

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

CITY OF LOS ALTOS; CITY COUNCIL OF THE CITY OF LOS ALTOS; and
DOES 1-100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

GOLDSILVERISLAND HOMES, LLC.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

E-FILED

8/13/2019 2:43 PM

Clerk of Court

Superior Court of CA,

County of Santa Clara

19CV352667

Reviewed By: R. Tien

Envelope: 3256218

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SANTA CLARA SUPERIOR COURT

191 North First Street

San Jose, CA 95113

CASE NUMBER:

(Número del Caso): 19CV352667

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Matthew D. Francois (SBN 181871) / David P. Lanferman (SBN 71593) / Alyssa Roy (SBN 300859)

RUTAN & TUCKER, LLP, 455 Market Street, Suite 1870, San Francisco, CA 94105

Tel: (650) 263-7900 Fax: (650) 263-7901

DATE: 8/13/2019 2:43 PM

Clerk of Court

Clerk, by
(Secretario)

R. Tien

(Fecha)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): CCP 416.50 (public entity)
4. ☐ by personal delivery on (date):

E-FILED
8/13/2019 2:43 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV352667
Reviewed By: R. Tien

1 RUTAN & TUCKER, LLP
Matthew D. Francois (State Bar No. 181871)
2 mfrancois@rutan.com
David P. Lanferman (State Bar No. 71593)
3 dlanferman@rutan.com
Alyssa Roy (State Bar No. 300859)
4 aroy@rutan.com
455 Market Street, Suite 1870
5 San Francisco, CA 94105
Telephone: 650-263-7900
6 Facsimile: 650-263-7901

7 Attorneys for Petitioner and Plaintiff
GOLDSILVERISLAND HOMES, LLC.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA

11 GOLDSILVERISLAND HOMES, LLC.,
12
13 Petitioner and Plaintiff,

14 vs.

15 CITY OF LOS ALTOS; CITY COUNCIL OF
THE CITY OF LOS ALTOS; and DOES 1-100,
16 inclusive,

17 Respondents and Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. 19CV352667

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DAMAGES**

Petitioner and Plaintiff GOLDSILVERISLAND HOMES, LLC. ("Petitioner") respectfully petitions this Court for issuance of a writ of mandate pursuant to Code of Civil Procedure ("CCP") sections 1085 and/or 1094.5, and complains for damages pursuant to, among others, the Fifth and Fourteenth Amendments to the U.S. Constitution, and 42 United States Code ("U.S.C.") section 1983, directed at Respondents and Defendants, the CITY OF LOS ALTOS and CITY COUNCIL OF THE CITY OF LOS ALTOS ("Respondents"), as follows:

I. INTRODUCTION

1. This case is brought to stop the unlawful and unauthorized denial by the City of Los Altos ("City") of a minor, two-lot subdivision which complies with all of the City's objective planning, zoning, and subdivision standards (the "Project"). Faced with neighborhood opposition, three of the five members of the Los Altos City Council ("City Council") voted to deny the Project, after having deferred action on it for more than 3 months. Because the City Council's action plainly violates the law, it must be set aside.

2. After having researched the City's zoning and other standards applicable to the Project site, Petitioner, a local homebuilder with experience constructing similar projects in nearby jurisdictions in the Bay Area, acquired the Property in October 2018.¹ Shortly thereafter, Petitioner applied to the City for the Project.

3. After thoroughly evaluating the Project and determining that it complied with the City's planning, zoning, and subdivision standards, City Staff recommended approval of the Project to the City's Planning Commission. The City's Planning Commission, in turn, voted unanimously to recommended approval of the Project to the City Council.

4. Instead of following the reasoned recommendation of its Planning Commission and Staff, the City Council, apparently fearful of disappointing a small, but vocal, group of Project opponents, denied the Project on a 3-2 vote. Unfortunately for the City, that politically expedient option is squarely at odds with the law.

5. The Project is deemed approved due to the Council's failure to act on it within 30

¹ The Project site is located at 831 Arroyo Avenue (the "Property"), which is located at the corner of Arroyo Road and Mountain View Avenue in the City's Montebello Acres neighborhood. Unless otherwise noted, emphasis in quotations herein is supplied and citations are omitted.

1 days from the date the Planning Commission's report was provided to it. (Government Code
2 §§ 66452.2 and 66452.4.) For this reason alone, the City Council's decision must be set aside and
3 the City ordered to issue a written certification of approval. (Government Code § 66452.4(b).)

4 6. The Council's action also violates the Housing Accountability Act, Government
5 Code § 65589.5 ("HAA"). That law prohibits a city from denying a residential development project
6 unless it finds that (1) "The housing development would have a specific, adverse impact upon the
7 public health or safety" and (2) "There is no feasible method to satisfactorily mitigate or avoid the
8 adverse impact . . . other than the disapproval of the housing development project . . ." (Government
9 Code § 65589.5(j)(1).) In purporting to deny the Project, the City Council did not make these
10 statutorily-mandated findings nor would any such findings be supported by a preponderance of the
11 evidence even had the Council had attempted to make them.

12 7. The Council findings purporting to deny the Project are also not supported by
13 substantial evidence in the record, as required. The Council purported to rely on one policy,
14 ironically enough in its Housing Element, to justify its denial of this housing Project. The claim
15 that the Project would not result in an orderly and compatible development is belied by the evidence
16 in the record.

17 8. Having attempted in good faith to secure approval of the Project from the City,
18 Petitioner turns now to this Court for relief. Petitioner respectfully asks the Court to issue an order
19 or judgment demanding that the City approve the Project and award Petitioner its reasonable
20 attorneys' fees and costs, in an amount subject to proof at trial.

21 **II. THE PARTIES**

22 9. Petitioner and Plaintiff GOLDSILVERISLAND HOMES, LLC. is, and at all times
23 ~~herein mentioned was,~~ a California limited liability company duly authorized to do business in the
24 State of California, and is the owner of the Property at issue in this proceeding.

25 10. Respondent and Defendant CITY OF LOS ALTOS is a municipal corporation,
26 organized and existing under the laws of the State of California, located in Santa Clara County.

27 11. Respondent and Defendant CITY COUNCIL OF THE CITY OF LOS ALTOS is the
28 elected legislative body of the City of Los Altos.

12. The true names or capacities, whether individual, corporate, associate, or otherwise, of the Respondents and Defendants named herein as “Doe,” are unknown to Petitioner, who therefore sues said Respondents and Defendants by such fictitious names. Petitioner prays leave to amend this Verified Petition for Writ of Mandate and Complaint for Damages (the “Petition”) to show the true names or capacities of said Respondents and Defendants when the same have been finally ascertained.

13. Petitioner is informed and believes, and thereon alleges, that each of the Respondents and Defendants designated herein as "Doe" is responsible in contract or tort, or in equity or by statute, for the events and happenings referred to herein, and proximately caused, contributed to, or are otherwise liable for the arbitrary, unauthorized, or invalid actions, demands, fees or exactions which are the subject of this Petition, as hereinafter set forth.

14. Petitioner is informed and believes, and thereon alleges, that at all times herein mentioned, Respondents and Defendants, and each of them, were and are the agents and employees of their co-Respondents and co-Defendants, and in doing the things herein alleged, were acting within the purpose and scope of their agency and employment.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to CCP sections 1085 and 1094.5; Government Code section 66410 *et seq.*; Government Code section 65589.5; 42 U.S.C. section 1983; and the various provisions of the federal and state constitutions cited herein.

16. Petitioner has beneficial and direct financial and business interests in the outcome of this action because Petitioner's use and enjoyment of the Property is directly impacted by Respondents' unlawful actions.

17. Petitioner has exhausted all non-judicial remedies available to them and required to be exhausted as a prerequisite to the filing of this Petition and action. Other than through this action, Petitioner has no plain, speedy, or adequate remedy at law.

18. Venue for this action is proper in this Court because the Respondents and the subject property are located in the City of Los Altos, Santa Clara County, California, which is within the jurisdiction of the Superior Court for the County of Santa Clara.

IV. FACTUAL BACKGROUND

19. The Project is a minor lot split of an approximately half-acre lot. The resulting lots meet the City's established minimum lot size requirements. The lots also meet all applicable site development standards, including width, depth, and frontage. (A copy of the Project's Tentative Map is attached hereto as Exhibit A.)

