

Fee must accompany original signed appeal form

Received by: ____

APPEAL FORM

Department of Community Development Planning Division

SECTION 1. APPELLANT INFORMATION	N
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Name	Mailing Address
805.593.0522	
Phone	Fax
	EMAIL UCBOUDD SECTIONALINET
In accordance with the procedures set for Code, I hereby appeal the decision of the	th in Title 17, Chapter 17.126 of the San Luis Obispo M unicipal :
	·
Community Developmen Tier 3 Applicant Appe	t Director (appealed to the Planning Commission)
□ Non-Applicant	· · ·
Tier 4	t Director- Minor (appealed to the Planning Commission)
☐ Applicant Appe ☐ Non-Applicant	

If an action by the Architectural Review commission, Cultural Heritage Committee or Planning Commission is being appealed, an "Appeal to the City Council" form is needed and can be obtained from the City Clerk's Office.

SECTION 2. SUBJECT OF APPEAL:
The date the decision being appealed was rendered: 3/17/22
Project address: 2406 - 2414 UDHNSON AND Application number: ARCH - 0383-2021, SPEVAC
Explain specifically what action(s) you are appealing and why you believe your appeal should be considered. You may attach additional pages, if necessary:
WE ARE APPEALING THE COMMUNITY DEVISIONENT DIRECTORS
APPROVAL OF THE ABOVE REFERENCED PROJECT FOR THE FOLLOWING:
(1) NON-COMPLIANCE AND VIDEATION OF CONSITION OF SUBDIVISION;
(2) NON-COMPLIANCE AND VIOLATION OF SLO CITY'S
COMMUNITY DESIGN GUIDELINES;
(3) PROPOSED APUIN NO LATION OF OBJECTIVE SUBDINISION
CONDITIONS AND CA STATE GUBDIUISION MAPACT.
THESE APPRAL ISSUES ARE DESCRIBED IN GREATER DETAIL IN
THE ATTACHED "APPEAL TO BAN LUIS OBY DO CHY PLANNING COMMISSION"
Parkusu Board

Date

Signature of Appellant

APPEAL TO SAN LUIS OBISPO CITY PLANNING COMMISSION

Date: March 28, 2022

To: City of San Luis Obispo City Planning Commission

Project: ARCH-0383-2021 (2406 & 2414 Johnson Avenue, Spevack)

Appellants: Stephen & Paula Dooley (Lot 13, Tr 1272)

Joe & Barbara Boud(Lot 12, Tr 1272)

Maureen Eyerman/James Callahan (Lot 2, Tr 1272) John Hayes, esq and Carolyn Hayes (Lot 3, Tr 1272)

William Herreras, esq and Barbara Herreras (Lot 4, Tr 1272)

Tracey Martinelli & Gene Francis (abut project to south, Johnson Ave)

Jason Pauysch (abut project to north, Johnson Ave)

I.Appeal Overview:

This project was approved by the Community Development Department on March 17, 2022. The Appellants believe the Findings that were cited in the approval document incorrectly addressed the Conditions of Development of the Parcel Map, the City's Design Guidelines and the California Government Code Section 65852.2, Accessary Dwelling Units and Subdivision Map Act 66410 et al.

Background:

MS-78-09, Spevack; A three-lot subdivision of Parcel 1 of Tract 1272, was approved with Conditions by the SLO City Council on 1/5/2010. Time extensions were also granted and the Final Parcel Map was recorded on 7/11/17 in Book 079, Page 075 of SLO County Clerk-Recorder office.

Definitions:

Building Envelope of a lot: building envelope means the buildable area on a lot, defined by the minimum front yard depth, rear yard depth, side yard width requirements and the maximum height requirements, within such buildings can be erected.

Building Footprint: building footprint means the horizontal area as seen in plan, measured from outside of all exterior walls and supporting columns. It includes dwellings and any area of attached garage that exceeds 200 square feet.

Building Structures: structures are defined as "anything constructed or erected with a fixed location on the ground. Among other things, structures include buildings, mobile homes ('manufactured homes'), retaining walls, fences, billboards, and poster panels.

