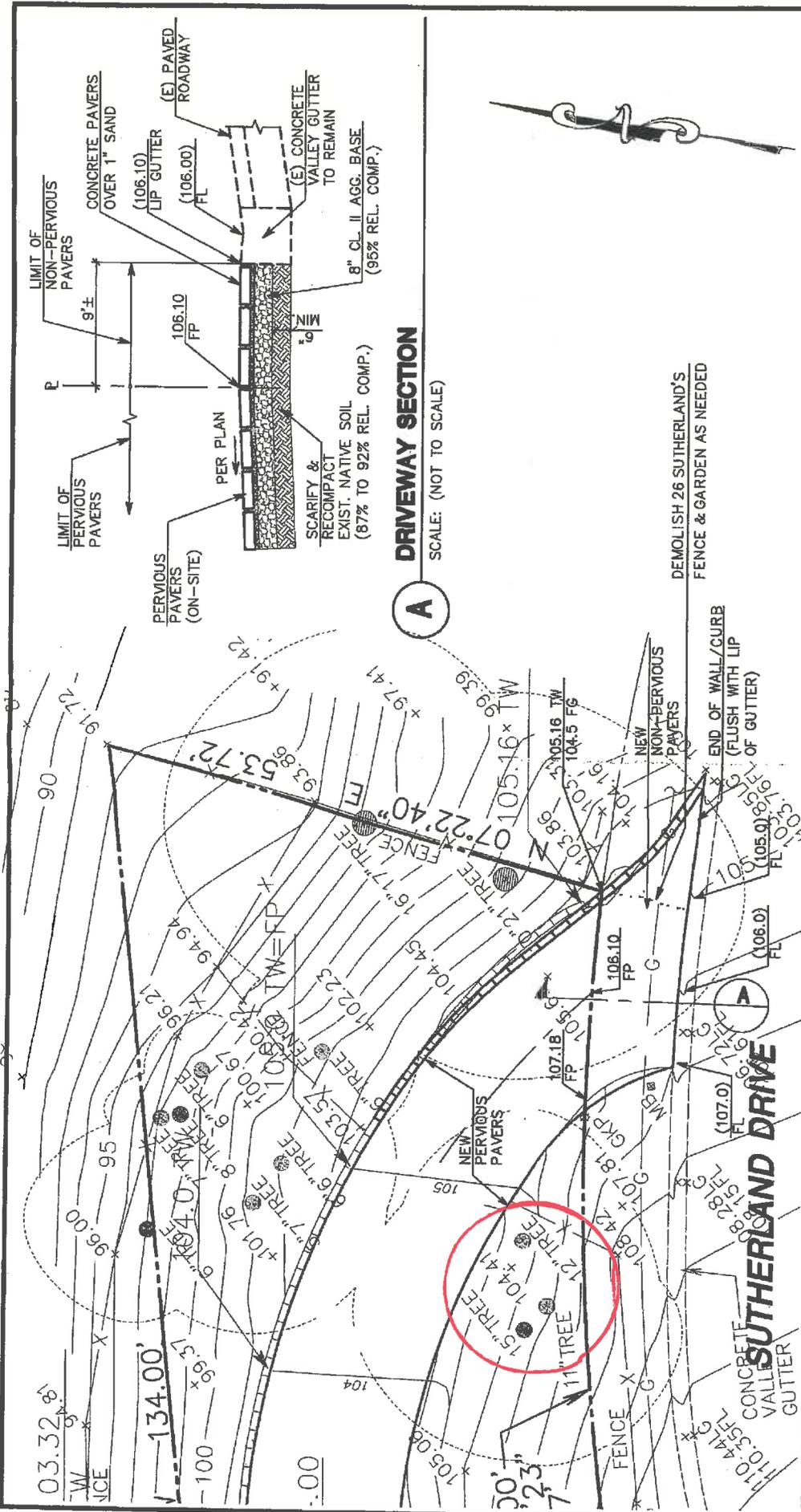
CONCRETE
VALLEY
GUTTER

SUTHERLAND DRIVE



MACLEOD AND ASSOCIATES		DRIVEWAY INSTALLATION PLAN		PREPARED FOR: PETER SILTEN	
CIVIL ENGINEERING • LAND SURVEYING		WITHIN PUBLIC RIGHT-OF-WAY		DRAWN BY: AAP	DESIGNED BY: VPG
965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580		ATHERTON SAN MATEO COUNTY CALIFORNIA		CHECKED BY: DGM	DATE: 07/28/16
				SCALE: 1"=10'	DRAWING NO. 3515-11

EXHIBIT "B"



A
DRIVEWAY SECTION
 SCALE: (NOT TO SCALE)

PREPARED FOR:	PETER SILTEN
DRAWN BY:	AAP
CHECKED BY:	DGM
SCALE:	1"=10'
DESIGNED BY:	VPG
DATE:	07/26/16
DRAWING NO.:	3515-11



**DRIVEWAY INSTALLATION PLAN
 WITHIN PUBLIC RIGHT-OF-WAY**

A.P.N. 073-202-420
 38 SUTHERLAND DRIVE
 SAN MATEO COUNTY
 CALIFORNIA

MACLEOD AND ASSOCIATES
 CIVIL ENGINEERING • LAND SURVEYING
 965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580









EXHIBIT "C"

EXHIBIT "D"





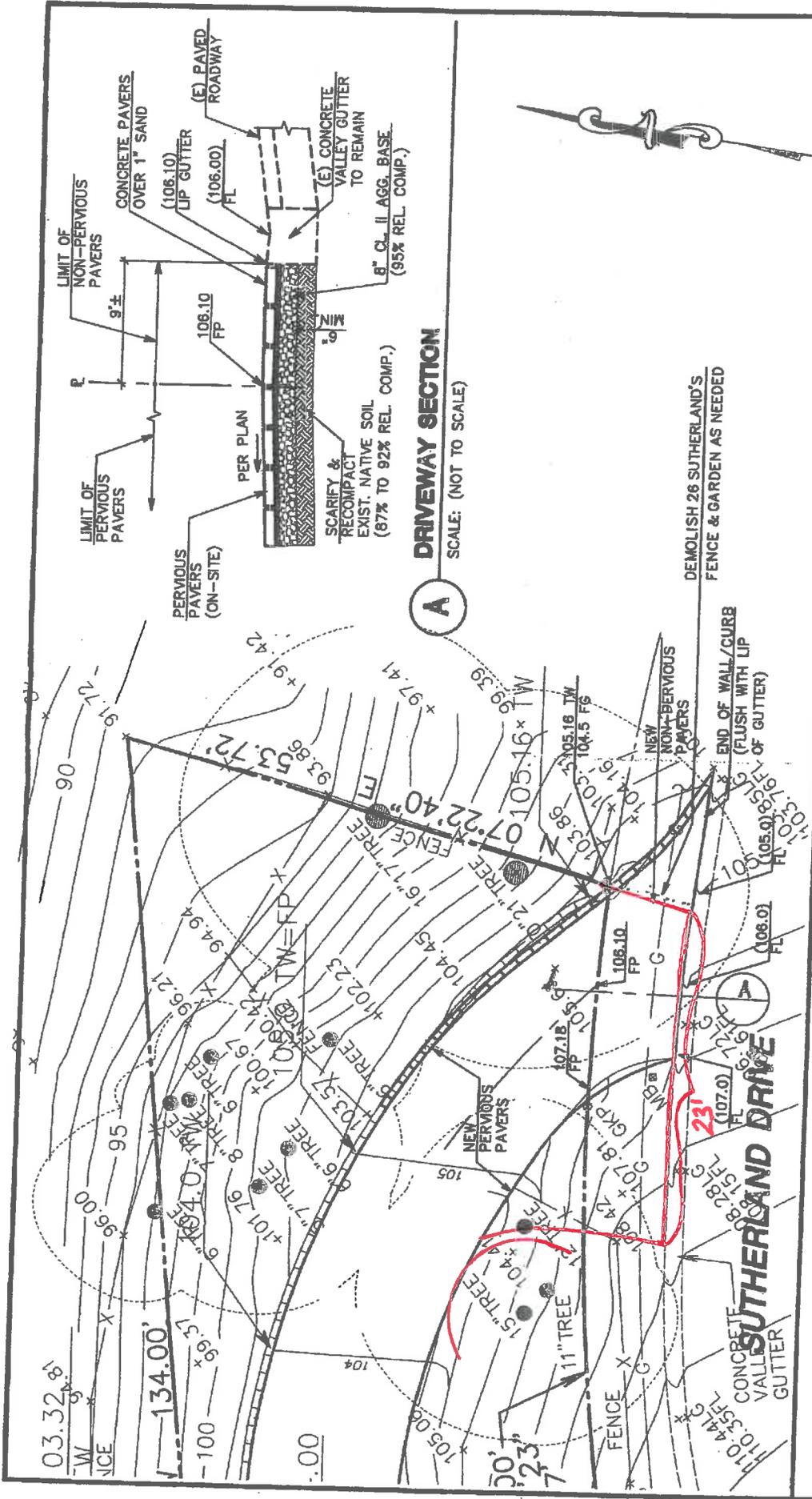
NOTICE
...
...
...







