Attachment A

Action NO. 2008-04

RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO
LAND USE ACTION FOR 4249 EL CAMINO REAL: VESTING
TENTATIVE MAP 07PLN-00335
(SUMMERHILL HOMES, APPLICANT)

At its meeting on March 24, 2008, the City Council of the City of Palo Alto approved the Vesting Tentative Map to subdivide a parcel (approx. 3.97 acres) into 45 multi-family residential condominium lots, private streets, and dedicated park land, making the following findings, determination and declarations:

SECTION 1. Background. The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A. Proposed by SummerHill Homes on behalf of the Benevolent and Protective Order of Elks (BPOE), this project involves the subdivision of the 3.97-acre portion of the Elk's Lodge site into 45 multi-family residential condominium lots and private streets. In addition, 0.48 acres of the site would be dedicated to the City as a public park with public access easements.

B. The Vesting Tentative Map plan set includes information on the existing parcels, onsite conditions, and the layout of the proposed new lots. These drawings are in compliance with the applicable provisions of the City's Subdivision Ordinance. These plans contain all information and notations required to be shown on a Vesting Tentative Map (per PAMC Sections 21.12 and 21.13), as well as the design requirements concerning the creation of lots, streets, walkways, and similar features (PAMC 21.20).

SECTION 2. Environmental Review. Prior to Architectural Review approval of the proposed SummerHill Homes multi-family development, Staff prepared an Initial Study and Draft Mitigated Negative Declaration which discussed the potential impacts of the two lot subdivision, the SummerHill Homes development and the new Elks Lodge development. The documents were made available for a 20 day public review period between August 31, 2007 and September 19, 2007. No public comments were received during this review period. The Environmental Assessment found that the impacts produced by the project, including the development of the single-family homes and the new Elks Lodge, would have less than significant impacts on the environment with the incorporation of mitigation measures. Since state law requires the adoption of an Initial Study and Mitigated Negative Declaration prior taking action on a discretionary project, these environmental documents were adopted on October 25, 2007 by the Director of Planning and
SECTION 3. Vesting Tentative Map Findings.
A legislative body of a city shall deny approval of a Vesting Tentative Map, if it makes any of the following findings (California Government Code Section 66474):

1. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451:
   
   This finding can not be made in the affirmative. The site does not lie within a specific plan area and is consistent with the provisions of the Comprehensive Plan. The land use designation in the area of the subdivision is Multiple Family Residential and the zoning designations are RM-15 and RM-30. The proposed development of multi-family dwelling units is consistent with the land use and zoning designations of the site.

2. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans:

   This finding can not be made in the affirmative. The map is consistent with the following Comprehensive Plan policies: (1) Policy L-1 - Limiting future urban development to currently developed lands within the urban service area; (2)Policy L-6: Where possible, avoid abrupt changes in scale and density between residential and non-residential areas and between residential areas of different densities; and (3)Policy L-35 - Establish the South El Camino Real area as a well-designed, compact, vital, Multi-neighborhood Center with diverse uses, a mix of one-, two-, and three-story buildings, and a network of pedestrian-oriented streets and ways.

3. That the site is not physically suitable for the type of development:

   This finding can not be made in the affirmative. The site can accommodate the proposed subdivision. The lots conform to the width, depth, and area requirements of the RM-30 and RM-15 districts. The design of the multi-family units by SummerHill Homes and the new Elks Lodge require Architectural Review approval. The proposed multi-family development by SummerHill Homes was granted Architectural Review approval on October 30, 2007 after a recommendation of approval from the Architectural Review Board on October 18, 2007.
4. That the site is not physically suitable for the proposed density of development:

The subdivision would be consistent with the site development regulations of the RM-30 and RM-15 districts and would not affect the location of the existing property lines at the perimeter of the site.

5. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat:

The subdivision would not cause environmental damage or injure fish, wildlife, or their habitat, as the site is currently developed with accessory uses and facilities of the permitted fraternal organization on the site. However, the applicant is required to implement mitigation measures to reduce impacts to tree-nesting raptors and trees during demolition and construction on Lots 1 and 2 as specified in the Mitigated Negative Declaration and as reflected in the conditions of Section 6 of this Record.

6. That the design of the subdivision or type of improvements is likely to cause serious public health problems:

This finding can not be made in the affirmative. The subdivision of the existing parcel into 45 multi-family residential condominium lots, private streets and dedicated park land will not cause serious public health problems.

7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

The subdivision of the existing parcel will not conflict with easements of any type, in that the subdivision is
compatible with the emergency vehicle access easement along the northern property line and any utility easements that would be required to serve the proposed developments.

SECTION 4. Approval of Vesting Tentative Map. Vesting Tentative Map approval is granted by the City Council under Palo Alto Municipal Code ("PAMC") Sections 21.13 and 21.20 and the California Government Code Section 66474, subject to the conditions of approval in Section 6 of this Record.

