



Irwin Ortiz <irwin.ortiz@cityofwatsonville.org>

July 6, 2021 City Council Meeting, Agenda Items 8.b and 8.x

Hillary Dickson <hdickson@pcg-llp.com>

Tue, Jul 6, 2021 at 12:24 PM

To: "cityclerk@cityofwatsonville.org" <cityclerk@cityofwatsonville.org>, "citycouncil@cityofwatsonville.oeg" <citycouncil@cityofwatsonville.oeg>

Cc: "alan.smith@cityofwatsonville.org" <alan.smith@cityofwatsonville.org>, "WAbbott@aklandlaw.com" <WAbbott@aklandlaw.com>, Ken Gorman <kgorman@pcg-llp.com>

Dear Sir or Madam:

Attached are two (2) letters from J. Kenneth Gorman regarding the Sunshine Garden Development, July 6, 2021 City Council Meeting Agenda Item Nos. 8.b and 8.x. Thank you.

Very truly yours,

Hillary Dickson,**Paralegal**

Please note that we are continuing to provide all services to our clients while maintaining appropriate safety measures in compliance with the California Department of Public Health orders. Please stay safe.

Penrose Chun & Gorman LLP
1200 Pacific Avenue, Suite 260Santa Cruz, CA 95060
tel: 831-515-3344, ext. 203
fax: 831-515-3308www.pcg-llp.comhdickson@pcg-llp.com

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2 attachments **LT-Mayor & Council re Bioswale & Road Bids 070621.pdf**
6957K **LT-Mayor & Council re Nuisance 070621.pdf**
273K



PENROSE
CHUN &
GORMAN LLP
LAW OFFICES

1200 PACIFIC AVENUE, SUITE 260
SANTA CRUZ, CA 95060

TELEPHONE: 831/515-3344
FACSIMILE: 831/515-3308

STEVEN D. PENROSE*
EDWARD L. CHUN
J. KENNETH GORMAN†
ANNA M. PENROSE-LEVIG
KHYRSTINA KISEL

†ALSO ADMITTED IN HAWAII
AND NEW YORK

WEBSITE:
WWW.PCG-LLP.COM
EMAIL:
KGORMAN@PCG-LLP.COM

*CERTIFIED BY THE STATE BAR OF CALIFORNIA BOARD
OF LEGAL SPECIALIZATION AS A SPECIALIST IN ESTATE
PLANNING, PROBATE AND TRUST LAW

July 6, 2021

Sent via Email Only

Clerk of the City of Watsonville
Hon. Jimmy Dutra, Mayor
Councilmembers
Watsonville City Council
275 Main Street, Suite 400
Watsonville, CA 95076

Re: City Council Meeting – July 6, 2021 – Opposition to Agenda Item 8.b

Dear Mr. Mayor and Councilmembers:

We represent Pacific Sunshine Development, LLC, the owner of the Sunshine Gardens subdivision (“PSD”), and U.S. Longton, Inc., its general contractor (“Longton”). On their behalf, we respectfully submit this written opposition to Agenda Item 8.b and the proposal by City staff to take over completion of the bioretention ponds and construction of an emergency access road to nowhere because our clients are not progressing fast enough to satisfy City staff. The demand for action ignores several salient facts:

- The bioretention ponds are located in the wetlands adjoining the Watsonville Slough and are under the jurisdiction of the California Department of Fish & Wildlife (“CDFW”) (formerly the Department of Fish & Game), which prohibits work during the period October 15 to June 15 and otherwise during rainy weather to protect the slough. Attached are the pertinent pages of the Streambed Alteration Agreement with the key provisions highlighted. Plans and specifications for the bioretention ponds were approved by the City when it approved Tract 1587, and they have been approved by the CDFW. There is no demonstrated need for further approval by the City Council.
- The permit extension for the work conditioned completion of wiring by PG&E. PG&E took months to install its wires. Our clients have no control over PG&E. Unfortunately, in January, 2021, soon after they were installed, PG&E’s wires were stolen. See the attached police report and photos. Lorenzo Jaso worked diligently to get PG&E to come back to the site and complete its wiring recently so that USL could resume its work.
- Our clients have built the bioretention ponds, and the work on the ponds is

almost complete. Our clients have developed a good working relationship with CDFW personnel, who are satisfied with the progress on the ponds. Construction historically has been overseen by the City's Department of Public Works and Utilities and the CDFW.¹ No City Council resolution is required to authorize that oversight.

- The “emergency vehicle access road” is planned for construction in the far northwest corner of the Project and ultimately will connect to a similar roadway on the adjoining parcel (see Agenda Item 11 on today’s agenda) which has yet to be approved, much less constructed. Indeed, the roadway on the adjoining parcel likely will not be constructed for the next two years. The roadway on the Sunshine Gardens property therefore will be a road to nowhere. The attached drawing and aerial photo show the location of this roadway, which is specified on the attached plan sheet C4.0 for the adjoining parcel as a “trail and fire access road.”
- Completion of the roadway on the Sunshine Gardens property always was contemplated to occur during construction of the final phase of construction. Over the past several months, Lorenzo Jaso has been working with Dave Caneer on the 3-phase plan for completion of the development. Mr. Caneer approved those phases. The access road is in Phase 3. The one-year deadline never was considered viable by anyone involved – either at the City or among our clients. There is no compelling reason to complete it now. The documentation for which approval is sought in today’s Agenda Item 11 specifically contemplates that all access to the adjoining parcel during construction will be via Errington Road. It thus seems there is no reason to complete the roadway on the Sunshine Gardens property now.
- The failure to enforce the one-year term for completion of these improvements, despite continuous review of the work, and the inclusion of the roadway in Phase 3 construction, should be deemed a waiver of any right of the City to enforce the one-year period, which was unrealistic and irrational in the first instance.
- The proposal to bid the work out under contract with the City means the cost will be unnecessarily high, due to the requirement of prevailing wage labor and City overhead expense. The City wants to use the Owner’s funds, which it has obtained for its own account, to pay for these excessive charges. That is unwarranted.
- Finally, the City has no right to bid out work on property it does not own. Watsonville Municipal Code §§ 7-14.05 and 7.14.06 limit public works

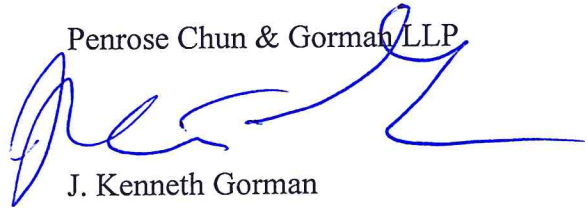
¹ The Community Development Department and the Building Official occasionally participate in the oversight, although the work is not under their jurisdiction.

bidding for to property improvements which are “publicly owned, leased or operated.” The improvements in question – the bioretention ponds and the “road to nowhere” – are NOT owned by the City. Even though the City may accede to ownership at a future date, it does not now own them and therefore may not bid out any work on those portions of Sunrise Gardens.