II.Conditions of Approval for MS-78-09 (CC approved 1/5/10)

SUBDIVISION CONDITION #1: "The Community Development Director has designated Parcels One, Two and Three as "sensitive sites. This status ensures that future infill development will respect existing site constraints, privacy for occupants and neighbors of the project, provide for adequate parking, and be compatible with the scale and character of the existing neighborhood. An application for architectural review will be required for all three parcels in accordance with Municipal Code Section 2.48.050. Development applications for Parcel One must be reviewed by the Architectural Review Commission."

Comment:

- (1) Parcel 1 has topography with an average cross-slope of 17.2%, with the westerly portions exceeding 28% and less severe slopes on the eastern portion of the building envelope. Rather than design a structure that steps down this gradient, the development proposes an 8' cut with 6' high retaining walls for over 200' linear feet. The retaining wall structure is located within the required 10' rear setback and outside of the required building envelope, to enable the proposed pre-fab boxes to be placed on this pad. We did the rough math: Estimate 933 cubic yards of excavation is required. This massive grading shows no respect for the topographical constraints.
- (2) To accommodate the development proposed, the Applicant's Arborist report identified tree removal and justifications. Arborist reports typically assess the project presented without recommendations of alternate project designs, tree and vegetative avoidance and/or alternatives (building footprints, drainage structures, etc.). As above, this project shows little regard for the site constraint challenges regarding the existing landscape environment.
- (3) These pre-fab boxes, dropped onto a massively over graded pad, have no character identity with the neighborhood. The comment in Findings #6 "the project provides single story, residential units that are proportional to the site by minimizing grading and setting the units into the existing topography, provide architectural interest with articulated wall planes through the use of horizontal and vertical siding, window trim, peaked roofs, and a porch..." and Finding #7 "the architectural style is complementary to the surrounding neighborhood and provides a variety of architectural treatments that add visual interest and articulation to the building design." These Finding statements are quite a stretch.

Conclusion: These horizontal boxes have no exterior elevation articulation of significance. A peaked roof ridge, horizontal hardiboard siding, minimum fenestration perimeter trim, and a porch with a wooden door hardly qualifies as in scale and of character with the neighborhood. FYI, all Tract 1272 roof material was required to be concrete or Mission tile, no composition roof materials were permitted. This proposal defies compliance with the designation of "sensitive site" development. It has no respect

for the topographical constraints, the mature vegetation, or attention to design detail and character of neighboring homes.

SUBDIVISION CONDITION #2: "Applications submitted for review on Parcel One shall include housing designed not to exceed a 406-foot elevation at the highest point of the roof, to preserve pleasant views from and towards the property (LUE 2.2.12), and remain consistent in character with the neighborhood."

Comment:

There are no height restrictions on Parcel #3. Development of a two-story structure would require less landscape removal and less site disturbance. Fit the Site.

SUBDIVISION CONDITION #3: "The building footprint shown on Parcel One shall be reduced in size so that eventual housing development of the parcel will be setback at least 10 feet from the north west property line. The driveway shall not be allowed within this required 10 -foot setback."

Comment:

The building envelope that was submitted by the Applicant and his engineer from EDA clearly delineates a building envelope on the Tentative Map on both Parcels #1 & #3. This was indeed modified by the Planning Commission, requiring the rear yard envelope to be reduced to 10-feet (shrinking the building envelope an additional five feet). Please refer to attached Exhibit of the Tentative Map delineating these envelopes (Exhibits A, B & C).

Public Records review of the resolution and the Minutes from the 2009-2010 Administrative Review, Planning Commission and final approval by the City Council make it abundantly clear that a building envelope was established through the approval of the Parcel Map. The Applicant, EDA engineer, City staff, Commissioners, City Council, neighborhood attendees were on the same page with the building envelopes proposed on the Tentative Map.

Recognition of this building envelope is an essential component of the Tentative Parcel Map approval. The discussion of 'Envelope" and "Footprint" is similar to the references of "Parcel Map" and "Subdivision" in discussions of land development and it's irrelevant to make a semantic distinction with these terms.