20. The Property has long been planned and zoned for residential development. The Property has a General Plan land use designation of Single Family Medium Lot.² This designation allows for a density of up to 4 dwelling units per net acre (and 4.4 units per gross acre). With two lots on a site that exceeds one-half acre, the Project is within the allowed density range.

21. The Property is zoned R1-10 Single-Family District. Single family residences are allowed in the R1-10 district. (Los Altos Municipal Code ["LAMC"] § 14.06.020.A.) The minimum interior lot area is 10,000 square feet, with the minimum corner lot area being 11,000 square feet. (LAMC § 14.06.040.) The Project proposes an interior lot of 10,029 square feet and a corner lot of 13,404 square feet.

22. Other development standards pertain to the ultimate residences proposed on any created lots. For instance, generally lot coverage and floor area ratios of 35 percent apply. (LAMC §§ 14.06.060, 14.06.070.) The following minimum setbacks apply: 25 feet (front), 25 feet (rear), and 20 feet (exterior side). (LAMC § 14.06.080.) No structure may exceed 27 feet in height or two stories from the natural grade. (LAMC § 14.06.090.)

23. Further, all new residential structures in the R1-10 zone are subject to the City's design review process. (LAMC §§ 14.06.130, 14.76.010, 14.76.020.) That process, which takes place after a subdivision is approved and proposed architectural plans for project homes have been developed, is intended to ensure that new housing is consistent with the policies and implementation techniques set forth in the Single-Family Residential Design Guidelines adopted by the City Council. (LAMC § 14.76.020.) In approving an application for design review, the approving

² A relatively small portion of the Property at the northwestern corner is designated Other Open Space due to it being immediately adjacent to a local creek. This portion of land is located within the required 25 foot rear yard setback area and "does not diminish the development potential of the subject site since no portion of the culverted creek or Creekside vegetation is located on the property." (Staff Report, February 7, 2019, p. 2.)

1 authority must find that the proposed structure: (1) does not result in an unreasonable interference
2 with views and privacy of adjacent lots, (2) is in keeping with the general appearance of neighboring
3 developed areas, (3) will minimize the perception of excessive bulk in the relation to the immediate
4 neighborhood, and (4) is compatible with the character of adjacent buildings. (LAMC § 14.76.060.)

5 24. The City's professional Staff thoroughly researched the Project and determined that
6 it complied with all planning, zoning, and subdivision standards. As such, Staff recommended
7 approval of the Project.

8 25. On February 7, 2019, the City's Planning Commission held a noticed public hearing
9 on the Project. In expressing their support of the Project, Commissioners Mosley and Lee expressly
10 noted that the Project was consistent with the lot pattern along Mountain View Avenue. In response
11 to neighbor concerns, the Commission recommended that a condition be imposed to ensure that one
12 of the new homes be re-oriented to face Arroyo Road and to have an increased setback of at least
13 25 feet from the exterior side property line adjacent to that street.³ With the addition of this
14 condition, the Planning Commission voted unanimously (6-0, with one commissioner absent) to
15 recommend approval of the Project to the City Council.

16 26. On March 26, 2019, the City Council held its first of four public hearings on the
17 minor lot split. Neighbors expressed concerns that one of the new homes would not adhere to a
18 private restriction imposing a 40 foot building setback and that the proposed lots were too small and
19 could present safety issues at the corner of Arroyo Road and Mountain View Avenue. At the
20 conclusion of the hearing, the Council directed Staff to further review potential private deed
21 restrictions pertaining to the Property, provide an additional map showing the adjacent property with
22 accompanying structures, and to prepare a condition of approval requiring safe egress of the parcels.

23 27. On April 23, 2019, the City Council held another public hearing on the Project. In
24 response to concerns raised at the first meeting, Petitioner updated the Project Tentative Map to
25 include: a 30-foot visibility triangle at the corner of Arroyo and Mountain View, setback of the new

26 _____
27 ³ A February 2019 petition purporting to be signed by 88 of the 104 property owners comprising
28 the Montebello Acres neighborhood asked the City Council to confirm the Planning Commission
requirement "that the complete front exterior of the proposed new residence at 831 Arroyo Road
face Arroyo Road thereby conforming with the character and setback of homes on the same side of
the street."

1 driveway for the corner lot from the edge of the radius corner, and orientation of the house on the
2 corner lot towards Arroyo with a minimum 25 foot setback from the side property line. Staff
3 determined that these provisions were consistent with all applicable City requirements and policies
4 and “will enhance site visibility for vehicles and pedestrians at the corner.” (Staff Report, March
5 26, 2019, p. 3.)

6 28. A neighborhood vicinity map showing the building footprints and front yard setbacks
7 for all surrounding properties was also included with the updated Project plans. (A true and correct
8 copy of this map is attached hereto as Exhibit B.) “As shown on the map, and previously
9 documented by staff . . . there are multiple properties that have front yard setback that ranges from
10 25 to 40 feet.” (Staff Report, April 23, 2019, p. 2.) For instance, the two homes directly across
11 Arroyo from the subject Property both appear to have 25 foot front yard setbacks.

12 29. As to the private setback restriction, the City Attorney advised the Council that the
13 City has no role or authority in enforcing it. (Staff Report, April 23, 2019, p. 5.) Staff further
14 observed that it had not found any evidence that related private restrictions had been enforced or
15 adhered to since the City’s 1969 Zoning Ordinance was adopted. (*Id.*) Staff also cited “multiple
16 examples of legal structures along Arroyo Road that have setbacks of less than 40 feet.” (*Id.*)

17 30. As requested by the majority of the neighbors, the home on the corner lot was re-
18 oriented to face Arroyo Road. But technically, that lot’s frontage is on Mountain View Avenue.
19 The portion of the lot along Arroyo is an exterior side yard, subject to a 20 foot City setback, which
20 the Planning Commission recommended be increased to 25 feet. Petitioner has no objection to that
21 increased setback requirement and even presented plans depicting a home on the corner lot being
22 setback 40 feet from the street line as per the cited private setback restriction.

23 31. A motion was made by Councilmember Enander and seconded by Councilmember
24 Pepper to approve the Project with additional conditions, including limitation of residential
25 development to single-story homes. That motion was withdrawn and the Council voted instead to
26 continue the item to a future meeting.

27 32. On May 14, 2019, the City Council held its third public hearing on the minor lot split.
28 At the conclusion of that hearing, the Council, on a 3-2 vote, directed Staff to draft a resolution

1 denying the Project. The motion was supported by Mayor Lee Eng and Councilmembers Enander
2 and Pepper, and opposed by Councilmembers Bruins and Fligor.

3 33. On May 28, 2019, more than 60 days after it was legally required to act, the City
4 Council adopted Resolution No. 2019-07 (the "Resolution") purporting to deny the Project.⁴
5 Specifically, Mayor Lee Eng and Councilmembers Enander and Pepper voted to approve the
6 Resolution, with Councilmembers Bruins and Fligor opposed.

7 34. The record demonstrates that Petitioner made multiple, good faith efforts to resolve
8 the concerns raised by the neighbors, including by volunteering to make substantial concessions that
9 the City could not otherwise legally require. For instance, prior to the May 28th Council hearing,
10 Petitioner agreed to: (1) limit building height on both lots to one-story, (2) comply with the private
11 40 foot setback from the street line for buildings on both parcels, and (3) orient the new home on
12 Parcel 2 to face Arroyo Road. Both before and after the City Council's denial of the Project,
13 Petitioner and/or its representatives contacted or met with City Staff and decision-makers numerous
14 times to avoid the need to initiate litigation. Unfortunately, the City was not receptive to those
15 efforts. Having exhausted all such administrative remedies, Petitioner now seeks legal and/or
16 equitable relief from this Court.

17 **FIRST CAUSE OF ACTION**

18 **(Writ of Mandate-Project Deemed Approved under Subdivision Map Act)**

19 35. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
20 set forth in full herein by this reference.

21 36. This action challenges the validity of a final administrative order or decision made
22 as a result of a proceeding in which, by law, a hearing was required to be held, evidence was required
23 to be taken, and discretion in the determination of facts was invested in an inferior tribunal,
24 corporation, board, or officer.

