



May 23, 2022

DETAILS OF GRADING VIOLATION BACKGROUND

Property Details:

APN **558-41-13** (see attached)
Location - Old Santa Cruz Highway
Property Owner - Ryan Kennedy

Grading Violation 1999
County File Number **6106-45-27-99 GV** (attached)

A detailed field survey and extensive historical due diligence has been performed by JMW Weiss, Inc. on the property as it relates to the 23-year-old referenced Grading Violation.

The facts, as ascertained, are presented below:

1. Santa Clara County built Old Santa Cruz Highway circa 1966. When they did, they diverted water from an existing channel that was running along the current school site and crossed the old road a couple hundred feet to the north of the existing crossing. This diversion caused significant damage to the subject property since it eroded a new gulch/drainageway.

The field survey confirms that the 36" "subject" culvert was not built per the 1966 plans. It was shortened and placed on a different angle. Please review the plans from 1966 and you will see the diversion and the erased length of culvert on the subject property side of the street. It is our opinion that the design was probably not based on accurate topography, more than likely due to heavy vegetation and brush in the area. When the contractor built the culvert, they tried to match the existing downstream topography and as they slightly adjusted the angle of the pipe in the field, the downstream end of the culvert daylighted approximately 40 feet shorter than what was called for on the design plan. It appears that the culvert was left in this adjusted alignment.

Unfortunately, the culvert should have never been installed at this location and it was originally designed to extend further into the property and match an existing drainage course. You can see that someone erased the extended culvert and shortened it on the 1966 design plan, representing the field adjustment. If the culvert would have been installed at the extended length and proper alignment, we would not have had this current problem, and the extensive erosion over the years would have occurred downstream from the old dirt road, closer to the reservoir.

2. Since the new culvert was installed and included the diverted runoff, erosion began to occur on the subject property over the years after 1966. In 1999 the new owner, after building his permitted home, cleared heavy brush on his property and found the old logging dirt road that connected his current house with an access to Old Santa Cruz highway to the north of the current culvert crossing. After discovering this existing access already in place, the owner, thinking to take advantage of this old roadway as a second access, applied for a formal entrance on Old Santa Cruz highway that was approved, permitted, and constructed.

3. As development upstream occurred, the runoff through the diverted channel became larger and larger every year. When the culvert was built in 1966 (with the field revisions) They daylighted approximately 2' higher and several feet upstream of the old dirt road. Hence, the pipe outfallled just upstream of the old dirt roadway.

4. This condition obviously started wearing away the dirt roadway in front of the culvert. The owner, who just obtained a new driveway permit for this roadway had always planned to use this roadway as a circular type driveway. At the time of the "violation", the culvert had worn away about one to three feet of the old roadway at the location where the culvert was dumping water at the outfall. The owner proceeded to fill this small portion of the old roadway so that he could use the dirt road on his property. He realized that the county daylighted the culvert right onto the old roadway so he poured a small section of concrete under the protruding 36" diameter pipe end, to prevent further erosion. At this point in time, a county stormwater inspector cited the owner for "grading in a channel".

5. The stormwater diversion to this new location grew over the years and, as stated, washed away significant dirt from the owner's property, including everything in the area as a new significant drainage channel was formed due to the county's diversion of water, and field adjustment of the culvert.

The old dirt road existed historically and traversed the property up to the house area. This is a typical remnant of old logging roads in the area dating back to the early 1900's. You can see by the size of the trees immediately adjacent to the outfall area that this old dirt roadway existed for decades, if not for over a century.

Our topo shows the old dirt roadway that was discovered when the property brush was cleared by the owner in 1999. We have since re-walked the site and have the professional determination that everything stated above is indeed fact.

At this point, it is my professional opinion that the grading violation was a result of the county diverting water onto a private property. The violation was insignificant and was only an attempt by the owner to prevent additional erosion occurring at the outfall of the diverted flows.

The small repair work performed by the owner was insignificant to the major damage that occurred over the years from the runoff from upstream. Over time, the runoff from this culvert created a huge channel where the evidence of any minor erosion repair grading is long gone. In addition, when the County preformed repairs to the culvert in 2019, as the channel was encroaching back up to the Old Santa Cruz roadbed, they cut the old 36" pipe off and let it fall into the drainage ditch downstream. The end of the culvert, which is county property, still lays at the bottom of the ravine on the owner's land today.

In summary, there appears to be fault on both sides of this citation. The County, inadvertently in 1966, altered the course and volume of runoff on the owner's property, causing significant damage over the last several decades to the owner's property. The culvert was constructed in 1966 without any downstream rip-rap or erosion control. A 36" pipe outfall would expect to have significant erosion without such protective measures. The owner, on the other hand, in an attempt to protect additional erosion, graded a small area at the outfall of the culvert, without a permit, and placed a concrete spill bed at the end of the pipe. This work should have been performed by the county when they constructed the culvert.

After reviewing all the facts and studying the site, it is our professional believe that there was no grading violation. The inspector at the time (1999) what not aware of all the facts. The owner of the property was

19890 Old Santa Cruz Highway
Grading Violation 1999
County File Number 6106-45-27-99 GV

merely trying to protect his land from erosion occurring from the 1966 construction of Old Santa Cruz Highway.

There is no possible way to replace, repair, abate, or rebuild anything in this location. The stated grading violation that was issued has been remedied by mother nature over the years. Under any condition, if the grades were abated at the time (to put the eroded portion of the old dirt road back) it would have made no difference since the amount of channel flow from upstream diverted runoff over the years would have washed away any condition, as it has. The drainage course of this outfall just downstream of Old Santa Cruz Highway is now over 30' deep.

The 23-year-old grading violation/repair efforts should be dismissed at this time.