It is not unusual for the term "building envelope" and "building footprint" to be comingled, however, the 3/17/22 approval with Findings #2c seem to ignore this interplay of terminology. There was no *building footprint* identified during the approval of the Tentative Parcel Map, however there was a delineated *building envelope*.

To be even more redundant: The EDA Tentative Map and testimony by the Applicant's representative, Jeff Wagner, throughout the hearings in 2009-10 referred to a "building envelope". More recently, in a message received on March 15, 2022 from Bill Dyer, Dyer Engineering, who processed and recorded the Final Map seven years later, with whom we asked the question "why wasn't the building envelope shown in the Final Map?" Dyer acknowledged the envelope on the Tentative Map and responded "Building envelopes are not necessarily shown on final parcel maps. But the city keeps a file on them and will require them to be honored or modified thru proper procedure. Bill.'

To further emphasize this fact of record, in the Applicant's letter in September, 2009, he made the statement "we are planning no lot sale, no building, just a plan to give us some options for our financial future." Here again, in the Applicant's admission, no "building" was proposed, but an "envelope" for future was clearly contemplated. In a 10/12/09 letter, the Spevack's recognized the difficulties associated with any future development on Parcel #1 and offered this, yet to be approved Parcel #1, for sale to the abutting upslope lots (Lots 2 & 3 of Tract 1272) via a Lot Line Adjustment with the statement that "you could extend and improve your yards, to enhance the value of your homes, and own and preserve your own viewshed.". However, this present proposal by Mr. Spevack is contradicting this recognition of real estate value, viewshed and privacy.

Conclusion: Nowhere in the minutes of any of the recorded public hearing throughout the planning process and subsequent time extensions of the parcel map was this building envelope (footprint) eliminated, replaced or compromised by the modified condition of reducing it in size by increasing the rear setback from five-feet to ten-feet.

The Parcel Map, MS-78-09, condition is crystal clear: future residential development, structures, guest parking spaces, driveways, structural retaining walls, etc. are not permitted outside of the prescribed building envelope (footprint).

SUBDIVISION CONDITION #4: "Future development of Parcels One & Three shall provide one (1) additional on-site guest parking space per lot, subject to approval of the Community Development Director."

Comment:

The proposed Site Plan shows three spaces on Parcel 1 and two tandem spaces on Parcel 3, with a guest space along the northern boundary. Presently, Parcel 2 uses the fire turn pocket between Parcels #2 & #3 that, per conditions of approval, is a fire access driveway and restricted from parking. Parcel 2 has no other parking identified, garage or surface, on-site.

The City Council Resolution 10140, Conditions of Approval, included Code Compliance condition #4 that required parking to be identified on Parcel #2 as well as Flag Lot Subdivision Condition #26 regarding parking access and maneuvers.

Where is Parcel #2 parking to be relocated when Parcel #3 is developed? How does the guest space on Parcel #3 comply with the maneuver standards? The answer is obvious. The fire turn-around area between Parcel 2 & 3 will become a parking area and the under-parked Parcels 1, 2 & 3 will load up the driveway with vehicles. In the event of a structural or wildland fire, how can the neighboring properties be adequately protected if the driveways are plugged with parked vehicles? City staff provided us with this response: "All vehicles accessing parcels 1, 2, & 3 along the common driveway must adhere to the "Fire lane, no parking" signs that are currently installed on the site. A person may report a vehicle parked in a fire lane to the Fire Department or the Police Department. During business hours, contact a Fire Inspector at 805-781-7383. After business hours and on weekends, call the City Police Department non-emergency line at 805-781-7312". This provides little comfort if the neighboring homes and properties are threatened with a wildland and/or structural fire.

