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May 21, 2018

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CITY OF TRACY
DEVELOPMENT SERVICES

Mr. Scott Claar
Senior Planner
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

**Re: Application for Amendment to Conditions of Approval
Redbridge Subdivision ((Tract 2984)
Proposed Gate and Guardhouse**

Dear Scott:

As you are aware, our firm represents the Redbridge Homeowners Association (“Redbridge” or “HOA”) in connection with an application to install gates at the entry to the Redbridge Community at the intersection of Redbridge and Lammers Road. The HOA proposes to install entry and exist gates allowing vehicular and pedestrian access, and to construct and install an unmanned 240 square foot guardhouse and landscaping at the community’s entrance.

Enclosed please find the HOA’s Development Application Form and Environmental Questionnaire which identifies the purpose of the requested amendment to the conditions of approval for the Preliminary/Final Development Plan and Vesting Tentative Subdivision Map for Redbridge approved by the City Council on June 1, 1999 by and through Resolution 99-194. This application requests amendment of the Concept Development Plan (“CDP”) for the Redbridge Planned Unit Development (“PUD”) Zone and amends the PUD Zone Preliminary and Final Development Plan (“PDP/FDP”) and conditions of approval for the PDP/FDP.

Project Conditions of Approval

As we understand it, Exhibit “A” to Resolution 99-194 reflects the City’s Planning Division Conditions of Approval for the PDP/FDP. Section 16 of these Conditions of Approval address conditions related to streets within the subdivision and state, in relevant part, “For all private streets and alleys, the Subdivider shall offer a public access easement...[]. In accordance with California Vehicle Code section 21107.5, all private streets shall be open for public use, and no person shall erect a sign to indicate that any private street within the Project is not subject to

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public traffic regulations or control.” Section 16 (c). A copy of Section 16(c) of Resolution 99-194 is attached hereto as Exhibit “1” and incorporated herein by this reference. Section 16 (e) states as follows:

“After the completion of construction of Schulte Road connecting Corral Hollow Road and Lammers Road, the Subdivider or the homeowners association may apply to the City to vacate the public access easement.... If the City Council makes findings required by California Streets and Highways Code section 8300 *et seq*, the City shall vacate the public access easement, provided, however that the vacation of the easement shall be subject to a condition to be imposed at the discretion of the City Council at the time of vacation for the homeowners association to either (i) assume all responsibility for enforcement of traffic regulations on the private streets and alleys within the Project, or (ii) post all necessary signs to the satisfaction of the City Engineer to allow the City to continue enforcement of traffic regulations in accordance with California Vehicle Code section 21107.7.” (See Exhibit “1”).

On April 4, 2000 and by Resolution 2000-107, the City amended Condition B16(e) to read as follows:

“16(e) The Subdivider(s) shall provide a temporary access easement allowing the use by the public of School House Road to Redbridge Drive to Lammers Road, *until such time as Schulte Road is completed*. The temporary public access easement shall include in its terms a specific provision that the temporary easement shall terminate upon the completion of Schulte Road, and the Public Works Director shall be empowered to issue and deliver a Quitclaim Deed, quitclaiming any interest in the private streets *when and if Schulte Road is completed*. In accordance with the California Vehicle Code Section 21107.5, until Schulte Road is completed, no person shall erect a sign to indicate that any private street within the subdivision is not subject to public traffic regulations or control. Following the completion of Schulte Road and the termination of the temporary public access easement, the City shall adopt an ordinance or resolution pursuant to Vehicle Code Section 21107.7 providing for the enforcement of public traffic regulations including but not limited to the provisions of the Vehicle Code by the City Police Department upon private streets. The Subdivider shall post signs at all entrances and exits to the project in a form approved by the City Engineer which indicate that the private streets shall be maintained by the Homeowners Association (HOA) and that the private streets are subject to the provisions of the Vehicle Code and other public traffic regulations or controls” (emphasis added).

