



**ROSSI HAMERSLOUGH  
REISCHL & CHUCK**  
A Professional Law Corporation

August 13, 2019

**COVER LETTER FOR: APPEAL OF FINAL CONDITIONS OF  
APPROVAL FOR DESIGN REVIEW & GRADING APPROVAL**

**VIA PERSONAL DELIVERY**

County of Santa Clara  
Department of Planning & Development  
Planning Division  
70 West Hedding  
San Jose, CA 95110-1705  
Email: [kim.rook@pln.scc.gov.org](mailto:kim.rook@pln.scc.gov.org)

**RE: Applicants: Judith Hart/Kevin Aitken**  
**Project Location: 65 "P" Pedro View Road, San Jose, CA (APN 612-67-003)**  
**Project File No.: PLN 19-0091**  
**Appellants: Carlos and Manuela Silveira**  
**Appellants' Property: 12245 Mount Hamilton Road (APN 612-67-002)**

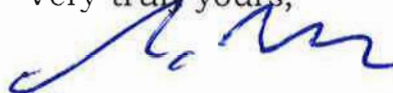
Dear Planning Office:

Enclosed please find the following documents in support of my clients' appeal regarding the above project.

1. Master application form entitled "Planning Development Application";
2. Letter addressed to the Planning Commission entitled "Appeal of Final Conditions of Approval for Design Review and Grading Approval" dated August 13, 2019; and
3. Check in the amount of \$896.10 for the residential appeal fee.

Please confirm the date for the planning commission hearing on this appeal. Thank you for your assistance in this matter.

Very truly yours,



RICHARD B. GULLEN

RBG:cm

cc: Kim Rook, Senior Planner  
Client

S:\CL\G\RR15820 SILVEIRA\CORRESPONDENCE\ROOK2.DOCX



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APPROVAL FOR DESIGN REVIEW & GRADING APPROVAL**

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Email: [kim.rook@pln.scc.gov.org](mailto:kim.rook@pln.scc.gov.org)

**RE: Applicants: Judith Hart/Kevin Aitken**  
**Project Location: 65 "P" Pedro View Road, San Jose, CA (APN 612-67-003) ("Parcel 3")**  
**Project File No.: PLN 19-0091**  
**Appellants: Carlos and Manuela Silveira**  
**Appellants' Property: 12245 Mount Hamilton Road (APN 612-67-002) ("Parcel 2")**

Dear Planning Commissioners:

**I. INTRODUCTION**

I represent the above-referenced appellants Carlos and Manuela Silveira, the owners of the property adjacent to the proposed project. This statement accompanies the master application form and the fee filed by appellants to appeal the final conditions of approval issued by the County on July 30, 2019 for the design review and grading approval for the project.

My clients object to the project as depicted in the revised plans dated May 2, 2019 because the applicants propose to replace my clients' current access point which is feasible and safe, with one that is infeasible and unsafe. My clients' current access rises gradually up a hillside slope at an angle across the fall line. In contrast, the applicants seek to replace my clients' access with a right angle approach which would force my clients to drive straight up and down a steep slope, which is not safe or acceptable.

## **II. BACKGROUND**

### **A. The Silveiras' Access Route to the Eastern Portion of their Property**

The Silveiras' property and the Hart/Aitken property were created by a parcel map recorded in 1994. (See **Exhibit "A."**) The Silveiras' property is Parcel 2, and the Hart/Aitken property is Parcel 3.

Parcel 3's access is from Mt. Hamilton Road by a 470-foot long driveway easement which runs over the Parcel 2 Silveira property. The Parcel 2 Silveira property is a steep lot which slopes down from east to west. The subject driveway bisects the Parcel 2 Silveira property into the upper eastern portion, and the lower western portion.

In 1998, the owners of Parcel 2 and Parcel 3 recorded a grant of easement under which Parcel 2 reserved the right to use the driveway to access the upper eastern portion and the lower western portion of the Parcel 2. (See **Exhibit "B."**)

The Silveiras bought Parcel 2 in 2003, and since then have used this driveway over their property to access both the upper and lower portions. The Silveiras access the lower western portion directly from the driveway. To get to the upper eastern portion, due to the steep slope directly adjacent to the eastern edge of the driveway (see **Exhibit "C"** photos), the Silveiras have accessed the upper eastern portion by driving to the end of the driveway, and then making a u-turn around a tree on Parcel 3 and traversing gradually across the slope on the upper eastern portion of the Silveira property on a route which runs roughly parallel to, and adjacent uphill from, the driveway. (See **Exhibit "D"** aerial photo.)