The proposed action offer inadequate justification for the City’s takeover of the work to complete the bioretention ponds and to build the “road to nowhere” now or any other time. For the foregoing reasons, we request that the proposed Resolution be rejected.

Sincerely,

Penrose Chun & Gorman/LLP



J. Kenneth Gorman

JKG/hmd

Encl.

cc: William Abbott
Alan Smith
Clients

RECEIVED



City of Watsonville
250 Main Street
P.O. Box 50000
Watsonville, CA 95077-5000
Tel: (831) 768-3050

SEP 30 2020

City of Watsonville
Community Development Dept

Application No: 666
Application Date: 9-30-20
Received By: Katie/DFC

APPLICATION FOR ON/OFF SITE PERMIT

PROJECT ADDRESS: 1773 Santa Victoria Ave. PARCEL NO: 018-711-21

SCOPE OF WORK: Repair and complete bio-retention ponds SCM-1 & SCM-9 by removing the contaminated drain rock & replacing with new, double checking pipe grades & resetting storm drain pipes to proper slopes, reinstalling pipes w/pipe glue, & using SDR 26 vs. HDPE N-12 pipe so they won't float, all complying w/ the project Improvement Plans, revised 10.02.19, to include retention soil certification per Sht. C5, and undergrounding the ex. overhead utility lines w/3 poles & guys running along the south side of pond SCM-9 as detailed on the attached exhibit. (Please note: A construction permit for the required landscaping & irrigation improvements to complete the ponds must be secured by 11/30/20.) This permit will also allow for 180 willow pole plantings in the project's Willow Riparian Habitat restoration area per the 11/9/18 Habitat Restoration and Monitoring Plan. All work necessary on the 2 bio-retention ponds must be completed w/in 3 months of this On/Off Site Permit, subject to weather delays and receipt of any stop work orders from CA Dept of Fish & Wildlife and cooperation of both PG&E and AT&T along with timely completion of their work. Applicant's failure to complete these improvements in accordance with this permit and to the satisfaction of the City Public Works & Utilities Director will result in the City completing the work with the project's improvement securities.

APPLICANT'S NAME: Ji Li, US Longton Inc. PHONE NO: 626-616-5665

APPLICANT'S ADDRESS: 343 San Luis Ave., Watsonville, CA 95076 FAX NO:

CONTRACTOR'S NAME: US Longton Inc. PHONE NO: 626-616-5665

CONTRACTOR'S ADDRESS: 12803 Schabarum Ave., Irwindale, CA 91706

LICENSE NO. & TYPE: 950477 A & B FAX NO:

I certify that the above information is correct. I agree to comply with all City Ordinances and State and Federal laws.

APPLICANT'S SIGNATURE: [Signature] DATE: 9/29/2020

(FOR CITY USE ONLY)
[X] MINOR or [] MAJOR ENCROACHMENT
[] GRADING or [X] ON-SITE ONLY
[] UTILITY or [] COMBO or [] CHANGE ORDER
5203 PLAN CHECK \$ 2,560.00
5206 INSPECTION \$ 5,541.00
5211 PERMIT FEE \$ 270.00
[] CALTRANS PERMIT REQUIRED
[] SPECIAL INSPECTION REQUIRED
[] SECURITY REQ'D (amt \$)
DATE PAID: RECEIPT #



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



March 7, 2016

Kevin Wang
Pacific Sunshine Development
275 Main Street, Suite 450
Watsonville, CA 95076

Subject: Final Lake or Streambed Alteration Agreement
Notification No. 1600-2015-0413-R3
Watsonville Slough; Sunshine Gardens Subdivision Project

Dear Mr. Wang:

Enclosed is the final Streambed Alteration Agreement (Agreement) for the Sunshine Gardens Subdivision Project (Project). Before the California Department of Fish and Wildlife (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a responsible agency, filed a Notice of Determination (NOD) within five working days of signing the Agreement. The NOD was based on information contained in the Negative Declaration prepared by the lead agency.

Under CEQA, the filing of an NOD triggers a 30-day statute of limitations period during which an interested party may challenge the filing agency's approval of the Project. You may begin the Project before the statute of limitations expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Melissa Farinha, Environmental Scientist at (707) 944-5579 or Melissa.Farinha@wildlife.ca.gov.

Sincerely,

Craig J. Weightman
Environmental Program Manager
Bay Delta Region

cc: Kim Tschantz; kimt@cypressenv.com
Lieutenant Schidler
Warden Jones

PERMIT REQUIREMENTS

No work shall commence until the City Inspector has been notified two (2) working days prior to beginning of permitted work. To schedule an inspection with a Building Inspector, call (831) 768-3060 (24-hr recorder number) by 4:30 the day before inspection is needed. Leave a message stating the type of inspection, job address, permit number and date inspection is needed. To schedule an inspection with a Public Works Inspector, call (831) 768-3100 48 hours before the day the inspection is needed. Leave a message if you are transferred to the voice mail system. If you don't know which type of inspection you need call (831) 768-3050.

Each phase of work must be approved before proceeding with the next phase. Work is to be completed within 180 days of permit issuance. Permit shall expire unless a written extension request is approved in writing by the Building Official.