III.Community Design Guidelines:

The City of San Luis Obispo adopted Community Design Guidelines in 2002 that have been thoughtfully amended multiple times over the years. The Findings preface statement and ARC staff report comment includes the following statements:

"The proposed development must be consistent with the requirements of the CDG. Staff has not identified any discussion items or concerns related to consistency with the CDG Chapter 2 (General Design Principles), Chapter 5 (Residential Project Design), and Chapter 6 (Site Planning and Other Design Details) (see Attachment A, Project Plans)." (ARC staff report, 2/7/2022).

The Administrative approval comments in the preamble and in Findings #6 & #7 include the following:

"The project provides single story, residential units that are proportional to the site by minimizing grading and setting the units into the existing topography, provide architectural interest with articulated wall planes through the use of horizontal and vertical siding, window trim, peaked roofs, and a porch, uses durable materials such as fiber cement siding and trim and composite decking."

Comment:

Our review of the CDG, Chapters 2, 5 & 6 identifies several inconsistencies with this ARC staff report statement and the Findings of approval of this project. With no disrespect, they are patently absurd with the CDG standards. Following are direct excerpts from the City's CDC (bold/italic), with additional comments.

E. Sensitive sites. The Community Development Director, Planning Commission or City Council may require design review on certain "sensitive sites". A project

site is considered sensitive when: 1. It has been designated through an "S", Special Consideration, overlay zone, use permit, or a condition of a tentative parcel or subdivision map as a site with special development concerns; Comment: These three parcels were designated "Sensitive Sites" through the approval of the PM by the City Council Resolution 10140 on 1/5/2010.

Chapter 2 - General Design Principles

The following general principles should be considered in the design of all development. Certain guidelines may only apply to non-residential projects, and/or apply depending on whether a proposed project includes specific features.

2.1 - Site Design

A. Fit the site. Each project should be designed with careful consideration of site character and constraints, and minimize changes to natural features, rather than altering a site to accommodate a stock building plan. Existing topography should be preserved where possible and excessive cuts or fills should be avoided.

B. Consider the context. Review existing development near the site and consider how the project can be designed to fit in with the best examples of appropriate site design and architecture in the vicinity of the site.

Comment:

Fit the site, consider topography and minimize changes to natural features is worth repeating, as well as "altering a site to accommodate a stock building plan". The comment in the plan package submitted by the Applicant's design team that "additional grading at Parcel 1 was required to comply with height restrictions (not to exceed 406' elevation) is faulty justification and certainly violates the above Site Design criteria. Excavation of over 933 cubic yards of excavation is a bit more than "additional grading".

This is not an impossible task as any competent design professional will attest. Evaluate the site constraints, review the conditions that have been historically placed on the site and design a structure that fits into the site, its topography and the mature landscape environment. This application proposes a pre-fab box that attempts to fit onto this site. It won't fit. A custom designed structure with stepped down foundation and architectural interest might fit. This "Fit the Site" statement is made throughout the CDG document.

B. Strive for interest, not clutter. The City encourages well-articulated, but not cluttered building elevations. Large roof and wail planes unrelieved by shadow or texture interest are generally not acceptable. However, too many elevation details can overwhelm, and appear awkward, gaudy, and/or chaotic.

Comment:

We again quote the Finding statement: "the project provides single story, residential units that are proportional to the site by minimizing grading and setting the units into the existing topography, provide architectural interest with articulated wall planes through the use of horizontal and vertical siding, window trim, peaked roofs, and a porch..." and Finding #7 "the architectural style is complementary to the surrounding neighborhood and provides a variety of architectural treatments that add visual interest and articulation to the building design."

A peaked roof with no roof plane relief, a porch (!), exterior elevations with no linear articulation, asphalt roofing, etc. hardly meets this standard. Compatibility takes on many forms. It is not limited to architectural elements, or intimate or distant views, but also includes the view of a proposed project, its proximity to neighboring homes and yards, the noise, smells and lights, the car doors closing and the sounds of habitation.