25 37. Due to the City Council's failure to act on the Project within 30 days of its referral
26 from the Planning Commission, the Project was deemed approved as a matter of law. (Government
27 Code §§ 66452.2(a) and 66452.4(a); *see also* LAMC § 13.12.050.F [requiring City Council to act

28 ⁴ A true and correct copy of the Resolution is attached hereto as Exhibit C.

1 on the tentative map at its first regular meeting following receipt by the City Clerk of the Planning
2 Commission's recommendation] and 81 Ops. Cal. Atty. Gen. 166 [when time limits are not met,
3 tentative map is deemed approved and is entitled to be treated in the same manner as a tentative map
4 that has been approved by a vote of the legislative body].)

5 38. In accordance with the City Code, the City Council was required to act on the Project
6 no later than March 13, 2019.⁵ Yet, the City Council did not take action purporting to deny the
7 Project until May 28, 2019, some 76 days late. For this reason alone, the City Council's decision
8 must be set aside and the City ordered to issue a written certification of approval. (Government
9 Code § 66452.4(b).)

10 39. The actions of Respondents as set forth herein constitute a prejudicial abuse of
11 discretion, denied Petitioner a fair hearing, and were in excess of Respondents' authority and
12 jurisdiction. Respondents abused their discretion by, *inter alia*, failing to proceed in the manner
13 required by law, making a decision not supported by the findings, and/or making findings that were
14 not supported by substantial evidence in the record.

15 40. Petitioner has exhausted all available administrative remedies. Petitioner is informed
16 and believes, and thereon alleges, that there is no alternative but to seek immediate court intervention
17 in this matter.

18 41. Petitioner does not have a plain, speedy or adequate remedy in the ordinary course
19 of law, other than this proceeding, to compel Respondents to perform their duties under State law,
20 including the Subdivision Map Act.

21 42. Pursuant to CCP sections 1094.5 and/or 1085, a writ of mandate should issue
22 directing Respondents to rescind its actions denying the Project and ordering it to issue a written
23 certification of approval.

24 43. WHEREFORE, Petitioner seeks relief and judgment as set forth herein.

25 ///

26 ///

27

28 ⁵ The Planning Commission's report was to be provided to the Council via the City Clerk within
three days after its action, i.e., on or before February 11, 2019. (LAMC § 13.12.050.A.)

1 **SECOND CAUSE OF ACTION**

2 **(Writ Of Mandate-Violation Of Housing Accountability Act)**

3 44. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
4 set forth in full herein by this reference.

5 45. This action challenges the validity of a final administrative order or decision made
6 as a result of a proceeding in which, by law, a hearing was required to be held, evidence was required
7 to be taken, and discretion in the determination of facts was invested in an inferior tribunal,
8 corporation, board, or officer.

9 46. In purporting to deny the Project, the City Council failed to make the statutorily-
10 mandated findings under the HAA. Even had the City Council purported to make such findings,
11 they would not be supported by a preponderance of the evidence, as required.

12 47. "When a proposed housing development complies with applicable, objective general
13 plan, zoning, and subdivision standards and criteria . . . but the local agency proposes to disapprove
14 the project . . . the local agency shall base its decision regarding the proposed housing development
15 project upon written findings supported by a preponderance of the evidence on the record that both
16 of the following conditions exist: (A) The housing development project would have a specific,
17 adverse impact upon the public health or safety unless the project is disapproved" and "(B) There is
18 no feasible method to satisfactorily mitigate or avoid the adverse impact . . . other than the
19 disapproval of the housing development project . . ."⁶ (Government Code section 65589.5(j)(1).)

20 48. A "housing development project" includes a proposed residential subdivision of
21 land. (Government Code § 65589.5(h)(2); *Honchariw v. County of Stanislaus* (2011) 200
22 Cal.App.4th 1066, 1074 [proposed 8-lot subdivision qualified as a housing development project
23 within the meaning of the HAA].) The Project is a housing development project.

24 49. A housing development project is deemed consistent with applicable, objective
25 planning or related standards if the agency fails to provide a written determination of inconsistency
26

27 ⁶ A "specific, adverse impact upon the public health or safety" means "a significant, quantifiable,
28 direct, and unavoidable impact, based on objective, identified written public health or safety
standards, policies, or conditions as they existed on the date the application was deemed complete."
(Government Code § 65589.5(j)(1).)

1 within 30 days from the date the application is complete. (Government Code § 65589.5(j)(2).) The
2 City never provided Petitioner with any timely, written determination of inconsistency with
3 objective development standards nor did it ever contend that the Project failed to comply with such
4 standards during the administrative proceedings.

5 50. The Resolution does not contain the above statutorily-mandated findings. (*See*
6 Exhibit C.) On this basis alone, a writ must issue ordering the City Council to set aside its adoption
7 of the Resolution. (Government Code § 65589.5(k)(1)(A) [if a court finds that a “local agency . . .
8 disapproved a housing development project complying with applicable, objective general plan and
9 zoning standards and criteria . . . without making the findings required by this section . . . the court
10 shall issue an order or judgment compelling compliance with this section within 60 days, including,
11 but not limited to, an order that the local agency take action on the housing development project . .
12 ..” (Government Code § 65589.5(k)(1); *Honchariw, supra*, 200 Cal.App.4th at 1081 [agency failed
13 to proceed in the manner required by law in denying approval of a housing development project
14 without making the requisite HAA findings].)

15 51. The record demonstrates that the Council’s narrow denial of the Project was not
16 based on legitimate planning standards, but rather politically-motivated and taken irrespective, and
17 seemingly in defiance, of its legal obligations. Moreover, the City’s unlawful denial of the Project
18 is not an isolated incident and appears to form part of a pattern and practice of violating the HAA.
19 For instance, the City is also being sued over its recent denial of a 15-unit project under the HAA.
20 (*California Renters Legal Advocacy and Education Fund et al. v. City of Los Altos*, Santa Clara
21 County Superior Court Case No. 19CV350422, June 12, 2019.) The City’s actions thus were in bad
22 faith. Petitioner accordingly asks the Court to direct the City Council to approve the Project.
23 (Government Code § 65589.5(k)(1) [“The court may issue an order or judgment directing the local
24 agency to approve the housing development project . . . if the court finds that the local agency acted
25 in bad faith when it disapproved . . . the housing development . . . in violation of this section.”].)

26 52. Further, given that City cannot lawfully make the findings that the Project would
27 result in a “specific, adverse impact upon the public health or safety” and that there are no feasible
28 means of avoiding that impact other than denying the Project, remanding this matter to the City for

1 further consideration would amount to an idle and useless act. (Civil Code § 3532 [“The law neither
2 does nor requires idle acts.”]; *In re Matter of Vincent S.* (2001) 92 Cal.App.4th 1090, 1093 [“remand
3 for another hearing would constitute an idle act; and the law does not require idle acts.”]; *Albertstone*
4 *v. California Coastal Commission* (2008) 169 Cal.App.4th 859, 868 [court refuses to set aside city’s
5 approval of residential development project based on State Commission’s alleged failure to make a
6 required determination, reasoning: “It would be a tremendous waste of time and resources to require
7 [the applicant] to submit a new application to the Commission at this juncture, particularly when the
8 Commission has already declined to consider it.”].)

9 53. At minimum, the Court “shall retain jurisdiction to ensure that its order or judgment
10 is carried out and shall award reasonable attorney’s fees and costs of suit to the plaintiff or petitioner
11” (Government Code § 65589.5(k)(1).) No extraordinary circumstances would justify the denial
12 of an award of attorneys’ fees to Petitioner here.

13 54. The actions of Respondents as set forth herein constitute a prejudicial abuse of
14 discretion, denied Petitioner a fair hearing, and were in excess of Respondents’ authority and
15 jurisdiction. Respondents abused their discretion by, *inter alia*, failing to proceed in the manner
16 required by law, making a decision not supported by the findings, and/or making findings that were
17 not supported by substantial evidence in the record.

18 55. Petitioner has exhausted all available administrative remedies. Petitioner is informed
19 and believes, and thereon alleges, that there is no alternative but to seek immediate court intervention
20 in this matter.