**19890 OLD SANTA CRUZ HY
LOS GATOS, CA 95033**

APN 558-41-13

Santa Clara County Grading Abatement Application File
Following Preliminary Application #**PLN22-049-PRE**

**Grading Violation 1999
County File Number 6106-45-27-99 GV**

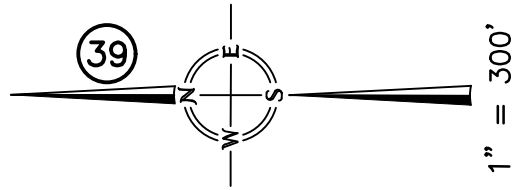
May 23, 2020

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32 5

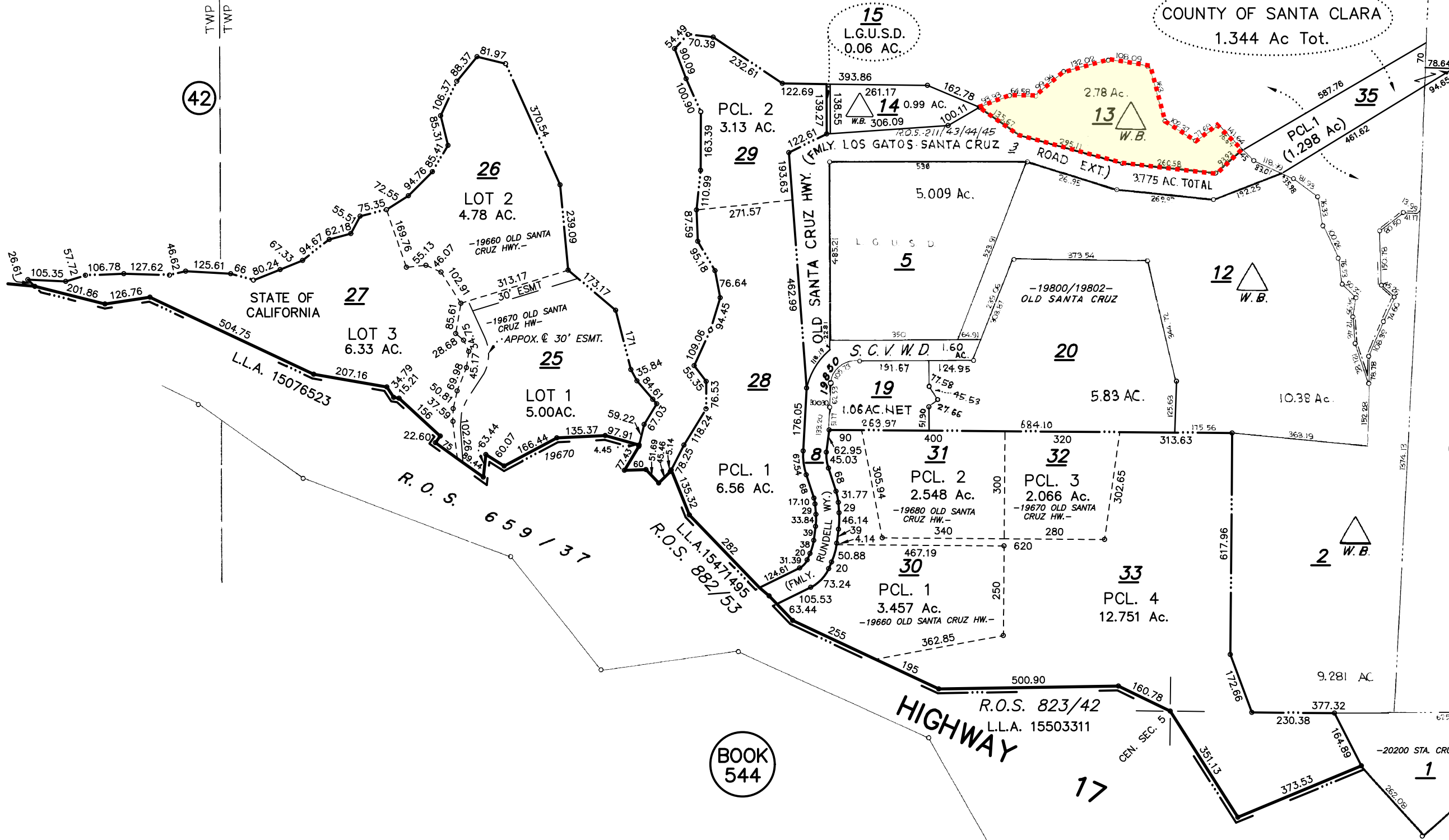
S. C. V. W. D.

34

87.682 Ac Calc



COUNTY OF SANTA CLARA
1.344 Ac Tot.