### **B. The Applicants Proposal to Change the Silveiras' Access Route**

In 2015, the applicants bought the subject site. Now the applicants wish to widen the driveway by cutting into the hillside along the eastern edge and install a retaining wall along the eastern edge of the driveway. The applicants would prefer that the Silveiras not continue to drive on the subject site to access the eastern upper portion and therefore have proposed creating a new access point along the driveway.

Accordingly, on February 7, 2019, the applicants submitted plans to the County showing a new access point at driveway station 5+78.83 that was acceptable to the Silveiras in location and in design. See **Exhibit "E."** As shown on the February plans, the proposed new access point at driveway station 5+78.83 and new turn-out area between station 5+78.83 and station 60+50 are situated so that the Silveiras can continue to access the eastern portion by traversing gradually across the slope similar to the route used previously for years without the turn-out area blocking the route. This access point was acceptable to the Silveiras and the only remaining task was for the parties to sign and record a document confirming the Silveiras right to use the new location and design of the new access point.

Instead, however, on May 2, 2019, the applicants apparently submitted a new design (**Exhibit "F"**) which rearranged the sequence of the access point and the turn-out area so that the access point is now located at station 6+50, which will cause the new turn-out to block the Silveiras' ability to use the existing gradual route across the slope, and instead force the Silveiras to drive straight up and down the slope, which is very dangerous. No explanation has been given for this change by the applicants or the County.

Contrary to the Silveiras' right to access their property, the design of the access point in the May plans unnecessarily interferes with the Silveiras' existing safe route by putting the turn-out between the access point and the safe route. In contrast, the February plans do not interfere with the safe route because the proposed access point is located before the turn-out. There is no reason for rearranging the access point and the turn-out so that the Silveiras' safe access route is blocked.

### **III. CONCLUSION**

The Silveiras request that the approval of the access point design in the May plans be revoked, that the County instead approve the new access point as designed in the February plans subject to the condition that the parties sign and record a document confirming the Silveiras' rights to use the new location and design for the access point.

The Silveiras reserve the right to raise other objections regarding the project, including the grading of the hillside for the proposed driveway, the location of the turn-around, the tree replacement plantings, and the impact of the project on the view.



Thank you for your consideration. Please advise if you require any further information prior to the hearing. We look forward to a productive hearing.

Very truly yours,



RICHARD B. GULLEN

RBG:cm

cc: Kim Rook, Senior Planner  
Client

S:\CL\G\RR15820 SILVEIRA\CORRESPONDENCE\APPEAL 08-13-19.DOCX



# PARCEL MAP

CONSISTING OF 2 SHEETS  
BEING A PORTION OF PUEBLO TRACT NO. 1  
LYING ENTIRELY WITHIN THE  
COUNTY OF SANTA CLARA, CALIFORNIA

MASON - SULLIVAN  
ENGINEERS & ARCHITECTS, INC.  
2024 THE ALAMEDA, SUITE 205  
SAN JOSE, CALIFORNIA 95126

AUGUST 1994

SCALE: 1" = 100'



FILE NO: 1963-80-73-908 GRID NO: 93-50-73 SHEET 2 OF 2

658 52

658 52

EXHIBIT A

#7

Fidelity National Title Co.  
Escrow No. 111541-GJ

RECORDING REQUESTED BY  
WHEN RECORDED MAIL TO:

Henry J. Aiassa  
12245 Mt. Hamilton Road  
San Jose, CA 95140

DOCUMENT: 14471343



0014471343

Titles: 1 / Pages: 5

Fees... 19.00

Taxes...

Copies...

AMT PAID 19.00

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Fidelity National Title Ins.

RDE # 002  
10/30/1998  
8:00 AM

Space above this line for Recorder's use

## GRANT OF EASEMENT

THIS GRANT OF EASEMENT ("Grant") is made this 22nd day of October, 1998, by HENRY J. AIASSA (hereinafter referred to as "AIASSA") to JERRY JOCHHEIM AND SUSAN JOCHHEIM; husband and wife as community property (collectively "JOCHHEIM") with reference to the following facts:

A. AIASSA and JOCHHEIM, respectively, are the owners in fee of Santa Clara County Assessor Parcel Numbers 612-67-002 and 612-67-003, more particularly described as Parcel 2 and Parcel 3, respectively, as so designated on that certain map entitled "Parcel Map Consisting of Two Sheets Being a Portion of Pueblo Tract No. 1", and recorded in the Official Records of Santa Clara County on September 29, 1994, in Book 658 of Maps at pages 51-52 (the "Map").

