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November 8, 2015

Dear Members of the Marin County Planning Commission,

We are writing to express our concerns on the proposed abandonment of the Sacramento Avenue public right of way and the associated proposed development of the adjacent parcels in San Anselmo (PC meeting 11/9/2015 agenda item #3, Thompson lot line adjustment, design reviews and CEQA exemption). We own a home at 54 Miwok Drive, situated directly across the small canyon from the proposed building sites. Previously, we submitted extensive comments on this project regarding our concerns over potential impact to public access, neighborhood quality of life, and the environment. Those comments can be found in the Planning Department's Staff Report attachments. In this communication, we would like to address what we feel are some inaccuracies in the Staff Report's response to neighborhood concerns, and also provide input on some specific elements of the design review.

Lot Line Adjustment

The lot line adjustment will create less uniform building envelopes that do not follow existing development patterns in the surrounding neighborhood. The average lot size of the 17 properties located closest to the proposed development is 24,000 sq. ft., about half the size of the proposed lots after the lot line adjustment. Only four of the nearest 17 properties have lot sizes greater than one acre. Most of the properties closest to the proposed development are significantly less than an acre and are much more comparable in size with the smallest lot owned by the developer (17,000 sq ft).

The Planning Commission Staff Report states that "the lot line adjustment ... will not result in the creation of additional potential building sites" (p. 7, PC Attachment 1). If the lot line adjustment and road abandonment are approved, an additional potential building site will be created directly across from our home. This is where the developer proposes to place house A. When we purchased our home in 2007, we carefully researched development potential on the adjacent lots, and felt confident that the Sacramento Ave. public right of way would prevent the placement of an imposing house directly across from us, preserving our view corridor, which currently extends from the undeveloped right of way up to the ridge tops of the adjacent Sorich Park and Terra Linda-Sleepy Hollow open space. We strongly disagree with the Planning Commission Staff Report which states that "the project will not diminish views from surrounding properties because it does not interfere with the primary viewshed of nearby residences" (PC Attachment 1, p. 9).

The County has stated that they are concerned with possible issues of a "taking" if they do not approve abandonment of the public right of way. Public access in this area was a very clear

condition associated with these lots when the developer purchased them. Eliminating public access, and causing irreparable harm to our views, privacy, and property value in doing so, is the real "taking". Clearly, if the developer is successful in his bid to abandon the public right of way at the end of Sacramento Ave., he will stand to make a significant financial gain - as evidenced by his aggressive listing of these lots for $600,000 more (or almost three times more) than he paid for them less than nine months after buying them.

Community Compatibility

The proposed houses are significantly larger than ones in the surrounding neighborhood. Only two of the nearest 17 houses are larger than proposed house B. The average house size in the surrounding neighborhood is 2,400 square feet, significantly less than the size of the proposed houses (4,116 square feet and 4,254 square feet). Similarly, the proposed house B garage is larger than all existing garages in the surrounding neighborhood, and significantly larger than the average garage size in the surrounding neighborhood.

Single-family Residential Design Guidelines state that "the floor area of the proposed development should not substantially exceed the median home size in the surrounding neighborhood...."

Project Setting

The Planning Commission Staff Report specifies a lot area of 2.7 acres (p.3). However, according to the assessor's parcel maps, the three parcels owned by the developer total to approximately 1.7 acres. Even if the public land under the Sacramento Ave. paper road was included, this would only add approximately 0.3 additional acres, for a total of 2.0 acres.

California Environmental Quality Act

The Planning Commission Staff Report states that "Section 15305 provides for an exemption for minor lot line adjustments which do not result in the creation of any new parcel" (PC Attachment 1, p.3). However, this exemption applies only to areas with an average slope of less than 20%. The average slope at the proposed development site is approximately 40%, as described on page 3 of the staff report. In addition, the requested "minor" lot line adjustment would increase the size of one of the lots from 17,000 square feet to 43,000 square feet, a 150% increase. The lot line adjustment would also create a new potential building site, as described above.

The western edge of the proposed development side is bordered by the West Fork of Sorich Creek, which provides valuable riparian habitat to the abundant wildlife in the area. Even during the recent extreme drought, isolated pools of water persisted all summer long in the creek bed, providing critical wildlife drinking sites. The Staff Report dismisses the importance of this creek simply because it is not "mapped" on their data bases. We believe that potential impacts to

this sensitive habitat, along with the issues of increased sedimentation and flooding potential caused by runoff from the massive proposed houses and extensive driveway warrant further study under CEQA.