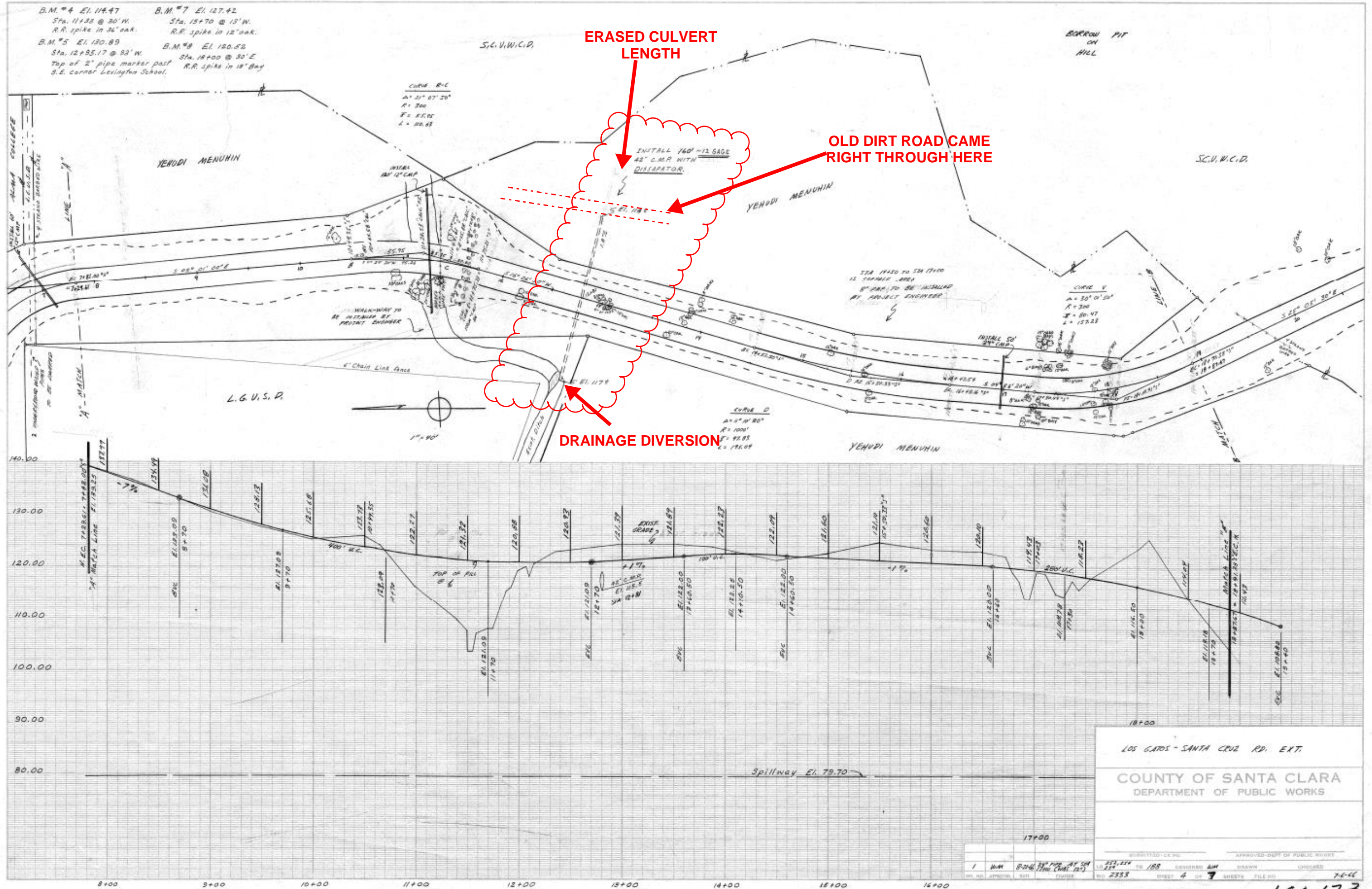
BOOK 544



APPROX. LOCATION
WHERE LAND OWNER
CLEARED END OF
CULVERT ON HIS
PROPERTY

NEW CULVERT
CROSSING (3) BY
COUNTY ROADS AND
AIRPORTS circa 2018

1966 OLD SANTA CRUZ HIGHWAY DESIGN PLAN



Grading Violation 1999

County File Number 6106-45-27-99 GV

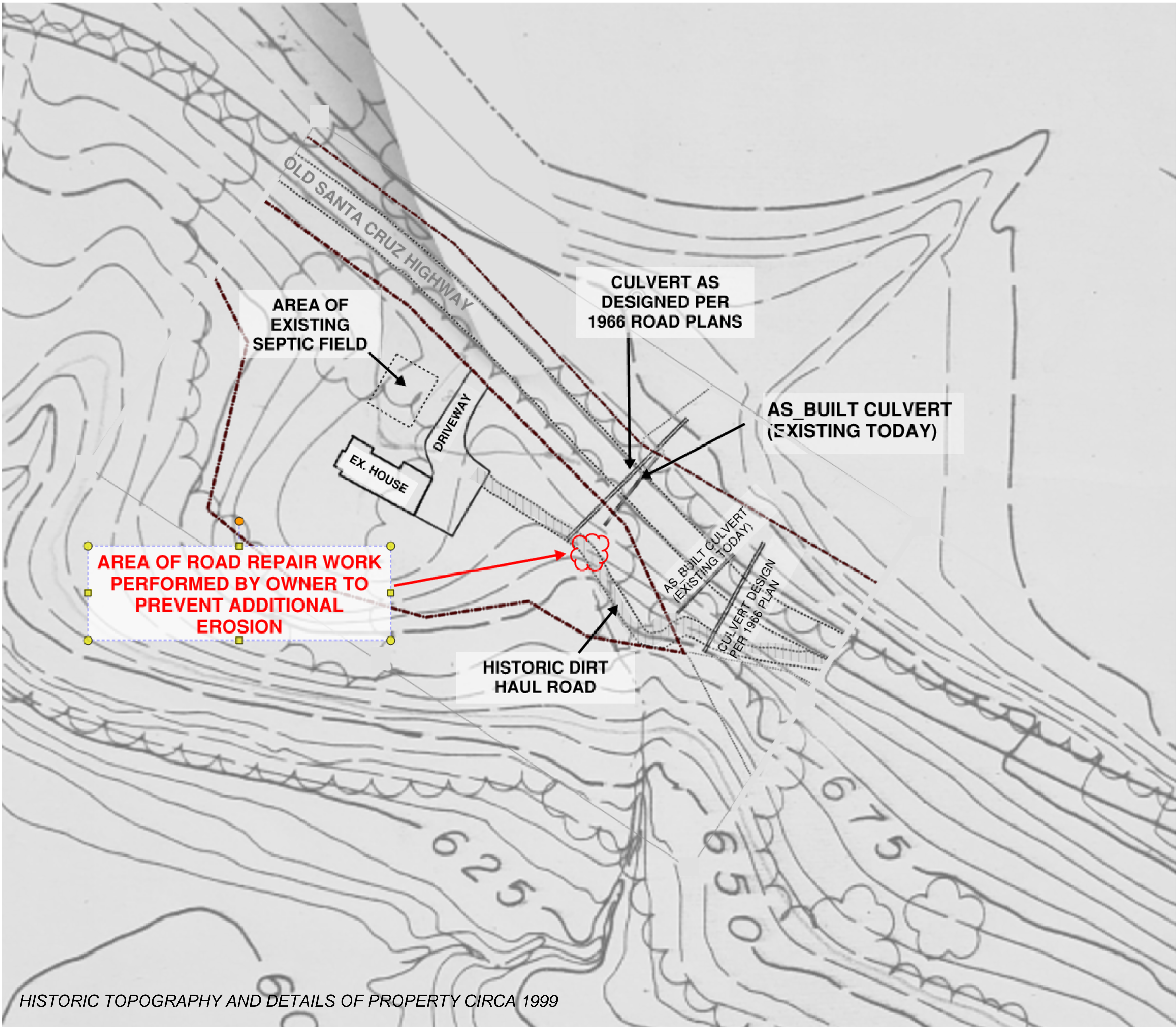
19890 OLD SANTA CRUZ HY
LOS GATOS, CA 95033

APN 558-41-13
Santa Clara County Preliminary Application File
#PLN22-049-PRE

NOTES:

1. The existing culverts, as designed under the 1996 Road Plan were not built per plan.
2. The 36" Culvert ,of subject matter,was shortened during construction, daylighting just upstream of the old historic dirt roadway.
3. If the said Culvert was built per plan it would have extended past the old dirt road and not caused it to erode.
4. The 36" diameter Culvert was built short of the road and approximately 1' to 2 ' higher than the old dirt roadway. This caused significant erosion over time, which in turn eroded a small section of the old dirt road.
5. The Owner of the property, in an attempt to protect his land, filled approximately 5 CY of dirt and placed a 4" concrete cap on top of the repair work, just under the existing 36", to protect from any additional erosion.
6. Subsequently, as development occurred upstream over the years, the 36" culvert forced too much storm water to this location and eroded, not only this small area of repair, but thousands of cubic yards of dirt of the owners property, downstream.
7. With significant years of erosion from upstream developments , Circa 2019 the Santa Clara County Department of Roads and Airports had to replace the old 36" culvert with 3 smaller culverts, as the erosion was encroaching into the existing Old Santa Cruz roadbed.

