

**DEVELOPMENT REVIEW COMMITTEE –September 22, 2020**  
**CONDITIONS OF APPROVAL**

**400 Surmont Drive**  
**Subdivision Application M-19-003**

**Requesting approval for subdivision of one lot into two lots with one remainder parcel on property zoned HR-2½. APN 527-20-003**

**PROPERTY OWNER: Sandra K. Anderson, TTE**  
**APPLICANT: Robert Hughes**  
**PROJECT PLANNER: Ryan Safty**

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director, DRC or the Planning Commission depending on the scope of the changes.
2. **DRIVEWAY:** Approval of an Architecture & Site Application is required for construction of the new shared driveway.
3. **EXPIRATION:** The approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
4. **ARBORIST REQUIREMENTS:** The developer shall implement, at their cost, all recommendations identified in the Arborist's report dated as received September 27, 2019 for the project, on file in the Community Development Department. These recommendations must be incorporated in the building permit plans, and completed prior to issuance of a building permit where applicable.
5. **NESTING BIRDS:** To avoid impacts to nesting birds, the removal of trees and shrubs shall be minimized to the greatest extent feasible. Construction activities that include any tree removal, pruning, grading, grubbing, or demolition shall be conducted outside of the bird nesting season (January 15 through September 15) to the greatest extent feasible. If this type of construction starts, if work is scheduled to start or if work already occurring during the nesting season stops for at least two weeks and is scheduled to resume during the bird nesting season, then a qualified biologist shall conduct a pre-construction surveys for nesting birds to ensure that no nests would be disturbed during project construction. If project-related work is scheduled during the nesting season (February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist shall conduct nesting bird surveys. Two surveys for active nests of such birds shall occur within 14 days prior to start of construction, with the second survey conducted with 48 hours prior to start of construction. Appropriate minimum survey radius surrounding each work area is typically

250 feet for passerines, 500 feet for smaller raptors, and 1,000 feet for larger raptors. Surveys shall be conducted at the appropriate times of day to observe nesting activities. If the qualified biologist documents active nests within the project site or in nearby surrounding areas, an appropriate buffer between each nest and active construction shall be established. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist shall conduct baseline monitoring of each nest to characterize "normal" bird behavior and establish a buffer distance, which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily during construction activities and increase the buffer if birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman shall have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

6. SPECIAL-STATUS BATS: Approximately 14 days prior to tree removal or structure demolition activities, a qualified biologist shall conduct a habitat assessment for bats and potential roosting sites in trees to be removed, in trees within 50 feet of the development footprint, and within and surrounding any structures that may be disturbed by the project. These surveys will include a visual inspection of potential roosting features (bats need not be present) and a search for presence of guano within the project site, construction access routes, and 50 feet around these areas. Cavities, crevices, exfoliating bark, and bark fissures that could provide suitable potential nest or roost habitat for bats shall be surveyed. Assumptions can be made on what species is present due to observed visual characteristics along with habitat use, or the bats can be identified to the species level with the use of a bat echolocation detector such as an "Anabat" unit. Potential roosting features found during the survey shall be flagged or marked.

If no roosting sites or bats are found, a letter report confirming absence will be prepared and no further measures are required.

If bats or roosting sites are found, a letter report and supplemental documents will be prepared prior to grading permit issuance and the following monitoring, exclusion, and habitat replacement measures will be implemented:

- a. If bats are found roosting outside of the nursery season (May 1 through October 1), they will be evicted as described under (b) below. If bats are found roosting during the nursery season, they will be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or by monitoring the roost after the adults leave for the night to listen for bat pups. If the roost is determined to not be a maternal roost, then the bats will be evicted as described under (b) below. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. Therefore, if a maternal roost is present, a 50-foot buffer zone (or different size if determined in consultation with the CDFW) will be established around the roosting site within which no construction activities

including tree removal or structure disturbance will occur until after the nursery season.

- b. If a non-breeding bat hibernaculum is found in a tree or snag scheduled for removal or on any structures scheduled to be disturbed by project activities, the individuals will be safely evicted, under the direction of a qualified bat biologist. If pre-construction surveys determine that there are bats present in any trees to be removed, exclusion structures (e.g. one-way doors or similar methods) shall be installed by a qualified biologist. The exclusion structures shall not be placed until the time of year in which young are able to fly, outside of the nursery season. Information on placement of exclusion structures shall be provided to the CDFW prior to construction.