- 2. Open space and natural features. Providing open space and integrating natural features into a residential project can significantly increase the appreciation of residents in their neighborhoods, provide safe places for children and families to play, and maintain a strong sense of connection with the surrounding natural environment in the city as a whole.
- a. Natural amenities (such as views, mature trees, creeks, riparian corridors, rock outcrops, and similar features) should be preserved and incorporated into proposed development to the greatest extent feasible. Reduced density and the clustering of units in hillside areas is encouraged as a means of achieving this goal.
- b. Development adjacent to parks or other public open spaces should be designed to provide maximum visibility of these areas.
- c. Development on hillsides should generally follow the natural terrain contour. Stepped building pads, larger lot sizes, and setbacks should be used to preserve the general shape of natural land forms and to minimize grade differentials with adjacent streets and with adjoining properties.

Comment:

This is especially pertinent on Parcel #1. Natural features should be preserved utilizing stepped back building pads, minimize grade differentials, retention of mature vegetation, etc., that can significantly increase the appreciation of residents in the neighborhood. Massive grading, clear cutting of all mature vegetation, structural development outside of the required building envelope, even removal of a 17" healthy Aleppo Pine to enable a cross drainage structure (which could be avoided as noted in the Approval Condition #19 with a Letter of Understanding or Easement), violates the subdivision conditions

and community design standards. It ignores all expectations of compatible development that was assured through the Parcel Map approval process. Parcel #3, if developed with a two-story house, would also enable the retention of a significant number of mature trees and cause far less site disturbance.

2. The color of fence and wall materials should complement the other structures on the site. The use of chain-link fencing and "crib" retaining wall designs are discouraged. Tall retaining walls (five feet and higher) should be divided up into two or more shorter walls (depending on height), with the upper portion of the wall set back from the lower wall at least two feet, with the slope between the walls not exceeding 4:1. Landscaping (with an irrigation system) should be installed in the space between walls. 3. Long, monotonous fences or walls should be avoided. Fences and walls should be offset at least every 10 feet. Landscaping should be installed in offset areas where appropriate. Landscaping along fences and walls should be coordinated with the street tree planting scheme.

Comment:

The proposed 200+ foot long, six-foot high retaining wall along nearly the entire length of Parcel #1, and the massive grading required in Parcel 1, completely violates this CDG standard. Not only is such a wall in violation of the CDG standard, but also in violation of the parcel map conditions requiring structural development to occur within the delineated building envelope.

When this project is redesigned, the Applicant should be reminded of these standards related to retaining wall heights, setbacks, offsets and finished slope standards. As the CDG and subdivision conditions state: Employ stepped building footings following the topography, no development (including retaining walls) within the 10' rear setback and adhere to the 406' height elevation. This is not an impossible task. Design a structure that fits the site, don't change the site to fit a pre-fab box. The CDG standards and conditions of the subdivision make this abundantly clear.

- B. Landscape design guidelines.
- 9. Tree/landscaping removals. Proposals to remove trees over three inches in trunk diameter must be shown on plans. The type, trunk and canopy diameter, and status (e.g. to be removed, saved, relocated) needs to be noted. Landscaping should not be considered for removal as part of a demolition plan without an accompanying development plan that demonstrates why the plantings cannot be saved and provides for an adequate replacement.

Comment:

The Arborist Report dated 10/11/2021 evaluated and assessed the landscape features of this property. This project proposes to remove nearly every mature tree with the

principal justification that the vegetation removal was necessary to accommodate the proposed development. A different design that "Fits the Site" and the topographical and existing site constraint landscape would certainly result in an alternate conclusion regarding the existing landscape destruction. When this project is redesigned to fit the site constraints, we would expect a different conclusion of vegetative destruction. Likewise, if a two-story residence was proposed in the redesign of this project, the Parcel #3 landscape removal would result in a different analysis.

4. Grading. Hillside grading to provide a building site and driveway access should be minimized. Large, single-elevation graded pads should be avoided in favor of more careful site preparation that provides for stepped foundations and/or smaller-scale graded areas. 5. Retaining walls. Large retaining walls in a uniform plane must be avoided. No visible portion of a retaining wall should be higher than six feet, and a maximum height of three feet is preferred. Where a retaining wall would otherwise exceed six feet in height, the wall shall be divided into terraces with variations in plane and include landscaping to break up the length of walls and to screen them from view. All retaining walls should also comply with the guidelines for exterior structure colors in B.4, below.