HISTORIC TOPOGRAPHY AND DETAILS OF PROPERTY CIRCA 1999



NOT TO SCALE

S.C.V.W.D.

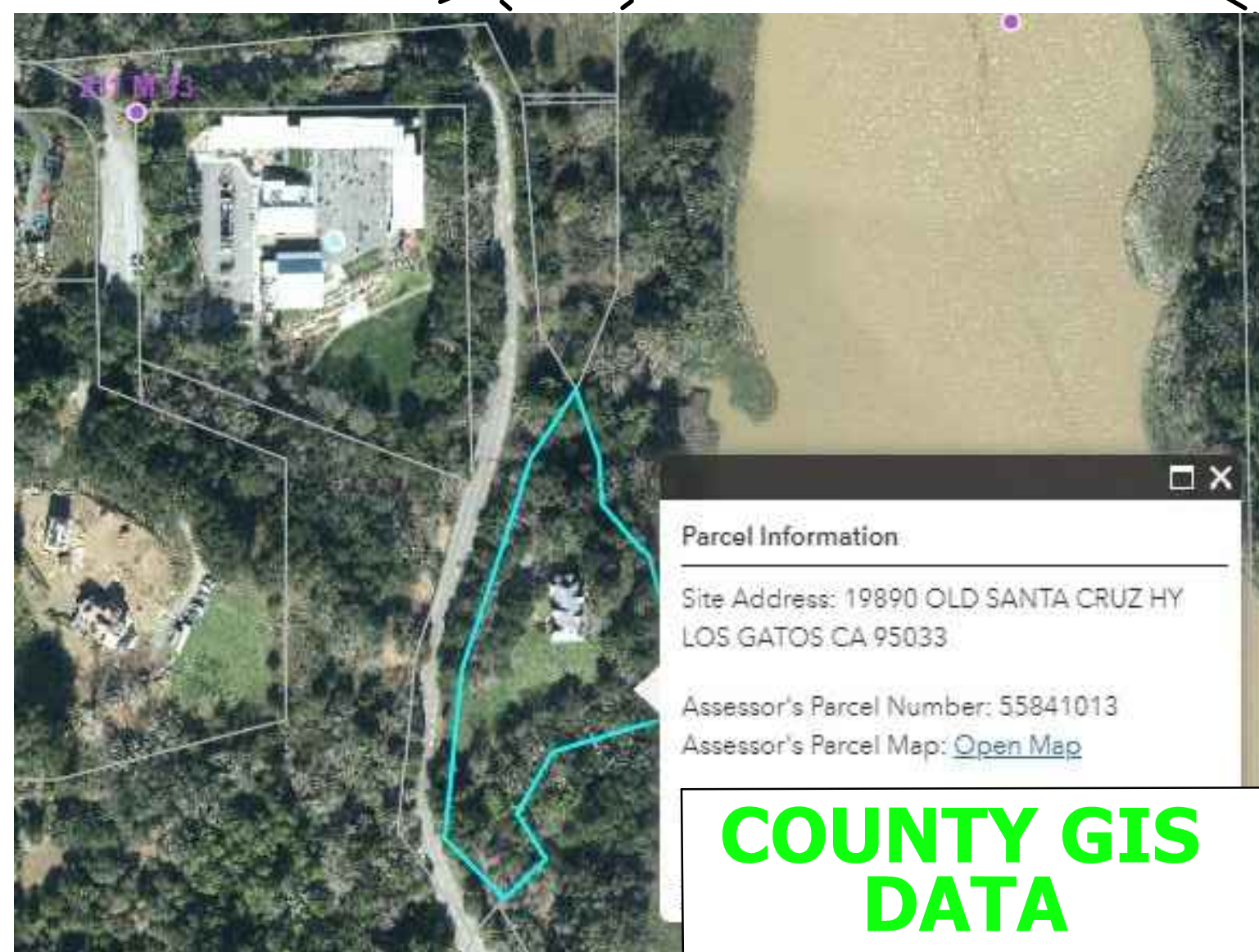