Insurance. Prior to permit issuance, permittee shall provide certificates of insurance and endorsements as satisfactory evidence of the insurance required. Certificates of insurance shall have a 30 day cancellation notice. A CG 20 10 11 85 or City-approved alternate certificate of endorsement shall accompany the insurance certificate and shall list the City as an additional insured, using the following text: "The City of Watsonville, its appointed and elected officials and employees". Permittee shall have in effect insurance policies that meet or exceed the following requirements: \$500,000 P.D., \$500,000 P.I., \$500,000 Aggregate.

Security. When required, security shall be in the form of a Letter of Credit, Passbook, Certificate of Deposit, Cashier's Check, or Money Order. The security shall be in the name of the City of Watsonville only and held by the City. It will be released to the individual posting it upon satisfactory completion of the improvements and acceptance of the project by the City.

Care of drainage. If the proposed work shall interfere with establish drainage, ample provisions shall be made, by the permittee, to provide for this drainage as may be directed by the City Engineer.

Maintenance. The permittee agrees by acceptance of this permit to exercise reasonable care to properly maintain any encroachments placed by it in the City streets and to inspect for and immediately repair any damage to any portion of the roadway which occurs as a result of the maintenance of the encroachment in the roadway, or as a result of the work done under this permit, including any and all damage to the roadway which would not have occurred had such work not been done or such encroachment not placed therein.

Test results. Upon demand, the permittee shall provide the Director of Public Works & Utilities with soil compaction test results. Compliance with compaction requirements shall be certified by a City-approved materials testing laboratory with local experience.

Pavement replacement. All pavement that is removed or damaged shall be replaced in one of the following ways:

1. Minimum of 8-inches of 1 1/2" Class II aggregate base at 95% compaction and 4-inches of Type 'A' (City mix design) asphaltic concrete, placed in 2-inch lifts.
2. Backfill with CDF (control density fill) or 2-sack concrete slurry, with 2" type 'A' asphaltic concrete.

Protection of traffic. Provide protection for the traveling public. Barricades shall be placed with amber lights at night. Flagpersons shall be provided. Warning signs, lights and devices shall be placed in conformance with the requirements of the City Engineer or Inspector.

Minimum interference with traffic. All work shall be planned and carried out so there will be the least possible inconvenience to the traveling public at all times. Road closures are not allowed.

Storage of material. No material shall be stored within two (2) feet of the edge of the pavement or traveled way or within the shoulder line where the shoulders are wider than five (5) feet. No supplies or equipment shall be stored on City street.

Cleanup. Immediately, upon completion of work, all brush timber, material and debris shall be entirely removed. The right-of-way shall be left in the same or better condition as before work started.

Conformance of construction. All construction shall conform to the most current Cal Trans and City of Watsonville standards and specifications. The conditions of this permit will take precedence over standard drawings and specifications if a conflict occurs.

Compliance with provisions of permit. If the provisions of this permit are not complied with, the City reserves the right to do any and all work necessary to bring the right-of-way into a safe condition. The cost of this work will be charged to the permittee.

PERMIT FEES:			TOTAL: \$ 270.00
INSPECTION FEES:	Grading (per CY):	CY: _____	\$ _____
	Concrete (per SF):	SF: _____	\$ _____
	Sewer laterals (per each):	EA: _____	\$ _____
	Utility trench (per LF):	LF: _____	\$ _____
	Asphaltic concrete (per SF):	SF: _____	\$ _____
	Erosion control (per 1,000 SF)	SF: _____	\$ _____
	Retaining walls (per SF)	SF: _____	\$ _____
	Miscellaneous (per each):	EA: _____	\$ _____
			TOTAL: \$ 5,541.00
PLAN CHECK FEES:			TOTAL: \$ 2,560.00
			\$8,371.00