A copy of Section 16(e) is attached hereto as Exhibit "2" and incorporated herein by reference.

While the intent of the Condition 16(e) appears to be relatively similar as between the two versions of the condition, it is important to note that the original 1999 version of the condition specifically states that the public access easement may terminate "after completion of construction of Schulte Road connecting Corral Hollow Road and Lammers Road". In the 2000 version of the condition, however, the specificity detailing to which roads Schulte is required to connect is eliminated and, instead, simply requires Schulte Road to be "completed" before the public access easement is terminated. Such a condition, as worded, is vague and of questionable enforceability.

Application for Amendment and Project Description

Our client seeks to have Condition B16(e) eliminated in its entirety and instead replaced with a condition of approval which permits the installation of a entry and exit gates allowing vehicular and pedestrian access at the entrance to the subdivision at the intersection of Redbridge and Lammers Road. The gates would remain open during morning and afternoon school-day periods¹ in order to ensure continued connectivity to the George Kelly Elementary School consistent with the Tracy General Plan policy relative to transportation connectivity. Redbridge residents will be issued a fob for remote access to the gate during non-school hours for ease of entry into the community. The specific design and location of the gate and guardhouse shall be subject to the City's standard design review and approval processes.

Consistent with other automated gates installed in other developments in Tracy, the Applicant proposes to install the "Click2Enter" system² (or similar and compatible system to the Blackstone Gate) for emergency/public safety (police and fire) access through the Redbridge gate.

The HOA understands that staff has, in the past, expressed concerns regarding vehicular safety at and around the Blackstone Gate. As a part of this Application, the Applicant is willing to install concrete curb, gutter and sidewalk on Blackstone Drive, on the east side of the gate as requested by staff. The Applicant will also install reflective material on the gate itself and signage on the Blackstone Drive approach to the gate indicating "Not a Thru Street".

The installation of the Redbridge gate, along with the guardhouse, fits squarely within the Class 3 categorical exemption afforded under 14 Cal. Code Regs., §15303 of the California Environmental Quality Act ("CEQA"). The Class 3 exemption allows for the "construction and

¹ The HOA proposes two periods of time during which the gates are open to allow access to the school: 7:30 -8:30 a.m. and 2:15 to 3:15 p.m.

² See product information at: <http://www.click2enter.net/>

location of limited numbers of new, small facilities or structures” without environmental review and includes such examples as accessory structures such as garages, carports and fences (See Guidelines §15303 (e)).

The Project does not fall within one of the exceptions to the Class 3 exemption as it is not located within a sensitive environment (Guidelines §15300.2(a)). Nor will the Project result in significant cumulative impacts due to successive projects of the same type in the same place (see Guidelines §15300.2(b)). Finally, there is no reasonable possibility that significant environmental impacts will result from the Project due to “unusual circumstances” (see Guidelines §15300.2(c)).

Basis for Application

The rationale for this Application is as follows. Since the construction of the Redbridge subdivision, members of the public frequently access the community to enjoy the numerous attractive amenities afforded by the neighborhood including a beautiful park and pool. Redbridge’s amenities, however, were never intended to be publicly accessed or used; Redbridge itself was intended to be a private and gated community by its developer, Surland Companies, and by the residents who have purchased homes in the community.

The Conditions of Approval, as reflected through Resolutions 99-194 and 2000-107, expressly require the streets (which are clearly intended to be private by virtue of the conditions’ reference to “private streets” and the Subdivider’s requirement to provide a temporary public access easement) to be maintained by the Homeowner’s Association. This means for the last 17 years since the project has been constructed, the individual members of the Redbridge community have borne the entire cost of street maintenance within the community, notwithstanding the fact that the public uses the streets 24 hours a day, 7 days a week.