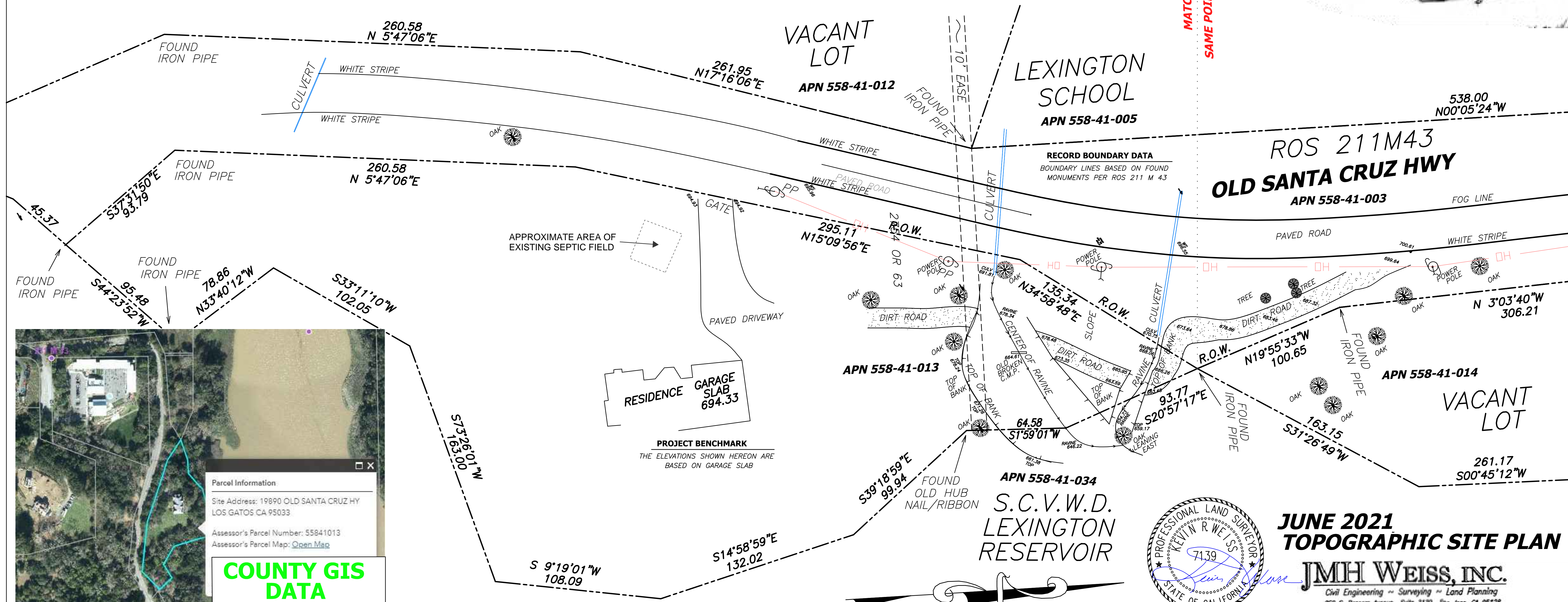
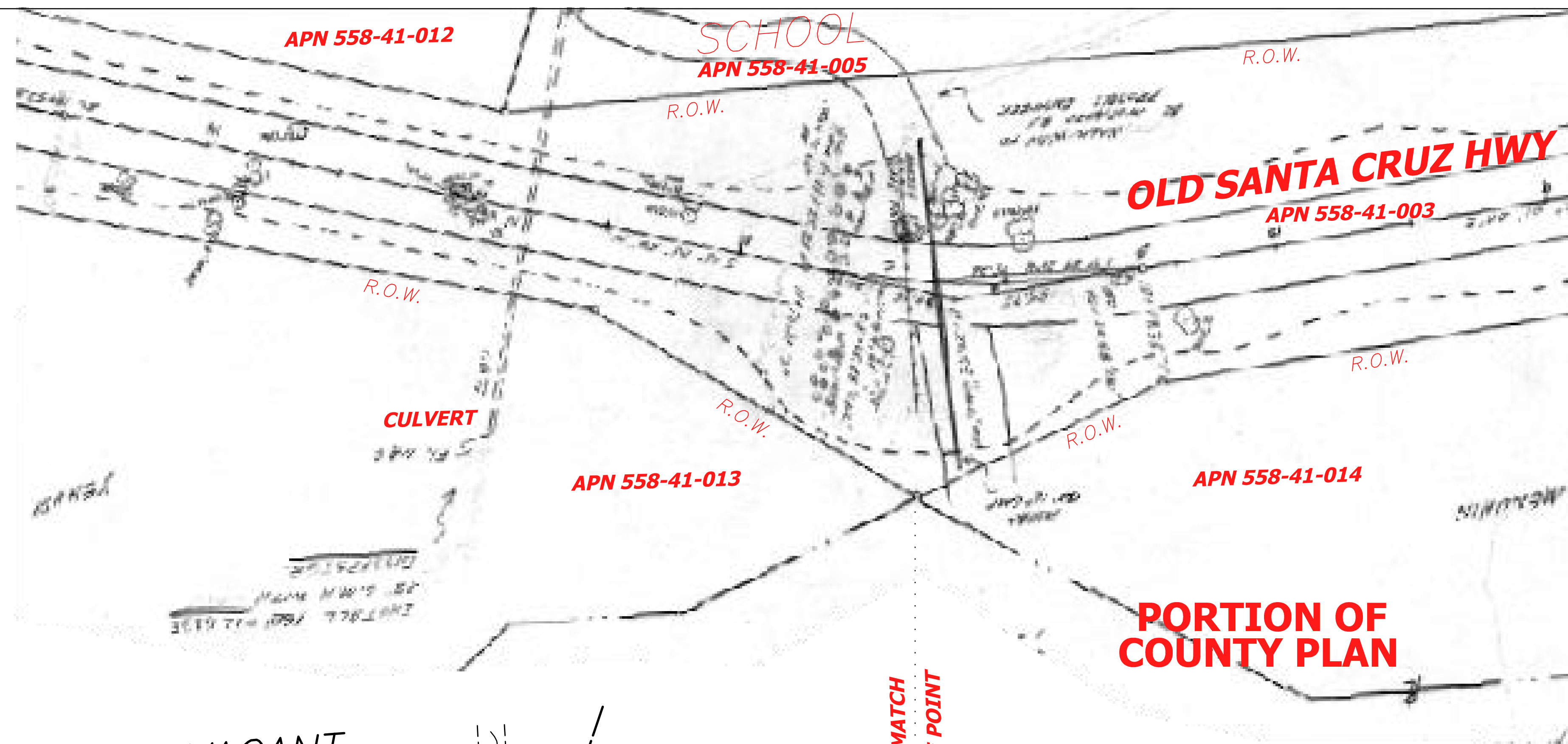
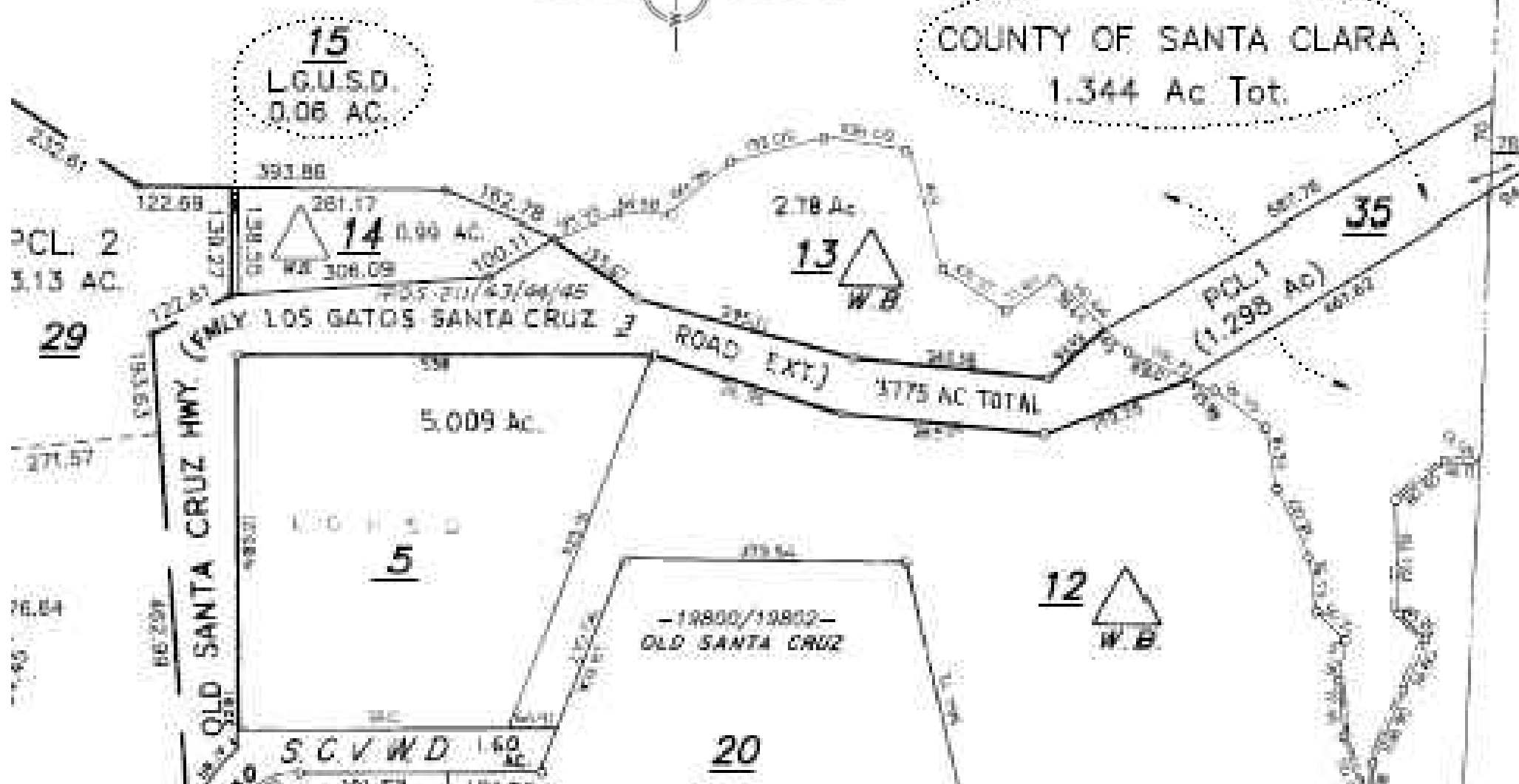
34