EXHIBIT "E"



<p>MACLEOD AND ASSOCIATES CIVIL ENGINEERING • LAND SURVEYING 965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580</p>	<p>ATHERTON SAN MATEO COUNTY CALIFORNIA</p>	<p>DRIVEWAY INSTALLATION PLAN WITHIN PUBLIC RIGHT-OF-WAY A.P.N. 073-202-420 38 SUTHERLAND DRIVE</p>		<p>PREPARED FOR: PETER SILTEN</p>
				<p>DRAWN BY: AAP</p>
		<p>CHECKED BY: DGM</p>	<p>DESIGNED BY: VFG</p>	
		<p>SCALE: 1"=10'</p>	<p>DATE: 07/26/16</p>	
		<p>DRAWING NO. 3515-11</p>		

EXHIBIT "F"



Menlo Park Fire Protection District

Fire Prevention Bureau

170 Middlefield Rd

Menlo Park, CA 94025

Phone: (650) 688-8425 Fax: (650) 473-9847

MENLO PARK FIRE DISTRICT GUIDELINE FOR PRIVATE ROADS AND DRIVEWAYS Includes requirements for Gates, Turnarounds & Turnouts

SCOPE. This guideline provides the minimum requirements necessary for Driveways of any length with Gates, Driveways exceeding 150 feet in length, and Private Roads of any distance. In addition to the requirements set forth within this guideline, Private Roads or Driveways shall also comply with the 2013 California Fire Code (CFC), Chapter 5 and Appendix D.

When necessary, these guidelines may be modified to ensure adequate access for fire apparatus and public safety. Some factors that may contribute to modifications include walls, cliffs along roads or driveways, angle of approach or departure, grade/slope and the likelihood of future obstructions.

DEFINITIONS

AASHTO HB-17: American Association of State Highway and Transportation Officials, the 17th edition *Standard for Highway Bridges*.

ALL WEATHER ROAD: A road or driveway constructed of asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34 050 kg).

DRIVEWAY: An access road serving not more than 2 dwelling units and is located within the boundaries of the properties being served.

PRIVATE ROAD: An access road that is outside the boundaries of the properties being served and/or serving 3 or more dwelling units.

GATES

The design for all gates across driveways and private roads shall be approved by the Fire District. Gates shall comply with all of the following criteria:

1. A minimum clear, unobstructed width of not less than 16 feet shall be provided.
2. Gates shall be of the swinging or sliding type.

3. Gates may have electric opening devices, but shall allow manual operation by one person.
4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.
5. All locking devices shall provide for Fire District access. Electric gates shall have a Knox® override key switch installed. Please see Menlo Park Fire District Guideline on Key Box Installations for details on Knox® override switches.
6. Manual opening gates shall not be locked with a padlock or chain and padlock unless they are capable of being opened by means of forcible entry tools, a Knox® Pad Lock is used, or when a Knox® Key Box containing the key(s) to the lock is installed at the gate location.
7. Locking device specifications shall be submitted to the Menlo Park Fire District for approval by the fire code official.

DRIVEWAYS

Driveway Specifications. Driveways shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building. Driveways shall provide a minimum unobstructed width of 16 feet (3658 mm) and a minimum unobstructed height of 13 feet 6 inches (4115 mm). Driveways in excess of 150 feet (45 720 mm) in length shall be provided with turnarounds. Driveways in excess of 500 feet (60 960 mm) in length and less than 20 feet (6096 mm) in width shall be provided with turnouts in addition to turnarounds.

Fire Sprinkler Allowance. When the most remote single family residence is provided with automatic fire sprinkler protection and is less than 3600 square feet, the driveway distance may be measured from the edge of the street to the face of the structure.

Turnarounds. Driveway turnarounds shall have inside turning radii of not less than 30 feet (9144 mm) and an outside turning radii of not less than 45 feet (13 716 mm). Driveways that connect with a road or roads at more than one point may be considered as having a turnaround if all changes of direction meet the radii requirements for driveway turnarounds.

Driveways exceeding 1 mile in length shall be provided with approved turnaround areas at ½ mile intervals.

Turnouts. Driveway turnouts shall be an all-weather road surface at least 10 feet (3048 mm) wide and 30 feet (9144 mm) long. Driveway turnouts shall be located every 500 feet or at the midpoint if the road is 1,000 feet or less.

PRIVATE ROADWAYS

Roadway Specifications. Private roadways serving 3 or more residential occupancies shall be all-weather roads with a minimum width of 20 feet (6096 mm) and a clear height of 13 feet 6 inches (4115 mm). Roadways shall be designed to accommodate the weight of fire apparatus and the minimum turning radii of 36 feet for fire apparatus. Dead-end roads in excess of 150 feet

(45 720 mm) in length shall be provided with turnarounds as specified by CFC Appendix D, Table D103.4. Access roads exceeding 1 mile in length shall be provided with approved turnaround areas at ½ mile intervals.

Marking of roads. . All road identification signs and supports shall be of noncombustible materials. Signs shall have minimum 4-inch-high (102 mm) reflective letters with 1/2 inch (12.7 mm) stroke on a contrasting 6-inch-high (152 mm) sign. Road identification signage shall be mounted at a height of 7 feet (2134 mm) from the road surface to the bottom of the sign.

Marking of Fire Protection Equipment. Fire protection equipment and fire hydrants shall be clearly identified accordance with the Menlo Park Fire District Guideline, “Water Supplies and Fire Hydrants.” On-site fire hydrants shall not be obstructed.

Cul-de-sacs, Curves, and 90° Turns. Cul-de-sacs, curves, and 90° turns shall be in accordance with CFC Appendix D. No obstructions are allowed within the cul-de-sac, such as trees, planters, islands etc.

GENERAL REQUIREMENTS

Surface. All the items in this standard shall meet the requirements for an all weather road.

Landscape. Landscaping shall not interfere with the required fire apparatus access.

Parking. Parking (or any other obstruction) will not be allowed on any of the items in this standard, unless additional space is provided and approved.

Fire Lane Signs. Installation and placement of signs and markings and designating fire lanes shall be in accordance with Menlo Park Fire Protection District Guideline for “Designation and Marking of Fire Lanes.”

Easements. Access improvements (roads, turnarounds and turnouts) that cross property lines shall be recorded with the San Mateo County Tax Assessors Office.

Bridges and elevated surfaces. Where a bridge or an elevated surface is part of the private roadway or driveway, the bridge shall be constructed and maintained in accordance with AASHTO HB-17 and CFC Chapter 5 Section 503.2.6.

Address markers. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and be visible from both directions of travel along the road. Permanent addresses on new construction and substantial remodels shall be internally or externally illuminated from dusk to dawn. Addresses shall be posted at the beginning of construction and shall be maintained thereafter. The address shall be visible and legible from the road on which the address is located. Address signs along one-way roads shall be visible from both the intended direction of travel and the opposite direction.

Where multiple addresses are required at a single driveway, they shall be mounted on a single post, and additional signs shall be posted at locations where driveways divide. Where a roadway provides access solely to a single commercial or industrial business, the address sign shall be placed at the nearest road intersection providing access to that site.

Grades. The gradient for private roadways and driveways shall not exceed 10%. Turnarounds and cul-de-sacs shall not have a grade greater than 5% in any direction. Turnouts, curves, and 90° turns shall not have a grade greater than allowed for the road they are on. Transitions between grade changes shall not exceed 5% and shall not interfere with the angle of approach, angle of departure or high centering of fire apparatus.

Timing of Installation. Access roadways and water supply, including the items required by this guideline, shall be provided prior to and kept in place during the time of construction.

PLAN CHECKS

Plan check. Two copies of a clear accurate site plan, with scale shown, are required for plan review. Plans shall include fire hydrant location(s) with the submittal. When approved, one copy will be kept by the Fire Prevention Division and all the others will be returned to the applicant. Final approval is subject to an onsite inspection.

Gates. All gates across any driveway or private road shall be approved by the Fire District. Plans and specifications shall be submitted to Menlo Park Fire District for review and approval prior to construction.

