



February 24, 2022

Job No. 20-235

Jennifer Armer - Planning Manager  
Town of Los Gatos Community Development Department  
Planning Division  
110 E. Main Street  
Los Gatos, CA 95030

**Initial Letter of Justification  
Lands of Elam - Hillside Subdivision & Rezoning  
14915 Shannon Road at Sky Lane, Los Gatos**

Dear Ms. Armer,

Submitted herein is our initial letter of justification highlighting our perceived significant issues. As the project moves through staff review, there will undoubtedly be other issues to include and we will add them during the Staff Technical Review Process.

**Shannon Road Status & Town Upgrade**

Shannon Road runs 2000' along the property frontage. The road has been substandard in pavement width of approximately 20' for likely 80-some years. The safe minimum width per Caltrans standards would be 22', comprised of two 11' wide lanes. The current Town Capital Improvement Project will widen the pavement to approximately 23' with 11' wide travel lanes, however, the project is only east of Diduca Way to Santa Rosa Drive. Sky Lane to Diduca will be the applicant's responsibility to improve.

The vertical alignment is adequate for sight distance with all downhill slopes easterly at a maximum slope of 12% east of Diduca Way. The intersection of Diduca is peculiar and nearly substandard with an angle of intersection of 60 degrees, where 70 degrees is the typical minimum. This is a pre-existing condition created by the County of Santa Clara and is not incumbent upon the applicant to upgrade or repair. Similarly, County road crews under the supervision of the Roads & Airports Department have for 40 years continuously overlayed the easterly 600' of the Elam frontage with 2" of asphalt concrete without ever constructing a downhill retaining wall. The pavement at the north edge adjacent to 14195 Shannon Road is presently 18" thick with asphalt and no retaining wall. This roadway was recently annexed to the Town in 2018 and a Capital Improvement Project is currently under design by Los Gatos Parks & Public Works. This roadway project will increase the pavement width to 23', as well as add guardrails and retaining walls to the north side of the road. The applicant has agreed to dedicate the additional street right of way at no cost to the Town.

### **1989 Public Works Department Failure to Secure Sky Lane Right of Way**

In 1989 a builder named Dan Shurter developed the lot and house at the east end of Sky Lane. The emergency access road connection of Sky Lane to Sierra Azule has been depicted on the Hillside Specific Plan since 1978. Shurter appealed the requirement to construct Sky Lane on his frontage to the Town Council and was relieved of that improvement work and expense. However, he was supposed to dedicate the 20' public half-street right of way for future installation of the gated emergency access road. Town staff failed to finalize the dedication paperwork prior to Shurter's occupancy in approximately 1990.

The applicant has secured an agreement with the current Shurter house owner (now Handel Jones) for the dedication of the necessary emergency access road easement. We have designed an 18' wide emergency access road across the Handel Jones frontage and effectively given him the land that he has taken. The roadway is offset entirely into the Elam property to include a fire department turnaround at the emergency gate. A Knox Box will be installed for County Fire Department access. Sky Lane will be extended easterly adjacent to the existing San Jose Water Company 300,000 gallon tank for 200' to connect to the present terminus of Sierra Azule. This connection will enhance the safety of the 14 residences on Sky Lane by providing a second means of access that is consistent with California Fire Code 4290. The negotiation and expense associated with securing the emergency access vehicle easement (EVAE) from Jones will provide a significant public benefit that far exceeds and mitigates any new fire service demand created by the applicant's subdivision lots.

### **Hillside Specific Plan**

The Hillside Specific Plan (HSP) was created by former Planning Director Lee Bowman and staff as a response to the anticipated loss of property tax revenue due to the approval of Proposition 13 in 1978. The HSP was literally a "deal with the devil," or in this case land developers. Increased unit density is allowed at appropriately safe and accessible terrain where houses are clustered for sewer and water infrastructure to reduce utility extension costs. The plan was a bit naive and presumed that the Town would receive support from the West Valley Sanitation District and San Jose Water Company. The project developer would construct the streets and trail/open space improvements and pay for all infrastructure costs with a large net profit realized with the finished lots at a higher density. The original Hillside Specific Plan was derived and adopted by the Town in 1980 with major amendments as a result of a subdivision moratorium for the Blossom Hill Area (including the applicant's property) in 1991. The HSP has been updated approximately every 10 years with the Town's General Plan update which has always been supported by a full Environmental Impact Report.