87,682 Ac Calc

BOOK
558
PAGE
41

ASSESSOR PARCEL
NUMBERS
NOT TO SCALE

COUNTY OF SANTA CLARA
1,344 Ac Tot



Parcel Information
Site Address: 19890 OLD SANTA CRUZ HWY
LOS GATOS CA 95033
Assessor's Parcel Number: 55841013
Assessor's Parcel Map: [Open Map](#)

COUNTY GIS
DATA

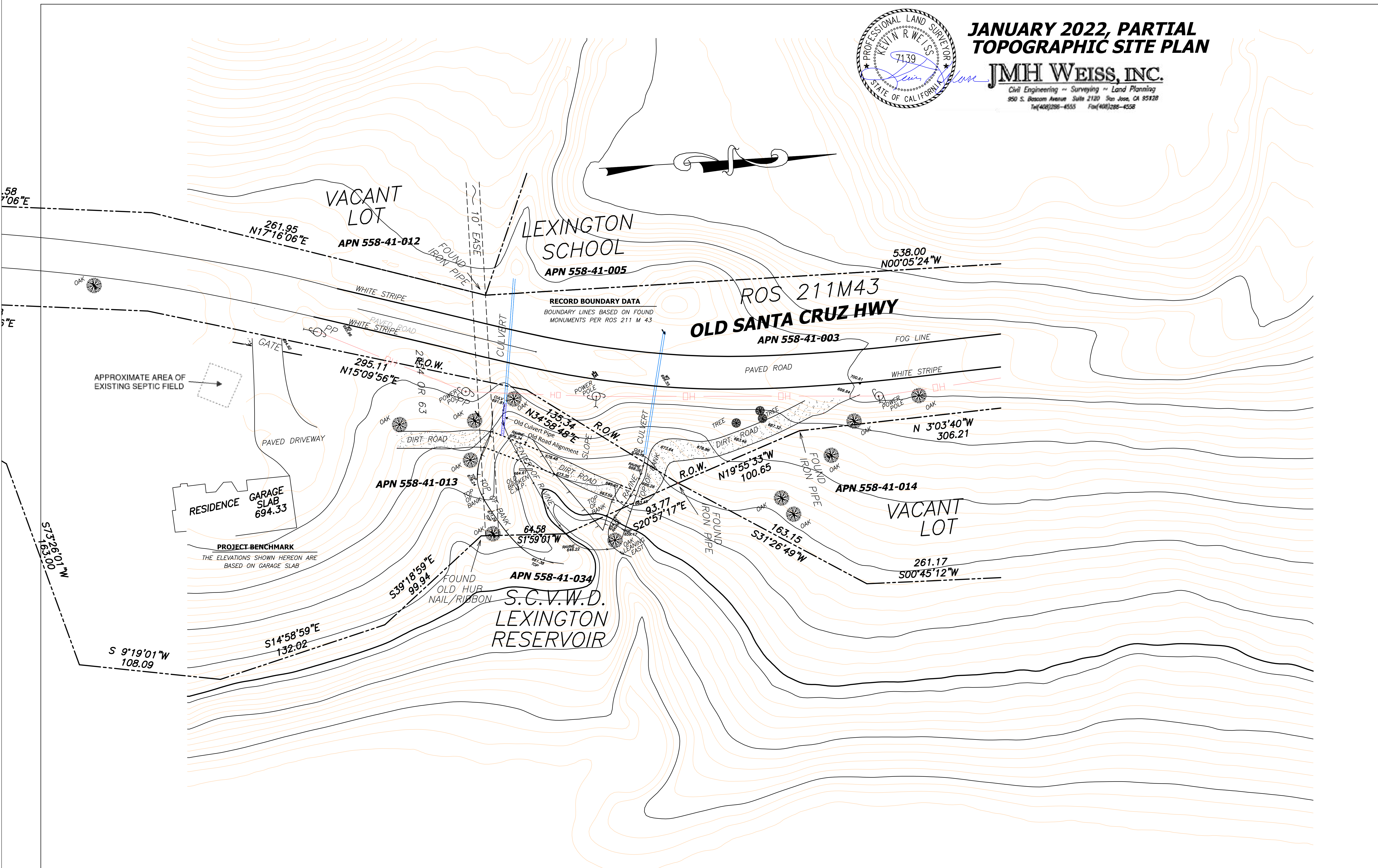


**JUNE 2021
TOPOGRAPHIC SITE PLAN**
JMH WEISS, INC.
Civil Engineering ~ Surveying ~ Land Planning
950 S. Bascom Avenue Suite 2120 San Jose, CA 95128
Tel (408) 296-4555 Fax (408) 296-4558

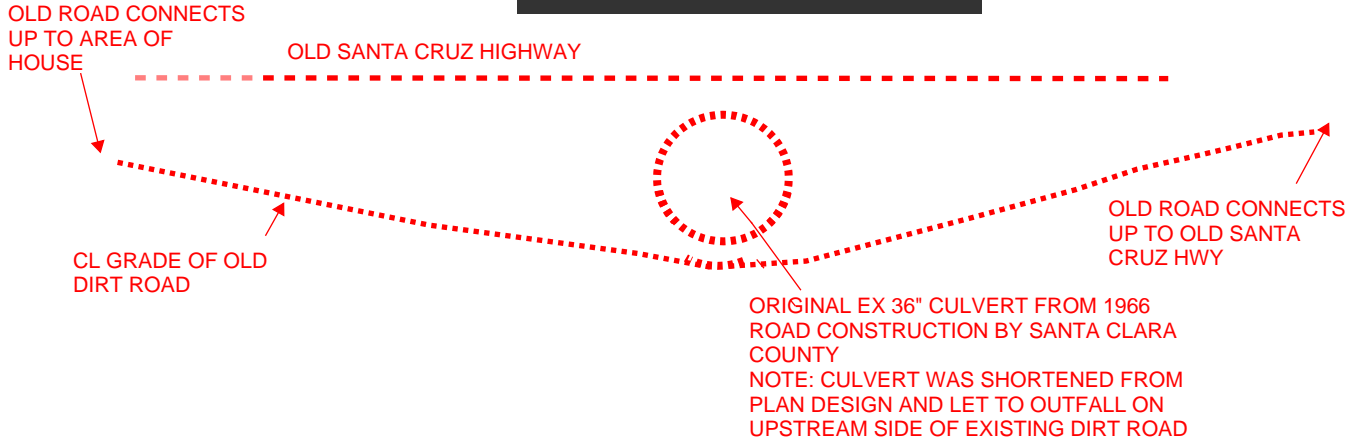


**JANUARY 2022, PARTIAL
TOPOGRAPHIC SITE PLAN**

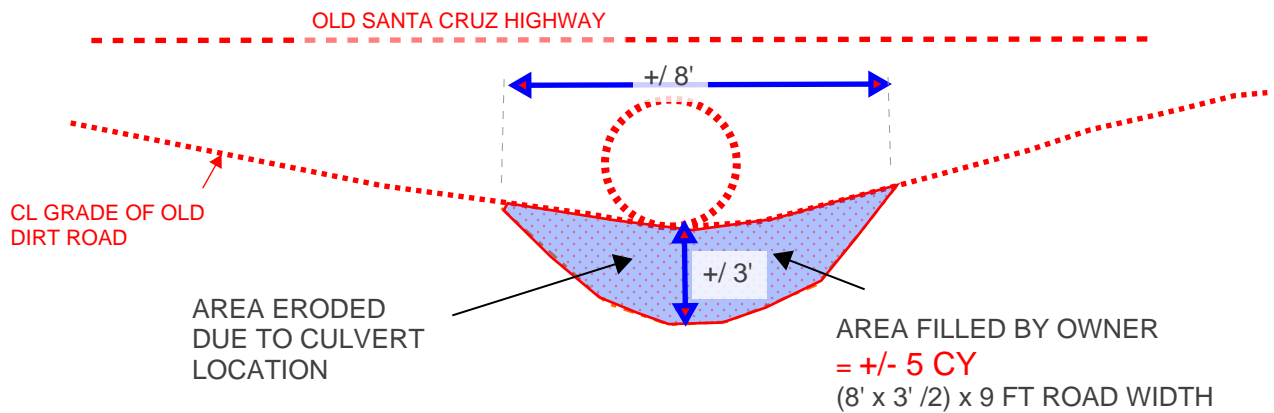
JMH WEISS, INC.
Civil Engineering • Surveying • Land Planning
950 S. Bascom Avenue Suite 2120 San Jose, CA 95128
Tel (408) 286-4555 Fax (408) 286-4558