TO THE ATHERTON CITY COUNCIL

Peter and Bobbi Silten's Response to Erminia Meier's Appeal of the Town Manager's Discretionary Decision to Grant an Encroachment Permit for the Driveway Entrance to Our Home at 38 Sutherland Drive

INTRODUCTION

My wife, Bobbi, and I are the owners of the real property at 38 Sutherland Drive. The property has been in my family since 1960. I was 10 when we moved there. The property was gifted to me in 2011 following the passing of my father. Given that the house was built in 1955, my wife and I decided to build a new home. Plans for the new home were submitted to and approved by the Town on December 12, 2012. Preconstruction, the existing paver driveway was removed and replaced with the Town's mandated construction entrance. The construction entrance was placed in the same location as the original driveway. For the Council's convenience, I have attached as Exhibit 1 a photograph of the construction driveway and several Google street view photographs which show the original driveway entrance as it stood since 1955.¹ The Google photographs were taken in April 2011 before we removed the original driveway to replace it with the required construction entrance. We are now at the stage of the project where we are ready to replace the construction entrance with a new paver driveway. As shown on our approved plans, land survey and our application for an encroachment permit, our new driveway will be installed in the very same location as the driveway we removed preconstruction. I have attached as Exhibit 2 copies of our approved plans which show the location of the driveway along with the notation in capital letters that "EXISTING DRIVEWAY TO REMAIN." On August 25, 2016, our application for an encroachment permit was granted based on the needs and requirements of the Menlo Park Fire District following the inspection of the site on August 24, 2016. On September 6, 2016, our neighbor at 26 Sutherland Drive, Ms. Erminia Meier, filed an appeal. As stated by her attorney, David M. Sloan, Esq., the basis for her appeal is that the "subject permit 1) does not comply with the Town of Atherton's Standard Specifications including, but not limited to, the Town's General Encroachment Permit

¹ We are relying on the Google photographs to show the location of the original driveway entrance in relation to the Town's right-of-way fronting 26 Sutherland Drive, and to show that, with the exception of a mail box and a single plant near that mailbox, the area was until late 2012 a barren strip of land. For purposes of establishing the location of the new driveway entrance, which will be in the same location as the original driveway entrance, we are relying on the documents prepared by our civil engineer as shown in Exhibit 2 who surveyed the original paver driveway before it was removed to make way for the construction entrance.

Provisions; 2) the subject permit is not, for any health or safety reason, necessary; and 3) the subject permit unreasonably encroaches into the Town's right-of-way directly in front of our client's home."²

The area in the right-of-way that is at issue here fronts the farthest most corner of Ms. Meier's property and has never been used by Ms. Meier in the 40 or so years she has resided at 26 Sutherland and, as shown in the Google photographs (Exh. 1), it has been a barren strip of land from 1955 to late 2012,³ when she erected an illegal garden in that area.⁴ For the reasons set forth below, which include the needs and requirements of the Menlo Park Fire District, vehicular safety in general, the costs and the difficulties that would result if we had to relocate the driveway entrance – something that we do not believe is even possible given the steep hillside terrain – would, among other things, require extensive grading, retaining walls and the removal of a heritage oak, we respectfully request that Ms. Meier's appeal be denied.

GOVERNING PRINCIPLES

Atherton Municipal Code section 12.06.080 provides that the granting or denial of an encroachment permit rests in the sound discretion of the City Manager based on the review, recommendations and findings of the appropriate Town staff who in turn are required to evaluate the permit application "to

² Mr. Sloan's statement that the area which is the subject of the encroachment permit is "directly" in front of Ms. Meier's home is misleading; it plainly is not. Ms. Meier's home is located at the end of a long, steep driveway well below the grade of Sutherland Drive. In terms of topography, her home sits closer to and is on the same grade as Ridgeview Drive on which it fronts. The area that is the subject of our request for an encroachment permit takes up a small portion of the Town's right-of-way which fronts the farthest most southwest corner of her property on Sutherland Drive.

³ In addition to not making any use of the Town's right-of-way area at issue here, prior to late December 2012, Ms. Meier never once complained about the location of the end of our driveway in that area. As such, she should be estopped from voicing any objection at this late date. "Vigilantibus et non dormientibus jura subveniunt." ("The laws relieve the vigilant and not those who sleep on their rights.")

⁴ See Atherton Municipal Code, §§ 12.06.010 et seq. [Encroachments]; see also <http://www.ci.atherton.ca.us/DocumentCenter/View/1488> [Town of Atherton Streetfronting Landscaping and Fence Location and Sight Distance Standards].

determine whether it is compatible with the general plan and with the character of adjacent public and private property.”⁵

FIRE SAFETY AND DRIVEWAY DESIGN SAFETY IN GENERAL

As noted above, the City Manager approved our request for an encroachment permit based on the needs and requirements of the Menlo Park Fire District, which are clearly matters that concern public health and safety.⁶ After we submitted our application for an encroachment permit, my builder and I met at the site with Menlo Park Fire District’s Fire Marshall, Jon Johnston, and Menlo Park Fire District’s plan checker/inspector William Saxon. (Public Works Superintendent Steve Tyler and Traffic Engineer Marty Hanneman were also present on behalf of the Town.) Mr. Johnston was emphatic that the driveway be constructed as shown on the plans which had already been approved by Menlo Fire. He noted that the approved driveway design had the required 44’ radius at the end to accommodate Menlo Fire’s fire trucks. (I have attached as Exhibit 3 a drawing of our approved driveway design which shows the required 44’ radius.) He was against changing the location of the driveway, noting that it would be problematic for a number of reasons, including the steep grade on the left side entrance of the driveway relative to the street,⁷ the layout of the street itself (we

⁵ Discretion has been defined as “the absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of discriminating judgment within the bounds of reason. Discretion in this connection means a sound judicial discretion enlightened by intelligence and learning, controlled by sound principles of law, of firm courage combined with the calmness of a cool mind, free from partiality, not swayed by sympathy or warped by prejudice or moved by any kind of influence save alone the overwhelming passion to do that which is just.” (*People v. Surplice* (1962) 203 Cal.App.2d 784, 791; see also *In re Cortez* (1971) 6 Cal.3d 78, 85-86.)

⁶ See generally Menlo Park Fire Protection District Ordinance No. 36-2013 District Fire Prevention Code Adopting the 2012 International Fire Code with California and Local Amendments (Version Adopted, Amended and Restated on September 17, 2013); Menlo Park Fire District Guidelines For Private Roads and Driveways (Revise 10-10-13); *City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 395 [“fire safety is clearly a public policy concern”].)

⁷ The Menlo Park Fire District requires that “transitions between grade changes shall not exceed 5% and shall not interfere with the angle of approach, angle of departure or high centering of fire apparatus.” (Menlo Park Fire District Guidelines For Private Roads and Driveways, *supra*, at p. 4.) The steep grade on the left side entrance of our driveway relative to the grade of the street far exceeds the grade change allowed by the Menlo Park Fire District. (See Exh. 4.)

are on a cul-de-sac, which has its own limitations), and the presence of a heritage oak.⁸ When told about Ms. Meier's objection to us putting the end of our driveway back in its original location in the Town's right-of-way, he dismissed her objection saying that the driveway was in the Town's right-of-way which belonged to the Town. We were informed that our encroachment permit had been granted in an email authored by Steve Tyler, dated August 25, 2016. In that email, Mr. Tyler said that "We received a letter from the Menlo Park Fire District yesterday explicitly stating that the driveway flare was necessary for their safety needs."

In addition to serving the necessary safety needs of the Menlo Park Fire District, which alone are sufficient in and of themselves to uphold the discretionary decision of the City Manager and to deny Ms. Meier's appeal, there are other safety considerations that come into play. As previously noted, we live on a cul-de-sac and our driveway is on the right-hand side of the street. As originally designed in 1955 and presumably approved by the Town at that time, our driveway has a normal sweep/flair/radius on the right side as you enter to accommodate in-coming and out-going vehicular traffic. It was designed that way when the house was first constructed for a reason: to safely accommodate vehicular traffic. If the angle of the entrance is altered from its original normal sweep to a much straighter, narrower angle this might create an unexpected danger for anyone who drives into the property for the first time, especially at night. As one driveway study has noted, "To have time to react, drivers need to detect the driveway well in advance and be able to visually define its shape before entering or exiting." (Guide for the Geometric Design of Driveways, p. 28 http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_659.pdf.) This safety issue also weighs heavily in favor of denying Ms. Meier's appeal.