B. On said Map, there is additionally designated across Parcel 2, a 40 foot wide public service easement and exclusive ingress and egress easement for the benefit of Parcel 3 only (the "Easement").

C. The Easement bisects Parcel 2, so that a portion of Parcel 2 is to the East of the easement area and the remainder of Parcel 2 is to the West of the easement area.

D. In conjunction with the conveyance of Parcel 3 to JOCHHEIM, AIASSA desires to grant the Easement to JOCHHEIM and to clarify the rights and obligations of the owners of Parcel 3 and Parcel 2 with respect to the Easement.

THEREFORE, AIASSA hereby grants to JOCHHEIM the Easement

EXHIBIT B



designated by the Map as follows:

1. Grant and Use of Easement. AIASSA hereby grants the Easement to JOCHHEIM. JOCHHEIM shall have the exclusive right to use the Easement for ingress to and egress from one single family dwelling and related improvements, subject to the provisions of this Grant. JOCHHEIM may, in its discretion, construct driveway improvements and utilities on and in the Easement area, may landscape and otherwise improve the area of the Easement, and may construct a gate within the Easement area near Mt. Hamilton Road, all at the sole cost and expense of JOCHHEIM. JOCHHEIM shall maintain and repair, at its sole cost and expense, any improvements it constructs within the Easement. Any improvements constructed within the Easement JOCHHEIM shall be maintained in a reasonable condition so as not to create an unsightly condition burdening Parcel 2.

2. Reservation of Crossing Rights. Notwithstanding the preceding paragraph, AIASSA hereby reserves the right to cross the Easement to access the Westerly portion of Parcel 2. In constructing improvements in the Easement, JOCHHEIM shall ensure that there remain available to AIASSA reasonable points of access across the Easement for that purpose. In exercising these reserved rights, AIASSA shall not unreasonably interfere with the Easement rights granted herein and shall repair any damage it causes to the Easement area.

3. Successors and Assigns. This Grant shall be binding on and inure to the benefit of the successors and assigns of AIASSA and JOCHHEIM, and shall be governed by the laws of the State of California.

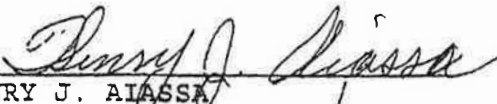
4. No Dedication. The provisions of this Grant shall not be deemed to constitute a dedication for public use or to create any right in the general public.

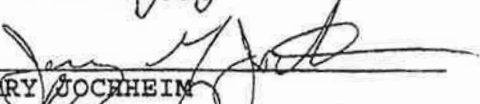
5. No Warranty of Access. Nothing in this Grant is intended to or shall be interpreted to imply any representation or warranty whatsoever by AIASSA as to the existence of any legal access from the Easement to Mt. Hamilton Road. The obtaining of any such legal access shall be the sole responsibility of the grantee of this Grant or its successors and assigns.

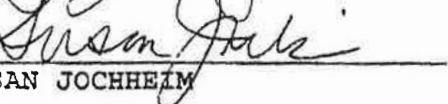
6. Effective Upon Recording. This Grant, executed as of the date herein, shall take effect only upon, from and after its

recording in the office of the County Recorder of Santa Clara  
County, California.

IN WITNESS WHEREOF, AIASSA and JOCHHEIM have executed this  
Grant as of the date first appearing above.

  
HENRY J. AIASSA

  
JERRY JOCHHEIM

  
SUSAN JOCHHEIM

(ATTACH ACKNOWLEDGMENTS)

aiassa.eas\doc\ki



Title or Type of Document Grant/of Easement  
Number of Pages 3 Date of Document 10/22/98  
Signor(s) other than named below Jerry Jochheim and  
Susan Jochheim

State of California )  
 )ss:  
County of Santa Clara )

On October 22, 1998, before me, G. Jarnagan  
Notary Public, personally appeared Henry J. Alassa

personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledge to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.