Public Access

On the one hand, the San Anselmo Open Space Committee states that they "do not support the abandonment of paper roads or public easements." On the other hand, this committee has negotiated directly with the developer, without soliciting input from neighbors, to secure a trail easement along the northern property boundary of the developer's lots. This easement hinges on the developer obtaining approval for his road abandonment request. Unfortunately, this easement is over the steepest portion of the lots, with a slope in excess of 40%. A trail over the existing Sacramento Ave. public access would allow the slope to be less steeply angled and more consistent with County trail design standards. These standards specifically state that "the steeper the grade, the more likely it is to erode", and that "most erosion problems tend to occur where the road or trail grade exceeds 15%. Grades steeper than 15% are difficult to adequately drain, and as a result, runoff tends to concentrate down the road or trail for long distances." Given that the SAOSC and neighboring property owners do not support the abandonment of the paper road, and that the trail easement being offered by the developer is substandard as compared to the existing public right of way, the County should reject the road abandonment request.

Single-family Residential Design Guidelines

The size, placement, and extreme height of the massive retaining walls required by this project are contrary to Single-family Design Guidelines. Large retaining walls in a uniform plane should be avoided by breaking retaining walls into smaller components and landscaped terraces.

House A includes a windowed "poke out" feature that is located in the area closest to our property. This "fish bowl" feature seems entirely unnecessary, and its placement is inconsistent with Single-family Residential Guidelines, as it will increase the impact to our privacy.

Single-family Residential Design Guidelines state that "all new hillside residential development should be located so as to minimize interference with privacy between properties and views from adjacent residences." The walls and roof of the second floor should be set back from the walls and roof of the first floor. The proposed design for house A is very imposing (basically a single massive wall filled with windows directly facing our home) and set backs between levels have not been used. The box-like appearance of house A is also completely out of character with many of the nearby homes in the neighborhood, which have incorporated architectural elements from the Mission and Arts and Crafts styles.

Marin Countywide Plan (CWP)

The CWP woodland preservation policy (BIO-1.3) requires protection of large native trees and oak woodlands, and prevention of untimely removal of trees. There are very few trees growing on the higher elevations of the lots, including a coast live oak and a large, multi-trunked buckeye, which qualifies for heritage status due to its diameter (a buckeye of similar stature is believed to be the oldest tree on the UC Berkeley campus). The developer proposes to remove both of these native trees. Instead, they should be preserved for the benefits they provide: stabilizing soil on the steep lots, screening, and wildlife habitat. The entire development could be moved closer to the last home on Sacramento Avenue to preserve the heritage buckeye tree and to minimize environmental impacts by shortening the driveway. There seems to be ample space in the southern portion of the development area to reconsider positioning of the houses.

The CWP natural transition and connection policies (BIO 2.3 and BIO 2.4) seek to preserve ecotones and protect wildlife movement corridors. The project is located very close to open space, with one undeveloped lot between, and borders a "blue line" stream as indicated in the Marin Map database. The riparian corridor along the intermittent creek provides shelter, food, and water for a variety of animals. Public access trails can also serve as important wildlife corridors. The gentler slope of the existing Sacramento Ave. public right of way would allow better wildlife access to these resources than the extremely steep and exposed proposed trail easement. Although this project does not include any fencing, there is nothing to prohibit its installation in the future, and fencing, in conjunction with the loss of the public right of way, would clearly restrict wildlife movement between nearby open space and a critical water source.

In conclusion, we urge the Planning Commission to reject the proposed abandonment of the Sacramento Ave. public right of way, and request that the developer modify the project design so that it can be accommodated by the current parcel configurations. By doing so, public access and wildlife corridors would be preserved, and impacts to the neighborhood and the environment would be minimized.

Thank you for consideration of our comments,

Robin McKillop and John Herr

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November 6, 2015

By Email

Planning Commission
County of Marin
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
Attention: Planning Director

Re: Thompson Lot Line Adjustment, Design Reviews, and CEQA Exemption (DR 14-89, DR 14-90, and LLA 14-8)

Dear Members of the Planning Commission:

I am writing to object to the application by Paul Thompson for a Lot Line Adjustment, Design Reviews, and CEQA Exemption, on the agenda for the Planning Commission meeting on November 9, 2015.

The property is located at the end of Sacramento Avenue in unincorporated San Anselmo, tentatively designated 183 and 187 Sacramento Avenue. APNs are 177-172-09, -10, -18, -19, and -20.

My wife and I own our home at 62 Miwok Drive, San Anselmo. Our property is adjacent to proposed development. The Sacramento Ave. public right of way, which passes through the middle of the Applicant's property, abuts and terminates in our property.