RECONFIGURING THE DRIVEWAY ENTRANCE, IF POSSIBLE, IS NOT PRACTIBLE AND WILL REQUIRE THE REMOVAL OF A HERITAGE OAK

If we are required to make any alterations to the layout of our driveway as shown on the plans previously approved by the Town and the Menlo Park Fire Department at this late date, if that is even possible, this will entail, among other things, the excavation of the hillside along the driveway, extensive grading and the off-hauling of dirt, additional retaining walls, including a 6' to 8' high retaining wall within the setback, which would require a variance, and the relocation of the

⁸ Exhibit 6 is a drawing that depicts the location of the end of the driveway if it were moved out of the right-of-way in front of Ms. Meier's property. As discussed *post*, such a relocation would be costly and would require the removal of a heritage oak and a mature Toyon (*Heteromeles Arbutifolia*).

already installed and approved footings and in-ground motors for our new double swing gates. Any alteration to the layout of our driveway will also require the removal of a heritage oak (see Exhibit 5, the report of arborist Robert Weatherill, who advises that he “would strongly recommend not moving the driveway any closer to Tree #1. The TPZ for this tree is 6 feet radius from the trunk; any grading or excavation closer to the tree will adversely impact the supporting root system and health of the tree.”) That particular oak sits at the entrance to our driveway and provides both charm and privacy. We have spent time and money protecting it from harm during construction and do not want to have to remove it. Given the importance the Town places on its heritage oaks (see generally Atherton Muni. Code, §§ 8.10.010 et seq.), the preservation of this heritage oak at the entrance of our driveway should also weigh in favor of denying Ms. Meier’s appeal. Other mature plants, including a Carolina Laurel Cherry, would also have to be removed. (See Exh. 7, photos of the protected heritage oak and the Toyon.)

CONCLUSION

For each of the reasons set forth herein, the decision of the City Manager granting our application for an encroachment permit should be affirmed and Ms. Meier’s appeal denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Silten". The signature is written in a cursive, somewhat stylized font.

Peter Silten

EXHIBIT 1

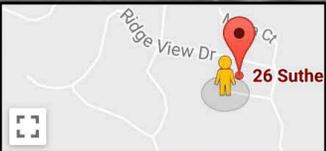
- A Photograph of the Construction Driveway Entrance Which Replaced the Original Driveway Entrance
- Google Street View Photographs Taken April 2011 Which Show the Location of the Original Driveway Entrance Preconstruction (1955-2012)





93 Sutherland Dr
Atherton, California

Street View - Apr 2011

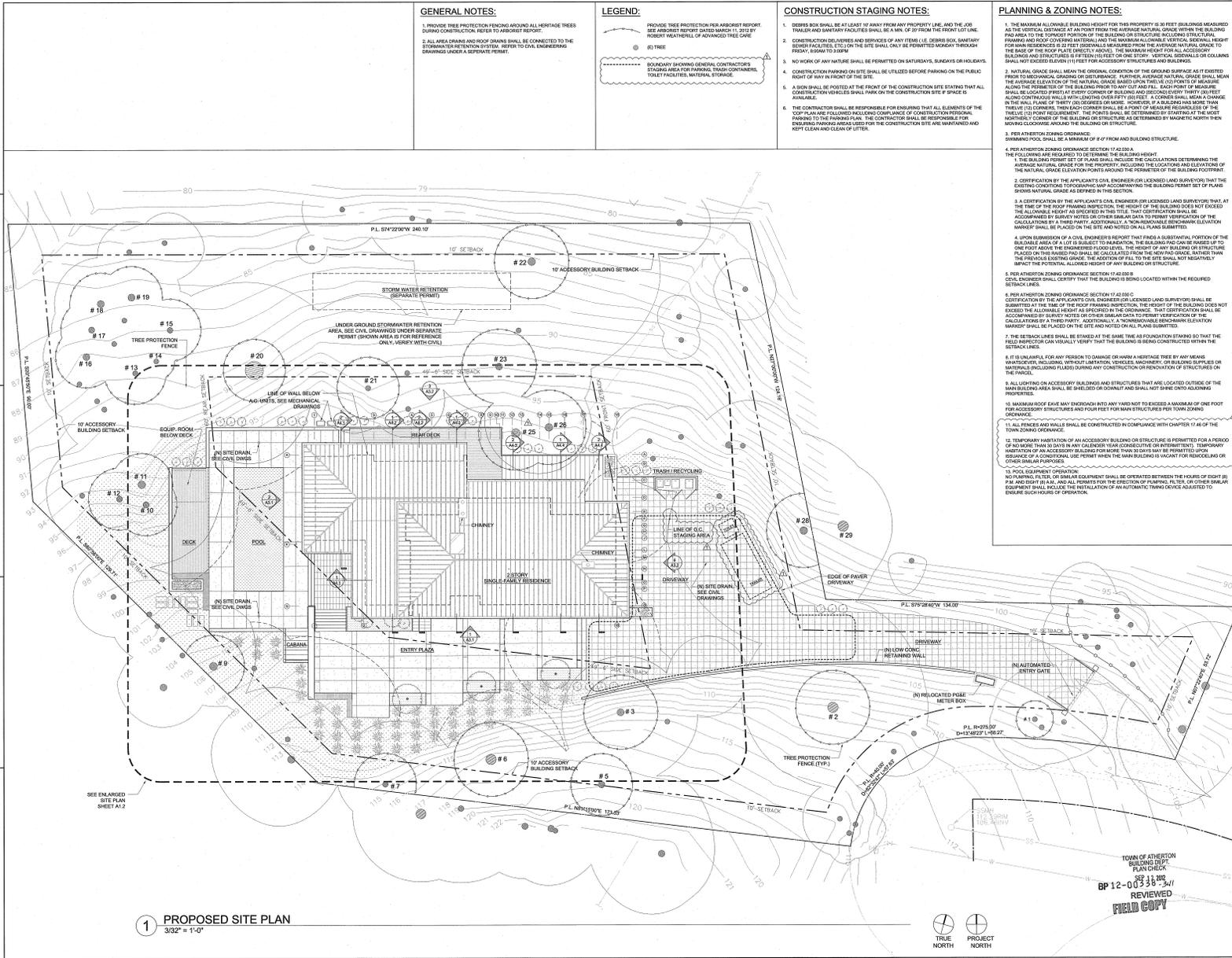


Google



EXHIBIT 2

- Copies of Our Approved Plans Which Show That the Location of the Driveway Along With the Notation in Capital Letters That “EXISTING DRIVEWAY TO REMAIN”



1 PROPOSED SITE PLAN
3/32" = 1'-0"

GENERAL NOTES:

1. PROVIDE TREE PROTECTION FENCING AROUND ALL HERITAGE TREES DURING CONSTRUCTION. REFER TO VARIATION REPORT.
2. ALL AREA DRAINS AND ROOF DRAINS SHALL BE CONNECTED TO THE STORMWATER DETENTION SYSTEM. REFER TO CIVIL ENGINEERING DRAWINGS UNDER A SEPARATE PERMIT.

LEGEND:

- PROVIDE TREE PROTECTION PER AMBREST REPORT. SEE AMBREST REPORT DATED MARCH 11, 2016 BY ROBERT WEATHERALL OF ADVANCED TREE CARE.
- TO TREE
- BOUNDARY SHOWING GENERAL CONTRACTOR'S STAGING AREA WITH TRUCKS, TOILETS, CHANGERS, TOILET FACILITIES, MATERIAL STORAGE.

CONSTRUCTION STAGING NOTES:

1. DEBRIS BOX SHALL BE AT LEAST 10' AWAY FROM ANY PROPERTY LINE, AND THE JOB TRAILER AND SANITARY FACILITIES SHALL BE A MIN. OF 50' FROM THE FRONT LOT LINE.
2. CONSTRUCTION DELIVERIES AND SERVICES OF ANY ITEMS (I.E. DEBRIS BOX, SANITARY FACILITY, ETC.) TO THE SITE SHALL ONLY BE PERMITTED MONDAY THROUGH FRIDAY, 8:00AM TO 5:00PM.
3. NO WORK OF ANY NATURE SHALL BE PERMITTED ON SATURDAYS, SUNDAYS OR HOLIDAYS.
4. CONSTRUCTION PARKING ON SITE SHALL BE UTILIZED BEFORE PARKING ON THE PUBLIC RIGHT OF WAY IN FRONT OF THE SITE.
5. A SIGN SHALL BE POSTED AT THE FRONT OF THE CONSTRUCTION SITE STATING THAT ALL CONSTRUCTION VEHICLES SHALL PARK ON THE CONSTRUCTION SITE IF SPACE IS AVAILABLE.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING THAT ALL ELEMENTS OF THE CONSTRUCTION PLAN ARE FOLLOWED INCLUDING COMPLIANCE OF CONSTRUCTION PERSONNEL PARKING TO THE PARKING PLAN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING PARKING AREAS USED FOR THE CONSTRUCTION SITE ARE MAINTAINED AND KEPT CLEAN AND CLEAR OF LITTER.