Into the 1990s the West Valley Sanitation District (WVSD) had excellent leadership from District Director Bill Gissler (the former mayor of Santa Clara). They were open-minded, service-driven, and expansion-oriented. Over the past 30 years, the leadership at WVSD has regressed to mediocre and the District Board has been populated by ineffective local politicians. As such, their district now approaches sewer extensions as suspicious, and more than ever attempts to force applicants into private shared sewer main extensions to reduce the WVSD system

expansion and future maintenance responsibilities. It has been a slow and dreadful decline. Our current sewer design will utilize a private on-site pump station, and will eventually discharge to the public system already existing in Sierra Azule. It is a bizarre new world where sewer districts refuse to expand to connect new users. This is contrary to the 1939 California legislation that created sewer districts to protect the public.

More extremely, San Jose Water Company is simply the most expensive water company within the South Bay. While their overall system in Los Gatos is a decrepit patchwork of substandard tanks and undersized, ancient water mains, they still charge customers at premium rates. Our client, John Aires, developed the 72 lot project on Santa Rosa Drive which was named the Alta Vista Subdivision. He constructed and financed two water tanks: one at Harwood Road and the other at Sierra Azule adjacent to this applicant's project. An 8" water main was extended in Shannon Road across the Elam property frontage and has provided service to numerous fire hydrants within the vicinity. We anticipate that San Jose Water Company will nonetheless require that we provide significant upgrades to their system to properly service the proposed lots.

### **Los Gatos Hillside Specific Plan is in Good Standing**

In 2011, with an unrelated project on Sheldon Road, just outside Town limits, we had to convince Bill Shoe, Principal Planner at Santa Clara County, that the Jointly Adopted Los Gatos Hillside Specific Plan was alive and well and had not been rescinded by the 2000 County General Plan. He finally accepted the fact after a telephone call with then Planning Director Laurel Prevetti. We have utilized the Hillside Specific Plan for decades with at least 15 subdivision applications in Los Gatos.

The beauty of a Specific Plan is that it anticipates density and zoning, and provides a detailed framework for the review and approval of subdivision projects. Until recently, the Town required major subdivisions (defined as 4 lots or more) to be processed as Planned Developments (PDs). That policy was rescinded. The current zoning of the Elam 27.68 acre site is Resource Conservation (RC) because it was formerly subject to the Williamson Act Land Conservation contract. That agricultural land preservation contract has since expired. For subdivision, the site needs to be rezoned to HR-1 or HR-2.5.

We have reviewed the slope density calculations prepared by Ruth & Goring in 2018 that were done at the time of annexation to the Town. Unfortunately, there was an error in not identifying a second legal lot created when Elam acquired the westerly hairpin turn on Sky Lane (see title report). This parcel area, therefore, is segregated from the overall slope density calculation's gross area and technically counts as an additional lot. The gross area was also in error because the calculations are to be done with the inclusion of private streets, per *HR Zoning Section 29.40.250 Density formula*:

**A is the gross area in acres of the parcel, not including the right-of-way of existing public roads.**

Finally, Ruth & Going did not separate out areas in excess of 50% slope which is allowed by the

Los Gatos Slope Density Ordinance. Using the average slope reduction and adding the second legal lot, we yield a count of 10 dwelling units (see map). Unfortunately, the maximum allowed density was underestimated at the January 2020 CDAC Meeting where the influence of the neighborhood resulted in an assumption that 6 to 8 dwelling units would be appropriate.

### **Elimination of Lots Undermines HSP Density Goals**

The above scenario for presumptive density reduction by the Town government is inconsistent with the HSP. Please recall that the catalyst for development is the critical mass of dwelling units clustered in moderately sloped, safe, and accessible terrain. Past Town Councils have consistently gutted subdivision projects of dwelling units which is contrary to the critical mass concept, and further diminishes the ultimate hillside dwelling unit target. There was anticipation that the Town would create approximately 1049 new dwelling units throughout the nine sub-areas of the HSP. Town staff has never conducted an inventory since the inception of the HSP, but a generous guess would be that under 200 units have been created over the past 40 years. Unfortunately, every time the Planning Commission and Town Council surrender to the false claims of opposing neighbors, they incrementally undermine the clustered density goals of the HSP and thereby make it less likely that the community benefits of emergency circulation, enhanced fire protection, trails, and open space can be created. The extremely high cost of infrastructure is exacerbated with the loss of units to absorb the cost.