Over the course of the last year, I have provided many written comments to the County Staff and the Board of Supervisors regarding the proposed development. It is my understanding that all of my prior comments would be provided to the Planning Commission for inclusion in the public record.

For the reasons set forth in this letter, and in my other communications regarding the proposed project, I oppose any action by the Planning Commission to approve the proposed Lot Line Adjustment, Design Reviews, and CEQA Exemption. Attachments referenced in this letter will be provided to the Planning Director by email before Monday, November 9.

In summary, the Planning Commission cannot and should not approve the proposed Lot Line Adjustment, Design Review, and CEQA Exemption because, among other things:

1. The proposed lot line adjustment is not categorically exempt under CEQA because the property site exceeds the maximum 20% slope requirement of Secton 15305 of the CEQA Guidelines, and the lot line adjustment is not a "minor" alteration in land use limitations, as required by Section 15305.

2. The proposed development includes construction of two homes on real property that, in part, is not owned by the Applicant. The real property that is included with the boundaries of Sacramento Ave. is owned by Short Ranch Co., and entity that is unrelated to the Applicant. Since Sacramento Ave. cuts through the center of the proposed development, Design Review must be denied.
3. Even if the Applicant is able to demonstrate that he owns clear title to the Sacramento Ave. real property, the purchase by the Applicant of that real property from Wells Fargo Bank resulted in a division of real property without compliance with the Subdivision Map Act or the County's zoning code. The Planning Commission is prohibited by the Marin Code and California law from granting development approvals or permits because an illegal division of real property has occurred.
4. The proposed Lot Line Adjustment would increase the number of potential building sites from two to three, and therefore cannot be approved by the Planning Commission under Marin Code Section 22.90.40.
5. The proposed development will adversely affect rights-of-way and pathways for circulation, and therefore Design Review cannot be approved under Marin Code Section 22.42.060. The proposed development would: encroach on land owned by a third party, Short Ranch Co.; would block the Sacramento Ave. public right of way, which has not been and may never be abandoned by the Board of Supervisors; and would block existing private access easements that exist over Sacramento Ave.

I submit the following for the consideration of the Planning Commission:

1. <u>The Proposed Lot Line Adjustment Is Not Categorically Exempt Under CEQA</u>

CEQA exempt activities are either expressly identified by statute (i.e., statutory exemptions) or those that fall into one of more than two- dozen classes deemed categorically exempt by the Secretary of Resources (i.e., categorical exemptions).

Public agencies utilizing CEQA exemptions must support their determination with "substantial evidence." PRC § 21168.5. Exemptions to CEQA are narrowly construed and exemption categories are not to be expanded beyond the reasonable scope of their statutory language. *Mountain Lion Fndn v. Fish & Game Comm.,* 16 Cal.4th 105, 125 (1997).

A reviewing court must "scrupulously enforce all legislatively mandated CEQA requirements." *Citizens of Goleta Valley v. Board of Supervisors,* 52 Cal.3d 553, 564 (1990). Erroneous reliance by Marin County on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. *Azusa Land Reclamation v. Main San Gabriel Basin*, 52 Cal.App.4th 1165, 1192 (1997).

A. <u>Proposed Lot Line Adjustment Property Exceeds the Maximum Slope Criteria under Section 15305 of the CEQA Guidelines</u>

The Staff Report states that the Design Reviews and Lot Line Adjustment are "Categorically Exempt from the requirements of the California Environmental Quality Act according to Sections 15303 and 15305 of the CEQA Guidelines." The Staff Report provides no explanation for the conclusion that the Lot Line Adjustment is categorically exempt under Section 15305. As mentioned above, PRC § 21168.5 provides that public agencies utilizing CEQA exemptions must support their determination with "substantial evidence."

Section 15305 of the CEQA Guidelines provides a categorical exemption for certain, but not all, lot line adjustments. Section 15305 reads as follows:

"15305. Minor Alterations in Land Use Limitations

"Class 5 consists of **minor alterations in land use limitations <u>in areas with an average slope of less than 20%,</u>** which do not result in any changes in land use or density, including but not limited to:

"(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;
"(b) Issuance of minor encroachment permits;
"(c) Reversion to acreage in accordance with the Subdivision Map Act." (emphasis added)

The Applicant's proposed Lot Line Adjustment clearly does not meet the categorical exemption criteria under Section 15305 of the CEQA Guidelines. The project site is not "in [an area] with an average slope of less than 20%," and so the categorical exemption plainly does not apply.