PLANNING & ZONING NOTES:

1. THE MAXIMUM ALLOWABLE BUILDING HEIGHT FOR THIS PROPERTY IS 40 FEET (MEASURED AS THE VERTICAL DISTANCE AT ANY POINT FROM THE FINISHED FINISHED GRADE WITHIN THE BUILDING PARCEL TO THE TYPICAL PORTION OF THE BUILDING OR STRUCTURE INCLUDING STRUCTURAL FRAMEWORK AND ROOF COVERING AND EXCLUDING THE MAXIMUM ALLOWABLE VERTICAL BEAM HEIGHT FROM THE BASE OF THE ROOF PLATE DIRECTLY ABOVE). THE MAXIMUM HEIGHT FOR ALL ACCESSORY BUILDINGS AND STRUCTURES IS 10 FEET OR LESS. VERTICAL DISTANCE TO ROOF OR EAVES SHALL NOT EXCEED ELEVEN (11) FEET FOR ACCESSORY STRUCTURES AND BUILDINGS.
2. THE MAXIMUM ALLOWABLE BUILDING HEIGHT FOR THE ORIGINAL STRUCTURE IS 40 FEET MEASURED PRIOR TO MECHANICAL CHIMNEY OR SHELTERSTACK. FURTHER, FINISHED NATURAL GRADE SHALL MEAN THE FINISHED ELEVATION OF THE NATURAL GRADE WITHIN THE PROPERTY. POINTS OF MEASUREMENT ALONG THE PERIMETER OF THE BUILDING PRIOR TO ANY CUT AND FILL. EACH POINT OF MEASUREMENT SHALL BE LOCATED PER FOOT EVERY CORNER OF BUILDING AND BE SECONDARY TO EVERY OTHER POINT. CONTIGUOUS WALLS WITH LENGTHS OVER 100 FEET. A CORNER SHALL MEAN A CHANGE IN THE WALL PLANE OF TWENTY (20) DEGREES OR MORE. PORTION OF A BUILDING OR STRUCTURE PLACED IN THE REAR YARD SHALL BE CALCULATED FROM THE REAR WALL OR WALL OTHER THAN THE FRONT WALL. THE PROVISION OF ALL SETBACKS SHALL BE NEUTRALLY IMPACT THE POTENTIAL ALLOWED HEIGHT OF ANY BUILDING OR STRUCTURE.
3. PER ATHERTON ZONING ORDINANCE SECTION 17.02.02.01: SWIMMING POOL SHALL BE A MINIMUM OF 8'-0" FROM AND BUILDING STRUCTURE.
4. PER ATHERTON ZONING ORDINANCE SECTION 17.02.02.01: THE FOLLOWING ARE REQUIRED TO DETERMINE THE BUILDING HEIGHT:
 1. THE BUILDING HEIGHT OF 20 FEET AND SHALL INCLUDE THE CALCULATION DETERMINING THE MAXIMUM ALLOWABLE HEIGHT FOR THE PROPERTY, INCLUDING THE LOCATIONS AND ELEVATIONS OF THE NATURAL GRADE ELEVATION POINTS AROUND THE PERIMETER OF THE BUILDING FOOTPRINT.
 2. CERTIFICATION BY THE APPLICANT'S CIVIL ENGINEER OR LICENSED LAND SURVEYOR THAT THE EXISTING CONDITIONS TOPOGRAPHIC MAP ACCOMPANYING THE BUILDING PERMIT SET OF PLANS SHOWS NATURAL GRADE AS REFERRED TO IN THIS SECTION.
 3. A CERTIFICATION BY THE APPLICANT'S CIVIL ENGINEER OR LICENSED LAND SURVEYOR THAT AT THE TIME OF THE FOOTPRINT INSPECTION, THE HEIGHT OF THE BUILDING DOES NOT EXCEED THE ALLOWABLE HEIGHT AS SPECIFIED IN THE ORDINANCE. THAT CERTIFICATION SHALL BE ACCOMPANIED BY WRITTEN NOTES OR OTHER INFORMATION TO SUPPORT THE DETERMINATION OF THE CALCULATION. IF A THIRD PARTY, ADDITIONALLY, A "NON-REMOVABLE" ELEVATION MARKER SHALL BE PLACED ON THE SITE AND NOTED ON ALL PLANS SUBMITTED.
 4. UPON SUBMISSION OF A CIVIL ENGINEER'S REPORT THAT FINDS A SUBSTANTIAL PORTION OF THE BUILDABLE AREA OF A LOT IS SUBJECT TO INUNDATION, THE BUILDING CAN BE RAISED UP TO ONE FOOT ABOVE THE ENGINEERED FLOOD LEVEL. THE HEIGHT OF ANY BUILDING OR STRUCTURE PLACED IN THE REAR YARD SHALL BE CALCULATED FROM THE REAR WALL OR WALL OTHER THAN THE FRONT WALL. THE PROVISION OF ALL SETBACKS SHALL BE NEUTRALLY IMPACT THE POTENTIAL ALLOWED HEIGHT OF ANY BUILDING OR STRUCTURE.
5. PER ATHERTON ZONING ORDINANCE SECTION 17.02.02.01: CIVIL ENGINEER SHALL CERTIFY THAT THE BUILDING IS BEING LOCATED WITHIN THE REQUIRED SETBACK LINES.
6. PER ATHERTON ZONING ORDINANCE SECTION 17.02.02.01: CERTIFICATION BY THE APPLICANT'S CIVIL ENGINEER OR LICENSED LAND SURVEYOR SHALL BE SUBMITTED AT THE TIME OF THE FOOTPRINT INSPECTION. THE HEIGHT OF THE BUILDING DOES NOT EXCEED THE ALLOWABLE HEIGHT AS SPECIFIED IN THE ORDINANCE. THAT CERTIFICATION SHALL BE ACCOMPANIED BY WRITTEN NOTES OR OTHER INFORMATION TO SUPPORT THE DETERMINATION OF THE CALCULATION. IF A THIRD PARTY, ADDITIONALLY, A "NON-REMOVABLE" ELEVATION MARKER SHALL BE PLACED ON THE SITE AND NOTED ON ALL PLANS SUBMITTED.
7. THE SETBACK LINES SHALL BE STAYED AT THE SAME TIME AS FOUNDATION STAKING SO THAT THE FIELD INSPECTOR CAN VISUALLY VERIFY THAT THE BUILDING IS BEING CONSTRUCTED WITHIN THE SETBACK LINES.
8. IT IS UNLAWFUL FOR ANY PERSON TO DAMAGE OR HARM A HERITAGE TREE BY ANY MEANS WHATSOEVER, INCLUDING, WITHOUT LIMITATION, VEHICLES, MACHINERY, OR AIRBORN SUPPLIES OR MATERIALS INCLUDING PLANTS DURING ANY CONSTRUCTION OR RENOVATION OF STRUCTURES ON THE PARCEL.
9. ALL LIGHTING ON ACCESSORY BUILDINGS AND STRUCTURES THAT ARE LOCATED OUTSIDE OF THE MAIN BUILDING AREA SHALL BE SHIELDED OR SHOWN UP AND SHALL NOT SHINE INTO ADJACENT PROPERTIES.
10. MAXIMUM ROOF EAVE MAY ENOUGH INTO ANY YARD NOT TO EXCEED A MAXIMUM OF ONE FOOT FOR ACCESSORY STRUCTURES AND FOUR FEET FOR MAIN STRUCTURES PER TOWN ZONING ORDINANCE.
11. ALL FENCES AND WALLS SHALL BE CONSTRUCTED IN COMPLIANCE WITH CHAPTER 17.06 OF THE TOWN ZONING ORDINANCE.
12. TEMPORARY HABITATION OF AN ACCESSORY BUILDING OR STRUCTURE IS PERMITTED FOR A PERIOD OF 90 DAYS OR LESS IN ANY YEAR UNLESS OTHERWISE SPECIFIED OR RESTRICTED. TEMPORARY HABITATION OF AN ACCESSORY BUILDING FOR MORE THAN 90 DAYS MAY BE PERMITTED UPON ISSUANCE OF A CONDITIONAL USE PERMIT WHEN THE MAIN BUILDING IS BEING REBUILT OR FOR OTHER SIMILAR PURPOSES.
13. HOUR RESTRICTIONS: NO PLANNING, FILTER, OR BARRIER EQUIPMENT SHALL BE OPERATED BETWEEN THE HOURS OF 8:00 PM AND 6:00 AM. ALL PERMITS FOR THE PROTECTION OF PLANNING, FILTER, OR OTHER SIMILAR EQUIPMENT SHALL INCLUDE THE INSTALLATION OF AN AUTOMATIC TRUNNIG DEVICE ADJUSTED TO DISRUPT EACH HOUR OF OPERATION.