21 56. Petitioner does not have a plain, speedy or adequate remedy in the ordinary course
22 of law, other than this proceeding, to compel Respondents to perform their duties under State law,
23 including the HAA.

24 57. Pursuant to CCP sections 1094.5 and/or 1085, a writ of mandate should issue
25 directing Respondents to rescind its actions denying the Project and ordering it to approve the
26 Project.

27 WHEREFORE, Petitioner seeks relief and judgment as set forth herein.

28 ///

1 **THIRD CAUSE OF ACTION**

2 **(Writ of Mandate-Findings Not Supported by Substantial Evidence)**

3 58. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
4 set forth in full herein by this reference.

5 59. This action challenges the validity of a final administrative order or decision made
6 as a result of a proceeding in which, by law, a hearing was required to be held, evidence was required
7 to be taken, and discretion in the determination of facts was invested in an inferior tribunal,
8 corporation, board, or officer.

9 60. Under the Subdivision Map Act, the legislative body of a city can deny approval of
10 a final map only based on certain specified findings. These include: (1) "That the proposed map is
11 not consistent with applicable general . . . plans"; (2) "That the site is not physically suitable for the
12 type of development"; (3) "That the site is not physically suitable for the proposed density of
13 development"; (4) "That the design of the subdivision or the proposed improvements are likely to
14 cause substantial environmental damage or substantially and avoidably injure fish or wildlife or
15 their habitat"; and/or (5) "That the design of the subdivision or type of improvements is likely to
16 cause serious public health problems." (Government Code § 66474.)

17 61. While the City Council purported to make all of the above findings in connection
18 with its denial of the Project, none of the findings are supported by substantial evidence, as required.
19 Substantial evidence is defined as evidence of "ponderable legal significance . . . reasonable in
20 nature, credible, and of solid value." (*Lucas Valley Homeowners Assn. v. County of Marin* (1991)
21 233 Cal.App.3d 130, 142.) Substantial evidence is not "argument, speculation, unsubstantiated
22 opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social impacts
23 that do not contribute to, or are not caused by, physical impacts on the environment." (Public
24 Resources Code § 21080(e)(2).)

25 62. In regard to the City's General Plan, the Project is unquestionably consistent with
26 the plan as a whole, as required.⁷ It is a residential project on residentially designated land within

27 ⁷ (See, e.g., Government Code § 65860 [finding of plan consistency requires only that a project
28 be "compatible with the objectives, policies, general land uses, and programs specified in" the plan];
Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors of El Dorado County

1 the density range specified for the site by the General Plan. The City's professional planning Staff
2 and Planning Commission both found the Project to be consistent with the General Plan. Any claims
3 to the contrary are manufactured and unsupported.

4 63. After preparing findings for Project approval, Staff struggled to reach diametrically
5 opposed findings when directed to do so by the Council. This is evidenced by the Resolution's
6 reliance on a single policy in the City's Housing Element. As a preliminary matter, the Housing
7 Element, as with the housing elements of all local agencies in the State, is a statutorily mandated
8 element of the General Plan designed to ensure that local agencies plan for the requisite number of
9 housing units needed in its jurisdiction over a specified period of time. (Government Code §§
10 65302, 65580 *et seq.*) It is illogical on its face to suggest that a housing development, such as the
11 Project, is inconsistent with the Housing Element.

12 64. Substantively, the claim also lacks merits. Policy 1.5 of the City's Housing Element
13 states that "[t]he City will ensure that the level of development permitted in the creation of land
14 divisions results in an orderly and compatible development pattern, within the subdivision and in
15 relation to its surroundings; provides for quality site planning and design; and provides for quality
16 structural design." It is plain that this policy, with its focus on "the level of development permitted,"
17 is aimed at larger land divisions, not a mere lot split such as the Project. In any case, compatibility
18 for a land division is judged by adherence to zoning standards. (Housing Element, Program 1.5.1;
19 *see also* Land Use Element, Policy 2.1 and Community Design and Historic Resources Element,
20 Program CDHR 1.) The Project unquestionably complies with all zoning standards, including lot
21 size and setbacks. In the future, the Project homes will likewise be subject to the City's design
22 review process to ensure compatibility with surrounding properties and the neighborhood. (*See*
23 ~~LAMC § 14.76.010 *et seq.*; Housing Element, Policy 1.4; Housing Element, Programs 1.4.1 and~~
24 ~~1.4.2; Community Design and Historic Resources Element, Policies 1.4, 1.5, 1.6, 1.7, and 1.8;~~
25 ~~Community Design and Historic Resources Element, Programs CDHR 1 and CDHR 2; Land Use~~
26

27 (1998) 155 Cal.App.3d 1334, 1338 ["A given project need not be in perfect conformity with each
28 and every general plan policy."]; and *Pfeiffer v. City of Sunnyvale City Council* (2011) 200
Cal.App.4th 1552, 1563 [court observes that "it is nearly, if not absolutely, impossible for a project
to be in perfect conformity with every policy set forth in the applicable plan."].)

1 Element, Policy 2.3; Land Use Element, Program LU 4; and Single-Family Residential Design
2 Guidelines, New Homes & Remodels.)

3 65. Despite the Project's conformity with the General Plan, including Housing Element
4 Policy 1.5, the City Council found that the Project was not in conformance with this policy because
5 it was "inconsistent with the existing pattern or orderly development achieved in the surrounding
6 Montebello Acres neighborhood and would fail to retain the very distinctive character of this long-
7 established neighborhood." (Resolution, p. 3.) The City Council also found that the Project "would
8 create lots that are substantially smaller than, and out of character with, the surrounding Montebello
9 Acres neighborhood," claiming that the Project's corner lot "is substantially smaller than the interior
10 lots in the surrounding neighborhood." (*Id.*) These statements are inconsistent with the record and
11 factually inaccurate.

12 66. In explaining that the Project was consistent with Housing Element Policy 1.5, City
13 Staff noted that lots in the area were "diverse in their sizes and shapes, with lots ranging from 10,101
14 to 38,061 square feet in size," and stated that the Project proposed a layout similar to nearby
15 previously approved lot splits and complied with all applicable R1-10 District site development
16 standards. (March 26, 2019 Staff Report, p. 4.) A map depicting four similarly situated lot splits
17 (numbered 1-4) and their close proximity to the Project site (at Arroyo Road and Mountain View
18 Avenue) is attached hereto as Exhibit D. Petitioner also provided evidence showing that corner lots
19 in the neighborhood were generally the same size as interior lots and that the Project's corner lot
20 exceeded the minimum lot size required for such a lot by 22 percent. The evidence in the record
21 supports the conclusion that the Project complies with the General Plan. No evidence, let alone
22 substantial evidence, as required, supports the Council's contrary finding.

23 67. In denying the Project, the City Council also found that the Project site is not
24 physically suitable for the type and density of development proposed, claiming that the Project
25 "would create lots that are substantially smaller than, and are out of character with, the surrounding
26 neighborhood." (Resolution, p. 3.) The evidence does not support those findings, as explained
27 above. Moreover, the Planning Commission found that the Project *was* physically suitable for the
28 type and density of development "because it is in conformance with the Single-Family, Medium Lot

1 and Other Open Space land use designations of the General Plan, has a density that does not exceed
2 four dwelling units per acre and complies with all applicable R1-10 District site development
3 standards.” (Planning Commission Findings, 18-DL-01, 831 Arroyo Road.) The Planning
4 Commission’s findings comport with the evidence; the City Council’s findings do not.⁸

5 68. Certain of the findings made by the City Council in its Resolution do not contain the
6 statutorily-required findings and thus fail as a matter of law. For instance, the Resolution claims
7 that the Project “could cause environmental damage due to its incompatibility with surrounding
8 development and its failure to provide for orderly development.” (Resolution, p. 4.) But, the law
9 required the City Council to find that the Project was “likely to cause substantial environmental
10 damage . . .” (Government Code § 66474(a)(3).) “Substantial environmental damage” is the
11 equivalent of a “significant effect on the environment” under the California Environmental Quality
12 Act (“CEQA”). (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214
13 Cal.App.3d 1348, 1356, fn. 3.) A “significant effect on the environment” means a “substantial, or
14 potentially substantial, adverse change in any of the physical conditions within the area affected by
15 the project . . .” (CEQA Guidelines § 15382; *see also* Public Resources Code § 21068.) The City’s
16 finding that the Project “could” cause “environmental damage” is speculative and falls far short of
17 the “likely to” cause “substantial environmental damage” standard.