SECTION 5. Final Map Approval. The Final Map submitted for review and approval by the City Council of the City of Palo Alto shall be in substantial conformance with the Tentative Map prepared by Brian Kangas Pouk titled "Vesting Tentative Condominium Map SummerHill Elks Residential", consisting of ten pages, dated February 27, 2008.

A copy of this Vesting Tentative Map is on file in the Department of Planning and Community Environment, Current Planning Division.

Within two years of the approval date of the Vesting Tentative Map, the subdivider shall cause the subdivision or any part thereof to be surveyed, and a Final Map, as specified in Chapter 21.08, to be prepared in conformance with the Tentative Map as conditionally approved, and in compliance with the provisions of the Subdivision Map Act and PAMC Section 21.16 and submitted to the City Engineer (PAMC Section 21.16.010[a]).

SECTION 6. Conditions of Approval.

Department of Planning and Community Environment

Planning Division

1. A Final Map, in conformance with the approved Vesting Tentative Map, all requirements of the Subdivision Ordinance (PAMC Section 21.16), and to the satisfaction of the City Engineer, shall be filed with the Planning Division and the Public Works Engineering Division within two years of the Tentative Map approval date (PAMC 21.13.020[c]).

2. To the extent practical, construction activities should be performed or vegetation removed from September through February to avoid the general nesting period of birds. If demolition, construction or vegetation removal can not be
performed during this period, pre-demolition and construction surveys should be performed by a qualified biologist no sooner than 14 days prior to demolition and construction activities to locate any active nests prior to the start of demolition/construction and prior to removal of any tree. If active nests are observed, buffer zones will be established around active nesting trees, with a size acceptable to the California Department of Fish and Game. Construction activities shall avoid buffered zones and no tree will be removed until the young have fledged or the nest is otherwise abandoned.


4. Applicant shall file a tree removal permit for the trees planned for removal.

5. A Below Market Rate agreement must be executed prior to City Council Action on the Final Map and recorded concurrently with the subdivision agreement and map.

6. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the “indemnified parties”) from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City its actual attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

7. Public access easements shall be dedicated on all sidewalks within the project, as proposed by the applicant in a letter from the applicant to the City Council Members, dated February 27, 2008. The dedication shall be recorded with the Final Map.
8. A second future pedestrian connection shall be included in addition to the future pedestrian connection point located at Street A, as proposed in the letter from the applicant to the City Council Members, dated February 27, 2008. This second connection and four-foot wide path are located along the southeastern boundary and will lead from the adjacent parcel to the west to the project's public park. The path shall be incorporated into the project should the City acquire access rights along the adjacent site on or before March 24, 2009.

**Utilities Department, Electric Engineering Division**

9. The transformers adjacent to Street A and Street D shall have a 10' x 10' public utility easement.

10. A 3' x 5' public utility easement shall be required in front of the transformer on Street D.

11. The public utility easement for the transformer adjacent to the intersection of Street C and Street B shall have a 10' x 20' public utility easement.

12. Where CPAU electric utility facilities are installed in private streets/PUEs for condominium and town home projects the CC&Rs and final map shall include the statement: "Public Utility Easements: If the City’s reasonable use of the Public Utility Easements, which are shown as P.U.E on the Map, results in any damage to the Common Area, then it shall be the responsibility of the Association, and not of the City, to Restore the affected portion(s) of the Common Area. This Section may not be amended without the prior written consent of the City".

13. The applicant shall secure a public utilities easement for facilities installed in private property. The applicant's engineer shall obtain, prepare, record with the county of Santa Clara, and provide the Utilities Engineering section with copies of the public utilities easement across the adjacent parcels as is necessary to serve the development.

14. Street light conduits on private streets shall not be in the joint trench.
Utilities, Water, Gas, Wastewater Division

15. The improvement plans for utility construction need to show the abandonment of the existing 6” water main on Deodar Street and the relocation of the existing fire hydrant.

16. All Irrigation meters, double check assemblies and RPPA backflows need to be shown in the improvement plans.

17. All fire sprinklered residences shall have an approved double check assembly installed just downstream of water meter (can be in a vault). Show all backflow preventers on the improvement plans for utility construction.

18. All fire hydrants, water meters, gas mains and water mains shall be located in a PUE.

19. Sanitary sewer mains and laterals on private streets are to be privately owned and maintained and shall be designated as such on the plans. The City’s responsibility for wastewater will start at a manhole or cleanout where the onsite wastewater system enters the public street right of way (this shall be included in the CCRs).

20. All meters (water, gas, electric, fire svc detector) on this project shall be AMR equipped.

21. Onsite public water mains will be 8”, diameter minimum limited to two loops through the property in private/public streets as currently shown on the plans and will require a minimum 20’ wide public utility easement with limited street parking in the private streets. All city owned water meters shall be within a public utility easement outside of the paved street surface (locate in the sidewalk, driveway or planting strip). All other onsite water lines shall be private water lines and shall be designated as such on the plans. **No dead end water lines are allowed on the public water system.** The water line stubs at the end of street A and street D shall be 2” CU with 2” blow-offs at the end per STD. DWG. WD-28.