Comment:

How this CDG standard was overlooked by City staff is astounding. This proposal development, as much as it has attempted to pretend to adhere to the site constraints, subdivision conditions and most of the CDG standards, has failed. All of the Tract 1272 parcels were developed with similar site design constraint challenges with outstanding results, as are many, many other homes in San Luis Obispo neighborhoods with site challenges.

The ARC staff report statement and the Administrative Review approval findings that "staff has not identified any discussion items or concerns related to consistency with the CDG", under closer examination, is incorrect and very concerning, as the above CDG standards and our comments have pointed out. Please don't overlook the obvious.

IV.Accessory Dwelling Units:

In our Public Records request of 2/09/22, the City Clerk provided us with this citation that was also cited in comments made by staff at the ARC hearing on 2/7/22 and in the preamble comments of the 3/17/22 Administrative Approval of this project:

"An ADU is not subject to discretionary review per Government Code Section 65852.2 which expressly states that ADUs that comply with applicable development standards are subject to ministerial review and cannot be required to go through discretionary reviews. As proposed, the ADU complies with all objective development standards,

including the building footprint's 10-foot setback requirement (per conditions of approval) and is subject to ministerial review under state law."

Comment:

The justification that the proposed ADU complies with the development standards is incorrect. The proposed ADU does not comply with objective development standards that were established in the approval of this Parcel Map in 2010, in accordance with the CA Subdivision Map Act 66410.

ADU Sec 65852.2 was approved on September 16, 2021, amending previous ADU legislation. Language was included to enable this type of development without burdensome process, including exemption to parking requirements, fire sprinklers, impact fees, HOA rules, etc. However, this recent legislation does not override or eliminate CA Subdivision Map Act 66410 conditions of approval for historical subdivisions.

In this case, the Spevack Parcel Map was approved by City Resolution 10140 on January 5, 2010, long before any ADU legislation was enacted and/or even considered. The Conditions of Approval for this parcel map explicitly require that all future development is to be contained within the adopted building envelopes (footprints). The ADU is proposed outside of this envelope and cannot be approved. There are no legislative acts, legal citations or case law references that enable a proposed ADU to override a condition of a subdivision that was historically approved with conditions.

V. Affordable Housing/Affordable Rental

Testimony at the ARC hearing indicated that this project will provide much needed affordable housing opportunities. The City staff responded by noting that "this project is not providing deed restricted affordable housing development. Comments were made at the ARC that the City has a major city goal to support housing development, including affordable housing."

Comment:

As testified by the Applicant, these proposed houses are to be rented. There no proposed deed restrictions regarding sale value, nor is there any proposal related to affordable future rent and/or lease. The Applicant has chosen an inexpensive house product that will, most assuredly, become a maximum profit student housing complex, and yet another peaceful San Luis Obispo residential neighborhood will be forever destroyed.

VI.Recommendation to the Planning Commission:

There is no justification to approve this project. Because the Applicant made a bad development decision and proceeded to have his design team prepare a bad design proposal attempting to fit a pre-fab horizontal box onto a very constrained site is no justification for approval. We, and all of our neighboring property owners, most of whom attended all of the exhausting hearings through the parcel map hearings in the 2009-2010 approval of this Spevack parcel map, remember very well the assurances and commitments of future development on the lots of this parcel map.

We expect the City to enforce the conditions of the Parcel Map that was approved in 2010 and enforce the thoughtful design and development documents that have been adopted and embraced by our community over the past many years.

As the neighbors have stated multiple times in correspondence with the City, the conditions of approval for MS-78-09 provided Mr. Spevack with reasonable and generous development opportunities and gave the neighborhood assurance that the qualify and character of their homes, their views, private yards, decks, patios and the value of their real estate would be respected and not adversely impacted.

Please advise the applicant to resubmit with a project that more closely adheres to the development expectations and conditions that he has historically agreed to in the development of his property.