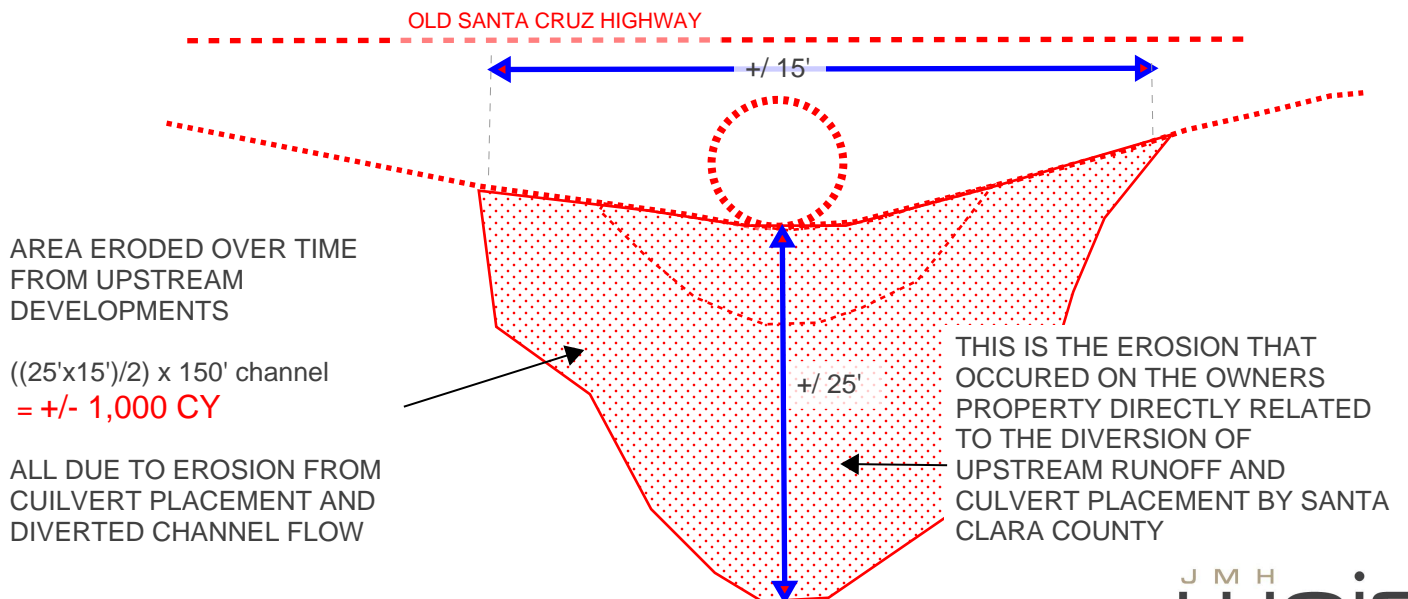
CONDITION CIRCA 1966



CONDITION CIRCA 1999



CONDITION TODAY



To be recorded without fee,
as per Gov. Code § 6103.

RECORDING REQUESTED BY:

County Surveyor's Office

WHEN RECORDED, MAIL TO:

PLANNING AND DEVELOPMENT
COUNTY SURVEYOR'S OFFICE
70 W. Hedding St., 7th Fl., East Wing
San Jose, CA 95110

DOCUMENT: 14722243



Titles 1 / Pages 2

Fees • No Fees
Taxes
Copies
AMT PAID

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
County Agency

RDE # 009
3/25/1999
10 02 AM

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Notice Grading Violation

COUNTY FILE NO.: 6106-45-27-99 GV

APN NO.: 558-41-002, 012, 013, & 014

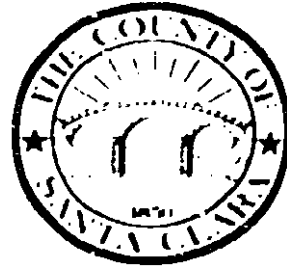
OWNER'S NAME: Ryan R. Kennedy and Diane E. Kennedy

LOCATION: Old Santa Cruz Highway

SEPARATE PAGE PURSUANT TO GOV. CODE § 27361.6

County of Santa Clara

Environmental Resources Agency
Building Inspection and Development Engineering and Surveying
County Government Center East Wing
70 West Hedding Street, 7th Floor
San Jose, California 95110
Bldg. Inspr. (408) 299-2351 Land Devel. (408) 299-2871 FAX (408) 299-8717



NOTICE: VIOLATION OF GRADING ORDINANCE

LOCATION: Old Santa Cruz Highway FILE NUMBER: 6106-45-27-99 GV

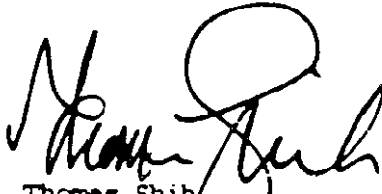
To Whom It May Concern:

NOTICE IS HEREBY GIVEN by the County of Santa Clara, State of California, that grading performed on the real property owned by Ryan R. Kennedy and Diane E. Kennedy, and described in the following paragraph is deemed to be in violation of Chapter 3, Division C12 of the Santa Clara County Ordinance Code (Grading Ordinance).

All that certain real property situated in the County of Santa Clara, State of California, more particularly described in that certain grant deed recorded on 5/15/96, granted to Ryan R. Kennedy and Diane E. Kennedy, filed in Book P 331 at Page 1141, Document # 13294128, of the Official Records of Santa Clara County, State of California, which description is by this reference incorporated herein.

This recorded notice of violation is made pursuant to section C12-547 of the above referenced code. Section C12-553 of said code reads as follows:

"No final map or parcel map shall be filed with the County Recorder and no petition for change of zone or application for subdivision, lot line adjustment, single building site approval, use permit or special permit shall be accepted as complete and no building permit, septic tank, water, sewer, electric or other permit shall be issued to any applicant for any premises or portion thereof which has been graded in violation of this chapter and not corrected pursuant to Section C12-548. Upon written request of the applicant, the approving authority may waive the provisions of this section whenever corrective work has commenced pursuant to the provisions of Section C12-548 or whenever an applicant has obtained a permit to perform corrective work and has executed an agreement to perform such work secured by an adequate bond. A waiver may not be granted if the approving authority determines that the existing violation presents a hazard, nuisance, or risk of severe environmental damage."


Thomas Shih
Building Official

Certificate of Acknowledgement

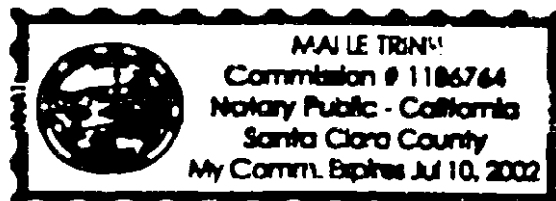
State of California, County of Santa Clara

On March, before me, the undersigned, a Notary Public in and for said state, personally appeared, THOMAS SHIH, Building Official, County of Santa Clara, personally known to me to be the person, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary's Signature


Mai Le Trinh



Board of Supervisors: Donald E. Gage, Blanca Alvarado, Peter McHugh, James E. Brallier, Joseph S. Simon
County Executive: Richard Wittenberg

Fire Marshal Review- Land Use Comments

PROPOSAL

1. Existing Gate will be either:
 - a. Removed completely
 - b. Moved back to a distance of 30' minimum from roadway edge.
2. New Gate location will be manually operated
3. New gate will have an 18' clear opening