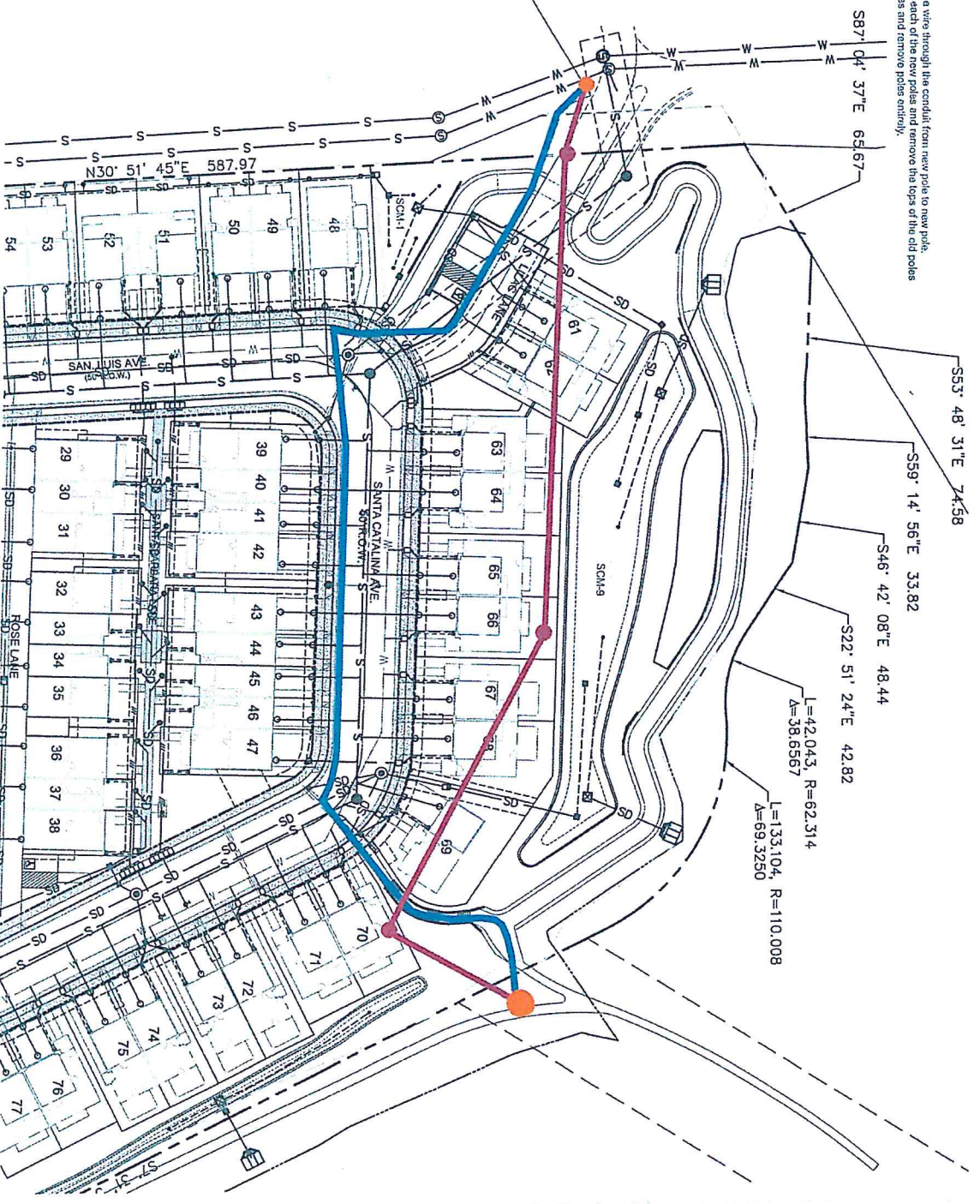
Legend

- EX. Overhead Lines to be removed
- New Lines
- EX. Pole to Remain
- EX. Pole to be removed

In order to fully complete the bio-retention pond SCL#9 this work needs to be completed by A-1, PG&E and AT&T.

The process is:

- A-1 needs to finish pulling the wire through the conduit from new pole to new pole.
- PG&E will connect power at each of the new poles and remove the tops of the old poles.
- AT&T will connect their cables and remove poles and/or.



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BAY DELTA REGION
7329 SILVERADO TRAIL
NAPA, CALIFORNIA 94558
(707) 944-5500
WWW.WILDLIFE.CA.GOV



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2015-0413-R3
SUNSHINE GARDENS SUBDIVISION PROJECT
WATSONVILLE SLOUGH, TRIBUTARY TO PAJARO RIVER
SANTA CRUZ COUNTY, CA

KEVIN WANG
PACIFIC SUNSHINE DEVELOPMENT
275 MAIN STREET, SUITE 450
WATSONVILLE, CA 95076

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Pacific Sunshine Development (Permittee), as represented by Kevin Wang.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on November 17, 2015 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located on Watsonville Slough, a Perennial stream, tributary to Pajaro River, 1773 Santa Victoria Avenue, City of Watsonville, County of Santa Cruz, State of California; United States Geological Survey 7.5 Minute Quad Map Soquel, Township 12S, Range 2E, Section 8; County Assessor's Parcel Number: 18-711-21.

PROJECT DESCRIPTION

The project activities covered under this Agreement are limited to the following as detailed in Exhibit A:

1. Demolition of a 1,711 sq. ft. abandoned dwelling;
2. Construction of a 90-foot segment of a 6-ft. wide asphalt pedestrian trail;
3. Installation of three drainage outfalls with gabion spillways at the slough to discharge overflow storm runoff from the subdivision detention ponds.

All three project elements listed above will be located above the 11-foot contour that the City of Watsonville has established as the high water flow line of the slough.

The project is part of the Sunshine Gardens 89-lot subdivision development that includes the construction of dwellings on each lot and three streets to serve the new parcels. The project complies with the residential land use prescribed by the City of Watsonville's approved Manabe-Ow Specific Plan.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: California red-legged frog and South-Central Coast Distinct Population Segment of steelhead, species listed as threatened under the federal Endangered Species Act (ESA) and designated as a state Species of Special Concern; tri-colored blackbird, a candidate species for listing under the California Endangered Species Act; San Francisco dusky-footed woodrat, a designated state Species of Special Concern; nesting birds; wetland habitat; and other aquatic and terrestrial vertebrates and invertebrates.

The adverse effects the project could have on the fish or wildlife resources identified above without implementation of the Measures to Protect Fish and Wildlife Resources specified below, include: displacement and/or take of California red-legged frog, steelhead, tri-colored blackbird or San Francisco dusky-footed woodrat; reduction of bird nesting habitat; sedimentation of fisheries habitat; significant reduction in water quality; and harassment, disturbance or mortality of fish and wildlife from project activities.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification

materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.

- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Access to Property Not Owned by Permittee. This Agreement does not grant the Permittee authority to enter, use, or otherwise encroach upon on the property rights of individuals or organizations not party to this Agreement. Permittee shall obtain written authorization from outside parties, in accordance with applicable laws, if access to property not owned by Permittee is necessary.
- 1.6 Unauthorized Take. This Agreement does not authorize the take of any State or federal endangered or threatened species. Liability for any take or incidental take of such listed species remains the responsibility of Permittee for the duration of the project. Any unauthorized take of such listed species may result in prosecution and nullification of the Agreement.
- 1.7 Qualified Biologist, Biological Monitor and Construction Monitor. A qualified fisheries biologist or qualified biologist is defined under this Agreement as an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two years conducting surveys for each species that may be present within the project area. Under this Agreement, a biological monitor is an individual experienced with construction level biological monitoring and who is able to recognize species in the project area and who is familiar with the habits and behavior of those species. Biological monitors shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project. A construction monitor under this

Agreement is an individual trained by the qualified biologist to identify special-status species which may be in the area, their general behavior, how they may be encountered in the work area, and procedures to follow when they are encountered and approved by CDFW. Within a minimum of seven (7) days prior to initiating fish and wildlife surveys within the project area, Permittee shall submit the names and resumes of all biologists, biological monitors and construction monitors involved in conducting survey and/or monitoring work to CDFW for review and written approval.