18 69. Moreover, approval of the Project is exempt from CEQA pursuant to the Class 15
19 categorical exemption for minor land divisions, and the Planning Commission correctly found the
20 Project would not cause substantial environmental damage because it is located within a developed
21 suburban context (i.e., not in or adjacent to any sensitive habitat areas). (Planning Commission
22 Findings, 18-DL-01, 831 Arroyo Road.) The Council’s purported finding that neighborhood
23 compatibility constitutes an environmental impact under CEQA is directly at odds with the law.
24 (*See, e.g.*, CEQA Guidelines § 15131 [“Economic or social effects of a project shall not be treated
25 as significant effects on the environment.”] and *Preserve Poway v. City of Poway* (2016) 245
26

27 ⁸ The City Council’s findings are also at odds with case law. (*Carmel Valley View, Ltd. v. Board*
28 *of Supervisors* (1976) 58 Cal.App.3d 817 [illustrating extreme circumstances justifying an
incompatibility finding, e.g., a 300 plus unit project on a hilly landslide with insufficient soils to
support a proposed septic system and avoid potential contamination of water supplies].)

1 Cal.App.4th 560 [project's alleged impact on a city's "community character" are outside CEQA's
2 scope].)

3 70. Additionally, in the Resolution, the City Council found that the Project "could cause
4 public health, safety or welfare problems due to its incompatibility with the surrounding
5 neighborhood and its failure to provide for orderly development." (Resolution, p. 4.) Yet, in order
6 to lawfully deny the Project, the City Council had to find that the Project "is likely to cause serious
7 public health problems." (Government Code § 66474(f).) The City Council's claim that the
8 Project's alleged incompatibility with the neighborhood is a "serious public health problem" is not
9 supported by the facts or law. (Resolution, p. 4.) As the Planning Commission correctly found, the
10 Project is not likely to cause serious public health problems "because the site is located within a
11 suburban context and has access to urban services including sewer and water." (Planning
12 Commission Findings, 18-DL-01, 831 Arroyo Road.) Again, the City's finding is speculative and
13 does not meet the requisite legal standard.

14 71. The actions of Respondents as set forth herein constitute a prejudicial abuse of
15 discretion, denied Petitioner a fair hearing, and were in excess of Respondents' authority and
16 jurisdiction. Respondents abused their discretion by, *inter alia*, failing to proceed in the manner
17 required by law, making a decision not supported by the findings, and/or making findings that were
18 not supported by substantial evidence in the record.

19 72. Petitioner has exhausted all available administrative remedies. Petitioner is informed
20 and believes, and thereon alleges, that there is no alternative but to seek immediate court intervention
21 in this matter.

22 73. Petitioner does not have a plain, speedy or adequate remedy in the ordinary course
23 of law, other than this proceeding, to compel Respondents to perform their duties under State law,
24 including the Subdivision Map Act.

25 74. Pursuant to CCP sections 1094.5 and/or 1085, a writ of mandate should issue
26 directing Respondents to rescind its actions denying the Project and ordering it to approve the
27 Project.

28 WHEREFORE, Petitioner seeks relief and judgment as set forth herein.

1 **FOURTH CAUSE OF ACTION**

2 **(Complaint For Damages-Violation Of Substantive Due Process)**

3 75. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
4 set forth in full herein by this reference.

5 76. The Fourteenth Amendment to the U.S. Constitution guarantees that no state shall
6 “deprive any person of life, liberty, or property, without due process of law.” Similarly, Article I,
7 Section 7 of the California Constitution provides that “[a] person may not be deprived of life, liberty,
8 or property without due process of law.” The due process clause includes both procedural and
9 substantive components. The substantive component guards against arbitrary, capricious,
10 malicious, abusive, or irrational government action.

11 77. In denying the Project, Respondents acted arbitrarily, capriciously, maliciously, and
12 without any rational basis, and thereby violated Petitioner’s right to substantive due process. The
13 City Council’s action was motivated by political pressure from certain vocal Project opponents as
14 opposed to legitimate planning-related concerns. The Project is a principally permitted land use and
15 was found by the City to satisfy all applicable site development standards.

16 78. City Council, City Staff, and/or City representatives, acting in their official capacities
17 for Respondents are, and were at all times relevant to this action, persons acting under color of state
18 law, pursuant to an official policy, custom or practice of the City.

19 79. By reason of the acts, omissions and conduct of City Council, City Staff, and/or City
20 representatives, acting in their official capacities for Respondents, as alleged above, Petitioner has
21 been damaged in an amount according to proof at the time of trial. Petitioner will continue to suffer
22 such damages until Respondents afford Petitioner their constitutional right to due process.

23 ~~80. As an incident of bringing and maintaining this action, Petitioner has become~~
24 ~~obligated to pay attorneys’ fees, expenses, and court costs. Upon prevailing in this action, Petitioner~~
25 ~~is entitled to recover its damages as well as its attorneys’ fees and costs under 42 U.S.C. section~~
26 ~~1988.~~

27 WHEREFORE, Petitioner seeks relief and judgment as set forth herein.

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **(Complaint For Damages-Violation Of Equal Protection)**

3 81. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
4 set forth in full herein by this reference.

5 82. The Fourteenth Amendment to the U.S. Constitution provides that no state shall
6 “deny to any person within its jurisdiction the equal protection of the laws.” Similarly, Article I,
7 Section 7 of the California Constitution provides that “[a] person may not be . . . denied equal
8 protection of the laws.” The equal protection clause secures every person against intentional and
9 arbitrary discrimination, whether occasioned by the express terms of a statute or by the improper
10 execution of the law.

11 83. In denying the Project, Respondents violated Petitioner’s rights to equal protection
12 by treating Petitioner in an unequal manner compared to other similarly situated property owners
13 and businesses without having a rational basis for doing so.

14 84. The City Council purported to deny the Project because it would create lots that are
15 substantially smaller than and out of character with the neighborhood. Yet, at least four other
16 subdivisions of similarly layout and lot size have been developed in the immediate vicinity of the
17 Project site. (See Exhibit D.) And the Project unquestionably complies with all of the City’s
18 objective site development standards.

19 85. City Council, City Staff, and/or City representatives, acting in their official capacities
20 for Respondents are, and were at all times relevant to this action, persons acting under color of state
21 law, pursuant to an official policy, custom or practice of the City.

22 86. By reason of the acts, omissions and conduct of City Council, City Staff, and/or City
23 ~~representatives, acting in their official capacities for Respondents, as alleged above,~~ Petitioner has
24 been damaged in an amount according to proof at the time of trial. Petitioner will continue to suffer
25 such damages until Respondents afford Petitioner their constitutional right to equal protection.

26 87. As an incident of bringing and maintaining this action, Petitioner has become
27 obligated to pay attorneys’ fees, expenses, and court costs. Upon prevailing in this action, Petitioner
28 is entitled to recover its damages as well as its attorneys’ fees and costs under 42 U.S.C. section

1 1988.

2 WHEREFORE, Petitioner seeks relief and judgment as set forth herein.

3 **SIXTH CAUSE OF ACTION**

4 **(Complaint For Damages-Unlawful Taking Of Private Property**

5 **Without Payment Of Just Compensation)**

6 88. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
7 set forth in full herein by this reference.

8 89. The Takings Clause of the Fifth Amendment to the U.S. Constitution, made
9 applicable to the states through the Fourteenth Amendment, guarantees that private property shall
10 not “be taken for public use, without just compensation.” Article I, Section 19 of the California
11 Constitution also provides that “[p]rivate property may be taken or damaged for public use only
12 when just compensation . . . has first been paid to . . . the owner.”

13 90. A land use regulation effects an impermissible taking of property if it deprives an
14 owner of all economically beneficial or productive uses of his land. (*Lucas v. South Carolina Costal*
15 *Council* (1992) 505 U.S. 1003.) A regulation may also effect a taking even though it leaves the
16 property owner *some* economically beneficial use of his property. (*Kavanau v. Santa Monica Rent*
17 *Control Board* (1997) 16 Cal.4th 761.)

