

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
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San Jose, California 95110-1705
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STAFF MEMORANDUM
Zoning Administration
January 16, 2020
Item #2

Staff Contact: Colleen Tsuchimoto – Senior Planner
(408) 299-5797, colleen.tsuchimoto@pln.sccgov.org

File: PLN18-8580

Building Site Approval with Architectural Review (BA), Grading Approval (G), and Variance (V) for a new single-family residence and attached accessory dwelling unit

Location: Sanborn Road, Saratoga (APN 517-33-003)

BACKGROUND

On August 11, 2011, the County's now-dissolved Architecture Site Approval (ASA) Committee approved a Building Site Approval with Architecture Review (BA), Grading Approval (G), and Variance (V) to allow the construction of a 5,950 sq. ft. residence. Grading of 11,854 cubic yards of cut, and 640 cubic yards of fill is associated with improvements on the parcels (building pads, driveway, and legalizing work previously done on a landslide repair). The approval included grading with establishment of a driveway that extended beyond an existing easement, and onto the neighbor's property (George Tengen) located at 16505 Sanborn Rd, immediately south of the site. In response to public comments, the ASA Committee required the following Conditions of Approval:

ASA Condition #41: Provide a construction easement from the owner of APN 517-37-002 (Lands of Tengen). Additionally, provide a signed acknowledgement from the owner of APN 517-37-002 that acknowledges the changes to their driveway and approach referencing an attached exhibit plat of the proposed and approved changes.

ASA Condition #44: Submit a signed and notarized Common Ownership Covenant of Easement for the driveway. The easement shall be sufficiently wide to accommodate required improvements, including constructed slopes. The Covenant of Easement document must be reviewed by County staff and recorded by the owner.

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On August 8, 2013, the ASA Committee approved of an extension of time to allow an additional two years for the owner to obtain building and grading permits for the project. This made the new expiration date for the BA and G August 8, 2015.

On February 23, 2012, the Applicant submitted an application for a Grading Permit with Land Development Engineering (LDE). The Grading Permit was issued on September 16, 2016. Grading construction work began shortly after September 2016. The Grading Permit was valid for two years, and was due to expire on September 16, 2018.

On November 5, 2013, the Applicant submitted applications for Building Permits into Building Plan Check. The Building Permits were not issued, as there were pending incomplete items for Planning, Environmental Health and Roads Dept. The Building Permit application expired on December 31, 2016.

On March 9, 2018 the owner submitted new applications for a BA, G and V land use entitlement, as the land use entitlements expired in August 2015. The applicant submitted the same plans that were approved in 2011. Staff deemed the application incomplete, requesting the notarized easement documentation be obtained and updates to plan to meet County standards for the driveway.

On May 22, 2018, LDE Staff became aware that notarized consent/authorization from the neighbor (ASA Committee Condition Nos. 41 and 44 above), was not obtained for work in the easement. Subsequently a stop work order was issued for all grading construction activity for the driveway.

On August 24, 2018, the applicant submitted revised plans to proposed all grading within the established easement, as the owner was unable to obtain the necessary notarized consent/authorization forms. The design modified the grading for access to the property in order to eliminate any grading that extended onto the neighbor's property, located south of the site. This revised application was deemed incomplete on September 19, 2018 as the proposed driveway still did not meet current County standards for Fire Marshal access and LDE. After several other resubmittals, the application was deemed complete for processing on November 25, 2019.

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On December 10, 2019, LDE Staff inspected the subject property in response to a complaint related to alleged stormwater violations. At that time, LDE Staff issued a 'Stop Work' and noted that the property displayed visual discharge into a nearby creek, and the property was not compliant with stormwater requirements for erosion control, run-on/off control, construction site entrance concerns, sediment control, active treatment systems, and the site was in poor site management. At the time of this inspection, the observed stormwater violations did not affect the Applicant's BA and G applications. LDE Staff also required the Applicant to request a reinspection by December 17, 2019.

On December 17, 2019, LDE Staff re-inspected the property and confirmed the continued stormwater violations. At that time, LDE Staff also verified unpermitted fill that was placed onto the neighbor's property, located at the immediate south neighboring lot (16505 Sanborn Rd.), during the initial construction of the driveway. As previously noted, due to the fact that the neighbor did not provide authorization for this fill, the fill is unpermitted. Staff was unaware that this unpermitted fill existed until December 17, 2019. Planning Staff was notified by LDE on January 3, 2020, confirming the violations. This was after the subject application was noticed for the January 16, 2020 Zoning Administration Hearing. This unpermitted fill was not addressed in the updated plans deemed complete on November 25, 2019.