OHASHI DESIGN STUDIO
Architecture & Interiors
5447 North St. Suite 108
Evanston, California
94617
Tel: 510-965-3303
Fax: 510-965-3333
www.ohashiapp.com



Siltren Residence
38 Sutherland Drive
Atherton, CA 94027

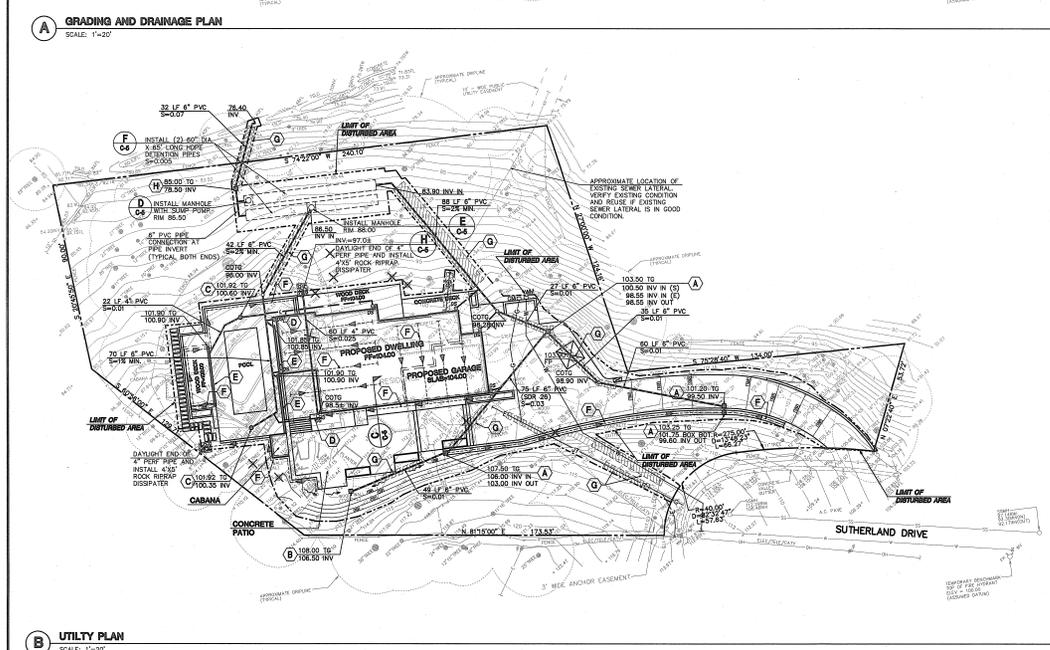
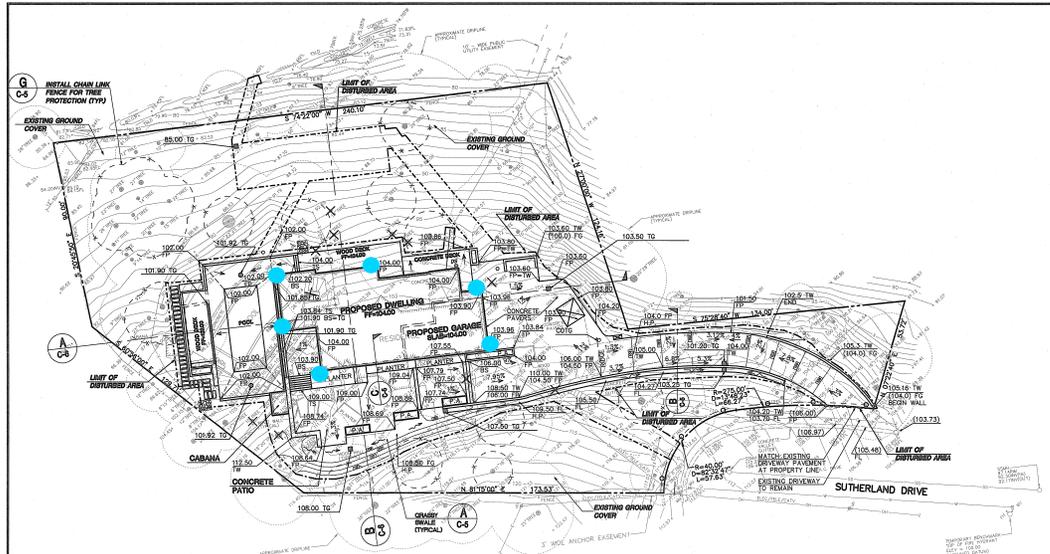
APN #: 073-202-420
OWNER: Peter & Bobbi Siltren
1566 Olympus Ave.
Berkeley, CA 94708
(510) 301-0055

CONSTRUCTION DOCUMENT

SHEET TITLE	
Proposed Site Plan	
06/15/2012	Issue & Review
06/20/2012	PLANNING REVIEW
08/27/2012	P.C. RESUBMITTAL

A1.1

REVISIONS TO BE MADE UPON APPROVAL



UTILITY NOTE:

THE UTILITIES EXISTING ON THE SURFACE AND SHOWN ON THIS DRAWING HAVE BEEN LOCATED BY FIELD SURVEY. ALL UNDERGROUND UTILITIES SHOWN ON THIS DRAWING ARE FROM RECORDS OF THE VARIOUS UTILITY COMPANIES AND THE SURVEYOR/ENGINEER DOES NOT ASSUME RESPONSIBILITY FOR THEIR COMPLETENESS. INDICATED LOCATION, DEPTH, RECORD UTILITY LOCATION SHOULD BE CONFIRMED BY EXPOSING THE UTILITY.

GEOTECHNICAL ENGINEERS NOTE:

GEOTECHNICAL REPORT PREPARED BY MICHELECCI AND ASSOCIATES, INC., JOB NO. 11-4096, DATED JANUARY 6, 2012 SHALL BE MADE A PART OF THIS PLAN.

RUNOFF NOTE:

POST-DEVELOPMENT RUNOFF CROSSING ONTO ADJACENT PROPERTIES WILL BE EQUAL OR LESS THAN THE PRE-DEVELOPMENT RUNOFF.

CONSTRUCTION NOTES:

- (A) INSTALL 12" X 12" PRECAST CONCRETE DRAIN BOX WITH GRATE COVER BY "ORSTET" OR APPROVED EQUAL.
- (B) INSTALL 12" X 12" PLASTIC DRAIN BOX BY NDS OR APPROVED EQUAL.
- (C) INSTALL 6" DIA. DRAIN INLET WITH FLAT GRATE.
- (D) CONNECT DOWNSPOUT WITH 4" DIA. PVC AT 2% MIN. SLOPE (TOPDOW).
- (E) INSTALL TRENCH DRAIN. COORDINATE WITH ARCHITECT FOR SPECS.
- (F) INSTALL 4" DIA. PERFORATED PVC SUBIRRIAN PIPE AT 1% MIN. SLOPE.
- (G) BENCHING OF UNDERGROUND UTILITIES SHALL BE PERFORMED BY HAND.
- (H) INSTALL 24" X 24" CONCRETE DRAIN BOX WITH GRATE COVER.

LEGEND:

- A.C. PAVE ASPHALTIC CONCRETE PAVEMENT
- AD AREA DRAIN
- CATV CABLE TELEVISION
- COTO CLEANOUT TO GRADE
- DS DOWNPOUTS
- ELEC ELECTRIC
- EM ELECTRIC METER
- EP EDGE OF PAVEMENT
- FF FRESH FLOOR
- FP FINISH PAVEMENT
- FG FINISH GRADE
- GM GAS METER
- GS FF GARAGE SLAB FINISH FLOOR
- INV INVERT
- H.P. HIGH POINT
- JP JOINT UTILITY POLE
- L.P. LOW POINT
- MB MAILBOX
- SMH SANITARY SEWER MANHOLE
- TEL TELEPHONE
- TG TOP OF GRADE
- T.O.S. TOP OF SUBFLOOR
- TH TOP OF HEADER
- WM WATER METER
- WM NEW WATER METER
- WM EXISTING TREE TO BE REMOVED
- WM TREE W/ SIZE & ELEVATION
- WM FENCE
- WM ELECTRIC LINE
- WM GAS LINE
- WM OVERHEAD LINE
- WM SANITARY SEWER LINE
- WM WATER LINE
- WM FOREMAN
- WM JOINT TRENCH
- WM NEW CONTOUR
- WM NEW STORM DRAIN LINE
- WM LIMIT OF EXCAVATION
- WM LIMIT OF DISTURBED AREA
- WM GRASSY SLOPE
- WM SURFACE RUNOFF DIRECTION
- WM EXISTING GRADE



MICELLO AND ASSOCIATES
CIVIL ENGINEERING & LAND SURVEYING
955 CENTER STREET • SAN CARLOS, CA 94070 • (415) 554-8800

PREPARED FOR:
PETER SILTEN

GRADING, DRAINAGE AND UTILITY PLAN WITH TREE PROTECTION
38 SUTHERLAND DRIVE
A.P.N. 0712-002-000
SAN MATEO COUNTY
CALIFORNIA