While the City has asserted that it has the right to allow the streets to be used by the public pursuant to California Vehicle Code section 21107.5, no temporary access easement was ever negotiated or recorded which specifies the scope, extent and conditions of such use by the public. Furthermore, the Conditions of Approval are vague relative to the duration of the presumed easement or public use of the “School House Road to Redbridge Drive to Lammers Road until such time as Schulte Road is completed.” Not only are the terms and conditions of the public’s use of Redbridge streets unclear, it is also unclear what is meant by the reference “until such time as Schulte Road is completed.” In short, the HOA has no certainty whatsoever when its obligations to keep the streets open and available to the public may terminate. It is also not clear whether the condition precedent to terminating the public’s use (completion of Schulte Road) is even a condition that can feasibly be met within the next decade or ever, for that matter. Notably, the Conditions of Approval references “*when and if Schulte Road is completed*” leading one to conclude Schulte Road may never be completed which would result in the Redbridge community shouldering the entire burden of road maintenance costs for the public’s use in perpetuity.

Policy P.6. of the City of Tracy's Community Character Element of the General Plan states, in part, "[g]ated communities and walls should only be allowed on a case by case basis and will generally be considered only for projects such as "estate" developments where the minimum lot size is at least 1 acre or in housing with specialized clientele such as senior citizens."

The Applicant asserts that the City of Tracy has interpreted this provision of its General Plan to allow a number of gated communities, including the following: Villages at Summergate, Aspire I and II and Almondwood Terrace. As with the Redbridge development, these communities are served by private streets and are all gated. Some of these projects are townhomes (for sale) and others are rental. Nowhere in the staff reports or minutes for these various projects is the City of Tracy's General Plan policy cited as an impediment or prohibition on the placement of the gates. In fact, none of the planning documents for these projects contains any discussion about the General Plan policy itself; there are no findings for the gates' approval and none related to General Plan consistency. A review of planning documents related to such projects suggests that only the recently-approved Tracy Village project contains reference to General Plan policy regarding gated communities.

We believe that, because the City of Tracy has already made numerous exceptions to its General Plan policy, the City Council may make the findings for an exception for this Application.

Among the findings are that Redbridge's private streets were always planned to be private and not made available to the public given the language of the conditions of approval. Specifically, Resolution 2000-17, Condition B16(e) states "[t]he Subdivider(s) shall provide a temporary access easement allowing the use by the public of School House Road to Redbridge Drive to Lammers Road until such time as Schulte Road is completed." Following satisfaction of that condition of approval, the plain language of the condition of approval clearly contemplates that the City would quitclaim its interest in the private streets in the Redbridge community. Therefore, the Applicant is merely requesting an acceleration of the timing of the City's clear intent to have Redbridge be a community with private streets and to quitclaim its interest in Redbridge's private streets.

Conclusion

Enclosed please find the Development Application Form and Environmental Questionnaire; fees were previously submitted and remain on deposit with the Planning Department in a total amount of \$8,223.00 (Planned Unit Development Amendment Fee of \$5,014; the Development Review Class B fee for the PDP/FDP of \$3,098; and the Environmental Assessment Fee of \$111. We respectfully request our application be processed in an expeditious manner and that the conditions of approval be amended to allow for the installation of a vehicle and pedestrian gate at the intersection of Redbridge Road and Lammers.

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Thank you and please do not hesitate to contact me should you have any questions.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

A handwritten signature in black ink, appearing to read "Amara", followed by a long horizontal flourish.

Amara L. Morrison

ALM/ALM

cc: Andrew Malik
Client
Tony Marshall
Donna Taylor
Andrew Crawl, Esq.