The Staff Report states that the project site is on a "Steep Slope (approximately 40%)." It describes the project site as "vacant, steeply sloped, grassy open hillside with a fairly consistent slope profile of approximately 40%." (emphasis added) There can be no doubt that the categorical exemption under Section 15305 is not applicable.

B. <u>The Proposed Lot Line Adjustment Is Not a "Minor Alteration in Land Use Limitations"</u>

In order to qualify for the exemption under Section 15305, the proposed Lot Line Adjustment must constitute "minor alterations in land use limitations …, which do not result in any changes in land use or density."

The proposed Lot Line Adjustment is, in fact, anything but a "minor alteration in land use limitations." According to the Staff Report, Lot 1 has an existing square footage of 16,638. After the Lot Line Adjustment, it will have a new square footage of 43,271. This is an increase of over 160%. The Lot Line Adjustment would add 26,633 square feet to Lot 1, well more than half an acre. There is no conceivable way that the Planning Commission can find that a 160% increase in the size of a parcel is a "minor" alteration in land use limitations.

Furthermore, by increasing the size of Lot 1 by over 160%, from 16,638 s.f. to 43,271 s.f., the land use limitations on Lot 1 are significantly lower. For example, at 16,638 s.f., Lot 1 is considered a "substandard lot" under Section 22.42.030 of the Marin Code. At 43,271 s.f., Lot 1 would no longer be classified as "substandard."

A substandard lot is defined as a vacant parcel proposed for single-family residential development, where the parcel is "at least 50 percent smaller in total area than required for new parcels under the applicable zoning district or slope regulations, in compliance with Section 22.82.050 (Hillside Subdivision Design Standards), whichever is more restrictive." Under the Hillside Subdivision Design Standards, for lots that have a slope of 40% or greater, the minimum lot area is 43,560 s.f. Since Lot 1 is currently 16,638 s.f., and according to the Staff Report, there is a consistent 40% slope over the project site, Lot 1 is more than 50% smaller than the minimum required lot area of 43,560 s.f.

There are several negative land use consequences to being a substandard lot. For example, a substandard lot such as existing Lot 1 must undergo Design Review regardless of the size of the development or any other exemption from Design Review, pursuant to Section 22.42.030. The stated purpose of this requirement is "to provide Design Review regulations for substandard and hillside building sites in conventional zoning districts to prevent inappropriate physical improvements. In these instances, any exemption from Design Review provided by Section 22.42.025 (Exemptions from Design Review) shall be void." (emphasis added)

Therefore, by virtue of the Lot Line Adjustment, Lot 1 would no longer be substandard, and therefore development of Lot 1 could be exempt from Design Review. Exempting a lot from Design Review is in no way a "minor alteration in land use limitations."

In summary, the Planning Commission must have "substantial evidence" to support a finding of a categorical exemption for the Lot Line Adjustment. Not only is there no evidence in the Staff Report or the proposed Resolutions to support the exemption, there is ample evidence in the record to conclude that the Section 15305 exemption is not applicable. Therefore, the Planning Commission would violate CEQA by approving the Lot Line Adjustment. The Lot Line Adjustment must be the subject of an Initial Study, and possibly an Environmental Impact Report.

2. <u>The Proposed Development Includes Construction of 2 Homes on Real Property That Is Not Owned by the Applicant</u>

In order to apply for a Lot Line Adjustment or Design Review in Marin County, the application must include the signature of the Property Owner. The County will not process a development proposal unless it is clear that the property owner agrees with the proposal.

Of course, the Planning Commission cannot under any circumstances approve Design Review for a project that includes construction on land that the Applicant does not own, without the express approval of the property owner. In this case, the true property owner of a critical piece of real property running through the center of the proposed development has never even been notified of the project, nor has it consented to the construction of encroachments that would render the property worthless.

A key portion of the real property included in the project site, on which 2 homes will be constructed, is owned by Short Ranch Co., not the Applicant. The Applicant and Short Ranch Co. are completely unrelated parties. Even though Short Ranch Co. is an owner within 600 feet of the project site, neither the County nor the Applicant has made any attempt to notify Short Ranch Co. of the proposed development.

Background of Prior Failed Attempt to Develop the Project Site by David Potts

The proposed development site includes, in part, two separate legal lots of record. Lot 1 is 16,638 s.f. of vacant land, APN 177-172-09. Lot 2 is 74,676 s.f. of vacant land, APNs 177-172-10 and -20. Although Lot 2 has been assigned two APNs, it is only one legal lot of record.

