



JOHN A. FANTHAM
DIRECTOR OF PUBLIC WORKS

County of Santa Cruz

0297

DEPARTMENT OF PUBLIC WORKS

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AGENDA: NOVEMBER 16, 1999

November 4, 1999

SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street
Santa Cruz, California 95060

SUBJECT: MLD 98-0237 LITTLE CREEK ROAD, AT SOQUEL-SAN JOSE ROAD
APN 102-171-1 1 MOSGROVE, SUBDIVISION AGREEMENT

Members of the Board:

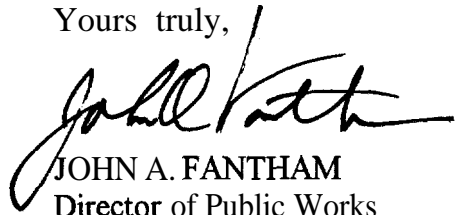
On March 24, 1999, the County of Santa Cruz Planning Commission approved the subject minor land division with conditions. The Department of Public Works has checked the improvement plans and verified that all conditions have been met.

The minor land division was required by the Planning Commission to acquire all rights of way and easements and make all dedications thereof as needed for the construction of the required improvements. The conditions also provide that any and all costs incurred by the County of Santa Cruz to obtain title to any property in the event that condemnation proceedings are necessary to implement this condition shall be paid in full by the applicant prior to recording of the parcel map. The applicant has made a good faith effort to obtain the needed rights of way but has been unsuccessful in completing negotiations with the affected property owners.

Attached is a copy of the subdivision agreement prepared by the Department of Public Works with provisions for the County to acquire the needed rights of way, using condemnation proceedings if necessary. A cash security of \$20,000.00 will be provided by the applicant to the County for property acquisition.

It is therefore recommended that the Board of Supervisors authorize the Director of Public Works to execute the subdivision agreement on behalf of the County.

Yours truly,

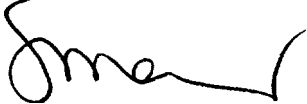


JOHN A. FANTHAM
Director of Public Works

JLC:mg

Attachment

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Public Works
 Jim Mosgrove
 Cathy Craves, Planning

SUBDIVISION AGREEMENT
(Partial Release MLD)

THIS AGREEMENT, by and between JAMES MOSGROVE AND LINDA MOSGROVE, hereinafter referred to as SUBDIVIDER, and the COUNTY OF SANTA CRUZ, hereinafter referred to as COUNTY.

0299

WITN-ESSETH:

WHEREAS, in connection with the development of that certain subdivision known as MLD 98-0237 SUBDIVIDER has previously filed with the Santa Cruz County Planning Director a tentative map of said subdivision, which said tentative map was duly approved; and

WHEREAS, SUBDIVIDER has submitted, for approval and acceptance, a parcel map of said subdivision; and

WHEREAS, certain work and improvements required by Chapter 14.01 of the Santa Cruz County Code have not been completed, to wit:

Work and improvements required as conditions for approval of the tentative subdivision map for this subdivision, including, but not limited to, site grading, driveway access, drainage, erosion control, including the prevention of sedimentation or damage to off-site property, street construction, sewer construction, and landscaping, all to be built or completed in accordance with improvement plans on file with and approved by the Director of Public Works of the County of Santa Cruz, the Santa Cruz County Code and the Subdivision Map Act.

WHEREAS, SUBDIVIDER hereby proposes to enter into an agreement with COUNTY, by the terms of which agreement SUBDIVIDER agrees to have the work and improvements set forth above completed on or before one year from the date of execution of this agreement, pursuant to Sections 14.01.510, et seq. of the Santa Cruz County Code.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. CONSTRUCTION OF IMPROVEMENTS: SUBDIVIDER shall do all necessary work and construct the improvements described hereinabove, and complete such work and improvements in accordance with the provisions of the conditions of the tentative map Approval, which are incorporated herein by reference. described above shall be completed on or before one year from the date of the execution of this agreement pursuant to Sections 14.01.101, et seq. of the Santa Cruz County Code, unless a written extension has been granted by the County.

All required off-site improvements shall be substantially complete to the satisfaction of the County Engineer, prior to the granting of occupancy for any new unit.

All off-site work if any. shall be done prior to or concurrently with on-site work, unless otherwise expressly specified by the conditions of the tentative map.