On January 3, 2020, a public notice was mailed to all property owners within a 300-foot radius of the subject property and an interested-parties list, and was also published in the Post Record on January 3, 2020.

DISCUSSION

To resolve the problem with grading material over an easement line, onto the neighboring property, the following steps are necessary before opening a public hearing and rendering a decision on the subject application:

- 1) Grading plans shall be updated showing whether the fill material will be removed or remain. Staff will need to review the plans and deem the plans complete.
- 2) As part of the completeness review, if the Applicant proposed to keep any portion of the unpermitted fill outside of the established easement, notarized authorization for the work outside of the easement and on the neighboring property will be required prior to deeming the application complete for processing. Staff will not defer the authorization requirement to a future date, as a Condition of Approval.

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RECOMMENDATION

Given the new information submitted into the record by County LDE Staff on December 17, 2019, and as reported to Planning Staff on January 3, 2020, Staff has verified that the project plans submitted do not address unpermitted fill on the neighboring property, which potentially affects the design of the driveway, Staff recommends continuance of the project to a date uncertain to resolve the above issues.

ADDITIONAL INFORMATION

Permit Streamlining Act

The subject application was deemed complete for processing on November 25, 2019, with a Permit Streamlining Act deadline of January 24, 2020. The applicant has granted a one-time, 90-day extension to the Permit Streamlining Act. The new decision deadline for the subject application is April 23, 2020. Should the applicant submit new plans, a new Permit Streamlining Act timeline will ensue.

REVIEWED BY

Prepared by: Colleen Tsuchimoto, Senior Planner 

Reviewed by: Leza Mikhail, Zoning Administrator 

ATTACHMENTS INCLUDED

Attachment A – January 3, 2020 Correspondence from LDE Staff to Planning Staff
Attachment B – January 6, 2020 Correspondence from LDE Staff regarding actions
for inspection findings

Tsuchimoto, Colleen

From: Beams, Steve
Sent: Friday, January 3, 2020 1:44 PM
To: Tsuchimoto, Colleen
Cc: Wong, Darrell; Duazo, Ed; Flagg, Gary; Alvarez, Michael; Freitas, Chris
Subject: RE: [EXTERNAL] Work Stoppage
Attachments: #LDE18-8580G 12-2019 Fill near Creek.pdf; Sanborn 40' Easement.pdf; IMG_8864.JPG; IMG_9075.JPG; IMG_9103.JPG; IMG_9098.JPG; IMG_9113.JPG; IMG_9111.JPG

Hi Colleen,

As we know Mitch retired, so Jerry and myself, back on 12-10-19 were able to visit the site with the stormwater complaint. Given we both haven't been on this project and with the current stormwater discharge into the creek, I was able to visit the site on 12/17/19 with a follow up inspection with the current site conditions. Some new erosion control measures were implemented; however, conditions worsened with grading and or directly sending storm runoff into the creek via a recently graded ditch (PIC IMG_9075). Secondly the upper creek are near the existing shed had recent and older deposits of soil material next the creek. Lastly the neighboring parcel with the conform to existing driveway was placed with soil encroaching "illegally" onto the parcel from what the neighboring parcel expressed during our site visit. With briefly looking at the approved plans, I believe the above mentioned items (especially the creek fill near shed), are out of scope of the approved plan. I'll be trying to contact the owner / applicant to walk the project in the near future.

Regards,

Steve Beams | Senior Construction Inspector
County of Santa Clara, Department of Planning and Development
Land Development Engineering – Inspection Division
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Please visit our [website](#).

Click [here](#) to look up unincorporated property zoning information.

Questions on the status of your permit? Please e-mail: PLN-PermitCenter@pln.sccgov.org

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Tsuchimoto, Colleen

From: Wong, Darrell
Sent: Monday, January 6, 2020 4:13 PM
To: Tsuchimoto, Colleen; Connolly, Mark; Mikhail, Leza
Cc: Beams, Steve
Subject: Sanborn Road - Bagnas - File 8224/8580

Leza,

While on site for an inspection of separate erosion control inspections, it was brought to our inspectors' attention that there is unauthorized fill material that has crossed over the easement line into the neighboring property. This unauthorized fill is not shown on the current plans. The fill must be shown on the plans along with a proposal as to how it will be addressed. Will it be removed or remain? In either case, a notarized authorization for the work outside of the easement and on the neighboring property would be required. That authorization should best be obtained prior to final Conditions of approval being issued.

Regards,
Darrell Wong
Senior Civil Engineer
Santa Clara County
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Please visit our website

Click [here](#) to look up unincorporated property zoning information.

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