Thank you for considering these comments in your review of this application.

Sincerely,

Appellants, as listed above

EXHIBIT A

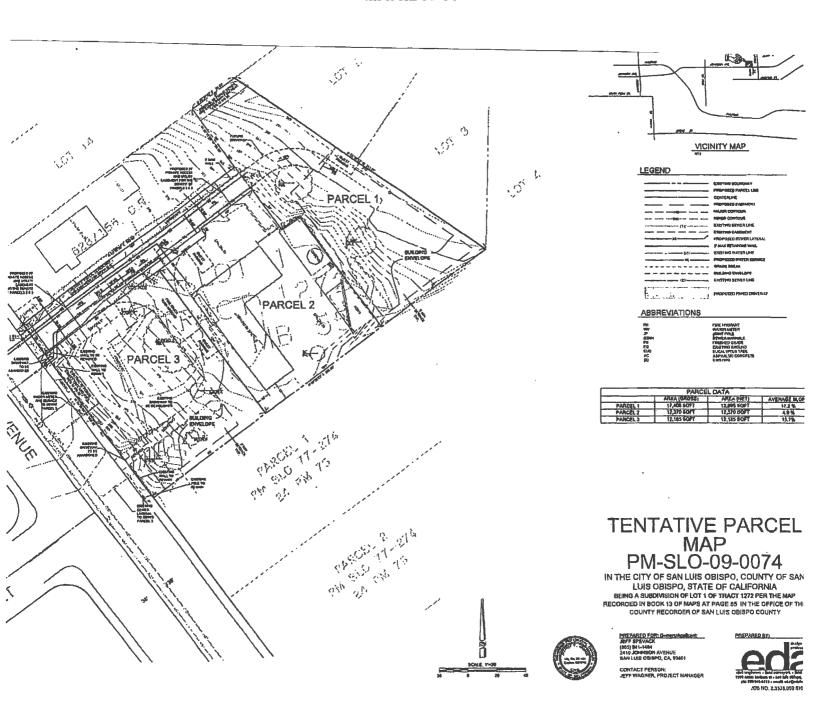


EXHIBIT B

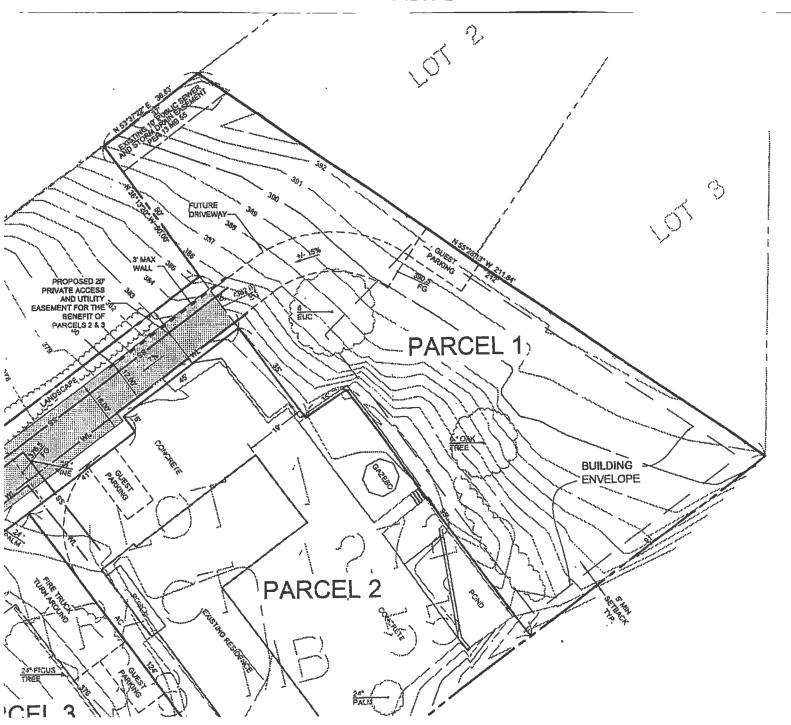


EXHIBIT C