- 1.8 Notification of Project Commencement/Completion. Permittee shall notify CDFW Bay Delta Region in writing, at least five (5) calendar days prior to initiation of construction (project) activities and at least five (5) calendar days post completion of construction (project) activities. Initial notification shall include the name(s) and contact information of the person(s) overseeing the project site as well as a project schedule that includes the start date and estimated end date, weekly work days and hours of operation. Notification shall be faxed to the CDFW at (707) 944-5563, Attn: LSA Program, or via e-mail to Melissa.Farinha@wildlife.ca.gov.
- 1.9 Post Construction Walkthrough. Permittee shall contact CDFW to participate in a post construction walkthrough of the project area to ensure the project has been constructed as designed and that erosion control measures and revegetation efforts have been appropriately implemented. Permittee shall act immediately upon CDFW staff request to address concerns discovered during the walkthrough in a time frame to be determined by CDFW staff.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

Construction Measures

- 2.1 Seasonal Work Period. Project activities, excluding building demolition, within a lake or stream and associated wetlands and riparian corridors shall be conducted after June 15 and before October 15. If Permittee needs more time to complete project activities, work may be authorized outside of the work period and extended on a week-by-week basis by CDFW representative, Melissa A. Farinha, or if unavailable, through contact with the CDFW Bay Delta Regional Office by mail, phone (707-944-5500) or fax (707-944-5553). Authorization shall be in the form of written communication. If Permittee requests a work period variance, Permittee

shall submit such a request in writing to the CDFW Bay Delta Office. The request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. The work period variance shall be issued at the discretion of CDFW. CDFW reserves the right to require additional measures to protect biological resources as a condition for granting the variance. CDFW shall have 10 business days to review the proposed work period variance.

- 2.2 Work Period in Dry Weather Only. Work within County Stream 602 and its associated riparian corridor shall be restricted to periods of dry weather. Precipitation forecasts and potential increases of stream flow shall be considered when planning construction activities. Construction activities shall cease, all equipment and materials shall be removed from the channel and all associated erosion control measures shall be in place at least 12 hours prior to the onset of precipitation. No work shall occur during a precipitation event. Construction activities halted due to precipitation may resume when precipitation ceases, the National Weather Service 72-hour weather forecast indicates a 30 percent (%) or less chance of precipitation, and after a dry-out period of 48 hours for rain events. The National Weather Service forecast can be found at: <http://www.weather.gov>.
- 2.3 Storm Event Inspection. After any storm event, Permittee shall inspect all sites scheduled to begin or continue construction within the next 72 hours. Corrective action for erosion and sedimentation shall be taken as needed.
- 2.4 No Equipment in Channel. No equipment shall be operated from within a flowing stream (including flowing or ponded water) at any time.
- 2.5 Hollow Open-ended Posts or Pipes. No exposed hollow open-ended posts or pipes in a vertical, skyward orientation shall be installed as part of the project or stored/staged on the project site. All pipes or posts on the project site during construction which are exposed to the environment shall be capped, screened or filled with material by Permittee.
- 2.6 Posts with Exposed Perforations. Any post with exposed perforations installed on the project site and exposed to the environment shall have the holes permanently filled within the top six inches of the post upon installation by Permittee.
- 2.7 No Hardscape Structures Including Concrete or Rock Rip Rap Below Top of Bank. No hardscape structures such as concrete or rock rip rap shall be installed below the top of bank as part of this project other than that

WATSONVILLE POLICE DEPARTMENT

215 Union, Watsonville, CA 95076

CA0440300

CR-1

CASE#

21W-00316

PAGE

1

Arrest
Crime
Non-Criminal

OFFENSE(S)
594(B)(2)(A) PC; Vandalism Less than \$400; Misd.

OFFENSE(S) cont'd.

DATE, TIME AND DAY OF OCCURENCE

01/11/21 17:00 Monday

DATE AND TIME REPORTED

01/25/21 13:02

MORE CHARGES

YES NO

ESTIMATED LOSS VALUE

\$200.00

LOCATION OF OCCURENCE

343 San Luis Av, Watsonville

LOCATION NAME

TYPE OF LOCATION

BEAT

2

SECTOR

2-24

PERSONS

MORE NAMES

YES NO

Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other

CODE RV	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Hu, Xiao	ADDRESS 1	CELL PHONE (323) 337-2017		
OCCUPATION General contractor	RACE A	SEX M	AGE 31	DOB 07/12/1989	ADDRESS 2	PHONE 2
DL	STATE	SS#	INJURIES	ADDRESS 3	PHONE 3	
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1	PHONE 1			
OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
DL	STATE	SS#	INJURIES	ADDRESS 3	PHONE 3	
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1	PHONE 1			
OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
DL	STATE	SS#	INJURIES	ADDRESS 3	PHONE 3	
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1	PHONE 1			
OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
DL	STATE	SS#	INJURIES	ADDRESS 3	PHONE 3	

CASE SUMMARY / VEHICLE INFORMATION

SUMMARY
Unknown suspect(s) use unknown object to cut electrical cable at construction site.
THIS COPY IS FOR THE EXCLUSIVE USE OF
City Attorney - Watsonville
NEITHER IT NOR THE INFORMATION CONTAINED HEREON
IS TO BE FURNISHED TO ANY OTHER PERSON OR
AGENCY WITHOUT WRITTEN CONSENT OF THE
WATSONVILLE POLICE DEPARTMENT
01/11/2021 12:51:16 PM

VEHICLE USED IN CRIME
YES NO UNK OF LICENSE (NO. AND STATE) VIN MORE VEHICLES
YES NO

TOW REPORT
YES NO GARAGE NAME AND PHONE

SUSPECT(S) / ARRESTEE(S)

MORE NAMES

YES NO

Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim

CODE S	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Unknown,	ADDRESS 1	PHONE 1					
RACE	SEX	HT	WT	HAIR	EYE	AGE	DOB	ADDRESS 2	PHONE 2
OCCUPATION	INJURIES	ADDRESS 3	PHONE 3						
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION	RELEASE LOCATION	ARREST DATE TIME					
DL	STATE	ARRESTED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	BOOKING #	WARRANT YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	CITATION #	SS#	CI#		
CHARGES 594(B)(2)(A) PC (1)									
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1	PHONE 1						
RACE	SEX	HT	WT	HAIR	EYE	AGE	DOB	ADDRESS 2	PHONE 2
OCCUPATION	INJURIES	ADDRESS 3	PHONE 3						
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION	RELEASE LOCATION	ARREST DATE TIME					
DL	STATE	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #	WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>	CITATION #	SS#	CI#		
CHARGES									

ADMINISTRATION

VICTIM DESIRES PROSECUTION
YES NO

FOLLOW-UP
YES NO

COPIES TO:
 Pat Det DA Court VVAP Probation OTHER:

BY OFFICER
L. Gombos 278

DATE/TIME
01/26/21 10:30

APPROVED BY
B. Iles 296

DATE APPROVED
01/26/21

OFFICER
Gombos, Lourdes

UNIT/SHIFT

ASSIGNED TO

CASE STATUS
Closed

Arrest <input type="checkbox"/> Crime <input checked="" type="checkbox"/> Non-Criminal <input type="checkbox"/>	WATSONVILLE POLICE DEPARTMENT 215 Union, Watsonville, CA 95076 CA0440300 Property and Evidence	CASE # 21W-00316 Page 1 of 1
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OFFENSE(S) 594(B)(2)(A) PC; Vandalism Less than \$400; Misd.	OFFENSE(S) cont'd.
--	--------------------

DATE, TIME AND DAY OF OCCURENCE 01/11/21 17:00 Monday	DATE AND TIME REPORTED 01/25/21 13:02	TOTAL PROPERTY VALUE \$200.00
---	---	---

LOCATION OF OCCURENCE 343 San Luis Av, Watsonville	LOCATION NAME	TYPE OF LOCATION	BEAT 2	SECTOR 2-24
--	---------------	------------------	------------------	-----------------------

PROPERTY ITEMS

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
278-001	D	1						
SERIAL NUMBER		BAR CODE		VALUE	TOTAL	LOCATION / BIN #		
				\$200.00	\$200.00			
DESCRIPTION							<input type="checkbox"/> FIELD RECEIPT ISSUED	
Cut electrical cable								

ADMINISTRATION

BY OFFICER L. Gombos 278	DATE/TIME 01/26/21 10:30	APPROVED BY B. Iles 296	DATE APPROVED 01/26/21
OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS Closed

Arrest <input type="checkbox"/> Crime <input checked="" type="checkbox"/> Non-Criminal <input type="checkbox"/>	WATSONVILLE POLICE DEPARTMENT 215 Union, Watsonville, CA 95076 CA0440300 Case MO	CASE # 21W-00316 PAGE 1 OF 1
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OFFENSE(S) 594(B)(2)(A) PC; Vandalism Less than \$400; Misd.	OFFENSE(S) cont'd.			
DATE, TIME AND DAY OF OCCURENCE 01/11/21 17:00 Monday	DATE AND TIME REPORTED 01/25/21 13:02			
LOCATION OF OCCURENCE 343 San Luis Av, Watsonville	LOCATION NAME	TYPE OF LOCATION	BEAT 2	SECTOR 2-24

MO DATA

<u>Case has Domestic Violence</u> No Domestic Violence in this case <u>Case inv. Anti-R. Rights Crime</u> No <u>Case involves a Hate Crime</u> No <u>Case involves Gang Activity</u> No <u>Case is Confidential</u> No	<u>Method of Entry</u> Unknown <u>Non-Residential</u> Open Area/Private <u>Point of Entry</u> Unknown <u>Security Used</u> Security Fence	<u>Surrounding Area</u> Residential Open Spaces <u>Suspect actions</u> Vandalized <u>Weapon/Weapon Force</u> Unknown
---	--	--

ADMINISTRATION

FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VWAP <input type="checkbox"/> OTHER		
BY OFFICER L. Gombos 278	DATE/TIME 01/26/2021 10:30	APPROVED BY B. Iles 296	DATE APPROVED 01/26/21
OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS Closed

Arrest
 Crime
 Non-Criminal

WATSONVILLE POLICE DEPARTMENT

215 Union, Watsonville, CA 95076
 CA0440300

CASE #
21W-00316

PAGE 1 OF 1

Person Profile

OFFENSE(S) 594(B)(2)(A) PC; Vandalism Less than \$400; Misd.	OFFENSE(S) cont'd.
--	--------------------

DATE, TIME AND DAY OF OCCURENCE 01/11/21 17:00 Monday	DATE AND TIME REPORTED 01/25/21 13:02			
LOCATION OF OCCURENCE 343 San Luis Av, Watsonville	LOCATION NAME	TYPE OF LOCATION	BEAT 2	SECTOR 2-24

PERSONS

Codes: V = Victim W = Witness S = Suspect A = Arrestee D = Detainee C = Complainant R = Party O = Other

MORE NAMES
 YES NO

CODE	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Unknown,	DOB	This report contains Person Profile information only. Please refer to the primary report(s) for additional information.
------	--------	---	-----	--

CODE	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Hu, Xiao	DOB 07/12/1989	This report contains Person Profile information only. Please refer to the primary report(s) for additional information.
------	--------	---	--------------------------	--

MO INFORMATION

Demeanor
 Calm
 Polite

Treatment
 None Needed

CLOTHING

ADMINISTRATION

BY OFFICER L. Gombos 278	DATE/TIME 01/26/21 10:30	APPROVED BY B. Iles 296	DATE APPROVED 01/26/21
OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS Closed

WATSONVILLE POLICE DEPARTMENT

215 Union, Watsonville, CA 95076
CA0440300

CASE #

21W-00316

Page 1 of 1

Arrest
Crime
Non-Criminal

Narrative Report

OFFENSE(S)

594(B)(2)(A) PC; Vandalism Less than \$400; Misd.

OFFENSE(S) cont'd.

DATE, TIME AND DAY OF OCCURENCE

01/11/21 17:00 Monday

DATE AND TIME REPORTED

01/25/21 13:02

LOCATION OF OCCURENCE

343 San Luis Av, Watsonville

LOCATION NAME

TYPE OF LOCATION

BEAT

2

SECTOR

2-24

NARRATIVE

There is no BWC evidence of this incident.

REPORT:

On 01-25-21 at about 1302 hrs I was dispatched to a phone detail regarding a vandalism that occurred at 343 San Luis Ave. I contacted (R/P-V) XIAU HU.

XIAU told me he is the general contractor for this housing project. He wanted to report that some of the electrical cable that is being used at the construction site had been cut. XIAU said he did not know when this happened. He last saw the cable around 01-11-21. Today he noticed the cable had been cut. XIAU does not know who may have done this and no witnesses were located. XIAU had no further information.

DISPOSITION:

Case suspended due to lack of investigative leads.