If needed, other methods conducted under the direction of a qualified bat biologist could include: carefully opening the roosting area in a tree or snag by hand to expose the cavity and opening doors/windows on structures, or creating openings in walls to allow light into the structures. Removal of any trees or snags and disturbance of any structures will be conducted no earlier than the following day (i.e., at least one night will be provided between initial roost eviction disturbance and tree removal/structure disturbance). This action will allow bats to leave during dark hours, which increases their chance of finding new roosts with a minimum of potential predation.

7. ARCHAEOLOGICAL RESOURCES AND HUMAN REMAINS:

- a. In the event that archaeological traces are encountered, all construction within a 50-meter radius of the find will be halted, the Community Development Director will be notified, and an archaeologist will be retained to examine the find and make appropriate recommendations.
- b. If human remains are discovered, the Santa Clara County Coroner will be notified. The Coroner will determine whether or not the remains are Native American. If the Coroner determines the remains are not subject to his authority, he will notify the Native American Heritage Commission, who shall attempt to identify descendants of the deceased Native Americans.
- c. If the Community Development Director finds that the archaeological find is not a significant resource, work will resume only after the submittal of a preliminary archaeological report and after provisions for reburial and ongoing monitoring are accepted. Provisions for identifying descendants of a deceased Native American and for reburial will follow the protocol set forth in CEQA Guidelines Section 15064.5( e). If the site is found to be a significant archaeological site, a mitigation program will be prepared and submitted to the Community Development Director for consideration and approval, in conformance with the protocol set forth in Public Resources Code Section 21083.2.
- d. A final report shall be prepared when a find is determined to be a significant archaeological site, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, any testing, other recovered information, and conclusions.

8. DUSKY-FOOTED WOODRATS: This project will implement the following standard measures to minimize impacts on woodrats and active woodrat nests on the project site.
- PRECONSTRUCTION SURVEY. A qualified biologist will conduct a preconstruction survey for San Francisco dusky-footed woodrat nests within 30 days of the start of work activities. If active woodrat nests are determined to be present in, or within 10 feet of the impact areas, the conditions below (Avoidance and/or Nest Relocation) will be implemented, as appropriate. If no active woodrat nests are present on or within 10 feet of impact areas, no further conditions are warranted.
  - AVOIDANCE. Active woodrat nests that are detected within the work area will be avoided to the extent feasible. Ideally, a minimum 10-foot buffer will be maintained between project activities and woodrat nests to avoid disturbance. In some situations, a small buffer may be allowed if, in the opinion of a qualified biologist, nest relocation (below) would represent a greater disturbance to the woodrats than the adjacent work activities.
  - NEST RELOCATION. If avoidance of active woodrat nests within and immediately adjacent to (within 10 feet of) the work areas is not feasible, then nest materials will be relocated to suitable habitat as close to the project site as possible (ideally, within or immediately adjacent to the project site).

Relocation efforts will avoid the peak nesting season (February-July) to the maximum extent feasible. Prior to the start of construction activities, a qualified biologist will disturb the woodrat nest to the degree that all woodrats leave the nest and seek refuge outside of the construction area. Disturbance of the woodrat nest will be initiated no earlier than one hour before dusk to prevent the exposure of woodrats to diurnal predators. Subsequently, the biologist will dismantle and relocate the nest material by hand. During the deconstruction process, the biologist will attempt to assess if there are juveniles in the nest. If immobile juveniles are observed, the deconstruction process will be discontinued until a time when the biologist believes the juveniles will be capable of independent survival (typically after 2 to 3 weeks). A no-disturbance buffer will be established around the nest until the juveniles are mobile. The nest may be dismantled once the biologist has determined that adverse impacts on the juveniles would not occur.

9. WATER QUALITY: The project will implement the following conditions to minimize impacts on water quality within the ephemeral drainage (many of these conditions are overlapping conditions with what will be required for compliance with the *California Regional Water Quality Board, San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit*):
- All construction activities in the ephemeral drainage shall be avoided. Within the Slope Stability Protection Area, grading will be minimized to the extent necessary and existing contours and slopes shall be maintained.
  - Existing native vegetation adjacent the drainage shall be retained by removing only as much vegetation as necessary to accommodate the construction of the retaining wall. When possible, a vegetated buffer strip between staging/excavation areas and the drainage shall be maintained.