Signature *G. Jarnagan*

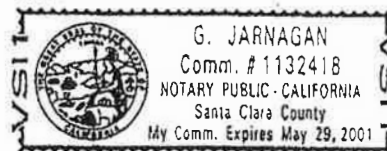
Title or Type of Document Grant of Easement  
Number of Pages 3 Date of Document 10/22/98  
Signor(s) other than named below Henry J. Aiassa

State of California )  
 ) ss:  
County of Santa Clara )

On October 27, 1998, before me, G. Jarnagan  
Notary Public, personally appeared Jerry Jochheim and Susan Jochheim

personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledge to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.



Signature

A handwritten signature in dark ink, appearing to read "G. Jarnagan", written over a horizontal line.

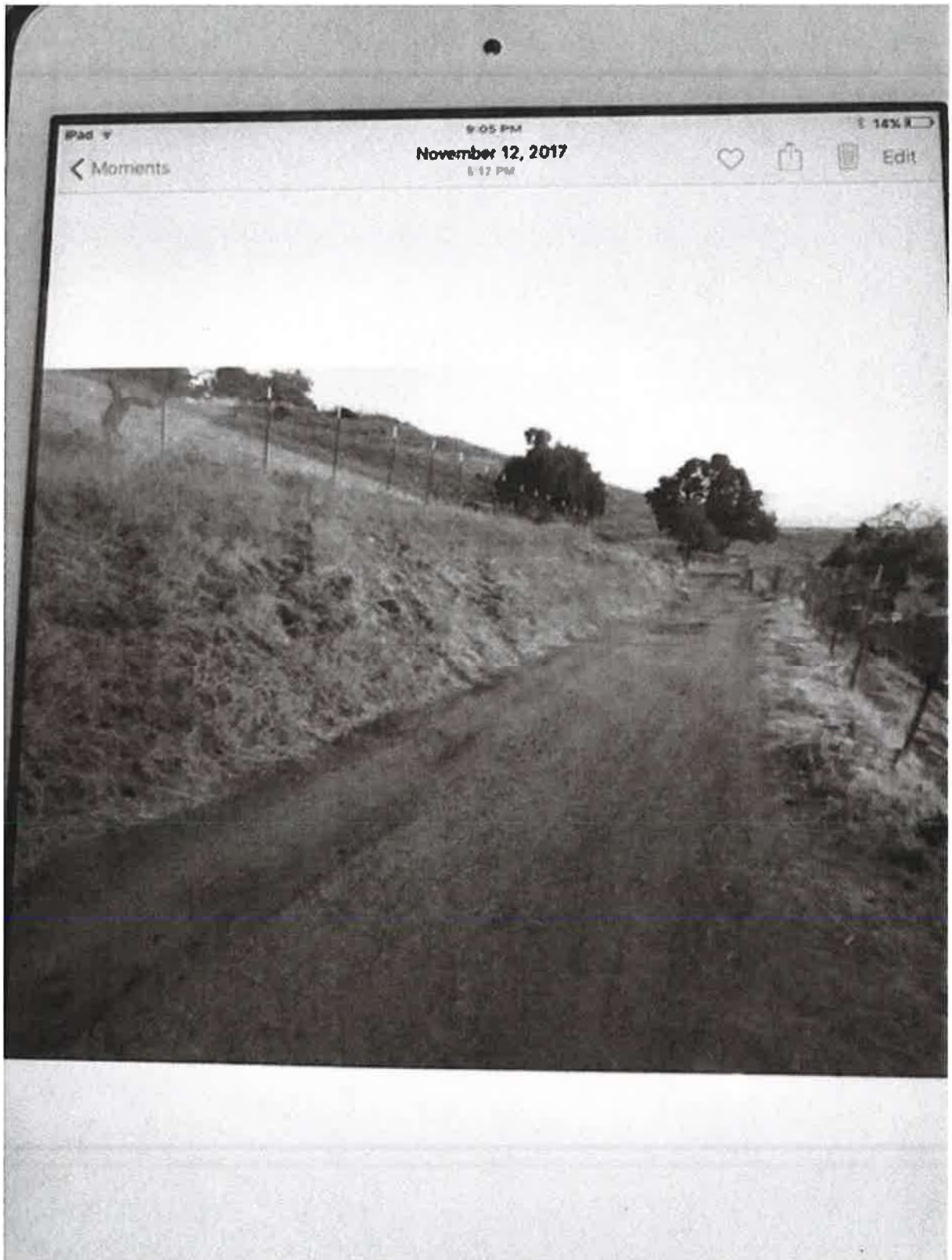
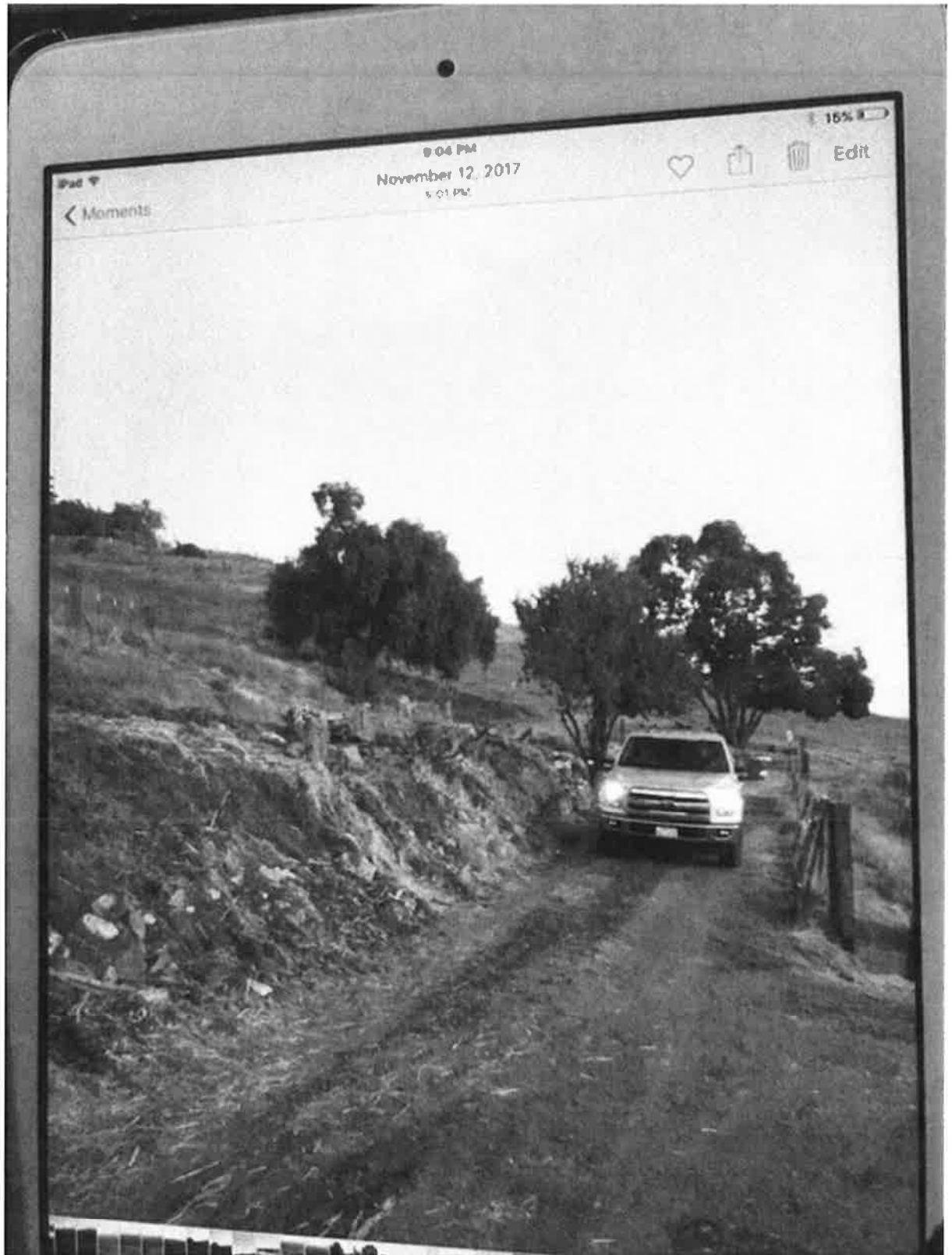