In 2007, a local developer named David Potts acquired title to Lots 1 and 2 by deed from the prior owner. The deed by which Mr. Potts acquired these 2 parcels expressly *excluded* "the included portion

of Sacramento Avenue as shown on the map entitled, 'Short Ranch Subdivision Two', filed July 3, 1912, in Map Book 4 at Page 22." (the "Sacramento Ave. Land Area").

Mr. Potts then drew up site plans, architectural drawings and other materials to proceed with development of the 2 parcels. (Interestingly, the Applicant's own plans for development are virtually identical to those created by Mr. Potts.)

As part of the development process, the Marin County Planning Division informed Mr. Potts that if he were to develop the project site as he proposed, he would be required to prove that he owned title to the Sacramento Ave. Land Area, because that real property is in the middle of the project site, and because title to that property had been expressly excluded from the grant deeds to Mr. Potts.

Mr. Potts contacted First American Title and requested a Preliminary Title Report on the ownership of the Sacramento Ave. Land Area. First American Title issued a Preliminary Title Report, dated March 29, 2007, which indicated that the Sacramento Ave. Land Area was owned by Short Ranch Co., a California corporation. See Prelim. Title Report of First American Title Company, dated March 29, 2007, attached.

I then met with Mr. Potts, who showed me his site plans and drawings. Mr. Potts informed me that Short Ranch Co. owned the Sacramento Ave. Land Area, running through the center of the project site. Mr. Potts indicated that he had attempted to contact Short Ranch Co., but the corporation had dissolved in the 1920s and so he did not know who to contact. I told him that, regardless of who may own the Sacramento Ave. Land Area, it was crystal clear in his deed that Mr. Potts did not own the land because it was expressly excluded.

Mr. Potts ultimately dropped the development, because he was unable to prove to the County Staff that he owned all of the land on which he proposed to build the homes. Mr. Potts then filed for bankruptcy. Lots 1 and 2 were acquired by the lenders in foreclosure, and eventually sold to Tim and Pat Newberry. The deeds to the lender, and the Newberrys, also expressly excluded any interest in Sacramento Ave. Land Area.

Purchase by Applicant of Lots 1 and 2

In March 2014, the Applicant acquired title to Lots 1 and 2 by deed from Tim and Pat Newberry. The deed by which the Applicant acquired these 2 parcels also expressly excluded "the included portion of Sacramento Avenue as shown on the map entitled, 'Short Ranch Subdivision Two', filed July 3, 1912, in Map Book 4 at Page 22", which is the Sacramento Ave. Land Area.

My understanding from Mr. Newberry is that the Applicant did many months of due diligence and title research on the parcels prior to the purchase. It is entirely possible that he was made aware of the prior title work done by David Potts and the preliminary title report from First American Title showing Short Ranch Co. as the owner of the Sacramento Ave. Land Area.

For example, six months prior to the closing of the purchase of Lots 1 and 2, on October 13, 2013, Annie Sasan, on behalf of the purported "property owner" Paul Thompson, submitted Applications for a Certificate of Compliance on Lots 1 and 2.

On April 17, 2014, the Planning Division issued two Certificates of Compliance, finding that Lot 1 and Lot 2 each constitute a legal parcel of record. The Applicant also furnished to the Staff a policy of title insurance regarding his ownership of a fee interest in Lots 1 and 2. In May 2014, the Applicant filed for a Lot Line Adjustment and Design Review.

Purported Purchase of the Sacramento Ave. Land Area by Applicant from Wells Fargo Bank

As part of the planning process, the Staff notified the Applicant that he would be required to demonstrate that the public right of way on undeveloped Sacramento Ave. had been vacated. Thereafter, the Applicant filed an Application to vacate the public right-of-way.

The Staff further asked the Applicant to demonstrate that he was the owner of the Sacramento Ave. Land Area. The Staff noted for the Applicant, as it had for Mr. Potts, that the deed to the Applicant for Lots 1 and 2 expressly excluded the included portion of undeveloped Sacramento Ave., and so that deed was not evidence that the Applicant owned land area. Without clear ownership of the property, the County would not permit the Applicant to construct improvements on land that might be owned by another person.

The Applicant then obtained a "Quitclaim Deed" from Wells Fargo Bank, N.A., dated September 11, 2014, recorded on September 16, 2014. The Quitclaim Deed conveyed to the Applicant any interest that Wells Fargo may have in the Sacramento Ave. Land Area. The Quitclaim Deed covers the following land area included in Lots 1 and 2: "All that portion of Sacramento Avenue 40' feet in width as Shown on Map entitled, "Short Ranch Subdivision Two" filed July 3, 1912 in Map Book 4 at Page 22 lying Southerly of the Northern boundary and Northerly of the Southern boundary" of Lots 1 and 2.