22. Where the water main is in an easement and the Customer’s water service is directly connected thereto, the Customer (or condo association) owns and is responsible for maintenance of the water service pipe from, and including the house to the point where the line connects to the corporation stop or shut-
off valve at the water main. The City still has sole ownership and responsibility for the water meter. (This shall be included in the CCRs.)

23. Onsite public gas mains will be limited to two loops as currently shown on the plans through the property in private/public streets in the same 20' easement with the water main or a dedicated minimum 10' public utility gas easement.

24. Gas mains will follow a straight route through the development and be within 3' of the curbline. Gas mains shall be in a separate trench (gas is not allowed in a joint trench). A separate gas service is required for each building. Gas meters shall be ganged at each separate building per the WGW Utility Standards.

25. The applicant shall create a separate gas main and services plan under the direction of CPAU. The applicant shall supply CPAU with an AutoCAD copy of the approved gas plan.

26. All improvements to the public gas system will be performed by City of Palo Alto Utilities. The applicant’s contractor shall supply trenches per the WGW utility standards for all gas mains and services to be installed by CPAU. The applicant’s contractor shall perform all backfilling per WGW utility standards after CPAU installs the gas pipes.

27. The applicant shall provide third party inspection services acceptable to CPAU to witness and inspect all public water and wastewater utility installations.

28. At the completion of the project, the applicant shall supply CPAU with AutoCAD based as-built drawings for the public (Palo Alto portion) gas, water, and wastewater systems. The as-built drawings must be approved by CPAU prior to acceptance of the project by the City. The AutoCAD based as-builts shall use the state plane coordinate system and be developed with the use of GPS base geopositional equipment with margin of error less than 1".

29. Water well, or auxiliary water supply is not allowed.

30. The applicant shall be responsible for installing and upgrading the existing utility mains and/or services as necessary to handle anticipated peak loads. This
responsibility includes all costs associated with the design and construction for the installation/upgrade of the utility mains and/or services.

31. Sewer drainage piping serving fixtures located below the next upstream sewer main manhole cover shall be protected by an approved backwater valve per California Plumbing Code 710.0. The upstream sewer main manhole rim elevation shall be shown on the plans.

32. The applicant's engineer shall submit flow calculations and system capacity study showing that the on-site and off-site water and sanitary sewer mains and services will provide the domestic, irrigation, fire flows, and wastewater capacity needed to service the development and adjacent properties during anticipated peak flow demands. Field testing may be required to determined current flows and water pressures on existing water main. Calculations must be signed and stamped by a registered civil engineer. The applicant may be required to perform, at his/her expense, a flow monitoring study of the existing sewer main to determine the remaining capacity. The report must include existing peak flows or depth of flow based on a minimum monitoring period of seven continuous days or as determined by the senior wastewater engineer. The study shall meet the requirements and the approval of the WGW engineering section. No downstream overloading of existing sewer main will be permitted.

33. For contractor installed water and wastewater mains or services, the applicant shall submit to the WGW engineering section of the Utilities Department four copies of the installation of water and wastewater utilities off-site improvement plans in accordance with the utilities department design criteria. All utility work within the public right-of-way shall be clearly shown on the plans that are prepared, signed and stamped by a registered civil engineer. The contractor shall also submit a complete schedule of work, method of construction and the manufacturer's literature on the materials to be used for approval by the utilities engineering section. The applicant's contractor will not be allowed to begin work until the improvement plan and other submittals have been approved by the water, gas and wastewater engineering section.

34. The applicant shall pay the capacity fees and connection fees associated with the installation of the new utility service/s
to be installed by the City of Palo Alto Utilities. The approved relocation of services, meters, hydrants, or other facilities will be performed at the cost of the person/entity requesting the relocation.

35. Each unit shall have its own water service and gas meter shown on the plans.

36. A separate water meter and backflow preventer shall be installed to irrigate the approved landscape plan. Show the location of the irrigation meter on the plans. This meter shall be designated as an irrigation account and no other water service will be billed on the account. The irrigation and landscape plans submitted with the application for a grading or building permit shall conform to the City of Palo Alto water efficiency standards.

37. An approved reduce pressure principle assembly (RPPA backflow preventer device) shall be installed for separate irrigation, community water connections and master meters from Palo Alto Utilities to comply with requirements of California administrative code, title 17, sections 7583 through 7605 inclusive. The RPPA shall be installed on the owner's property and directly behind the water meter. Show the location of the RPPA on the plans. Inspection by the utilities cross connection inspector is required for the supply pipe between the meter and the assembly.

38. An approved double detector check valve shall be installed for the existing or new water connections for the fire system to comply with requirements of California administrative code, title 17, sections 7583 through 7605 inclusive. Double check detector check valves shall be installed on the owner's property adjacent to the property line. Show the location of the double detector check assembly on the plans. Inspection by the utilities cross connection inspector is required for the supply pipe between the City connection and the assembly.