EXHIBIT C







Silveira Upper Access

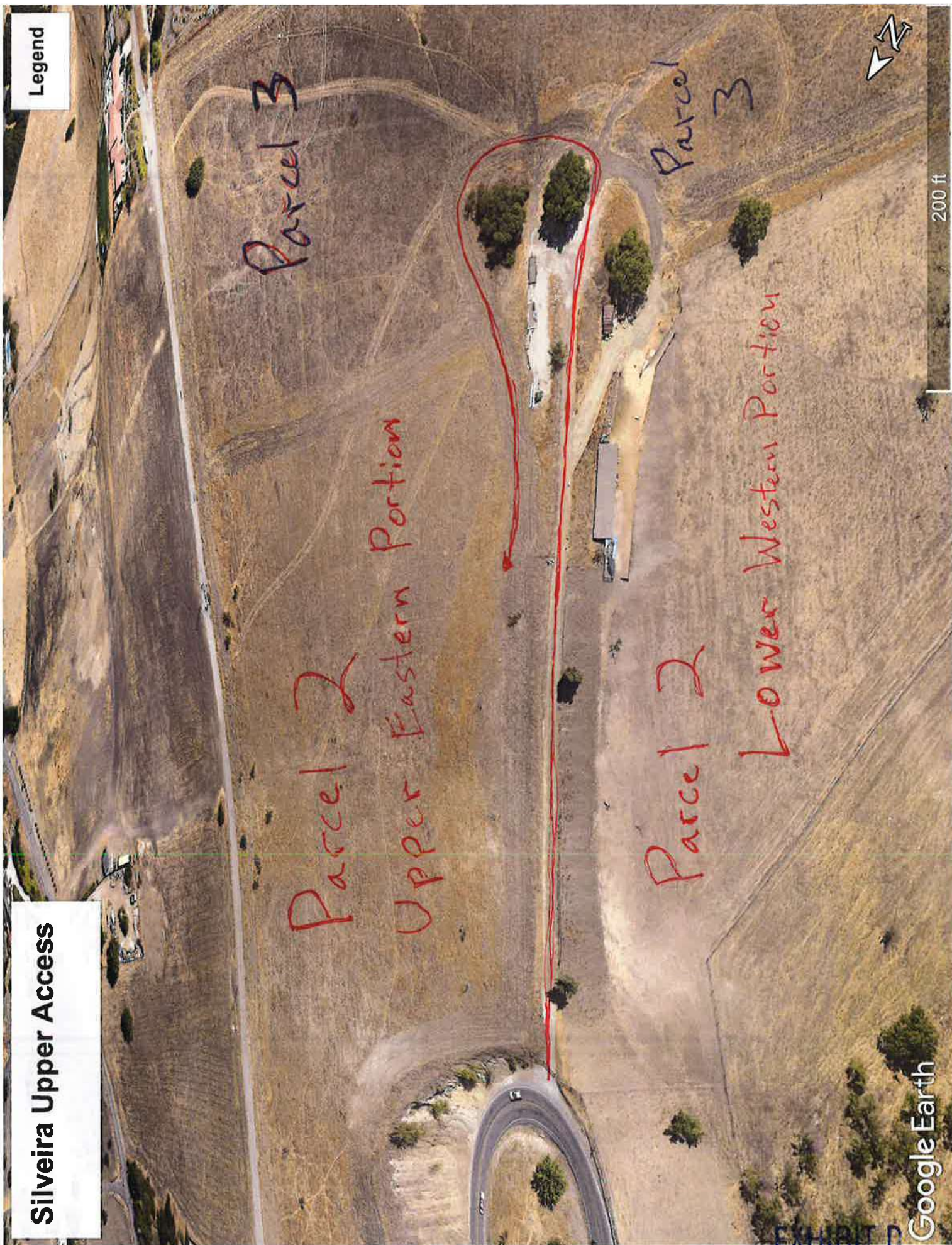
Legend

Parcel 2  
Upper Eastern Portion

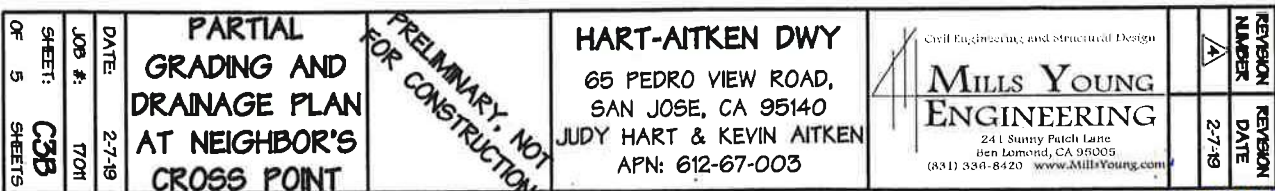
Parcel 2  
Lower Western Portion

Parcel 3

Parcel 3







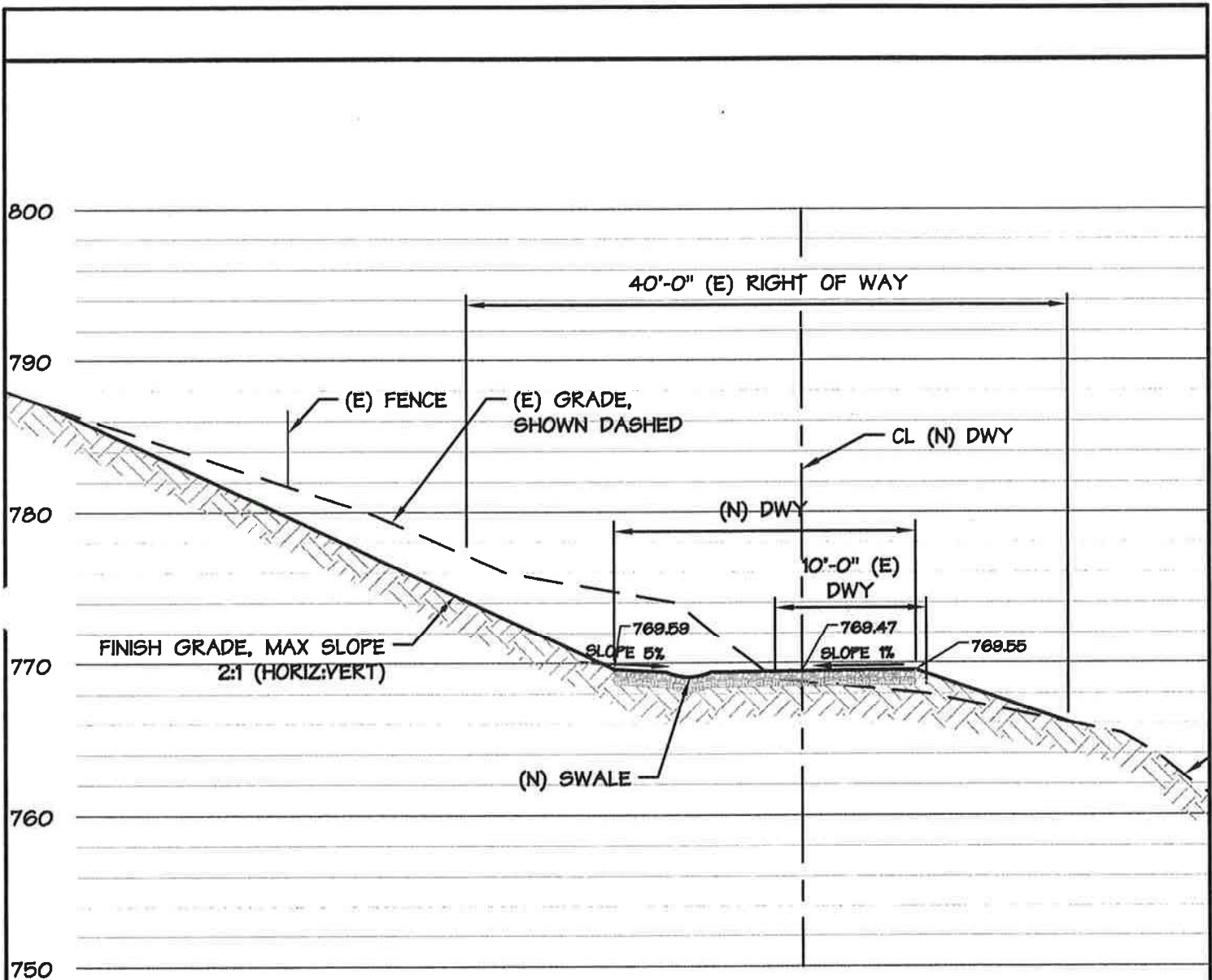
**PRELIMINARY. NOT  
FOR CONSTRUCTION**

PROJECT: 17011 HART-AITKEN

SCALE: 1" = 10'-0"

PREPARED BY: MBM DATE: 2-7-19

PAGE NUMBER: 2



**DRIVEWAY SECTION AT STATION 5+78.83**

**4** ENTIRELY  
NEW  
SECTION

SCALE VALID WHEN  
PRINTED FULL SIZE ON  
8 1/2" x 11" PAPER