A quitclaim deed by definition provides no warranty to the purchaser that the seller owns any interest in the land conveyed, but only conveys whatever interest the seller might have, which could be none. The Wells Fargo deed stated that: "This conveyance is made without representation or warranty of any kind". The Applicant was well aware that Wells Fargo might have no interest in the property, but agreed to acquire the deed anyway.

Upon the filing of the Quitclaim Deed with the County Recorder, the County Assessor assigned two APNs to the Sacramento Ave. Land Area and listed Paul Thompson as the owner. The APNs assigned are 177-172-18, and -19. The assignment of an APN is not a determination by the County that the Sacramento Ave. Land Area constitutes a legal parcel of record, nor does it prove in any way that the Applicant is the owner of the property. It is merely done for the purpose of establishing property taxes and sending tax bills.

As part of a refinancing, the Applicant sought a Preliminary Title Report regarding his ownership of the Sacramento Ave. Land Area. Rather than seek a title report from First American Title, which had done the title work for Mr. Potts, the Applicant went title shopping. The Applicant contacted Old Republic Title Company, which issued a Preliminary Title Report dated September 15, 2014, which purportedly indicated that the Applicant, rather than Short Ranch Co., was the owner of a fee interest in the Sacramento Ave. Land Area.

The Old Republic Preliminary Title Report, like other title reports, specifically states "This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby." The Applicant provided a copy of the

Quitclaim Deed and the Preliminary Title Report to the Staff of the Real Estate Division, and based on those documents, the Staff concluded that the Applicant owned the Sacramento Ave. Land Area. To my knowledge, the Applicant has never provided the Staff with a copy of a title insurance policy covering his ownership of the Sacramento Ave. Land Area.

In preparation for a possible quiet title action to establish access easements over the Sacramento Ave. Land Area, I obtained a Litigation Guarantee from First American Title, which states that Short Ranch Co., a California corporation, is the owner of the Sacramento Ave. Land Area. A copy of the Litigation Guarantee issued by First American Title is attached.

The Applicant has been unable to produce any clear proof that he is the owner of the Sacramento Ave. Land Area, and the Litigation Guarantee issued by First American Title states that the land area is owned by Short Ranch Co., rather than the Applicant.

Even if the Applicant were able to produce a title insurance policy issued by Old Republic or another title insurer showing that he owns the Sacramento Ave. Land Area, the fact that First American Title has issued a Litigation Guarantee showing the owner to be Short Ranch Co. casts sufficient doubt on the Applicant's ownership of the property that the Planning Commission must require clear an unequivocal proof of ownership before allowing construction on the subject property.

3. <u>The Sacramento Ave. Land Area, Even If Validly Conveyed by Wells Fargo to the Applicant, Is an Illegal Division of Real Property</u>

Even if the Applicant is able to demonstrate unequivocally that he acquired title to the Sacramento Ave. Land Area by virtue of the deed from Wells Fargo Bank, the sale by Wells Fargo to him involved a division of real property in violation of the Subdivision Map Act and Marin County is zoning ordinances.

The Planning Director has stated that the Sacramento Ave. Land Area is not a legal parcel of record. Therefore, the sale of the Sacramento Ave. Land Area by Wells Fargo Bank to the Applicant must have been a carveout of a portion of a larger legal parcel of record owned by Wells Fargo Bank. The sale by Wells Fargo Bank of a portion of a legal parcel, without complying with the applicable laws regarding subdivision, is unlawful. Wells Fargo Bank and the Applicant did not take any of the steps necessary to get approval of the division of real property.

Furthermore, the Applicant has neither sought nor received a certificate of compliance that includes his ownership of the Sacramento Ave. Land Area. The Planning Director has assured me that the land area is not a legal parcel of record, and therefore the Applicant could not get a certificate of compliance, even if he were to seek one.

Under Section 20.84.020 of the Marin Code, once the Planning Director verifies that real property has been divided in violation of the Subdivision Map Act or the Marin County Code, the County surveyor is required to record a tentative, and then final, Notice of Violation. To my knowledge, these notices have not been recorded, even though it has been known for many months that the Applicant owns real property that is not a legal parcel of record and was acquired by division in violation of law.