- Appropriate erosion control measures (e.g., fiber rolls, filter fences, vegetative bugger strips) shall be used on site to reduce siltation and runoff of contaminants into the ephemeral drainage. Fiber rolls used for erosion control will be certified as free of noxious weed seed. Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control measures will be placed at the top of bank of the drainage or the edge of the Slope Stability Protection Area where possible. The erosion control measures should follow the approaches and details outlined in the Bank Protection/Erosion Repair Design Guide in the Santa Clara Valley Water Resources Protection Collaborative's User Manual: Guidelines & Standards for Land Use Near Streams (Valley Water 2006).
  - All disturbed soils shall be revegetated with native plants and/or grasses or sterile nonnative species suitable for the altered soil conditions upon completion of construction. Local watershed native plants will be used if available. If sterile nonnative species are used for temporary erosion control, native seed mixtures must be used in subsequent treatments to provide long-term erosion control and slow colonization by invasive nonnatives. All disturbed areas that have been compacted shall be de-compacted prior to planting or seeding. Cut-and-fill slopes will be planted with local native or non-invasive plants suitable for the altered soil conditions. Again, revegetation of disturbed soils shall follow the recommendations of the Santa Clara Valley Water Resources Protection Collaborative's User Manual: Guidelines & Standards for Land Use Near Streams (Valley Water 2006).
  - No stockpiling or placement of erodible materials shall be allowed within 20 feet of the ephemeral drainage or along areas of natural stormwater flow where materials could be washed into waterways.
  - No equipment servicing shall be done within 20 feet of the ephemeral drainage, unless equipment stationed in these locations cannot be readily relocated (i.e., pumps, generators.)
  - Construction personnel shall prevent the accidental release of chemicals, fuels, lubricants, and non-storm drainage water into channels. Spill prevention kits shall always be in close proximity when using hazardous materials (e.g., crew trucks and other logical locations). Personnel shall implement measures to ensure that hazardous materials are properly handled, and all construction waste will be disposed of in designated areas to prevent stormwater from flowing onto or off these areas.
  - Potential contaminating materials must be stored in covered storage areas or secondary containment that is impervious to leaks and spills. Runoff pathways shall be free of trash containers or trash storage areas. Trash storage areas shall be screened or walled.
  - Vehicles and equipment shall be parked on pavement, existing roads, and previously disturbed areas.
10. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a

condition of approval of all such permits and entitlements whether or not expressly set forth in the approval, and may be secured to the satisfaction of the Town Attorney.

11. COMPLIANCE MEMORANDUM: A memorandum shall be prepared and submitted with the building plans detailing how the Conditions of Approval will be addressed.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS:

*Engineering Division*

12. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.
13. PLANS AND STUDIES: All studies imposed by the Planning Commission or Town Council shall be funded by the Owner and/or Applicant.
14. CONSTRUCTION EASEMENT: Prior to the issuance of a grading or building permit, it shall be the sole responsibility of the Owner and/or Applicant to obtain any and all proposed or required easements and/or permissions necessary to perform the grading herein proposed. Proof of agreement/approval is required prior to the issuance of any Permit.
15. SURVEYING CONTROLS: Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer qualified to practice land surveying, for the following items:
  - a) Retaining wall: top of wall elevations and locations.
  - b) Toe and top of cut and fill slopes.
16. RETAINING WALLS: A building permit, issued by the Building Department, located at 110 E. Main Street, may be required for site retaining walls. Walls are not reviewed or approved by the Engineering Division of Parks and Public Works during the grading permit plan review process.
17. GENERAL: The Owner and/or Applicant shall comply with all Town, County, State and Federal laws and regulations applicable to this land division. No other proposed development is included in this particular application of the Certificate of Compliance. Issuance of a Certificate of Compliance will acknowledge the Town's acceptance of the parcel as legally created in accordance with the Subdivision Map Act. Any subsequent development will be required to demonstrate compliance with the Town Development Standards and Codes.
18. PARCEL MAP: A parcel map shall be recorded. Two (2) hardcopies and an electronic copy of the parcel map shall be submitted to the Engineering Division of the Parks and Public Works Department for review and approval. Submittal shall include closure calculations, title reports and the appropriate fee. The map shall be recorded prior to the issuance of any grading or building permits. The Owner or Applicant shall provide the Engineering Division with an electronic copy (in PDF format) and two hardcopies of the signed recorded map along with a CAD drawing of the Parcel Map after it is recorded.
19. WEST VALLEY SANITATION DISTRICT: All sewer connection and treatment plant capacity fees shall be paid either immediately prior to the recordation of any maps with respect to the subject property or properties or immediately prior to the issuance of a sewer

connection permit, which ever event occurs first. Written confirmation of payment of these fees shall be provided prior to map recordation.