39. The applicant shall secure a public utilities easement for facilities installed in private property. The applicant's engineer shall obtain, prepare, record with the county of Santa Clara, and provide the utilities engineering section with copies of the public utilities easement across the adjacent parcels as is necessary to serve the development.
40. Where public mains are installed in private streets/PUEs for condominium and town home projects the CC&Rs and final map shall include the statement: "Public Utility Easements: If the City's reasonable use of the Public Utility Easements, which are shown as P.U.E on the Map, results in any damage to the Common Area, then it shall be the responsibility of the Association, and not of the City, to Restore the affected portion(s) of the Common Area. This Section may not be amended without the prior written consent of the City".

41. The new gas mains/services will not be put in service (connected to the City gas distribution system) until the public/private streets are paved, the public utility easements are recorded, and an as-built of the gas mains and services is received and approved by CPAU.

42. All existing water and wastewater services that will not be reused shall be abandoned at the main per WGW utility's procedures.

43. All utility installations shall be in accordance with the City of Palo Alto utility standards for water, gas & wastewater.

Fire Department

44. All Emergency Vehicle Access Roadways shall be posted NO PARKING - FIRE LANE. Applicant shall work with Police Department to determine enforceable marking method. Applicant shall also identify the entity responsible for enforcing parking rules on site and verify that Bylaws or other governing rules will ensure ongoing enforcement.

45. All structures over 3,600 sq. ft. gross floor area or more than 2 stories in height shall be fire sprinklered in accordance with an applicable NFPA Standard.

Public Works Department

Prior to Final Map Recordation:

46. The Final Map submitted by SummerHill under application 07PLN-00140 must be recorded prior to the recordation of the Final Map resulting from this Vesting Tentative Map (07PLN-00335).
SECTION 7. Term of Approval.

Tentative Map. All conditions of approval of the Tentative Map shall be fulfilled prior to approval of a Final Map (PAMC Section 21.16.010[c]).

Unless a Final Map is filed, and all conditions of approval are fulfilled within a two-year period from the date of the Vesting Tentative Map approval, or such extension as may be granted, the Tentative Map shall expire and all proceedings shall terminate. Thereafter, no Final Map shall be filed without first processing a Tentative Map (PAMC Section 21.16.010[d]).

PASSED: 6-2
AYES: Barton, Drekmeier, Espinosa, Klein, Morton, Yeh
NOES: Kishimoto, Schmid
ABSENT: Burt
ABSTENTIONS:

ATTEST: 

City Clerk

APPROVED:

Director of Planning and Community Environment

APPROVED AS TO FORM:

Senior Asst. City Attorney

PLANS AND DRAWINGS REFERENCED:

Those plans prepared by Brian Kangas Foulk titled, "Vesting Tentative Condominium Map SummerHill Elks Subdivision", consisting of ten pages, dated February 27, 2008.
RECORDING REQUESTED BY
CITY OF PALO ALTO and is
entitled to be recorded free of charge
in accordance with Section 6103 of the
Government Code

WHEN RECORDED, RETURN TO:

OFFICE OF THE CITY ATTORNEY
CITY OF PALO ALTO
250 Hamilton Avenue
Palo Alto, CA 94301

PUBLIC ACCESS EASEMENT

This Public Access Easement (the "Agreement") is entered into this ___ day of
_____________, 2008 (the "Effective Date"), by and between the City of Palo Alto, a
California municipal corporation (the "City") and SummerHill Redwood Gate LLC, a
California limited liability company (the "Developer").

RECITALS

A. Developer is the owner and developer of a project (the "Project") in the
City of Palo Alto commonly known as Redwood Gate, the legal description of which is
attached hereto as Exhibit A (the "Property"). The Project includes a .48 acre park (the
"Park").

B. Pursuant to Developer’s conditions of approval from the City, and subject
to the terms and conditions of this Agreement, the Developer is required to provide a
second pedestrian connection on the Property and four (4) foot wide public access
easement located along the northeastern boundary of the Property leading from the
Property boundary with the adjacent parcel (APN: 148-01-005) that is not owned by
Developer (the "Adjacent Parcel") to the northwest to the Park.

C. Developer has formed, or will form, the Redwood Gate Owners
Association (the "HOA"), which has the long-term responsibility to maintain certain
common areas within the Project, including the Easement Area (defined below). The
HOA will succeed to the obligations of Developer under this Agreement.

NOW, THEREFORE, the parties agree as follows:
AGREEMENT

1. GRANT OF EASEMENT

Developer hereby grants to the City and its successors and assigns, a perpetual, non-exclusive easement in gross (the "Easement") across and over that portion of the Property identified on Exhibit B attached hereto (the "Easement Area") for the purpose of providing non-vehicular public access to and from the Park, subject to the terms and conditions of this Agreement. The Easement excludes the use of motorized vehicles. Developer and Developer’s heirs, successors and assigns shall not place or permit to be placed on the Easement Area any building or structure, nor do nor allow to be done anything which may interfere with the full enjoyment by City and the general public of the rights herein granted. Developer and upon transfer of the Easement Area, the HOA, shall have the right to establish regulations related to use of the Easement Area pertaining to health, safety and welfare, including but not limited to, establishing rules of conduct, noise regulations and hours of use, provided such rules do not unreasonably interfere with the use and enjoyment of the Easement Area by members of the general public during day light hours.