More significantly for the Planning Commission, Section 20.84.030 provides that if real property has been divided in violation of law, development approvals and permits must be withheld until further

action is taken by the Planning Director or, on appeal, the Planning Commission. Section 20.84.030 provides, in part, as follows:

"20.84.030 - Development permits and approvals withheld.

"No permits or approvals necessary to develop any real property shall be issued for such real property which has been divided or which has resulted from a division in violation of the provisions of the Subdivision Map Act or the Marin County Code applicable at the time such division occurred, unless the planning director or, on appeal, the planning commission finds that the development of such real property is not contrary to the public health, safety or general welfare."

At this time, the Planning Director and the Planning Commission have not made the findings referred to in Section 20.84.030. Therefore, the Planning Commission is prohibited from approving the Lot Line Adjustment and the Design Reviews at this time.

4. Proposed Lot Line Adjustment Would Result in the Creation of Additional Potential Building Sites

Code Section 22.90.40 requires as a mandatory finding that the proposed Lot Line Adjustment would not result in the creation of additional potential building sites. This finding cannot be made.

Under the current lot configuration, there is only one potential building site on Lot 1, which is within the current boundaries of Lot 1. Lot 1 is only 16,638 s.f. It is long and narrow, and has a 40% slope down into a creek bottom. Assuming that Lot 1 is buildable at all, there is only one potential building site, which would be a very small house at the far eastern edge of Lot 1.

After the Lot Line Adjustment, Lot 1 will still have the first potential building site available, but it will also have another potential building site. Since Lot 1 is proposed to be increased in area by 160%, adding over a half acre of land area, a much larger and more desirable building site is created in the center or northeast part of the enlarged parcel. In fact, this is not only a "potential" second building site; this actually is where the Applicant is proposing to build House B.

Therefore, before the Lot Line Adjustment, Lot 1 and Lot 2 each have one potential building site. After the Lot Line Adjustment, Lot 1 would have 2 potential building sites. Lot 2 would continue to have 1, which is where House A is proposed to be located. Potential building sites are therefore increased from 2 to 3. Accordingly, the Lot Line Adjustment must be denied, pursuant to Code Section 22.90.40.

5. Proposed Development Will "Adversely Affect Rights-of-Way and Pathways for Circulation"

Under Marin Code Section 22.42.060, the Design Review Applications may only be approved by the Planning Commission if it makes an affirmative finding that "The proposed development results in site layout and design (including building arrangement, exterior appearance, heights, setbacks, drainage, fences and walls, grading, lighting, signs, etc.) … that will not adversely affect rights-of-way or pathways for circulation." The Planning Commission cannot make this required finding.

A. The Proposed Development Encroaches on the Sacramento Ave. Land Area, which is Owned by Short Ranch Co.

As discussed in detail above, the Sacramento Ave. Land Area runs through the middle of the project site, and it is owned by Short Ranch Co. If the proposed development is approved, the Applicant will build 2 homes on land owned by Short Ranch Co., which would be an encroachment that destroys the value of the land to Short Ranch Co.

B. The Proposed Development Blocks Sacramento Ave. Public Right of Way

The proposed development has a site layout that puts two homes directly in the path of the existing Sacramento Ave. public right-of-way, thereby completely blocking public access. Private parties have no right to block a public right-of-way, and the Planning Commission cannot approve a development that does so.

The Applicant cannot eliminate the right of public access by constructing buildings that block the road. Throughout Marin County, there are privately owned and maintained streets that are public rights of way. Even though own the property, the owners are not permitted to build structures that block the public right of way, be they gates, walls, houses or whatever.

In order to eliminate the public right of way, the Applicant must follow the procedures for vacating a public right of way under California law. Although the Applicant has filed an Application to abandon the Sacramento Ave. public right of way, that application has not been approved, and there is no assurance that the right-of-way will ever be abandoned. At this time, Sacramento Ave. remains a public right of way, and the Planning Commission cannot approve Design Review of a project that would block it. In the proposed Resolutions for the Planning Commission, in 11 pages of conditions, I am unable to find any condition that the Sacramento Ave. public right-of-way shall have been abandoned.

Frankly, this entire process is now backwards. The Applicant should seek and obtain abandonment of the public right of way before proceeding with a lot line adjustment and design review. If the right of way is not abandoned, all the other matters are irrelevant and a waste of the time of the Staff, the Planning Commission and the public in addressing a hypothetical development.