18 91. To determine whether a taking has occurred when the economic impact is less than
19 total, a reviewing court looks to three factors: (i) the economic impact of the regulation on the owner,
20 (ii) the extent to which the regulation interferes with the property owner’s distinct investment-
21 backed expectations as to the use of its property, and (iii) the character of the governmental action.
22 (*Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104.)

23 92. ~~Petitioner purchased the Property in reliance on the site’s zoning designation~~
24 ~~allowing residential development of up to 4 dwelling units per net acre and established site~~
25 ~~development standards. Due to the City’s denial of the Project, Petitioner has not been able to make~~
26 ~~an economically viable use of the Property. Respondents’ refusal to issue a minor subdivision~~
27 ~~approval for the Project is not a normal delay in the land use entitlement process. Respondents’~~
28 ~~actions are unreasonable, unwarranted, and deprive Petitioner of all economically beneficial use of~~

1 the Property.

2 93. Petitioner incurred substantial expenditures in acquiring the Property, preparing the
3 map application and related studies, and responding to inquiries, requests, and concerns raised by
4 the decision-makers or Staff. Based on a positive recommendation from City Staff, the Planning
5 Commission voted unanimously to approve the Project. Due to pressure from certain vocal Project
6 opponents, the City Council, however denied the Project on a 3-2 vote. This regulatory “about face”
7 subjects the City to liability for damages for a taking. (*Lockaway Storage v. County of Alameda*
8 (2013) 216 Cal.App.4th 161 [court upholds award of damages and fees for a regulatory taking
9 against a county based on its inconsistent statements regarding the permitted use of land].)

10 94. The City’s conduct herein also effects a taking of the Property under the principles
11 of *Penn Central*. The economic impact of the City’s conduct is severe as it destroys the value of
12 the Property and Petitioner’s use and enjoyment of it. The City’s conduct further interferes with
13 Petitioner’s reasonable investment-backed expectations, as Petitioner reasonably expected that it
14 could use its Property in a manner consistent with the City’s representations and consistent with the
15 Property’s long-standing planning and zoning designations. The City’s action in purporting to
16 restrict a use allowed as of right by the City’s zoning ordinance is also evidence of a taking.

17 95. City Council, City Staff, and/or City representatives, acting in their official capacities
18 for Respondents are, and were at all times relevant to this action, persons acting under color of state
19 law, pursuant to an official policy, custom or practice of the City.

20 96. By reason of the acts, omissions and conduct of City Council, City Staff, and/or City
21 representatives, acting in their official capacities for Respondents, as alleged above, Petitioner has
22 been damaged in an amount according to proof at the time of trial. Petitioner will continue to suffer
23 ~~such damages until Respondents afford Petitioner their constitutional right to just compensation.~~

24 97. Petitioner is entitled to recover just compensation for the taking of the Property.
25 Additionally, Petitioner is entitled to recover their attorneys’ fees and litigation expenses pursuant
26 to 42 U.S.C. section 1988 and/or CCP section 1036.

27 WHEREFORE, Petitioner seeks relief and judgment as set forth herein.

28 ///

1 PRAYER FOR RELIEF

2 WHEREFORE, Petitioner seeks relief and judgment as follows:

3 1. For a Writ of Mandate:

4 a. Directing Respondents to rescind and set aside the Resolution purporting to
5 deny the Project;

6 b. Commanding Respondents to approve the Project either through issuing a
7 certification of approval pursuant to Government Code section 66452.4(b) or a resolution approving
8 the Project pursuant to Government Code section 65589.5(k)(1);

9 c. Commanding Respondents to conform their actions to controlling law,
10 including the Subdivision Map Act, HAA, and state and local planning and zoning requirements;

11 2. For compensatory damages, according to proof at trial;

12 3. For an award of attorneys' fees, litigation expenses, and costs as permitted or
13 required by law, including but not limited to, CCP sections 1021.5 and 1036; Government Code
14 sections 800 and 65589.5; 42 U.S.C. section 1988; and other statutory and common law; and

15 4. For such other relief as the Court deems just and proper.

16 Dated: August 13, 2019

RUTAN & TUCKER, LLP

17
18 By: 

19 Matthew D. Francois
20 Attorneys for Petitioner and Plaintiff
21 GOLDSILVERISLAND HOMES, LLC.
22
23
24
25
26
27
28

VERIFICATION

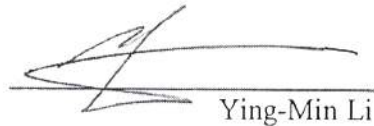
STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DAMAGES** and know its contents.

I am an authorized officer of the Petitioner and Plaintiff, and have reviewed the foregoing document on its behalf, and am authorized to make this Verification. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I am informed and believe that they are true.

Executed on 8/12/2019, at Campbell, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Ying-Min Li

Exhibit A

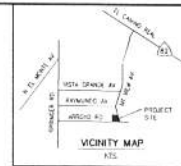
TENTATIVE PARCEL MAP
831 ARROYO ROAD
LOS ALTOS, CA

GENERAL NOTES

CONTACT: 415.436.1713 / 510.436.1713
FAX: 415.436.1713
577 SAN ANGELO BLVD. #111
CAMBRIDGE, CA 95908
(415) 836-1261
www.munichsystems.com

CH. ENGINEER &
AND SURVEYOR

ROBERT S. WANG (2004) & JONG
PA ENGINEERING, INC
305 ALVARADO DRIVE
MILPITAS, CA 95020
(408) 261-1999
rs@rsgneng.com

[illegible]