TOWN OF ATHERTON
BUILDING DEPT.
PLAN CHECK
OCT 12 2012
REVIEWED

DRAWN BY: DFM
DESIGNED BY: VFS
CHECKED BY: DFM
SCALE: 1"=20'
DATE: 09/17/12
DRAWING NO.: 3515-11
SHEET: C-3
3 OF 7

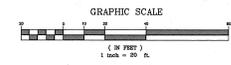
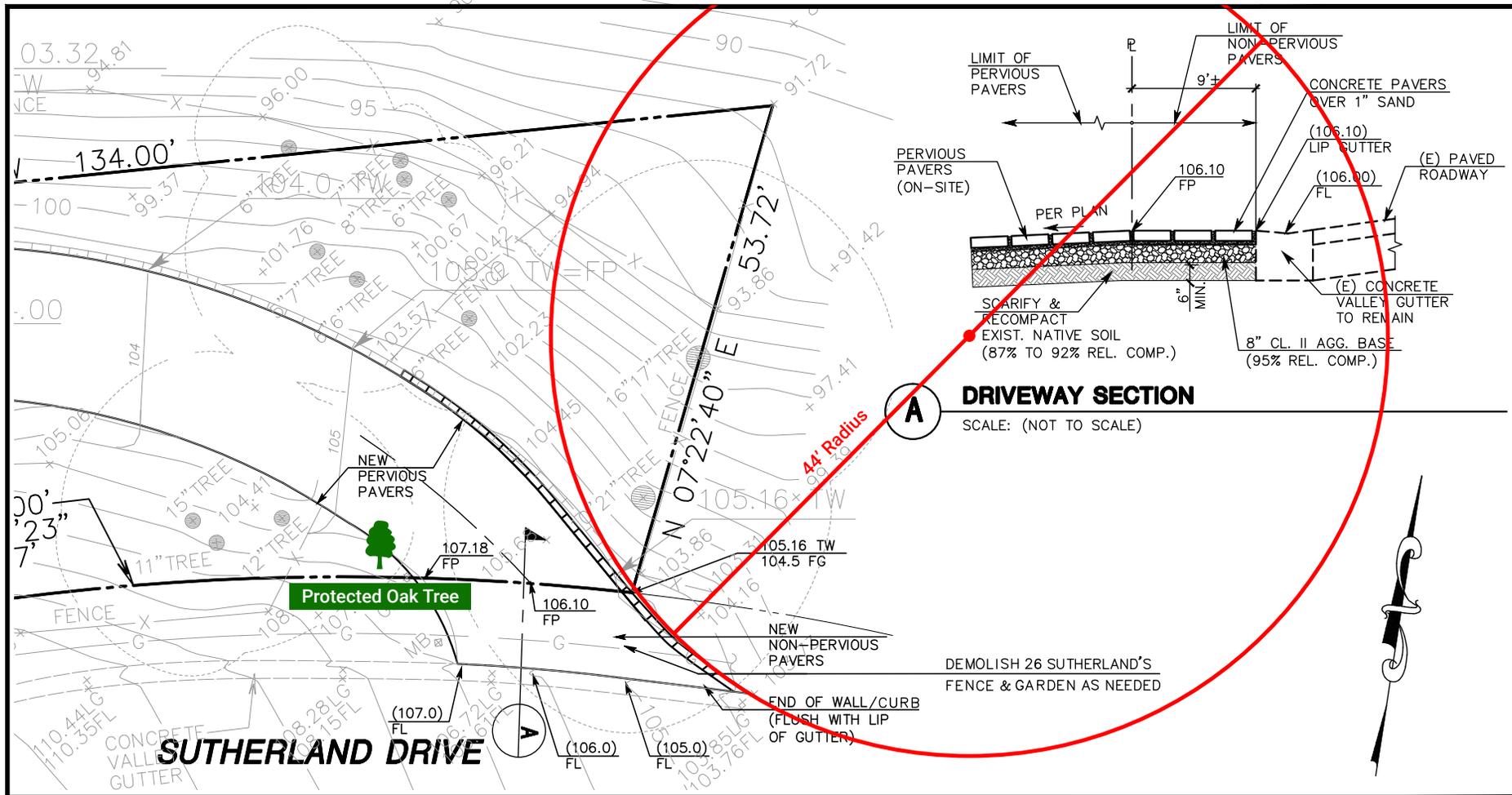


EXHIBIT 3

- A Drawing of Our Approved Driveway Design Which Shows the 44' Radius Required by the Menlo Park Fire District

Exhibit 3



DRIVEWAY SECTION

SCALE: (NOT TO SCALE)

MACLEOD AND ASSOCIATES
 CIVIL ENGINEERING • LAND SURVEYING
 965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580

**DRIVEWAY INSTALLATION PLAN
 WITHIN PUBLIC RIGHT-OF-WAY**

A.P.N. 073-202-420
 38 SUTHERLAND DRIVE

ATHERTON SAN MATEO COUNTY CALIFORNIA



PREPARED FOR: PETER SILTEN	
DRAWN BY: AAP	DESIGNED BY: VPG
CHECKED BY: DGM	DATE: 07/26/16
SCALE: 1"=10'	DRAWING NO. 3515-11

EXHIBIT 4

- A Drawing That Shows the Grade Difference Between the Elevation of the Driveway Entrance Relative to the Elevation of the Street
- A Photograph That Shows the Difference in Elevation Between the Driveway and the Street

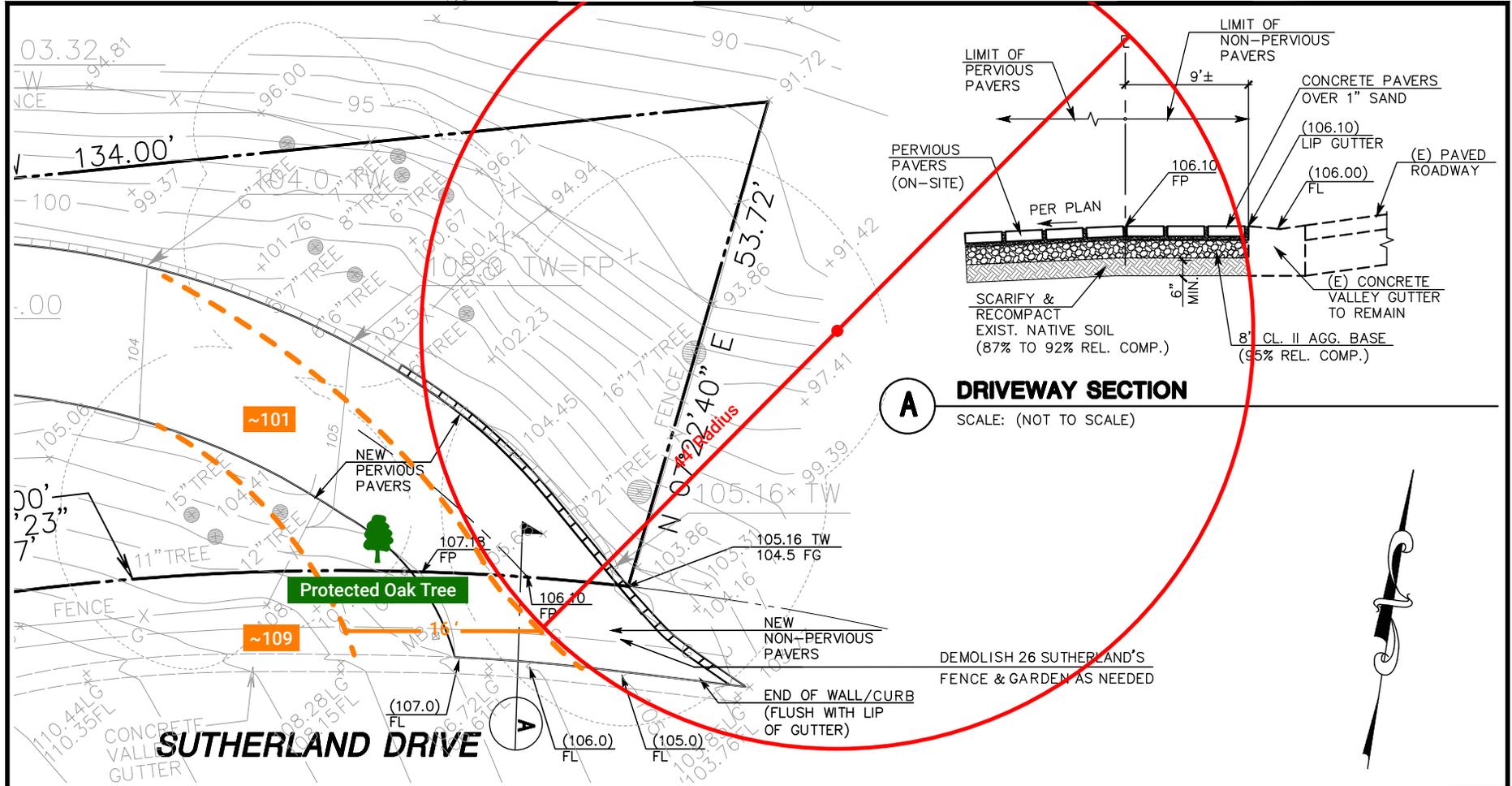
Photograph Showing Elevation
Difference Between Driveway and Street