2. DEVELOPMENT OF PATH

If and only if the City acquires access rights over the Adjacent Parcel that are adequate to serve the Easement on or before March 24, 2009, then Developer will construct a four (4) foot wide path within the Easement Area (the "Improvements") pursuant to plans and specification that the City has already reviewed and approved, in a good and workman-like manner, and in compliance with all applicable law, at Developer’s sole cost and expense.

3. MAINTENANCE, REPAIR AND REPLACEMENT

Developer and upon transfer of the Easement Area, the HOA, shall be obligated to maintain, repair, and keep the Easement Area and the Improvements in good working order and repair, in accordance with this Agreement. Developer shall replace Improvements when necessary to meet the standard described in this paragraph. If Developer fails to maintain the Easement Area or Improvements in accordance with this Agreement, City, in its reasonable discretion, may determine to maintain, repair and care for the Improvements, or to contract for the correction of such deficiencies, after written notice to Developer. Prior to taking any such corrective action, City agrees to notify Developer in writing if the conditions of the Easement Area or Improvements does not conform to the standards and requirements set forth herein and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Developer shall have twenty-four (24) hours to rectify the problem.
If Developer fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such deficiency after notification and after expiration of any applicable cure period, then City shall have the right, but not the obligation, to maintain, repair, care for and, if and when necessary, replace the Easement Area and Improvements at Developer’s expense. Developer agrees to pay City upon demand all charges and costs incurred by City for any such maintenance, repair and replacement work. Until so paid, the City shall have a lien on the Easement Area for the amount of such charges or costs, which lien shall be perfected by the recordation of a “Notice of Claim of Lien” against the Easement Area. Any lien in favor of the City created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates its interest, of record, to such lien. No lien in favor of the City created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Developer acknowledges and agrees, on behalf of Developer and its successors and assigns, that the City may also pursue any and all other remedies available in law or equity in the event of a breach of Developer’s obligations and agreements set forth herein. Developer and the HOA have no duty or obligation to provide security for the Easement Area. All persons using the Easement Area shall do so at his or her risk and they assume all risk of injury to person or damage to property.

4. LIABILITY AND INSURANCE; UNIT OWNERS NOT LIABLE.

Developer shall defend, indemnify and hold the City, its officers, agents, and employees harmless from and against any and all claims, lawsuits, liabilities, losses, damages, costs, or expenses, including reasonable attorneys’ fees, consultants’ fee expenses, awards, fines, penalties, or judgments of whatsoever kind or nature (collectively, “Claims”) whether arising before or after completion of the Improvements, that relate to Developer’s breach of its obligations under this Agreement, the construction of the Improvements, the maintenance and repair of the Improvements prior to transfer of the Improvements to the HOA, or the use of the Easement Area by Developer or Developer’s contractors, invitees, successors and assigns. Notwithstanding the foregoing, Developer’s indemnification, defense and hold harmless obligations exclude all Claims to the extent covered by the indemnification, defense and hold harmless obligations of the HOA and/or the City set forth below.

Upon transfer of the Easement Area to the HOA, the HOA shall defend, indemnify and hold the Developer and the City, and their respective officers, agents, and employees harmless from and against any and all Claims arising after completion of the Improvements, that relate to the HOA’s breach of its obligations under this Agreement, the maintenance and repair of the Improvements or the use of the Easement Area by the HOA or any of its members, contractors, invitees, successors and assigns. The HOA’s indemnification, defense and hold harmless obligations exclude all Claims to the extent covered by the indemnification, defense and hold harmless obligations of the Developer and/or the City set forth herein.
City shall defend, indemnify and hold Developer and the HOA, and their respective officers, directors, shareholders, members, managers, agents, and employees harmless from and against any and all Claims, whether arising before or after completion of the Improvements, that relate to a breach of the City's obligations under this Agreement, or the use of the Improvements or the Easement Area by members of the public and anyone other than Developer, the HOA, or their respective members, contractors, invitees, successors and assigns. The City’s indemnification, defense and hold harmless obligations exclude all Claims to the extent covered by the indemnification, defense and hold harmless obligations of the Developer and the HOA set forth above.

Developer shall carry commercial general liability insurance of at least $1,000,000 naming the City as additional insured thereunder for all claims relating to the use of the Easement Area by Developer or Developer’s contractors, invitees, successors and assigns. Once the Easement Area has been transferred to the HOA, the HOA shall carry commercial general liability insurance as required by and otherwise subject to the terms and conditions set forth in Article 8 of the Declaration of Restrictions that have been or will be recorded against the Property. The HOA shall name the City as additional insured thereunder for all claims relating to the use of the Easement Area by the HOA or its members, contractors, invitees, successors and assigns.

City agrees that no individual unit owner within the Project shall have any liability for, nor any duty or obligation to perform, any of the obligations or covenants of the Developer or the HOA under this Agreement, including, without limitation, those set forth in this Section 4.

5. AUTHORITY

Developer warrants and represents that the person or persons signing on behalf of Developer has or have the authority to execute this Agreement on behalf of Developer and has or have the authority to bind the Developer and the Property to the terms and obligations set forth in this Agreement. Developer agrees that this Agreement, and any instrument or agreement required hereunder, are within the Developer’s powers, and have been duly authorized and delivered and do not conflict with any of Developer’s organizational powers.

6. ATTORNEY FEES

If any action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to its attorneys’ fees and costs and necessary disbursements, in addition to any other relief to which the party may be entitled.

7. AMENDMENT

This Agreement may not be modified except in a writing signed by both parties.
8. **GOVERNING LAW; VENUE**

This Agreement shall be governed by the laws of the State of California. In case of dispute, venue shall reside in Santa Clara County, California.

9. **SEVERABILITY**

If any provision in this Agreement is held by any court to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

10. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties regarding its subject matter. This Agreement is deemed to have been drafted equally by both parties.

11. **RECORDATION; RUNS WITH THE LAND; TERMINATION**

This Agreement shall not be recorded with the Santa Clara County Recorder against the Property unless the City has obtained access rights over the Adjacent Property sufficient to serve the Easement on or before March 24, 2009. If notwithstanding the foregoing, this Agreement is inadvertently recorded before the City has timely obtained access rights over the Adjacent Property sufficient to serve the Easement, then it is agreed that no Easement shall be granted thereby, delivery of the Agreement shall not be deemed to have occurred, no rights shall be created in favor of the City or the public by reason thereof, and this Agreement shall be null and void in all respects. Notwithstanding the fact that a signed and notarized original of this Agreement may have been deposited by the parties into a third party escrow, under no circumstances will this Agreement or the Easement be deemed to have been delivered to the City or the public, nor shall the Easement be deemed to have been granted, at any time prior to the time the City has obtained access rights over the Adjacent Property sufficient to serve the Easement and this Agreement has been recorded. If the City has not obtained such access rights over the Adjacent Property on or before March 24, 2009, this Agreement and the Easement shall automatically terminate and expire without further action required of either party hereto and the original signed and notarized Agreement shall be returned to Developer upon Developer's sole instructions.

If and when this Agreement is recorded, this Agreement shall run with the land and be binding upon all heirs, successors and assigns of Developer and all future owners of all or any portion of the Easement Area, including without limitation, the HOA. The deed conveying the Easement Area to the HOA shall be subject to this Agreement (regardless if the deed to the HOA expressly so states), recorded with the Santa Clara County Recorder as a covenant running with the Property. Upon conveyance of the Easement Area by Developer to the HOA (1) Developer shall notify the City and provide the City with contact information for the HOA for purposes of notification under this Agreement; (2) the HOA shall automatically assume all of the rights and duties of the Developer
under this Agreement except for Developer’s obligations in Section 2 hereof; and (3) Developer shall be relieved of all obligations and liability under this Agreement or otherwise with respect to the Easement Area (including, without limitation, under Section 4 hereof), except that liability for Developer’s acts or omissions that occurred prior to the conveyance shall survive the conveyance, unless otherwise provided in the conveyance instrument. Upon conveyance of the Easement Area the HOA, the Board of Directors of the HOA shall have full power, right and authority to take any and all actions under this Agreement on behalf of the HOA and its members and the consent of the members shall not be required.

12. NOTICES

Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within forty-eight hours from the time of mailing if notice is served by mail. Either party may change its address by notifying the other party in writing of the change address.

If to City: Office of the City Clerk
250 Hamilton Avenue
Palo Alto, CA 94301

With a copy to: City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301
Attn: Planning Department

If to Developer: SummerHill Redwood Gate LLC
777 California Avenue
Palo Alto, CA 94304
Attn: President & CEO

With a copy to: SummerHill Redwood Gate LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

13. CITY’S DISCRETION

Enforcement of the terms of this Agreement shall be at the discretion of the City, and any forbearance by the City to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by Developer shall not be deemed or construed to be a waiver by the City of such term or of any subsequent breach for the same or any other term of this Agreement or of any of the City’s rights under this Agreement. No delay or omission by the City in the exercise of any right or remedy upon any breach by
Owner shall impair such right or remedy or be construed as a waiver. Notwithstanding any other provision of law, all waivers maybe be express and in writing.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, Developer and City have executed this Agreement.

DEVELOPER:

SummerHill Redwood Gate LLC, a California limited liability company

By: SummerHill Homes LLC, a California limited liability company, its Manager

By: ___________________________
Name: _________________________
Title: __________________________

CITY:

City of Palo Alto

By: ___________________________
Name: _________________________
Title: City Manager

APPROVED AS TO FORM:

By: ___________________________
Name: _________________________
Title: Assistant City Attorney
State of California 
County of ____________________

On ___________________________ before me, ____________________, personally appeared ______________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ___________________________ (Seal)

State of California 
County of ____________________

On ___________________________ before me, ____________________, personally appeared ______________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ___________________________ (Seal)
State of California  )
County of _____________  )

On ___________________________ before me, ________________, personally appeared ________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ___________________________  (Seal)

______________________________
County of _____________  )

On ___________________________ before me, ________________, personally appeared ________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ___________________________  (Seal)
EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

All that certain real property located in the City of Palo Alto, County of Santa Clara, State of California, known as Lot 2 shown on Tract Map No. 9989, filed on May 15, 2008, in Book 824 of Maps at Pages 46 and 47, File No. 19854842, Official Records of Santa Clara County.
EXHIBIT “A”

Legal Description
for
Public Access Easement
Palo Alto, Santa Clara County, California

Real property situate in the City of Palo Alto, County of Santa Clara, State of California, described as follows:

Being a portion of Lot 2, as shown on Map of Tract No. 9989, filed May 15, 2008 in Book 824 of Maps at Pages 46 and 47, Records of Santa Clara County, more particularly described as follows:

Beginning at the most easterly corner of said Lot 2 of said Map of Tract No. 9989;

Thence leaving said corner and along the southeasterly line of said Lot 2, South 41°55'35" West, 4.65 feet to the intersection of a line drawn 4.50 feet southwesterly, right angle measurement from the northeasterly line of said Lot 2;

Thence leaving said southeasterly line and parallel with said northeasterly line of said Lot 2, North 33°20’00” West, 99.44 feet to the beginning of a curve to the left having a radius of 70.50 feet;

Northwesterly, along said curve, through a central angle of 21°50’10” for an arc length of 26.87 feet;

Thence North 55°10’10” West, 8.68 feet;

Thence North 41°59’49” East, 4.54 feet;

Thence South 55°10’10” East, 8.11 feet to the beginning of a curve to the right having a radius of 75.00 feet;

Southeasterly, along said curve, through a central angle of 21°50’10” for an arc length of 28.58 feet to said northeasterly line of said Lot 2;

Thence along said northeasterly line of said Lot 2, South 33°20’00” East, 98.26 feet to the Point of Beginning.

Containing an area of 607 square feet, more or less.

As shown on Exhibit “B” attached hereto and made a part hereof.

This description was prepared by me or under my direction.

For: BKF Engineers

[Signature]

Davis Thresh, P.L.S. No. 6868
License expires 9-30-2008

Date: 8-18-2008
EXHIBIT B
LEGAL DESCRIPTION AND SCHEMATIC OF EASEMENT AREA
Public Access Easement  
Date: August 18, 2008  
Project: 20066091  

Closure Calculations

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<td>S 33-20-00 E</td>
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</tr>
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</table>

Perimeter: 279.13

Area: 607.38  
0.01 acres

Mapcheck Closure - (Uses listed courses & COGO Units)  
Error of Closure: 0.006  
Course: S 38-37-43 W  
Precision 1: 45030.45
TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: JANUARY 22, 2008

CMR: 100:08

SUBJECT: APPROVAL OF A TENTATIVE MAP AND A RECORD OF LAND USE ACTION TO SUBDIVIDE THE ELKS LODGE SITE INTO TWO LOTS, FOR A NEW LODGE AND A MULTI-FAMILY RESIDENTIAL PROJECT LOCATED AT 4249 AND 4251 EL CAMINO REAL.

RECOMMENDATION
Staff and the Planning and Transportation Commission recommend that the City Council approve the proposed Tentative Map which proposes to subdivide the Elks Lodge site into two lots, based upon findings and conditions contained within the draft Record of Land Use Action (Attachment A).

DISCUSSION
The Tentative Map proposed by SummerHill Homes on behalf of the property owner, Benevolent and Protective Order of Elks (BPOE), involves a two-lot subdivision of the approximately 7-acre Elks Lodge site to enable the construction of a new Elks Lodge on Lot 1 and the development of a 45 unit, multi-family residential community by SummerHill Homes on Lot 2. Although the applicant’s request is for only a two-lot subdivision, PAMC 21.04.030 requires a Tentative Map for certain minor subdivisions involving less than five lots or units where the total acreage involved exceeds five acres or for any subdivision where an individual lot created exceeds two acres.

The proposed two lot subdivision would create one 2.82 acre parcel to be retained by BPOE for the future Elks Lodge and a second 3.97 acre parcel to be purchased by SummerHill Homes for its proposed multi-family development. Approximately .34 acres of the Elks Lodge site, which is currently a public access easement for a portion of Deodar Street, would be permanently dedicated. A preliminary Architectural Review application for the new Elks Lodge was reviewed by the Architectural Review Board on August 2, 2007. A formal application for Architectural Review of the new Elks Lodge has not yet been submitted. The proposed 45 unit, multi-family SummerHill Homes development on Lot 2 was granted Architectural Review approval on October 30, 2007. A Tentative Map for the separate SummerHill Homes development on Lot 2 will be presented for Commission recommendation and City Council approval after the approval of this subject two-lot subdivision.
Because of the terms of the purchase agreement between BPOE and SummerHill Homes, the existing Elks Lodge will not be demolished until after the final map for the two-lot subdivision is recorded. In effect, the proposed lot line subdividing the Elks Lodge site into two lots would slice through the existing Elks Lodge structure. City staff has discussed the logistics of the demolition with the applicant and an agreement was reached that a bond or letter of credit would be provided by the applicant to the City to guarantee the demolition of the Elks Lodge upon final map recordation. The actual demolition of the Elks Lodge and accessory structures would occur immediately after final map recordation. Conditions pertaining to the demolition of the Elks Lodge are included in the attached draft Record of Land Use action. With the incorporation of conditions relating to the demolition of the Elks Lodge, staff and City departments have determined that the two-lot Tentative Map request is in general conformance with the requirements set forth in Chapter 18 (Zoning) and Chapter 21 (Subdivisions) of the Palo Alto Municipal Code (PAMC). Background information related to the project’s details and history has been included in the attached draft Record of Land Use Action.

RESOURCE IMPACTS
The proposed map will not result in any cost or revenue impacts to the City. The resource impacts of the residential subdivision (SummerHill Homes) primarily relate to impact fees and will be assessed in greater detail when that tentative map proceeds to Council. The Elks Lodge site plans are not yet developed, but in general the new Lodge will replace the old with little change in size and use. All development review costs for both projects will be recovered through permit fees.

POLICY IMPLICATIONS
The proposed map is consistent with the Comprehensive Plan in that the site is zoned for multi-family residential use and the continued use and renovation of the Lodge was expressly permitted by prior action of the Council. Design and compatibility policies are addressed by the Architectural Review Board during design review of each project.

BOARD/COMMISSION REVIEW AND RECOMMENDATIONS
On November 28, 2007, the Planning and Transportation Commission (Commission) conducted a public hearing and recommended (6-0-0-1) that the City Council approve the Tentative Map to subdivide the Elks Lodge site into two lots, as submitted, based upon the findings and conditions contained within the draft Record of Land Use Action. At the hearing, the Commission had questions regarding drainage impacts of the proposed development which were addressed by the applicant’s civil engineer. Three members of the public spoke regarding access to Wilkie Way from the proposed development at the Elks Lodge site, and traffic concerns on Deodar Stree and El Camino Real. The Commission also posed questions regarding pedestrian and bicycle connectivity to Wilkie Way, and street design and circulation within the proposed development by SummerHill Homes. Staff explained to the Commission that these issues will be considered with the Tentative Map for the 45-unit SummerHill Homes condominium development (the site planning for which was granted Architectural Review approval on October 30, 2007) to be presented to the Commission for review and recommendation to the City Council within the next three months. Draft minutes from the Commission hearing are included in Attachment C.
ENVIRONMENTAL REVIEW
The California Environmental Quality Act (CEQA) lists a land division of property in an urbanized area into four or fewer parcels as exempt from CEQA if the subdivision is in conformance with all zoning regulations. As such, the proposed two lot subdivision would generally be exempt from the requirements of CEQA. However, CEQA requires that a Lead Agency examine the potential environmental impacts of the ‘whole of an action’ which has the potential to physically change the environment, directly or ultimately, and not just the act of merely subdividing a parcel into two lots. In this case, the two lot subdivision would ultimately facilitate the construction of two developments—a new fraternal lodge and a 45 unit multi-family development—which are not exempt from CEQA requirements.

Prior to Architectural Review approval of the proposed SummerHill Homes multi-family development, Staff prepared an Initial Study and Draft Mitigated Negative Declaration which discussed the potential impacts of the two lot subdivision, the SummerHill Homes development and the new Elks Lodge development. The documents were made available for a 20 day public review period between August 31, 2007 and September 19, 2007. No public comments were received during this review period. The Environmental Assessment found that the impacts produced by the project, including the development of the multi-family homes and the new Elks Lodge, would have less than significant impacts on the environment with the incorporation of mitigation measures. These impacts are described in the assessment contained in Attachment D. Since State law requires the adoption of an Initial Study and Mitigated Negative Declaration prior to taking action on a discretionary project, these environmental documents were adopted on October 25, 2007 by the Director of Planning and Community Environment, prior to Architectural Review of the proposed SummerHill Homes project.

PREPARED BY:  
LATA VASUDEVAN, AICP  
Planner

DEPARTMENT HEAD:
STEVE EMSLIE  
Director of Planning and Community Environment

CITY MANAGER APPROVAL:
EMILY HARRISON  
Assistant City Manager
ATTACHMENTS
A. Draft Record of Land Use Action
B. Planning & Transportation Commission Staff Report, November 28, 2007
C. Excerpt of the Draft Planning & Transportation Commission Minutes, November 28, 2007
D. Initial Study and Mitigated Negative Declaration, adopted October 25, 2007
E. Tentative Map (Councilmembers only)

COURTESY COPIES
James E. Baer, Premier Properties
Elaine Breeze, SummerHill Homes
Carlin Otto
Penny Ellson
Jean Olmsted
Denis Lose