### **Background Environmental Reports**

We have conducted the necessary background environmental reports and have found no fatal flaws with the project site. Please refer to the following:

- Archeological Report
- Biological Assessment
- Geologic Report for Earthquake Faults
- Geotechnical Report
- Traffic Study

### **Subdivision Design**

Pursuant to the Blossom Hill Open Space Study prepared by Tito Patri in 1989, we start any Los Gatos Hillside subdivision design with the identification of physical constraints. We have mapped the 30% slope lines as a limit to hillside grading. We then had the apparent riparian area parallel to Shannon Road assessed for wildlife habitat. No significant riparian corridor vegetation or habitat was found. Because the site is not visible from the Santa Clara Valley, regional visibility and ridgeline projections are not an issue. The south-facing slopes look toward the Sierra Azule foothill area. In summary, there are no unmanageable constraints that inhibit the development of the building sites. The Blossom Hill Open Space Study identified this site as Environmental Sensitivity Zone category 1, which is comparable to the Least Restrictive Development Area (see Open Space Study images & text).

Next, we evaluated the appropriate access and circulation. Sky Lane on the westerly end through the property provides access to another 14 lots to the north, therefore only minor enhancements

of width and alignment are allowed. We have designed the easterly extension of Sky Lane as an emergency access connection to Sierra Azule, with access to lots 8, 9, and 10. An emergency access road that is actively used by a few residences is better maintained and protected than an inactive secured driveway. Pavement tends to deteriorate without the application of active wheel pressure from vehicles. Additionally, residences adjacent to an EVAE tend to discourage trespass and mischief.

Based upon neighborhood feedback at the CDAC, we have minimized the number of new driveways on Shannon Road with the use of shared private access roads for lots 1 and 2, then 4, 5, and 6. This reduces the number of new driveways on Shannon road to just two for the seven lots proposed, which results in fewer traffic conflicts on Shannon Road. Furthermore, grading and impervious surface area are minimized with the shared pavement.

The HR zoning allows any lot to be as small as 40,000 SF with an average width of 100'. Lots 8,9 and 10 comply with these standards. The Shannon Road building sites are located within a 110' wide minimally sloped corridor of 2% to 5% terrain. This area is below the 30% slope line. Each two-acre lot will include an open space area of approximately 1.5 acres and a development envelope of 0.5 acres.

### **The Irony of NIMBY-ism**

Ray Elam Sr. and Elizabeth Elam originally acquired 38.09 acres of land in 1947. The seller was a European vintner that tended to his grape vineyards and 12-acre apricot orchard with his mule daily from dawn to dusk. Elam Sr. worked at Ames Research Center and had a passion for his family farm where he raised two children. The site was also used for horse boarding with as many as 30 horses at one time.

Mr. Elam was a talented handyman and for decades was the primary maintenance director for the Kennon Mutual Water System that serves the Sky Lane and the Shannon/Kennedy Road areas. He was active in this role well into his 80s and would always arrive with a shovel in hand for water leaks on the system. He was a committed good neighbor in the classic American farming tradition.

It is indeed ironic that local neighbors have objected to subdivision of the site given that at least eight of their houses occupy lots that were subdivided by deeds from the original Elam 38 acres. The eight parcels south of Sky Lane along the ridgeline sit on approximately 10.4 acres or at a density of 0.77 DU/AC, or an average lot size of approximately 1.30 acres. The applicant's proposal is for 10 units on 27.68 acres, or a density of 0.36 DU/AC, which is half of the Sky Lane density. The average lot size as proposed is 2.77 AC/DU, or more than double the size of those lots in the area south of Sky Lane.

It is disappointing that some of these eight neighbors would now oppose a project that will complete a 40-year planned emergency access road by connecting Sky Lane to Sierra Azule to greatly enhance their own personal safety. Sky Lane is presently a 3600' (0.7 mile) long

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dead-end street with no fire department turnarounds. Furthermore, their drinking water and fire protection system was built and maintained by Ray Elam Sr. for 60 years to protect the land that he subdivided, upon which their residences sit.

We look forward to your initial review and intake of the project plans and documents and are available for a ZOOM meeting with our assigned project planner prior to the determination of the filing fees.

Sincerely,



TS/CIVIL ENGINEERING, INC.  
Terence J. Szewczyk, P.E. C35527  
Principal Engineer