ADMINISTRATION

BY OFFICER L. Gombos 278	DATE/TIME 01/26/2021 10:30	APPROVED BY B. Iles 296	DATE APPROVED 01/26/21
OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS Closed

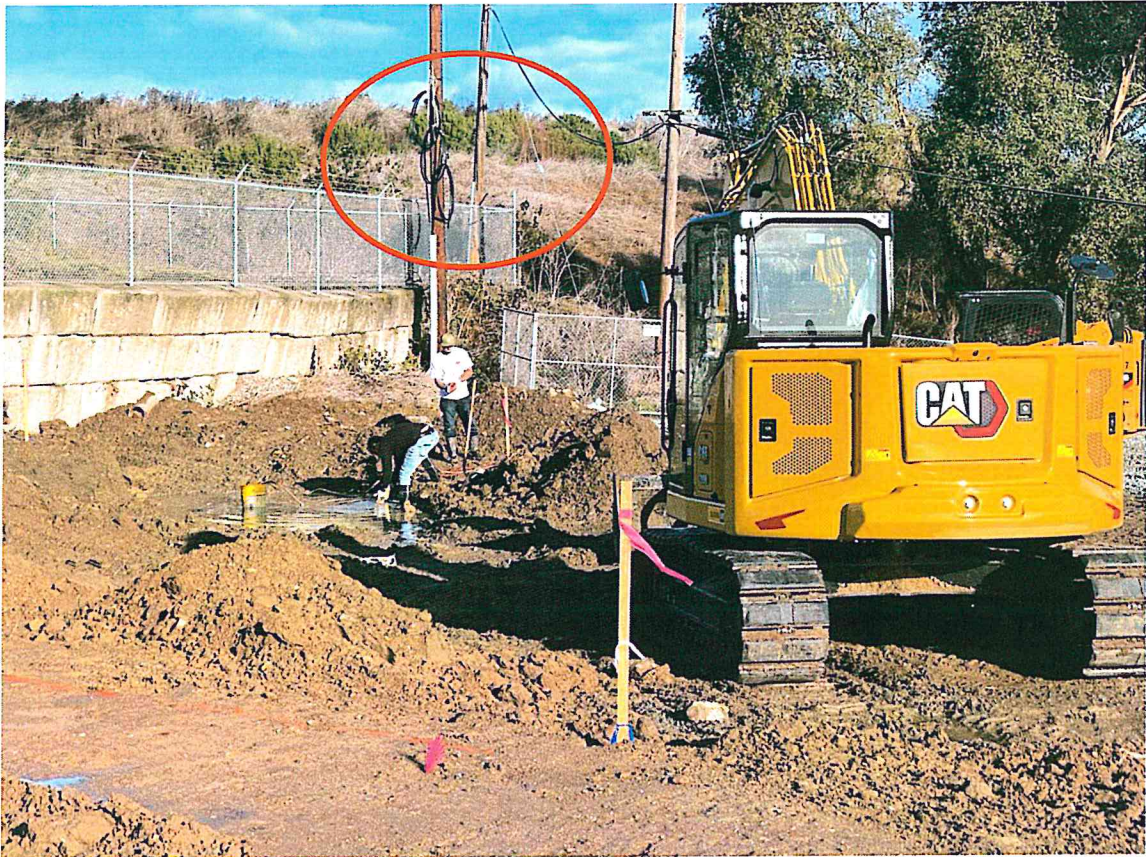
Pole 1



Pole 2



Pole 1 before vandalism





PENROSE
CHUN &
GORMAN LLP
LAW OFFICES

1200 PACIFIC AVENUE, SUITE 260
SANTA CRUZ, CA 95060

TELEPHONE: 831/515-3344
FACSIMILE: 831/515-3308

STEVEN D. PENROSE*
EDWARD L. CHUN
J. KENNETH GORMAN†
ANNA M. PENROSE-LEVIG
KHRYSTSINA KISEL

†ALSO ADMITTED IN HAWAII
AND NEW YORK

WEBSITE:
WWW.PCG-LLP.COM
EMAIL:
KGORMAN@PCG-LLP.COM

*CERTIFIED BY THE STATE BAR OF CALIFORNIA BOARD
OF LEGAL SPECIALIZATION AS A SPECIALIST IN ESTATE
PLANNING, PROBATE AND TRUST LAW

July 6, 2021

Sent via Email Only

Mayor and Councilmembers
Watsonville City Council
275 Main St., Suite 400
Watsonville, CA 95076

Re: City Council Meeting – July 6, 2021 – Opposition to Agenda Item 8.x

Dear Mr. Mayor and Councilmembers:

We represent Pacific Sunshine Development, LLC, the owner of the Sunshine Gardens subdivision (“PSD”), and U.S. Longton, Inc., its general contractor (“Longton”). On their behalf, we respectfully submit this written opposition to Agenda Item 8.x and the proposal by City staff to declare Sunshine Gardens a public nuisance. Many of the factual predicates for the proposal are tenuous and others are wholly inaccurate. The legal predicates are at odds with the law. The procedures described by the Building Official contemplate a unilateral determination by the City Council without our clients’ full participation and therefore violate due process. As a result, the proposal should be rejected and the Resolution denied.

The Unsupportable Claims

The Building Official does not allege the existence of a nuisance. Instead, he usurps the responsibility of the City Council, as an administrative tribunal, to make such a determination and instead submits a determinative report, characterizing it as

the Building Official’s report of the existence of a public nuisance required by §5-17.05: This subdivision was determined to be a public nuisance because of a list of purported transgressions. (Agenda Report for Item 8.b at 2-3.) The Building Official incorrectly asserts the following; our clients’ responses to those claims are interlineated in italics:

- Townhomes have been left partially constructed for over three years and exposed to the elements and weather without protection.

The Building Official neglects to mention that the partial construction is due to his numerous stop work orders, most recently in the Fall of 2019, and his refusal to allow any resumption of the work until the non-structural slabs on

grade – which had been approved by the Building Department in early 2018 -- are repaired to his satisfaction. He caused the condition, but he blames the owner and general contractor. In any event, that condition does not create a nuisance.

- The subdivision is used to store abandoned and deteriorated construction materials.

If the materials are being stored, they are not abandoned or deteriorated by definition. In fact, the stored materials are in garage spaces, out of sight of the neighbors.