All materials used shall comply with the County's specifications. SUBDIVIDER hereby guarantees that the above mentioned work and improvements shall in all respects meet specifications prescribed by the Director of Public Works of the County of Santa Cruz. SUBDIVIDER guarantees and warrants all work and materials, and further agrees to replace defective work and materials and maintain all of said work and improvements to the satisfaction of COUNTY in accordance with Chapter 14.01 of the Santa Cruz County Code. SUBDIVIDER further agrees that all survey work shall comply with the requirements prescribed by the COUNTY SURVEYOR.

0300

2. EROSION CONTROL: SUBDIVIDER will take all necessary actions during the course of construction to prevent erosion damage to adjacent properties during inclement weather. It is understood and agreed that in the event of failure on the part of SUBDIVIDER to prevent erosion, COUNTY may do the work on an emergency basis and back-charge the SUBDIVIDER for the actual expenses incurred, or, if necessary, proceed against the Faithful Performance Security to cover COUNTY'S expenses.

3. SECURITY. At the time of execution of this agreement, SUBDIVIDER shall furnish to COUNTY the following security in the form of cash deposits, or instrument of credit satisfactory to the County:

- A. Faithful Performance Security in the amount of \$189,620.00 to assure that all work specified in this agreement will be completed; except for that amount retained to provide the Guarantee, Warranty and Maintenance of Work Security, the Faithful Performance Security shall be released upon completion of the work and acceptance of the work to be performed hereunder, in whole or in part; provided that a partial release shall not be in an amount less than 25% of the total security amount and that no more than 50% of the total security amount shall be released prior to final completion and acceptance of the work hereunder. Since partial releases are to be made, a schedule of construction shall be made a part of this agreement. The schedule shall specify the portions of the work to be completed and target completion dates for those portions of work, as well as the amounts of partial release to be made for each portion of work. Failure on the part of SUBDIVIDER to meet a target date shall result in forfeiture of the corresponding partial release. Any partial release thus forfeited may be regained at the next target date if all portions of work due prior to and on that next target date are completed by that next target date. Any extension or modification of the schedule must be granted in writing by the County. Provisions for partial release may be made at the written request of SUBDIVIDER. SUBDIVIDER shall submit documentation to the County in order to verify that the work required to gain a partial release has been completed.
- B. Labor and Material Security in the amount of \$94,810.00, which said security, by its terms, shall secure payment to materialmen and laborers furnishing materials and/or labor in connection with the above-described work or improvement; the Labor & Material Security shall be released 90 days after the completion of all the work and provided that no liens have been filed against the project.

C. Inspection Security in the amount of \$3,792.40 (MUST BE CASH DEPOSIT).

D. Tax Security PAID TO DATE OR (\$5,500 LIEN AMOUNT).

Securities held by COUNTY on behalf of other agencies shall be included in the categories above. Work of improvements required under this agreement requires the holding of securities by COUNTY on behalf of the following agencies or companies in the following amounts:

a. Water Purveyor: Soauel Creek Water District

Name of Agency

☒ Security held by County: \$64.3 11.50

☐ Security is held by agency.

b. Fire Agency _____

Name of Agency

☐ Security held by County: \$ _____

☐ Security is held by Agency.

c. Utilities _____

Name of Agency

☐ Security held by County: \$ _____

☐ Security is held by Company(ies)

d. Other _____

Name(s)

☐ Security held by County: \$ _____

☐ Security is held by Company(ies)

In all cases where the performance of the obligation for which the security is required is subject to the approval of another agency, COUNTY shall not release the security until the obligation is performed to the satisfaction of such other agency, pursuant to Government Code Section 66499.8.

Deposits to COUNTY for the acquisition of any necessary easements or right-of-way shall be required. Work of improvements required under this agreement involves the acquisition of an easement or easements, or a right-of-way or rights-of-way, over the following parcels of land: **APN(s)** 102-151-07; 102-171-09 AND 10. These easements or rights-of-way:

☐ HAVE been acquired. (Describe and attach documentation).

☒ HAVE NOT been acquired and the following standard condemnation clause is made a part of the agreement. At the time of execution of this agreement, SUBDIVIDER shall furnish to COUNTY a cash deposit in the amount of **\$20,000.00** for processing and acquisition as outlined in the following condemnation clause.