20. PRIVATE UTILITIES: Prior to the recordation of a subdivision map the Owner and/or Applicant shall place a note on the map, in a manner that meets the approval of the Town Engineer that states: "The private utilities constructed within this map shall be owned, operated and maintained by the property owner, successors or assigns."
21. DEDICATIONS: The following shall be dedicated on the parcel map by separate instrument. The dedication shall be recorded before any grading or building permits are issued:
  - a) Ingress-Egress Easement as required.
  - b) Private Storm Drain Easement as required.
  - c) Private Sanitary Sewer Easement as required.
  - d) Private Utility Easement as required.
  - e) Emergency Access Easement: Twenty (20) feet wide, from the end of the public road through the hammerhead turnaround proposed.
  - f) Trail easements as required by the General Plan and Zoning Code.
  - g) Open space easement as required by the General Plan and Zoning Code.
22. SHARED MAINTENANCE AGREEMENT: The Owner/Applicant shall record a shared Maintenance Agreement at the time of recordation of the Parcel Map. The shared Maintenance Agreement shall be subject to the review and approval of the Town prior to recordation of the parcel map. The owners of the three (3) properties shall be responsible for the maintenance of all private utilities, wildland fire and buffer areas, storm water treatment facilities, landscape areas, the long-term maintenance the fences located on the boundary line, and other common areas/facilities within the proposed subdivision. The owners of the three (3) properties shall be responsible for keeping the shared driveway signed, marked, free and clear for fire department access.
23. PRIVATE EASEMENTS: Agreements detailing rights, limitations, and responsibilities of involved parties shall accompany each private easement. The easements and associated agreements shall be recorded simultaneously with the Parcel map. Both a hardcopy and electronic file of the recorded agreement(s) shall be submitted to the Engineering Division of the Parks and Public Works Department prior to the issuance of any permit.
24. WATER AGENCY PERMITTING: Prior to start of any work along or within a water agency's right-of-way/easement, the Owner and/or Applicant shall obtain necessary encroachment permit(s) and/or plan check review(s) from said Agency(ies) corresponding with the proposed work. A copy of any necessary permit(s) is required to be submitted to the Engineering Division of the Parks and Public Works Department prior to Grading or Building Permit issuance.
25. STORMWATER MANAGEMENT: Construction activities including but not limited to clearing, stockpiling, grading or excavation of land, which disturbs one (1) acre or more which are part of a larger common plan of development which disturbs less than one (1) acre are required to obtain coverage under the construction general permit with the State Water Resources Control Board. The Owner and/or Applicant is required to provide proof of WDID# and keep a current copy of the storm water pollution prevention plan (SWPPP) on the construction site and shall be made available to the Town of Los Gatos Engineering

Division of the Parks and Public Works Department and/or Building Department upon request.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

26. GENERAL: Review of this Developmental proposal is limited to acceptability of site access, water supply and may include specific additional requirements as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.
27. FIRE APPARATUS (ENGINE) ACCESS ROAD REQUIRED: *(As shown on Sheet C-2)* Provide an access driveway with a paved all weather surface, a minimum unobstructed width of 12 feet, vertical clearance of 13 feet 6 inches, and a maximum slope of 15%. Installations shall conform to the Fire Department Standard Details Specifications D-1 and CFC Section 503. The proposed driveways for Parcel 1 and Parcel 2 exceed the maximum 15% slope requirement and are proposed at up to 20%. Please provide your request for variance and associated justification for increased slope up to 20% with the submittal when moving forward with site development.
28. FIRE DEPARTMENT (ENGINE) ROADWAY TURNAROUND REQUIRED: *(As shown on Sheet C-2)* Provide an approved fire department engine roadway turnaround with a minimum radius of 42 feet outside and 23 feet inside. Installations shall conform with Fire Department Standard Details and Specification sheet A-1. Cul-De-Sac Diameters shall be no less than 72 feet. CFC Sec. 503.
29. PUBLIC FIRE HYDRANT(S) REQUIRED: *(As shown on Sheet C-4)* Provide public fire hydrant(s) at location(s) to be determined by the Fire Department, Maximum hydrant spacing shall be 500 feet, with a minimum single hydrant flow of 1,500 GPM at 20psi, residual. If area fire hydrants exist, reflect their location on the civil drawings included with the building permit submittal, including new hydrants. CFC Sec. 508.3, per Appendix B and C. A letter from San Jose Water verifying the available flow will be required during developmental review.
30. FIRE HYDRANT SYSTEMS REQUIRED: Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, onsite fire hydrants and mains shall be provided where required by the fire code official. Exception: For Group R-3 and Group U occupancies, equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.3, the distance requirement shall be not more than 600 feet. [CFC, Section 507.5.1]
31. WILDLAND-URBAN INTERFACE: This project is located within the designated Wildland-Urban Interface Fire Area. The building construction shall comply with the provisions of California Building Code (CBC) Chapter 7A. Note that vegetation clearance shall be in compliance with CBC Section 701A.3.2.4 prior to project final approval. Check with the Planning Department for related landscape plan requirements.

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