- The owner-developer and general contractor have failed to reasonably keep the project moving forward and the buildings maintained.

The owner-developer and general contractor cannot keep the project moving forward in the face of the Building Official's stop work orders, which are enumerated in the attachments to the Agenda Report. The buildings are as wellmaintained as can be done under the circumstances, since the Building Official will not permit any work to be done to protect the OSB shear panels or to complete the roofs.

- The buildings under construction appear to be unsalvageable and unable to be repaired. [Emphasis added.]

The Building Official offers no evidence because the assertion is unsupported. This is particularly disconcerting given the time and effort devoted over the past months to repairing the existing work before proceeding with the remaining construction.

- The dilapidated condition of the partially constructed townhomes is offensive to the senses because it is a blight on the neighborhood and nearby homes and so an obstruction to the free use of property so as to interfere with the comfortable enjoyment of neighboring property.

The townhomes are not "dilapidated;" at most, the exterior surfaces of the uncompleted structures are "weathered" due to the refusal of the Building Official to allow the Owner and General Contractor to effectively protect the exterior surfaces from weathering.

These assertions otherwise are irresponsible. A construction project, by definition, if contained within its property boundaries as is the case with Sunshine Gardens, cannot obstruct the free use of property across an adjoining street. It cannot interfere with the "comfortable enjoyment" of neighboring property because of the right granted by the City to conduct work on the Project six days a week. Under this "standard," any project under construction

could be characterized as a nuisance. That certainly is not the case.

It thus should be clear that the assertions of the Building Official, adopted by the Director of Community Development, are not supported by a reasonable and objective view of the facts.

The Applicable Law

The Watsonville Municipal Code defines a nuisance as”

Anything within the City which is injurious to health, indecent, offensive to the senses, an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in the customary manner of any stream, public park, square, street, highway, or alley of the City.

(WATSONVILLE MUNI. CODE § 5-17.01.) This language apparently is drawn from CAL. CIV. CODE §3479:

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

Under the City’s ordinance, which is the predicate for the City’s proposed action, Sunshine Gardens quite obviously

- is not “injurious to health,”
- is not “indecent,”
- is not “an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property,” and
- does not “unlawfully obstruct the free passage or use in the customary manner of any stream, public park, square, street, highway, or alley of the City.”

The only criterion which might even hypothetically apply is “offensive to the senses.” Nevertheless, City staff invokes all of the criteria of the ordinance to support its application for a declaration of nuisance, includes all the criteria as predicates for the declaration in the proposed Resolution, and offers no evidence in support of any of them.

We submit that Sunshine Gardens, created and maintained pursuant to the express authority of the Subdivision Map Act, cannot be deemed a nuisance. (WATSONVILLE MUNI CODE § 5-17.03.)

Even if Section 5-17.03 were not to control, the City staff proposition still cannot

prevail. The City ordinance, unlike the state statute, does not require that the matter which is “offensive to the senses” must interfere with the comfortable enjoyment of life or property. Instead, the City ordinance, devoid of any standards, allows anything that is “offensive to the senses” to constitute a nuisance, even if without any adverse effect and without any guidance as to what is “offensive.”¹ Thus, as adopted, the City ordinance violates the basic concept underlying the law of nuisances, articulated in the maxim *sic utere tuo ut alienum non laedas*; that is, use your own as not to injure another's property.

Under California law, which should control over the contrary but analogous language of the ordinance, not every activity that is offensive to the senses and interferes with the comfortable enjoyment of life is a nuisance. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 764.) The interference must be substantial and unreasonable, and such as would be offensive or inconvenient to the normal person, before the disturbance of the enjoyment of the property *may* amount to a nuisance. (*Ibid.*) The incomplete improvements at Sunshine Gardens cannot, under any reasonable interpretation, constitute a substantial and unreasonable interference with anyone's use of his or her property. Therefore, quite simply, Sunshine Gardens is not and cannot be legally characterized as a nuisance, and the proposed Resolution must be rejected.

Conclusion

City staff close by again asserting, without supporting facts or law, that the “Sunshine Gardens Development . . . is a public nuisance and must be abated.” (Agenda Report at 4.) They also add, for motives which are dubious at best, that “the owner has failed to comply with all City notifications,” carefully avoiding any detail about the timing or nature of the alleged notifications. This woefully inadequate presentation is an improper attempt to shift the burden of proof to the Owner and General Contractor, and violates article I, section 13 of the California Constitution which states that no person shall be deprived of property without due process of law. (*Leppo v. City of Petaluma*, 20 Cal.App.3d 711, 718 (1971).) The law is clear. Neither at common law nor under any express power granted by ordinance, can a city's governing body, by its mere declaration that specified property is a nuisance, make it one when in fact it is not. (*Ibid.*)

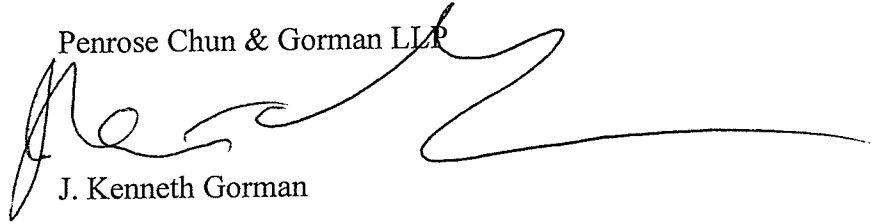
For all the foregoing reasons, the City Council should decline the request of staff and do nothing – an alternative offered by City staff. The Owner and General Contractor will continue their efforts to resolve the impediments to successful completion of the Project and to resume work at the earliest possible date.

//

¹ The ordinance therefore seeks to vest the City Council with the unfettered discretion to declare what is “offensive to the senses.” It is very like the old adage about pornography: “I can't tell you what it is, but I know it when I see it.” That unfettered discretion cannot be used to deprive Pacific Sunshine Gardens of its property without due process.

Sincerely,

Penrose Chun & Gorman LLP

A handwritten signature in black ink, appearing to read 'J. Kenneth Gorman', with a long horizontal flourish extending to the right.

J. Kenneth Gorman

JKG/hmd

cc: William Abbott
Alan Smith, City Attorney
Clients