SUBDIVIDER agrees to construct the roadway and roadside improvements and appurtenances at and on the project site and along LITTLE CREEK ROAD as shown upon the approved improvement plans and assumes all costs associated with those improvements,

including condemnation costs. Construction of said roadway and roadside improvements and appurtenances requires the acquisition of road easements on those certain parcels known as Assessor's Parcel Numbers (APN's) 102-151-07; 102-171-09 AND 10.

0302

Prior to filing the final map, SUBDIVIDER agrees to use best efforts to negotiate for acquisition of the required easements. SUBDIVIDER shall base his offers to purchase the roadway easements on appraisals prepared in conformity with eminent domain law. Prior to the filing of the final map SUBDIVIDER shall provide the County with written documentation of acquisition efforts, including parties contacted, times of such contact, amounts offered, basis of offers, and property owners responses.

Prior to filing the final map, SUBDIVIDER agrees to deposit with the County of Santa Cruz a \$20,000.00 cash deposit to apply toward the costs required to acquire the roadway easements, including attorney time, appraisal, and engineering services. County Counsel fees shall be billed at \$125.00 per hour. Upon receipt of the security, County Counsel shall retain an appraiser and initiate negotiations with the property owners and, if necessary, shall initiate and diligently pursue eminent domain proceedings. Both parties acknowledge that the Board of Supervisors of the County after authorizing staff to initiate eminent domain proceedings may, in its sole discretion, based on substantial legal justification for good cause, determine not to proceed or to abandon the eminent domain proceedings.

The County shall consider initiation of a condemnation action pursuant to Civil Code Section 1001, Code of Civil Procedure Section 1245.325, Government Code Section 66462.5, and Santa Cruz County Code Chapter 14.01.

If the costs of acquisition are less than \$20,000.00, then the balance of the cash deposit thereon shall be refunded to the SUBDIVIDER. If the County requires additional funds to pursue eminent domain proceedings, the SUBDIVIDER shall submit, within 30 days of a request by the County, for such additional funds.

4. FAILURE TO COMPLETE IMPROVEMENTS: In the event SUBDIVIDER has not completed the specified work and improvements within the period of time allowed by this agreement, SUBDIVIDER shall not proceed further with such work and improvements unless and until approval to do so is obtained from the COUNTY. Under normal circumstances, if it is not found to be contrary to the public interest, the COUNTY will allow renewals of this agreement, provided that all applicable requirements are met by SUBDIVIDER. The COUNTY reserves the right, upon each renewal, to increase the security amounts to reflect fluctuations in material and labor prices. It is understood that in the event the SUBDIVIDER fails to complete the work and improvements within the specified period of time that the COUNTY may proceed against the Faithful Performance Security, to obtain completion of such work and improvements, or may initiate proceedings to revert the subdivided property to acreage pursuant to the provisions of Sections 14.01.344 et. seq. of the Santa Cruz County Code.

5 . INDEPENDENT CONTRACTOR: SUBDIVIDER agrees that, in making the above-mentioned improvements, SUBDIVIDER is an independent contractor and not an employee of COUNTY, and all persons hired to furnish labor and/or materials in connection with proposed improvements are not employees of COUNTY.

6. INDEMNIFICATION: SUBDIVIDER agrees to defend and hold the COUNTY, its' officers, employees, and agents harmless from any losses or damages. occasioned

by injuries to persons **and/or** property arising out of or in any way connected with the above-mentioned work or improvement.

0303

7. **FILING OF FINAL PARCEL MAP:** COUNTY, for and in consideration of the execution of this agreement and fulfillment by SUBDIVIDER of the terms set forth herein, agrees to accept for filing the parcel map of MLD No.98-0237.

8. **BINDING ON SUCCESSORS AND ASSIGNS:** This agreement shall be binding upon the successors and assigns of each of the parties. SUBDIVIDER shall inform potential buyers of parcels of land created by the underlying subdivision of the obligations on successors and assigns created by this paragraph. SUBDIVIDER shall provide copies of this executed agreement to those potential buyers. SUBDIVIDER is advised that the sale of all or part of the lands of the underlying subdivision does not automatically transfer from the SUBDIVIDER of the land the security obligations of this agreement. Those security obligations attach to SUBDIVIDER until all obligations of SUBDIVIDER under this agreement are fulfilled or transferred by substitution of a replacement agreement and replacement securities acceptable to the County.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto on _____, 19____.

COUNTY OF SANTA CRUZ

By: _____
Director of Public Works

By: _____
Subdivider

Address: _____

Phone: _____

APPROVED AS TO FORM:

 II- 3-99
Assistant County Counsel