Sociodemographic			
No.	Variables	Obs.	Values
1	SEX (male/female)	157	0 = male (84.0%) 1 = female (16.0%)
2	AGE (years)	54	0 = 18-24 1 = 25-34 2 = 35-44 3 = 45-54 4 = 55-64 5 = 65-74 6 = 75-84
3	EDUCATION (years)	113	0 = 0-4 1 = 5-7 2 = 8-10 3 = 11-12 4 = 13-14 5 = 15-16 6 = 17-18 7 = 19-20 8 = 21-22 9 = 23-24 10 = 25-29 11 = 30-34 12 = 35-39 13 = 40-44 14 = 45-49 15 = 50-54 16 = 55-59 17 = 60-64 18 = 65-69 19 = 70-74 20 = 75-79 21 = 80-84 22 = 85-89 23 = 90-94 24 = 95-99
4	RELIGION (religion)	157	0 = 0 1 = 1 2 = 2 3 = 3 4 = 4 5 = 5 6 = 6 7 = 7 8 = 8 9 = 9 10 = 10 11 = 11 12 = 12 13 = 13 14 = 14 15 = 15 16 = 16 17 = 17 18 = 18 19 = 19 20 = 20 21 = 21 22 = 22 23 = 23 24 = 24 25 = 25 26 = 26 27 = 27 28 = 28 29 = 29 30 = 30 31 = 31 32 = 32 33 = 33 34 = 34 35 = 35 36 = 36 37 = 37 38 = 38 39 = 39 40 = 40 41 = 41 42 = 42 43 = 43 44 = 44 45 = 45 46 = 46 47 = 47 48 = 48 49 = 49 50 = 50 51 = 51 52 = 52 53 = 53 54 = 54 55 = 55 56 = 56 57 = 57 58 = 58 59 = 59 60 = 60 61 = 61 62 = 62 63 = 63 64 = 64 65 = 65 66 = 66 67 = 67 68 = 68 69 = 69 70 = 70 71 = 71 72 = 72 73 = 73 74 = 74 75 = 75 76 = 76 77 = 77 78 = 78 79 = 79 80 = 80 81 = 81 82 = 82 83 = 83 84 = 84 85 = 85 86 = 86 87 = 87 88 = 88 89 = 89 90 = 90 91 = 91 92 = 92 93 = 93 94 = 94 95 = 95 96 = 96 97 = 97 98 = 98 99 = 99 100 = 100 101 = 101 102 = 102 103 = 103 104 = 104 105 = 105 106 = 106 107 = 107 108 = 108 109 = 109 110 = 110 111 = 111 112 = 112 113 = 113 114 = 114 115 = 115 116 = 116 117 = 117 118 = 118 119 = 119 120 = 120 121 = 121 122 = 122 123 = 123 124 = 124 125 = 125 126 = 126 127 = 127 128 = 128 129 = 129 130 = 130 131 = 131 132 = 132 133 = 133 134 = 134 135 = 135 136 = 136 137 = 137 138 = 138 139 = 139 140 = 140 141 = 141 142 = 142 143 = 143 144 = 144 145 = 145 146 = 146 147 = 147 148 = 148 149 = 149 150 = 150 151 = 151 152 = 152 153 = 153 154 = 154 155 = 155 156 = 156 157 = 157
5	RELIGION (religion)	157	0 = 0 1 = 1 2 = 2 3 = 3 4 = 4 5 = 5 6 = 6 7 = 7 8 = 8 9 = 9 10 = 10 11 = 11 12 = 12 13 = 13 14 = 14 15 = 15 16 = 16 17 = 17 18 = 18 19 = 19 20 = 20 21 = 21 22 = 22 23 = 23 24 = 24 25 = 25 26 = 26 27 = 27 28 = 28 29 = 29 30 = 30 31 = 31 32 = 32 33 = 33 34 = 34 35 = 35 36 = 36 37 = 37 38 = 38 39 = 39 40 = 40 41 = 41 42 = 42 43 = 43 44 = 44 45 = 45 46 = 46 47 = 47 48 = 48 49 = 49 50 = 50 51 = 51 52 = 52 53 = 53 54 = 54 55 = 55 56 = 56 57 = 57 58 = 58 59 = 59 60 = 60 61 = 61 62 = 62 63 = 63 64 = 64 65 = 65 66 = 66 67 = 67 68 = 68 69 = 69 70 = 70 71 = 71 72 = 72 73 = 73 74 = 74 75 = 75 76 = 76 77 = 77 78 = 78 79 = 79 80 = 80 81 = 81 82 = 82 83 = 83 84 = 84 85 = 85 86 = 86 87 = 87 88 = 88 89 = 89 90 = 90 91 = 91 92 = 92 93 = 93 94 = 94 95 = 95 96 = 96 97 = 97 98 = 98 99 = 99 100 = 100 101 = 101 102 = 102 103 = 103 104 = 104 105 = 105 106 = 106 107 = 107 108 = 108 109 = 109 110 = 110 111 = 111 112 = 112 113 = 113 114 = 114 115 = 115 116 = 116 117 = 117 118 = 118 119 = 119 120 = 120 121 = 121 122 = 122 123 = 123 124 = 124 125 = 125 126 = 126 127 = 127 128 = 128 129 = 129 130 = 130 131 = 131 132 = 132 133 = 133 134 = 134 135 = 135 136 = 136 137 = 137 138 = 138 139 = 139 140 = 140 141 = 141 142 = 142 143 = 143 144 = 144 145 = 145 146 = 146 147 = 147 148 = 148 149 = 149 150 = 150 151 = 151 152 = 152 153 = 153 154 = 154 155 = 155 156 = 156 157 = 157
6	RELIGION (religion)	157	0 = 0 1 = 1 2 = 2 3 = 3 4 = 4 5 = 5 6 = 6 7 = 7 8 = 8 9 = 9 10 = 10 11 = 11 12 = 12 13 = 13 14 = 14 15 = 15 16 = 16 17 = 17 18 = 18 19 = 19 20 = 20 21 = 21 22 = 22 23 = 23 24 = 24 25 = 25 26 = 26 27 = 27 28 = 28 29 = 29 30 = 30 31 = 31 32 = 32 33 = 33 34 = 34 35 = 35 36 = 36 37 = 37 38 = 38 39 = 39 40 = 40 41 = 41 42 = 42 43 = 43 44 = 44 45 = 45 46 = 46 47 = 47 48 = 48 49 = 49 50 = 50 51 = 51 52 = 52 53 = 53 54 = 54 55 = 55 56 = 56 57 = 57 58 = 58 59 = 59 60 = 60 61 = 61 62 = 62 63 = 63 64 = 64 65 = 65 66 = 66 67 = 67 68 = 68 69 = 69 70 = 70 71 = 71 72 = 72 73 = 73 74 = 74 75 = 75 76 = 76 77 = 77 78 = 78 79 = 79 80 = 80 81 = 81 82 = 82 83 = 83 84 = 84 85 = 85 86 = 86 87 = 87 88 = 88 89 = 89 90 = 90 91 = 91 92 = 92 93 = 93

SHEET INDEX

NO
TU-1 S/E PLAN
TU-2 PRE MANUFACTURING & STORAGE PLAN

SITE BENCHMARK

1971-1981
11/10/1981-12/31/1981

BASIS OF BEARINGS:

THE BEARING AND SIZE OF CERTAIN OF MARIO RUIZ AS
SHOWN ON MAP OF SUBDIVISION OF MONTEBELLO ACRES FILED
IN BOOK "A" OF MAPS AT PAGE 1-1, SANTA CLARA COUNTY
RECORD.

[illegible]

ERW ENGINEERING, INC.
341 E. MONROE • LAND SURVEYORS
1000 N. MICHIGAN STREET
BIRMINGHAM, AL 35203
(205) 262-1999
FAX: (205) 424-3336
info@erwengr.com



831 ARROYO ROAD
LOS ALTOS, CA

APN: 180-29-020

VE PARCEL MAP
SITE PLAN

DATE 8/4/73
NAME AS NOTED
FINGERPRINTS FOR
SAMPLE BY FB

TM-1

18-2-2021

Exhibit B



CM-1	SHEET	DATE: 06/18/2019 DRAWN BY: JMM CHECKED BY: JMM PROJECT: Arroyo Road	831 Arroyo Road Los Altos, CA APR 199-07-021 Santa Clara County	GoldSilverIsland Homes LLC 577 Shaver Ave, Ste 127 Campbell, CA 95008	DATE: 06/18/2019 DRAWN BY: JMM CHECKED BY: JMM PROJECT: Arroyo Road
------	-------	--	---	--	--

Exhibit C

RESOLUTION NO. 2019-07

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
DENYING A TENTATIVE MAP FOR A TWO-LOT SUBDIVISION AT 831
ARROYO ROAD**

WHEREAS, the City of Los Altos received a subdivision application that includes a tentative map from Ying-Min Li for a two-lot subdivision, application 18-DL-01, referred to herein as the “Application;” and

WHEREAS, this action is exempt from environmental review as a project that is disapproved in accordance with Section 15270 of the California Environmental Quality Act of 1970 Guidelines (“CEQA Guidelines”) and, as a separate and independent basis CEQA Guidelines Section 15061(b)(3); and

WHEREAS, the Application was processed in accordance with the applicable provisions of the California Government Code and the Los Altos Municipal Code; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the Application on February 7, 2019; and

WHEREAS, the City Council held duly noticed public hearings on the Application on March 26, 2019, April 23, 2019 and May 14, 2019; and

WHEREAS, the City Council afforded the Applicant and all other interested parties the opportunity to comment on the Application and has thoroughly and independently reviewed all written evidence and oral testimony presented to date on this matter; and

WHEREAS, the State Subdivision Map Act provides that the City Council shall deny approval of a tentative subdivision or parcel map if it makes any of the findings specified in Government Code Section 66474; and

WHEREAS, based upon such evidence and testimony, and the entire record of proceedings and matters of general knowledge to the City, including without limitation the Los Altos General Plan, the Los Altos Municipal Code and other laws, regulations, policies, procedures and requirements the City Council has determined that one or more of the findings specified in Government Code Section 66474 apply and, therefore, warrant denial of the Application; and

WHEREAS, the location and custodian of the documents or other materials which constitute the record of proceedings upon which the City Council’s findings and decision are hereby made are located in the Office of the City Clerk of the City of Los Altos;’

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby denies the Application. This determination is based on the Recitals set forth above together with the findings and determinations, as specified in California Government Code Section 66474, as set forth in Exhibit A, each of which is based upon the evidence

presented in the record as a whole and each of which provides a separate and independent basis for this decision.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 28th day of May, 2019 by the following vote:

AYES:	ENANDER, LEE ENG, PEPPER
NOES:	BRUINS, FLIGOR
ABSENT:	NONE
ABSTAIN:	NONE


Lynette Lee Eng, MAYOR

Attest:

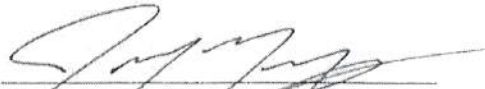

Jon Maginot, CMC, CITY CLERK

EXHIBIT A

FINDINGS

With regard to division of land application 18-DL-01, (the "Application") the City Council makes the following findings in accordance with the California Government Code, Chapter 4, Article 1, Section 66474 of the Subdivision Map Act of the State of California, each of which provides a separate and independent basis, based upon substantial evidence in the record, for the City Council's decision to deny the Application:

A. The proposed subdivision is not in conformance with the Los Altos General Plan. The Application is inconsistent with, among other policies and provisions of the General Plan, Housing Element 1.5, which provides that the City will ensure that the level of development permitted in the creation of land divisions results in an orderly and compatible development pattern within the subdivision and in relation to its surroundings; provides for quality site planning and design; and provides for quality structural design. As specified in Housing Element Program 15.1, the City is required to review the compatibility of land divisions as part of the permit review and approval process.