Enclosures: Development Application Form
Environmental Questionnaire

00093517

000935

Exhibit A
Conditions of Approval
Redbridge
June 1, 1999
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EXHIBIT "1"

attached to each garage) All improvements in the alleys shall be maintained by the homeowners association

- (b) The Subdivider shall provide notice to all home buyers and through the CC&Rs that there is no parking in the alleyways and that no obstructions shall occur in alleyways which would prevent emergency vehicles from responding in the alleys
 - (c) For all private streets and alleys, the Subdivider shall offer a public access easement and no person (including the Subdivider, the homeowners association, or any property owner) shall excavate within the easement without first obtaining an encroachment permit from the City in accordance with the Tracy Municipal Code. In accordance with California Vehicle Code section 21107.5, all private streets shall be open for public use, and no person shall erect a sign to indicate that any private street within the Project is not subject to public traffic regulations or control
 - (d) The Subdivider shall post signs at all entrances and exits to the Project, in a form satisfactory to the City Engineer, which indicate that all streets within the Project are privately maintained
 - (e) After the completion of construction of Schulte Road connecting Corral Hollow Road and Lammers Road, the Subdivider or the homeowners association may apply to the City to vacate the public access easement identified in Condition B(15)(c), above. If the City Council makes findings required by California Streets and Highways Code section 8300, et seq., the City shall vacate the public access easement, provided, however, that the vacation of the easement shall be subject to a condition, to be imposed at the discretion of the City Council at the time of vacation, for the homeowners association to either (i) assume all responsibility for enforcement of traffic regulations on the private streets and alleys within the Project, or (ii) post all necessary signs, to the satisfaction of the City Engineer, to allow the City to continue enforcement of traffic regulations in accordance with California Vehicle Code section 21107.7
 - (f) Unless otherwise specifically provided in these Conditions, all improvements on private streets and alleys (including landscaping, lighting and all signage) shall be maintained by the homeowners association
17. For lots of 3,000, 5,500, 6,000, 8,000 and 10,000 square feet the following minimum requirements shall apply:
The front setback on the 3,000, 5,500, 6,000, 8,000 and 10,000 square foot lots shall be 15 feet from the face of curb. The side yard setbacks shall be a minimum of 5 feet with a minimum of 10 feet between structures, except on

RESOLUTION 2000-107

APPROVING AMENDMENTS TO THE
CONDITIONS OF APPROVAL FOR THE
REDBRIDGE PLANNED UNIT DEVELOPMENT
VESTING TENTATIVE SUBDIVISION MAP
APPLICANT SURLAND COMPANIES
APPLICATION 11-99-TSM

WHEREAS, On June 1, 1999, the City Council approved the Preliminary/Final Development Plan and Vesting Tentative Subdivision Map for the Redbridge project, and

WHEREAS, The Tracy Municipal Code Section 12.16.100 allows for minor modifications to Conditions of Approval, such minor modifications were requested and made in the document entitled Minor Modifications to Conditions of Approval, Redbridge Subdivision, Resolution 99-194 and signed by the Development and Engineering Director and City Engineer, and

WHEREAS, The Surland Companies submitted an application to amend the adopted Conditions of Approval, B16, B18 and N2, relating private streets, setbacks and private parks, and

WHEREAS, Condition B16(e) is amended to read as follows:

- 16(e) The Subdivider(s) shall provide a temporary access easement allowing the use by the public of School House Road to Redbridge Drive to Lammers Road, until such time as Schulte Road is completed. The temporary public access easement shall include in its terms a specific provision that the temporary easement shall terminate upon the completion of Schulte Road, and the Public Works Director shall be empowered to issue and deliver a Quitclaim Deed, quitclaiming any interest in the private streets when and if Schulte Road is completed. In accordance with the California Vehicle Code Section 21107.5, until Schulte Road is completed, no person shall erect a sign to indicate that any private street within the subdivision is not subject to public traffic regulations or control. Following the completion of Schulte Road and the termination of the temporary public access easement, the City shall adopt an ordinance or resolution pursuant to Vehicle Code Section 21107.7 providing for the enforcement of public traffic regulations including but not limited to the provisions of the Vehicle Code by the City Police Department upon private streets. The Subdivider shall post signs at all entrances and exits to the project in a form approved by the City Engineer which indicate that the private streets shall be maintained by the Homeowners Association (HOA) and that the private streets are subject to the provisions of the Vehicle Code and other public traffic regulations or controls.

EXHIBIT "2"