Current Sacramento Ave. Public Right-of-Way Is a Valuable Community Asset That Should Be Preserved

The current public right of way on Sacramento Ave. has been open to the public for use for almost 100 years. There is significant evidence in the public record that it has been used in the past, and recently. A trail is plainly visible on the ground, and historical evidence, including aerial photographs, shows that it has actually been used as a trail and a road for decades. Although the Staff Report repeatedly calls it a "proposed trail," in fact it is an actual undeveloped trail that is used by many in the area. Numerous local residents, including my family, the Schinners, the Herrs, the Schneiders, the Blocks and the Sullivans, among many others, have stated in writing that they use the right of way for hiking, dog walking, and as a route to get to open space. In addition, the public right of way has even been used recently for vehicular travel. Any argument by the Applicant that the public never uses the current right of way is false.

Although the public right of way is currently a valuable public asset on its own, someday if trail easements or other rights were acquired, Sacramento Ave. could become a key piece in a long loop of open space connecting Sorich Ranch Park and the Terra Linda/Sleepy Hollow Divide, without the need to travel on over half a mile of paved streets, some of which are very steep and have no sidewalks.

It is clear that there is significant public opposition to the concept that a public right of way be blocked or abandoned to benefit a private developer. The neighbors and other members of the public have commented in by meetings, calls, letters and petition that they do not want to see the current public right of way blocked or abandoned.

The Applicant's Proposed Trail Easement Is a Completely Inadequate Alternative to the Existing Public Right-of-Way

The Applicant's proposed trail easement is a completely unacceptable substitute for the current Sacramento Ave. public right of way. The current public right of way is usable for both walking and vehicular travel, with a gentle 3-5% grade. It is available for use by the public at any time. By the addition of a switchback or two within the confines of the existing right of way area, and a bit of improvement, it could even be made accessible to the mobility impaired.

By contrast, the Applicant's proposed "trail" easement would require construction of a 5-story staircase up a 30% grade on an eroded hillside, with no allowance for safety landings. By definition, it would be inaccessible to the mobility impaired and bicyclists, and of course other vehicles. The Planning Commission should not be willing to trade an accessible, public trail for an easement that would forever block access by the mobility impaired. In addition, the cost of construction and maintenance of the alternative trail would be huge, and this trail development would require an extensive permitting process.

Once site work and grading begins at the proposed development, the current easy public access over Sacramento Ave. will become blocked, effective immediately. Thereafter, public access would remain blocked until funds are raised for the alternative trail and staircase, permits and approvals are obtained, and staircase and trail construction completed, if ever. The Applicant has expressly repudiated any responsibility for the cost of construction or maintenance, seeking permits, and liability for injuries or deaths that might occur on the steep staircase. No one else has agreed to incur the expense, effort or liability. There is no assurance that the alternative trail will ever be constructed or maintained. In no way is it an acceptable substitute for the current right of public access, which is open and usable today by the public at any time at little or no cost to maintain.

C. <u>The Proposed Development Blocks Private Access Easements that Benefit Many of the Parcels in Short Ranch Subdivision Two</u>

Sacramento Ave. was shown on the original subdivision map for Short Ranch Subdivision Two. Many of the legal descriptions of parcels located in the Short Ranch Subdivision Two reference the original subdivision map. Under California law, such parcels have the benefit of an easement appurtenant, which gives the owners of all of those parcels the right of access to use all of Sacramento Ave., including the undeveloped portion. If the Board of Supervisors decides to abandon the Sacramento Ave. public right of way, owners of such parcels have 2 years after abandonment in which to give notice that they will preserve that right of access. In addition, I believe that our property at 62 Miwok Drive, which abuts the existing public right of way, may also benefit from a private easement over undeveloped Sacramento Ave.

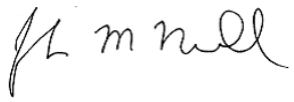
If the Planning Commission were to approve the proposed development, the development would completely block all of those private access easements, because the structures are sited on the

private access easements. Accordingly, the site layout would "adversely affect rights-of way", in violation of Section 22.42.060.

Furthermore, by approving the proposed development, the County would be wiping out valuable private access easements. Owners that file the requisite notice within 2 years after abandonment of the public right of way could seek compensation for taking of or damage to private property because of loss of access. Since the number of potential claimants in the class is unknown at the time of abandonment, but could measure in the hundreds, the County could not know in advance how many claims the class might bring. The County can ill-afford to defend these claims, nor should it, when the private developer is the only person that benefits from the loss of public access.

Based on the foregoing, I would urge the Planning Commission to deny the Applicant's Applications for Lot Line Adjustment and Design Review, and to not approve a CEQA exemption for the Lot Line Adjustment.

Very truly yours,



John M. Newell