Consistent with these requirements, the City Council hereby finds and determines that the Application would be inconsistent with the General Plan and would not achieve an orderly or compatible development. The Application is inconsistent with the existing pattern or orderly development achieved in the surrounding Montebello Acres neighborhood and would fail to retain the very distinctive character of this long-established neighborhood. As discussed with examples of more details below, the Application fails to satisfy this finding necessary to approve the subdivision.

The Application does not provide for creation of a subdivision that would result in an orderly or compatible development pattern, either within the subdivision or in relation to its surroundings. Among other things, the Application would create lots that are substantially smaller than, and out of character with, the surrounding Montebello Acres neighborhood. The predominant character of the surrounding neighborhood comprises substantially larger lots, which are at odds with the lots proposed in the Application. This incompatibility is particularly concerning for the Application's proposed corner lot, which is substantially smaller than the interior lots in the surrounding neighborhood. The proposal departs from the recognized City planning practice for the area for corner lots in a neighborhood to comprise a substantially larger area than interior lots. This planning concept and the Application's inconsistency with the same was discussed at length in the City Council proceedings on the Application. It is further recognized that in the Los Altos Zoning Code provisions for the subject zoning, it establishes a greater minimum lot size for corner lots, than for interior lots (*See* Los Altos Municipal Code Section 14.06.040).





B. The site is not physically suitable for the type and density of development proposed in the Application. The Application proposes a subdivision that would create lots that are substantially smaller than, and are out of character with, the surrounding neighborhood.

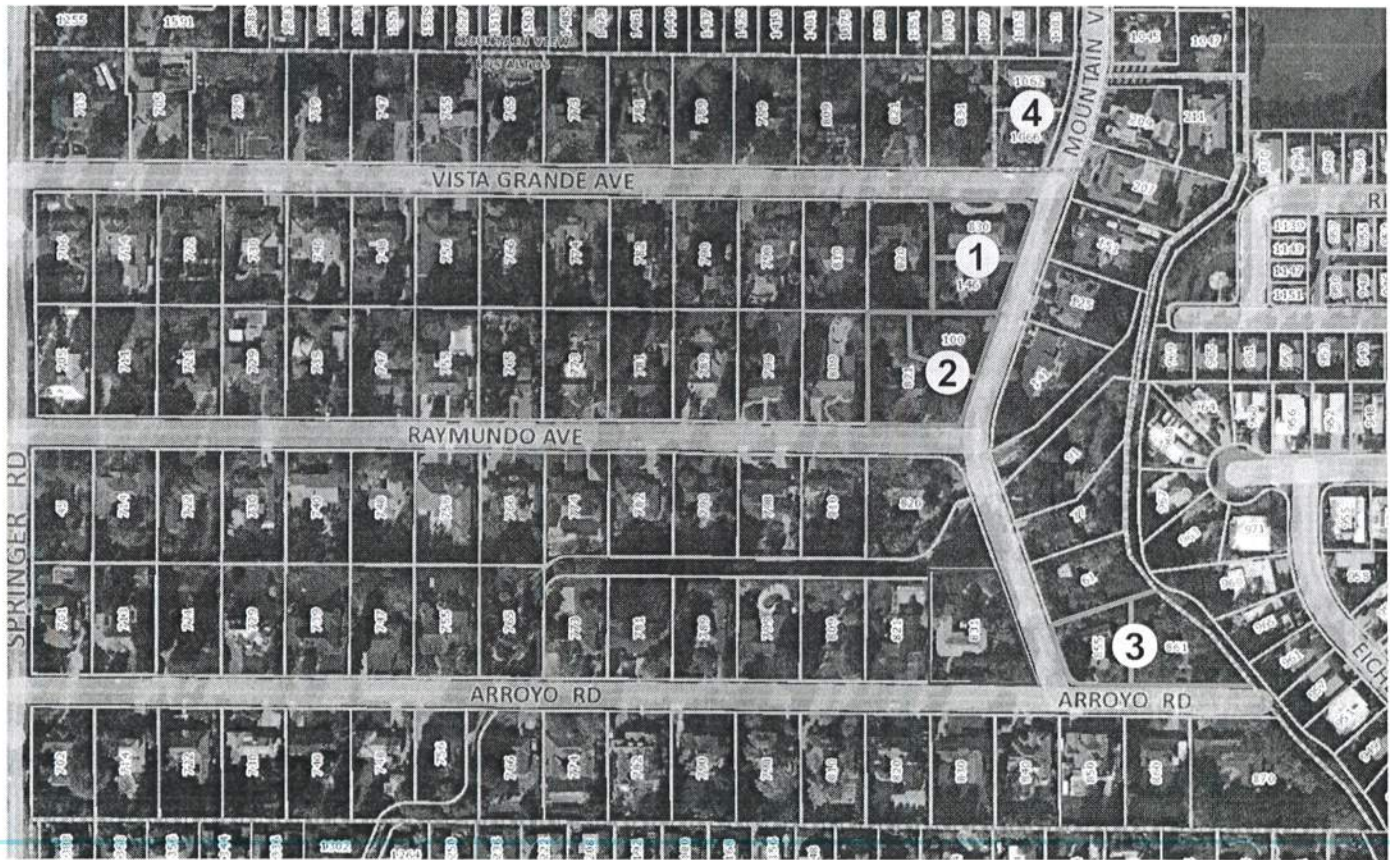
C. The design of the subdivision and the proposed improvement could cause environmental damage due to its incompatibility with surrounding development and its failure to provide for orderly development.

D. The design of the subdivision could cause public health, safety or welfare problems due to its incompatibility with the surrounding neighborhood and its failure to provide for orderly development.

Exhibit D

Montebello Acres Prior Subdivisions

-  City of Los Altos Boundary
-  Property Lines
-  Project Site (831 Arroyo Road)
-  Subdivided Lots in Montebello Acres (Los Altos)



Source: SCCMap (County of Santa Clara)

SANTA CLARA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew D. Francois (SBN 181871) / David P. Lanferman (SBN 71593) RUTAN & TUCKER, LLP 455 Market Street, Suite 1870 San Francisco, CA 94105 TELEPHONE NO: (650) 263-7900 FAX NO: (650) 263-7901 ATTORNEY FOR (Name): GOLDSILVERISLAND HOMES, LLC.		FOR COURT USE ONLY Electronically Filed by Superior Court of CA, County of Santa Clara, on 8/13/2019 2:43 PM Reviewed By: R. Tien Case #19CV352667 Envelope: 3256218
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		CASE NUMBER: 19CV352667 JUDGE: DEPT:
CASE NAME: GOLDSILVERISLAND HOMES, LLC. v. City of Los Altos, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	---

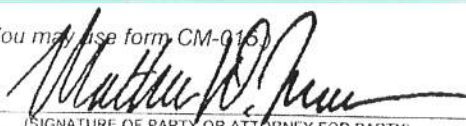
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Six (6)
5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-010.)

Date: August 13, 2019

Matthew D. Francois

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36) Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: _____

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of < CountyName > Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: _____ Department: _____

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: _____ Time: _____ in Department: _____

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.