EXHIBIT 5

- A Drawing That Depicts the Approximate Location of the Driveway Entrance If it Were Moved out of the Right-of-way in Front of Ms. Meier's Property

Exhibit 5



A DRIVEWAY SECTION

SCALE: (NOT TO SCALE)

DEMOLISH 26 SUTHERLAND'S FENCE & GARDEN AS NEEDED

MACLEOD AND ASSOCIATES

CIVIL ENGINEERING • LAND SURVEYING
965 CENTER STREET • SAN CARLOS • CA 94070 • (650) 593-8580

**DRIVEWAY INSTALLATION PLAN
WITHIN PUBLIC RIGHT-OF-WAY**

A.P.N. 073-202-420
38 SUTHERLAND DRIVE
SANTHERTON SAN MATEO COUNTY CALIFORNIA



PREPARED FOR: PETER SILTEN	
DRAWN BY: AAP	DESIGNED BY: VPG
CHECKED BY: DGM	DATE: 07/26/16
SCALE: 1"=10'	DRAWING NO. 3515-11

EXHIBIT 6

- The Report of Arborist Robert Weatherill Regarding the Heritage Oak That Would Have to Be Removed If the Driveway Entrance Were Moved

Advanced Tree Care
P. O. Box 5326 Redwood City, CA 94063

38 Sutherland Drive, Atherton
November 2, 2013

Exact Builders, Inc.
Attn: Tom Sagi,
P.O. Box 60864
Palo Alto, CA 94306

November 2, 2013

Site: 38 Sutherland Dr, Atherton

Dear Tom,

After our meeting last week at 38 Sutherland I have the following observations and recommendations.

1. The drain from the Pool Equipment Vault can run out towards the trees as long as the opening is no closer than 8 feet from the base of any tree. It is my understanding that this drain will be very infrequently used and the water coming through the drain will be small volumes of fresh water and not chlorinated pool water.
2. I would strongly recommend not moving the driveway any closer to Tree #1. The TPZ for this tree is 6 feet radius from the trunk; any grading or excavation closer to the tree will adversely impact the supporting root system and health of the tree.

If you have any questions, please don't hesitate to call.

Sincerely



Robert Weatherill
Certified Arborist WE 1936A

EXHIBIT 7

- A Photograph of the Heritage Oak That Would Have to Be Removed If the Driveway Were to Be Relocated
- A Photograph of the Toyon That Would Also Have to Be Removed If the Driveway Were to Be Relocated

Photograph Showing Protected Heritage Tree



Photograph Showing Mature Toyon Tree





RECORDING REQUESTED BY:
Town of Atherton

WHEN RECORDED MAIL TO:
**City Clerk
Town of Atherton
91 Ashfield Road
Atherton, CA 94027**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REVOCABLE LICENSE AND ENCROACHMENT PERMIT

AGREEMENT NO. _____

WHEREAS, the undersigned applicant proposes to construct certain improvements on a public right-of-way running in favor of the Town of Atherton adjacent to the following described parcel of real property in the Town of Atherton, San Mateo County, California, which property has frontage on:

Street Address: _____

Assessor's Parcel Number: _____

Legal Description: _____

WHEREAS, Applicant desires to use and encroach in, over, upon or under the right-of-way of said street, in constructing, using and maintaining said improvements, to the extent and in the manner hereinafter more specifically described and set forth; and

WHEREAS, the requested encroachment will currently not, in the opinion of the Town of Atherton, obstruct, interfere with, or in any way whatsoever impede or endanger the Town or any member of the public in any lawful use of said street or right-of-way as the same is presently improved for public use and a revocable license and encroachment permit can reasonably and safely be granted to the present and future owners of said property for the encroachment hereinafter described until such time when and if said license and encroachment permit is revoked;

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES and subject to the terms and conditions hereinafter set forth, the Town of Atherton does hereby give and grant to Applicant, for the use and benefit of the above-described parcel of real property, a revocable license and encroachment permit to construct, keep, use, and maintain within the right-of-way where it bounds said parcel of real property, or otherwise as set forth herein, the following described use, improvement, or encroachment:

(A map, plat, plot plan, sketch or drawing showing said encroachment is attached hereto, and is referred to herein, and shall be deemed incorporated herein and a part hereto for all purposes.)

**THIS LICENSE AND ENCROACHMENT PERMIT IS EXPRESSLY GRANTED
SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

1. Said license and encroachment permit shall run with the parcel or parcels of real property as described above and the terms and conditions thereof and all of the duties and liabilities created hereby shall be a benefit to and a burden upon the owners and occupants of the land, their assigns, and their successors in interest. The Town shall record encroachment permits relating to “Development” (such as the installation of a driveway or underground utilities) with the County at Permittee’s expense. Permittee shall deliver this Permit to any successor in interest to the above-described land. Encroachment permits for landscaping purposes may or may not be recorded, at the discretion of the Town.

2. The process for revocation depends on the type of encroachment:

A. Where the encroachment is related to development of a property such as installation of a driveway, connection to public utilities, or similar long-term use, the permit may be revoked by the City Manager only upon substantial evidence of good cause based on clear need and necessity to do so. Any decision by the City Manager to revoke a permit involving a driveway, utilities, or similar semi-permanent encroachment may be appealed to the City Council in writing within thirty (30) days.

B. Where the encroachment is less permanent in nature, such as for landscaping, fencing, or similar use, the permit shall be revocable at any time by the City Manager with or without cause; provided, however, that before revoking such permit, the City Manager shall provide the owner with an opportunity to a hearing to object to the revocation upon at least ten (10) days’ notice.

C. In either case, if the City Manager exercises the option to revoke this permit and agreement and that decision becomes final after all appeals are exhausted, the

Permittee and/or any successors, assigns or holders of interest in the land referenced in the Permit encroachment permit benefit area shall be responsible for the removal of all improvements in the right-of-way as required by the Town of Atherton at no cost to the Town for such removal and restoration of the terrain within sixty (60) days after written notice of the final decision to revoke such license and permit has been served on the owners of said parcel of real property herein above described. Further, Permittee agrees that if there are any pre-existing Town improvements in or under the right-of-way prior to the issuance of this Permit that later require removal, maintenance, modification, or for any reason access by Town after Permittee places private improvements in the right-of-way pursuant to this Permit, Permittee agrees to remove such private improvements upon request by Town prior to Town access. If such private improvements are not removed, Town shall cause such removal and the cost for such removal will be reimbursed by Permittee in lieu of revocation of the Permit to allow access to Town improvements. In the case of such necessary access, where feasible, Town shall provide at least 15 calendar days' notice prior to access.

3. Licensee and Permittee does hereby, for him/herself and his/her successors in interest of said real property, release and hold harmless the Town of Atherton from any and all damage and claim for damage related to or arising from the use or improvement within the right-of-way related to this Agreement, and does hereby waive any and all actions, causes of action and claims which he or she or they may have, or claim to have, against the Town by reason of any future revocation of this license and permit.

4. It is mutually agreed that the Town shall not be responsible for any loss, cost, or damage, or claim of loss, cost, or damage to persons or property by any person as a result of the existence of said use or improvement of the right-of-way, and the Licensee and Permittee, for him/herself and his/her successors in interest, does hereby agree to hold the Town, its officers, agents and employees, free, clear and harmless from any such loss, cost or damage.

5. Licensee and Permittee, for him/herself and his/her successors in interest, does hereby agree at all times during the life of this license and permit, to provide insurance coverage upon the property and improvements within the right-of-way under the same policy of insurance provided on the adjacent property owned by Licensee/Permittee, with the Town to be named as an additional insured under that policy of insurance covering the adjacent premises so as to protect the Town from any and all claims of damage to person or property as a result of the encroachment.

6. Permittee acknowledges that the property interest created hereunder by issuance of this Permit may give rise to possessory interest taxation and said Permittee recognizes and agrees that he/she/they shall be solely responsible for payment of any and all such taxes levied upon said possessory interest.

7. Any previous permits issued to this property for this permitted area are hereby null and void.

City Manager

Date

I hereby represent that I am the owner of the above-described property, and, after reviewing the foregoing terms and conditions, I accept this Revocable License and Encroachment Permit and agree that I have applied for the same and that I have read and understand the contents thereof and for myself and my successors in interest, as owners or occupants of the parcel of land herein above described, I agree to abide by and be bound by all the terms, conditions and provisions thereof.

_____	_____
Name of Owner(s)	Name of Owner(s)
_____	_____
Address of Owner(s)	Address of Owner(s)
_____	_____
Signature of Owner(s)	Signature of Owner(s)

Dated _____, 20____

/////
/////
/////

State of California}
County of San Mateo} ss.

On this _____ day of _____, 20____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature