



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
September 10, 2008
Agenda Item:

STAFF REPORT

To: **Members of the Planning Commission**

From: **Associate Planner Tyler**

Subject: **Conditional Use Permit #10809: Proposal to Establish and Operate a Segway Retail Sales and Showroom at 80-E Main Street (Ark Row); Zelinsky Properties, Owner; Slide4Less LLC, Applicant; Assessor's Parcel Number: 059-102-20**

Reviewed By: _____

PROJECT DATA

Address:	80-E Main Street
Assessor's Parcel Number:	059-102-20
File Number:	10809
General Plan:	VC (Village Commercial)
Zoning:	VC (Village Commercial)
Current Use:	Vacant
Previous Use:	Christine Foley Knitwear
Proposed Use:	Segway Retail Sales
Owner:	Zelinsky Properties
Applicant:	Darren Romar & Steven Steinberg; Slide4Less LLC

PROJECT DESCRIPTION

The 547 square foot commercial space at 80-E Main Street (Ark Row) is currently vacant. The applicant is requesting to open a Segway Personal Transporter (PT) retail sales business at this location, which previously housed Christine Foley Knitwear. A Segway PT is a two-wheeled, self-balancing, electric motorized vehicle, which is steadily becoming a popular, environmentally-friendly form of alternative transportation. As defined by the California Vehicle Code, a Segway constitutes a "motor vehicle".

A conditional use permit is required because this use would constitute a substantial change of use from the prior retail clothing shop. A sales and showroom for motor vehicles is not included on the list of conditional uses for the NC and VC zones found in Section 16-2.11.2 of the Zoning Ordinance. However, the Commission has the authority to either find that the use is similar to other uses listed in that section or may add the use to the list by resolution.

According to the application, 10 to 20 Segway vehicles would be on display at the store at any given time. Test drives would be limited to Angel Island or Town streets. The proposed hours of operation would be Monday through Sunday, 9AM to 5PM, and closed on holidays. The applicant has indicated that only one to two employees would be associated with the business. A detailed narrative and a floor plan are attached as Exhibits 1 and 2.

ANALYSIS

Use Issues

The proposed business would be located in Suite E of the multi-tenant commercial building at 80 Main Street. Giftique, a small gift/greeting card shop, is located to the right of the business (80-D), and Saint Germain's Jewels and Art, a jewelry store, is located to the left (80-F). Access to the business is from the upper Main Street (Ark Row) side of the building, not from the Main Street Parking lot.

According to the application, the proposal to establish a Segway PT retail sales operation and showroom is intended to build interest with consumers and to provide more access to new Segway PT models. Segways are a relatively new mode of transportation and can be quite costly; therefore they do not currently appear to be a high demand product. The units are fairly noiseless and are an environmentally friendly short distance vehicle, with top speeds at approximately twelve miles per hour. The application states that with time, Segways may become more popular as newer models are unveiled and more consumers pick up on the trend.

The applicant intends to stock the subject location with newer available Segway PT models, and have some units available for purchase on the premises. Most of the sales conducted at the subject site will be delivered directly to the customer's home from a central warehouse in Oakland. Therefore, the amount of delivery trucks at the subject site would be minimal compared to other retail uses in the vicinity of Downtown Tiburon.

Staff has reviewed the project for conformance with Municipal Code Sections 16-4.4.2 and 16-4.4.3 and concludes that the proposed use, if appropriately conditioned, would be generally appropriate for the site and location and compatible with surrounding uses. Staff primary concern is with demonstration and test-driving of the vehicles. The proposed location of the use is far from ideal for this specific aspect of the use.

The applicant anticipates that as Segway popularity increases, more consumers will want to test-drive the vehicles or receive instructions on how to ride them. Town staff, including the Police Department, believes that test-driving of the vehicles would not be appropriate on streets in the Downtown area, and operation of Segways would be unlawful on sidewalks, on the Multi-Use Path in the Richardson Bay Lineal Park, or on any bicycle or pedestrian paths owned by the Town. Angel Island State Park currently has a rental operation of units for tour purposes. The applicant proposes this as the primary area for demonstrations and test-driving. However, some testing and instructional testing may be performed on Town streets outside of the Downtown area. For liability reasons, the owner of the Main Street Parking Lot is unwilling to allow test-driving in that lot, and the applicant has indicated that no test-driving would be performed within the Main Street Parking lot.

Staff has included a condition of approval that would prohibit the test-driving of Segways on any sidewalk or street in the Downtown area. In addition, because the proposed use is unlike any other business in the downtown, Staff also recommends that this conditional use permit be reviewed after six (6) months of operation, or sooner for cause.

Parking Issues

The proposed space was previously used as a knit wear boutique, which is considered a small item retail sales use. For the purposes of calculating parking, the proposed use would be similar to a retail sales use with a requirement of one space for every 250 square feet of floor area, or a total of 2 spaces. Parking for this use is located on-site in the Main Street Parking lot. There is also limited public parking along upper Main Street that could be used by customers. The application narrative also addresses the loading issue to the satisfaction of staff. Staff sees no parking or loading issues of concern with the proposed use.

General Plan/Zoning Ordinance Consistency

Staff reviewed the project for consistency with the Tiburon General Plan and Zoning Ordinance. Policy DT-1 of the Downtown Element of the General Plan states that “the Town shall promote a well-maintained downtown area that serves the commercial, service, and passive recreation needs of the community.” The proposed use would be the first business in recent memory to sell motor vehicles in the downtown area. Segway retail sales would appear to be a quiet form of motorized vehicle sales, and in several ways similar to a bicycle retail shop. The on-site aspects of the proposed use appear to be consistent with the provisions of the Village Commercial Zone, and would be generally compatible with other businesses located in the vicinity of the Downtown area. It is the potential off-site impacts of demonstration and test-driving that concern staff.

ENVIRONMENTAL DETERMINATION

Staff has preliminarily determined that the subject application is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15303 of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, no letters have been received regarding the subject application.

RECOMMENDATION

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing, deliberate upon the project merits, and adopt the draft resolution finding the project exempt from CEQA and conditionally approving this project.

Exhibits: 1. Project Narrative
 2. Site Plan
 3. Draft Resolution

Prepared By: Laurie Tyler, Associate Planner

Proposed Use Details: Applicant plans to use the space as a retail sales office for Segway PT's. One-two employees will run the store from 9-5 everyday except holidays. The size of the retail space will be about 547 square feet.

The Segway PT's are still rare and expensive, so we do not expect a large volume of customers. Retail sales for the Segway are conducted in an office-like setting. However, the Segway attracts minor attention, and we expect the shop to draw a steady and increasing stream of new retail customers to the area. Over time, we expect the sales of Segway PT's to increase because the Segway is a new form of transportation that is environmentally friendly, very efficient, and the Segway runs on electricity instead of gasoline.

Our goal is to build interest with consumers, and to provide more access to new Segway PT's. The machine is still unfamiliar to most so we currently rely on a niche markets including law enforcement and other government agencies, motor home owners, mobility impaired, and warehousing, transportation, and security related private businesses. We intend to make available units to Tiburon law enforcement and we intend to work with the Police Chief to integrate Segway's in a reasonable manner. We plan to make available two police Segway's rent free for the Tiburon Police Department. Segway's are also good for parades and other public events and we plan on working with the town to make units available where it makes sense for the Town of Tiburon.

The amount of vehicle traffic for stocking and supplying the shop are negligible compared to most retail operations because the over-all retail sales are relatively low due to the expense and newness of the product. We also deliver larger orders from Oakland where we have a warehouse, and we will thereby limit the units that actually go through the small shop in Tiburon. Many of the sales made at the shop will be delivered directly to the customer's home from Oakland. Our service and rentals are generally also delivered from Oakland. We will maintain a service vehicle that will occasionally be in Tiburon making pick ups and delivery, but the vehicle will operate out of Oakland.

Nonetheless, we will stock the retail office with most new available models of Segway PT and we will have units available for customers to buy on the premises. We expect that over time we will draw more traffic, and ultimately people will want to demo the unit or receive instructions on how to ride the Segway. Any testing by potential customers will be in the shop itself, or in the streets and not on the sidewalks or parking lot.

Our plan is to refer the customers to Angel Island State Park for tours and more in-depth instruction outside of the shop. The State Park has a tour operation that we helped start last year. There are also several other tour operations in San Francisco and Sausalito that we will refer people to for more in depth lessons and tours.

The Segway is a noiseless and environmentally friendly vehicle that offers extreme efficiency. It is a short distance vehicle that works well in smaller communities. We think in the future the Segway will be found useful for a multitude of activities and purposes. It is new and different now but we think many people will eventually see the usefulness of this unique new little vehicle.

Plans and Drawings: No changes to existing structures other than alarms and window signage. No remodeling. No new development. 500 square feet of sales area, and 10-20 new Segway PT units on premises at all times. No changes to structure or surrounding area. No significant waste or litter. No significant changes in demand for electricity or services. Some Segway's use lithium saphion batteries

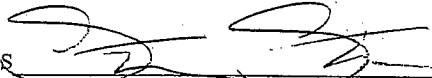
EXHIBIT NO. 1

but are encased to handle the shock and environmental hazards. No disposal of batteries at these premises.

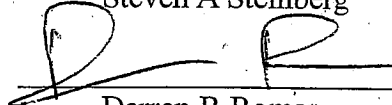
CERTIFICATION: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date: June 22 2008

Applicant's Signatures



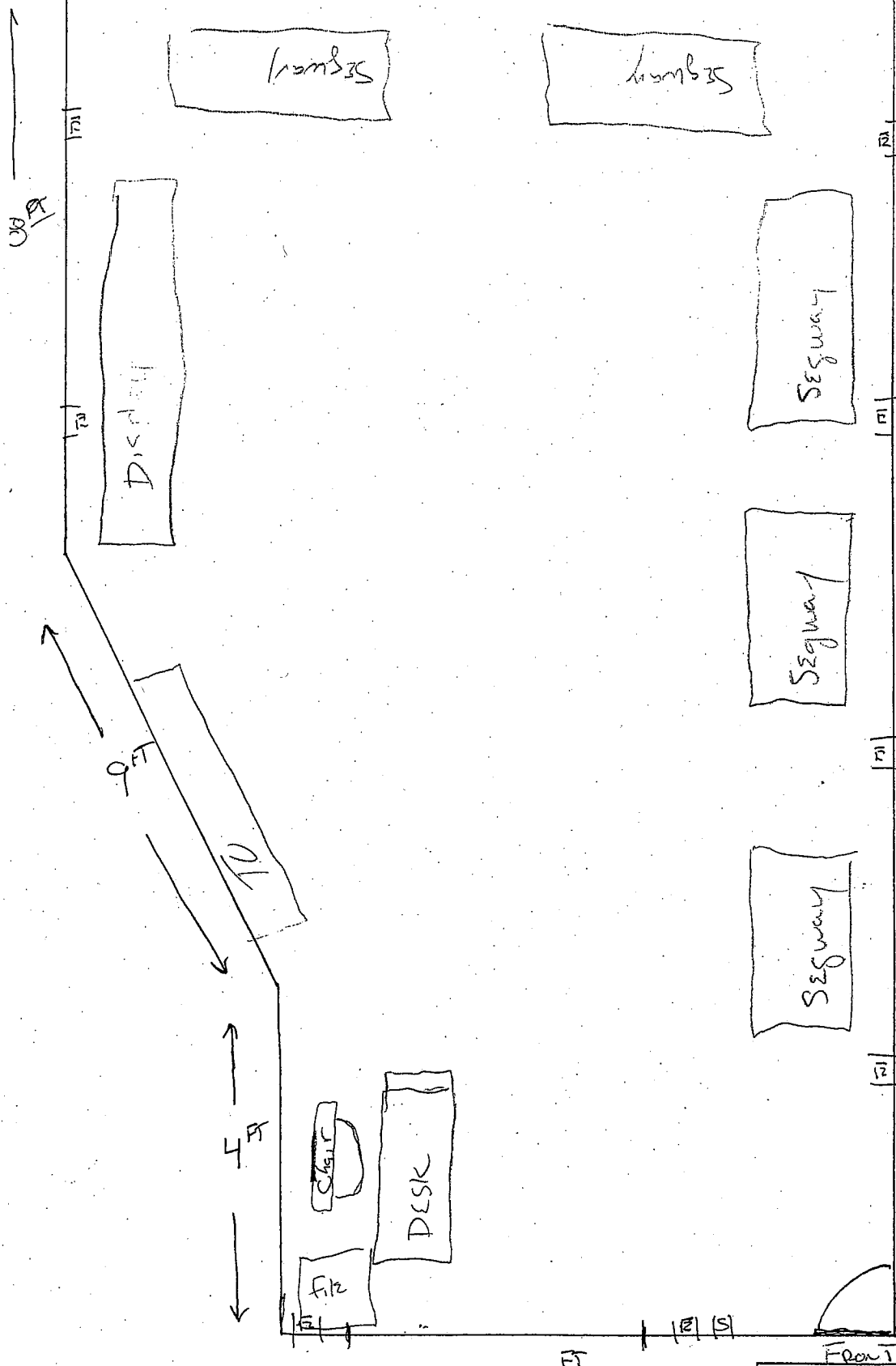
Steven A Steinberg



Darren R Romar

80 E MAIN STREET

21 FT



29 FT

Light Switch
 Elec. Plugs
 TV To SCALP

14 FT

DECEMBER
 JUL 30 2008
 PLANNING DIVISION

EXHIBIT NO. 2

RECORDING REQUESTED
WHEN RECORDED, RETURN TO:
Tiburon Planning Division
1505 Tiburon Boulevard
Tiburon, CA 94920
Attn: Laurie Tyler

RESOLUTION NO. 2008-DRAFT

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON
APPROVING A CONDITIONAL USE PERMIT FOR THE OPERATION
OF A SEGWAY RETAIL SALES AND SHOWROOM ESTABLISHMENT
LOCATED AT 80-E MAIN STREET

ASSESSOR PARCEL NO. 059-102-20

WHEREAS, the Planning Commission of the Town of Tiburon does resolve as follows:

Section 1. Findings.

A. The Planning Commission has received and considered an application for the operation of a segway retail sales business located at 80-E Main Street (File #10809). The application consists of the following:

1. Application Form and supplemental materials received July 30, 2008
2. Floor Plan received July 30, 2008

The official record for this project is hereby incorporated and made part of this resolution. The record includes the Staff Reports, Minutes, Application Materials, and all comments and materials received at the public hearing.

B. The Planning Commission held a duly-noticed public hearing on September 10, 2008, and heard and considered testimony from interested persons.

C. The Planning Commission has found that the project is exempt from the requirements of the California Environmental Quality Act per Section 15303 of the CEQA Guidelines.

D. The Planning Commission has found, based upon the application materials and analysis provided in the September 10, 2008 Staff Report, that the project, as conditioned, is consistent with the Tiburon General Plan and is in compliance with applicable sections of the Tiburon Zoning Ordinance, specifically Sections 16-4.4.2 and 16-4.4.3, and other applicable regulations. The proposed use is intended to build interest with consumers and to provide access to the Segway as an alternative form of transportation that is environmentally friendly, while serving both local residents as well as visitors to the

Town. The use would therefore be consistent with Policy No. DT-1 of the Downtown Element of the General Plan, which states that “the Town shall promote a well-maintained downtown area that serves the commercial, service, and passive recreation needs of the community.” The customer base for this business would consist primarily of local residents and tourists visiting Tiburon.

- E. The Planning Commission has found that the proposed use is similar or accessory to those uses permitted by the Zoning Ordinance for the Village Commercial (VC) zoning district, and hereby incorporates the proposed use as an appropriate use for the VC zone pursuant to Conditional Use Permit review and approval.

Section 2. Approval.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the Town of Tiburon does hereby approve the Conditional Use Permit (File #10809), to operate a Segway retail sales and showroom located at 80-E Main Street, subject to the following conditions of approval:

1. The use shall operate in substantial conformance with the Project Narrative (2 pages) as submitted by the applicant, attached hereto as Exhibit “A” and incorporated herein. Any substantial modification of the approved use, as determined in the reasonable discretion of the Director of Community Development, shall require an amendment to this use permit.
2. There shall be no “test-driving” of Segway units on the streets or sidewalks in the Downtown area. Test driving shall be limited to the retail area at 80-E Main Street, Angel Island, and streets outside of the Downtown area.
3. No music or noise from the use shall be audible from the exterior of the business.
4. Hours of operation shall be limited to between 9:00 a.m. and 5:00 p.m. Hours of operation may be occasionally extended, without amendment of this permit, to match hours of community events in the Downtown Area (e.g. Friday Nights on Main) during times when those events are held.
5. The Town reserves the right to amend or revoke this Conditional Use Permit for cause, in accordance with adopted regulations of the Town.
6. This Conditional Use Permit approval shall become null and void if the approved use has not commenced within one (1) year of final approval, unless an extension has been granted.
7. This Conditional Use Permit shall be reviewed approximately one-hundred eighty (180) days after commencement of the use, or earlier for cause, to determine if

parking/loading issues, noise issues, test-drive safety issues, or other problems arise that are associated with the use.

8. If this approval is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge. The property owner/applicant agrees to defend, indemnify and hold the Town of Tiburon harmless from any costs, claims or liabilities arising from the approval, including, without limitations, any award of attorney's fees that might result from the third party challenge.

PASSED AND ADOPTED at a regular meeting of the Planning Commission on September 10, 2008, by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

EMMETT O'DONNELL, CHAIRMAN
TIBURON PLANNING COMMISSION

ATTEST:

SCOTT ANDERSON, SECRETARY (ACTING)

Attachments: Exhibit "A" (2 pages)



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Planning Commission Meeting
September 10, 2008
Agenda Item:

STAFF REPORT

To: **Members of the Planning Commission**

From: **Scott Anderson, Director of Community Development**

Subject: **Vacant Parcel East of 81 Paseo Mirasol: Amendment to the Ring Mountain Precise Plan (PD#10) to Re-designate a Parcel (Parcel A) from Open Space to Private Recreation use; Doug & Leslie Barry, Owners; Riley Hurd, Applicant; Assessor Parcel No. 038-410-01**

PROJECT DATA

Address: Vacant parcel east of 81 Paseo Mirasol
Assessor's Parcel Number: 038-410-01
File Number: 30802
Lot Size: .56 acres (24,394 square feet)
General Plan: M (Medium Density Residential)
Zoning: RPD (Residential Planned Development)
Precise Plan: Shown as Open Space on Ring Mountain Precise Plan, PD #10
Subdivision: Parcel "A" of RM 20-46
Current Use: Vacant
Owners: Doug and Leslie Barry
Applicant: Riley Hurd, Esquire

PROJECT DESCRIPTION

The applicants desire to install a fenced play area for their children and some landscaping on a roughly half-acre parcel of land under their ownership that was designated as "open space" on the Town's Ring Mountain Precise Plan drawing in 1983. They therefore are requesting a change in the Precise Plan map designation from Open Space to Private Recreation. The proposed play area would be 40 feet by 72 feet and would be surrounded by a 6 foot tall wood-and-wire fence. Several native trees and shrubs would be planted to provide screening for the play area. The site plan and narrative description of the project are attached as **Exhibit 6**.

Partial work on these improvements was performed last year before the work was stopped for lack of permits and is plainly visible in the field. The level play area was roughly defined and partly graveled by the prior work and an approximately 12" high retaining wall was installed. Rolls of artificial turf are still present on the site. The site was winterized to prevent erosion until such time as applications were filed and a Town decision on the permit applications was reached.

HISTORY

In June 1982, the County of Marin approved a Master Plan for the approximately 325-acre Ring Mountain property, authorizing the development of up to 74 single family homes. The 280 acres of undeveloped remainder was to be preserved as open space, preferably public open space if a public agency would accept it for public use. If not, the non-development area would remain as private open space with a public trail easement along the ridgeline.

In September 1983, the Town of Tiburon approved a Precise Plan for the Ring Mountain project. The subject parcel was included as part of the large open space remainder parcel surrounding the development area, and was labeled “Portion of Parcel D” (see **Exhibit 1**). The developable portions of the Ring Mountain property, including the subject parcel, were subsequently annexed into the Town of Tiburon in 1984. All of the other portions of the open space area identified in the County Master Plan and Town Precise Plan were acquired by the Nature Conservancy and became the Ring Mountain Nature Preserve. In the 1990’s, the Marin County Open Space District acquired the Ring Mountain Nature Preserve from the Nature Conservancy and continues to operate and maintain it as public open space. However, neither the Nature Conservancy nor the County or the Town would accept the subject half-acre of land, and it was essentially “orphaned” by the time the Ring Mountain subdivision application was processed. Staff believes that this parcel was unattractive as public open space for several reasons, including the fact that it was heavily disturbed by grading, slide repair and installation of roadway and drainage facilities. Furthermore, it was separated from all other open space by a public street and incapable of providing meaningful habitat value or physical contiguity.

As part of the subdivision process, the subject parcel was labeled “Parcel A: To be retained by Paramount [subdivider] (not a building site)”, as shown on **Exhibit 2**. The CC&R’s for the Ring Mountain Subdivision tied Parcel A to Lot 11 (81 Paseo Mirasol) through a “special easement” provision (see **Exhibit 3**) that requires, among other things, maintenance and payment of taxes on the parcel, while ostensibly allowing limited but non-specific use of the parcel. In an ideal world, the developer would have sought clarification or amendment of the Town’s Precise Plan at this time, but this was not done.

In 2006, the applicants obtained quiet title to Parcel A through a superior court judgment (**Exhibit 4**). It does not appear that any other party contested the grant of quiet title ownership. The Town was not a party to the action and was unaware of it.

ANALYSIS

This is an unusual application driven by a unique situation. Staff believes that the basic question before the Commission is one of policy, and the secondary question before the Commission is one of degree. The policy question is whether Parcel A should be made available to its owners for any use other than Open Space as was shown on the Ring Mountain Precise Plan map. Staff notes that this map is the only map depicting the parcel as open space, and that Town-approved documents subsequent to the Precise Plan map appear to indicate that the original intent of preserving this parcel as pure “open space” were later abandoned, although it clearly was not intended to be usable as a “building site” for residential living purposes. Staff concludes that

Parcel A ended up in an ill-defined limbo land in terms of use or improvement, which could be resolved through an amendment to the Ring Mountain Precise Plan.

Should the Commission disagree with this assessment, then it should consider denying the application. If it agrees, then the issue becomes one of the appropriate degree of use and improvement of Parcel A such that it remains compatible with surrounding development.

Generally speaking, children's play equipment, fenced play areas, and landscaping are all considered traditional ancillary uses of residential property, typically but not always located in the rear yard of a property. This particular situation is unusual due to somewhat isolated location of the play area from the adjoining residence and the high visibility of the proposed improvements from a public street. Due to the relative isolation and lack of direct visibility from inside the associated residence at 81 Paseo Mirasol, there is some potential for the improvements to be treated as a communal play area subject to unauthorized use and even vandalism; i.e. to become an attractive nuisance. A six foot high fence seems unlikely to prevent determined children (or others) from using the area without permission. Staff can only speculate as to whether this will become an issue in the future.

The appearance of the play area improvements and landscaping would essentially form an "entry statement" for the neighborhood of homes on upper Paseo Mirasol. At a minimum, careful review of proposed improvements by the Design Review Board and provision of additional landscaping should be required to better soften the appearance of the improvements. While enhanced landscaping is desirable, Staff does not recommend a dense screen of vegetation that would seek to conceal the play area from public view.

Also, there is a private drainage pipe serving the Ring Mountain subdivision located underneath the proposed play area. The Town Engineer has reviewed the plan of proposed improvements and considers it unlikely that the pipe, which is located deep in the ground, would be affected by the installation or use of the play area. The Town Engineer recommends that the situation be reviewed and signed off by a civil engineer prior to issuance of any building or grading permit. Any approved concrete stairs or landings leading to the fenced area should be relocated out of the drainage easement altogether.

CC&R's

The Town is not party to the Ring Mountain CC&R's and does not enforce them. Staff encouraged the applicants before filing to contact neighbors and any association representative in the area to discuss the application and proposed improvements. This would include any issues that may arise from the CC&R's in terms of use, maintenance, and existing private drainage facilities. As of the date of this report, staff has received one phone call and one counter visit from interested neighbors, primarily seeking information on specifically what type of improvements were being proposed.

ENVIRONMENTAL REVIEW

Staff has preliminarily determined that the subject project is categorically exempt from the requirements of CEQA per Section 15301 of the CEQA Guidelines.

FUTURE ACTIONS REQUIRED

Any affirmative action by the Planning Commission on this application would be in the form of a recommendation to the Town Council. Should the Commission vote to deny the project, that decision would be final, unless appealed to the Town Council. If the amendment to the precise plan is approved by the Town Council, subsequent Town permits would include Site Plan and Architectural Review approval and building permits.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Hold a public hearing on this application:
2. Consider the draft resolution (**Exhibit 7**) recommending approval to the Town Council of the amendment to the Ring Mountain Precise Plan map to re-designate the parcel from Open Space to Private Recreation use.

- Exhibits:
1. Excerpt from Town-approved Ring Mountain Precise Plan drawing
 2. Excerpt from Ring Mountain Final Map (Paseo Mirasol phase)
 3. Excerpt from Ring Mountain CC&R's affecting Parcel A
 4. Superior Court Judgment dated November 28, 2006
 5. Site Plan/Proposed Improvements drawing dated August 7, 2008 and narrative description of proposed improvements
 6. Draft Resolution

LANDS OF MARIN ESTATES

LANDS OF SCHIELEIN CITY OF CORTE MADERA

LANDS OF MUNICIPAL WATER DISTRICT (EXISTING TANK)

LANDS OF NATURE CONSERVATION

134 133

B

EAST

1382.6'

PARCEL "E" OPEN SPACE 37 ac ±

N6°44'47"E 414.43'

N28°08'W NO DISTANCE OF RECORD

N90°00'00"W 3855.00'

PARCEL "D" OPEN SPACE 46 ac ±

AREA II SEE SHEET C3

VIA ELVERANO PHASE

PASEO MIRASOL PHASE

LANDS OF ALTA SUBDIVISION OPEN SPACE

N27°41'43"N 588.15'

PORTION OF PARCEL "D" OF FIELD

LANDS OF REED UNION SCHOOL DISTRICT N42°45'00"E 12333'

AREA IV SEE SHEET C5

MAP OF REEDLAND WOODS UNIT 2

LOS ALTOS

LANDS OF ALTA SUBDIVISION

LANDS OF REED UNION SCHOOL DISTRICT

VIA CAPISTRANO

LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

VIA LOS ALTOS

CORTE SAN FERNANDO

BLACKFIELD

EXHIBIT I

NORTHWESTERN PACIFIC RAILROAD

RING MOUNTAIN

A RESIDENTIAL DEVELOPMENT FOR: RING MOUNTAIN LIMITED

TENTATIVE MAP / PRECISE PLAN

KEY PLAN

Approved by Town Council Resolution No. 2163 dated 9/21/83. Please return this map to Planning Dept. Approved Map Copy #2

BLACKFIELD, EFF.

5 Midden Lane

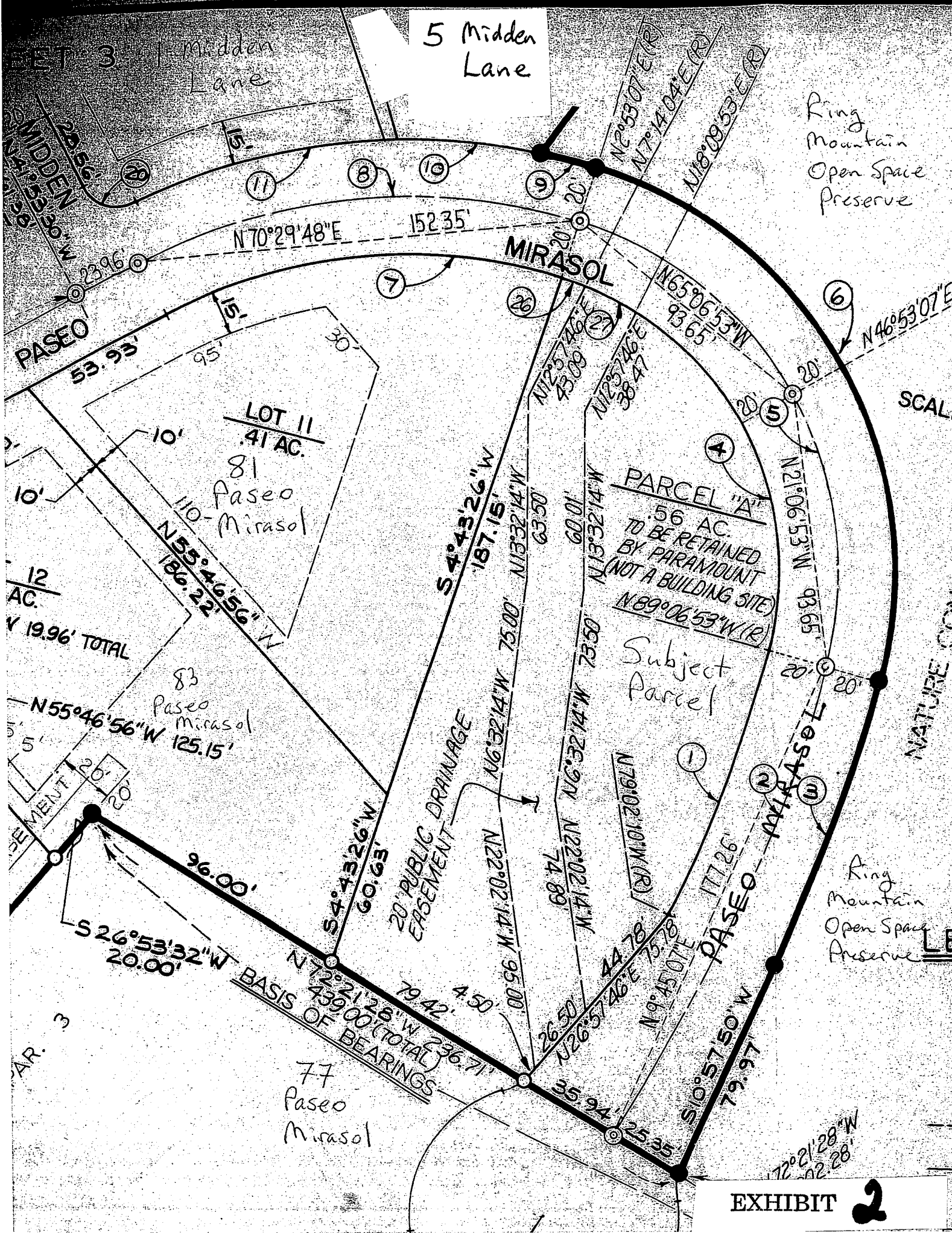
Ring Mountain Open Space Preserve

SCALE

NATURE CONSERVATION

Ring Mountain Open Space Preserve

EXHIBIT 2





Subdivision Title Copy
RECORDED AT REQUEST OF

FIRST AMERICAN

1988 NOV 10 PM 1:00

OFFICIAL RECORDS
MARIN COUNTY CALIFORNIA
JAMES J. DAL BON

RECORDING REQUESTED BY:

AFTER RECORDING RETURN TO:
Collette & Erickson
555 California Street, Suite 4350
San Francisco, CA 94104
ATTN: Kenneth J. Cohen, Esq.

THIS STAMP CONFIRMS
RECORDING DATA ONLY

283⁰⁰

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

RING MOUNTAIN
(Paseo Mirasol-Blackfield Phase)

RECEIVED

AUG 2 1989

TOWN OF TIBURON
Dept. of Community Development

NOTE TO STAFF:
Bldg envelopes
are shown
in Exhibit A

benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

→ Section 2.5. Special Easement. The plot of land designated as Parcel "A" on the Paseo Mirasol Map is not a Lot and is subject to a right of the Owner of Lot 11 to cross over and use such Parcel "A" subject to all restrictions set forth in the Paseo Mirasol Map and under applicable ordinances. Such plot of land is not a buildable site. The Owner of Lot 11 shall also have the obligation to keep and maintain such Parcel "A" and to pay any and all taxes and assessments levied thereon, except for maintenance of any Improvements on such Parcel "A" to be maintained by the Association pursuant to Section 4.8 or any other provisions of this Declaration; provided, that the obligations of the Owner of Lot 11 to keep and maintain such plot shall terminate if (and only if) Declarant shall convey fee title to Parcel "A" to The Nature Conservancy (and if The Nature Conservancy agrees in writing to keep and maintain such plot) or to the Town for open space. Any taxes or assessments paid by the fee owner of such Parcel "A" shall be reimbursed by the Owner of Lot 11 promptly upon receipt of demand therefor with appropriate supporting documentation. Anything herein

to the contrary notwithstanding, the use and maintenance of such Parcel "A" by the Owner of Lot 11 shall be subject to the same conditions and restrictions as are applicable to Lots under this Declaration as if such Parcel "A" were a Lot, but in no event shall such Parcel "A" be deemed a Lot for purposes of assessment under Article V of this Declaration.

ARTICLE III

RESTRICTIONS ON USE AND OCCUPANCY

Section 3.1. Residential Use. Lots shall be used for residential purposes only, and no part of the Project shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purpose. However, for a period of five (5) years from the date of recordation of the Declaration, Lots owned by Declarant may be used by Declarant or its designees as models, sales offices, and construction offices for the purpose of developing, improving, and selling Lots in the Project.

Section 3.2. Leasing. An Owner is permitted to lease or rent his Lot and all Improvements thereon. However, any lease or rental agreement shall be in writing signed by both parties, and any tenant shall abide by and be subject to all of the terms and provisions of this Declaration, the Articles and the Bylaws.

FILED

NOV 28 2006

KIM TURNER
Court Administrator
MARIN COUNTY SUPERIOR COURT

C. Lucchesi

1 GARY T. RAGGHIANI, ESQ. (SBN 43049)
TODD W. SMITH, ESQ. (SBN 235566)
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3 874 Fourth Street, Suite D
San Rafael, California 94901-3246
4 Telephone: (415) 453-9433
Facsimile: (415) 453-8269

5 Attorneys for Plaintiffs DOUGLAS C. BARRY
6 AND LESLIE NOBLE BARRY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10 DOUGLAS C. BARRY AND LESLIE
11 NOBLE BARRY, formerly known as
12 LESLIE NOBLE

13 Plaintiffs,

14 vs.

15 RING MOUNTAIN ASSOCIATES, A
16 General Partnership; All persons unknown
17 claiming any legal or equitable right, title,
18 estate, lien or interest in the property
19 described in the Complaint adverse to
Plaintiff's title or any cloud upon Plaintiff's
title; and DOES 1 through 10, inclusive.

20 Defendants.

Case No. CV 061617

JUDGMENT QUIETING TITLE

21
22 This cause came on regularly for trial on November 28, 2006 in Department H
23 the above-entitled court, the Honorable John A. Sutro, Judge, presiding, sitting without
24 a jury. Plaintiffs appeared by Todd W. Smith, counsel; and defendants did not appear.
25 Documentary evidence was presented by plaintiff. The cause was argued and
26 submitted for decision. A statement of decision was not requested.

27 NOW, THEREFORE, IT IS ADJUDGED, ORDERED, AND DECREED that:
28

EXHIBIT 4

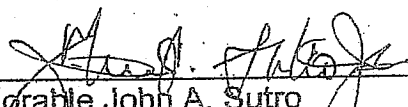
1. As of November 28, 2006, PLAINTIFFS DOUGLAS C. BARRY AND
LESLIE NOBLE BARRY, formerly known as LESLIE NOBLE, are the sole owners, as
husband and wife, of the title in fee simple in the following real property, to wit:

Parcel A, as shown upon that certain Map entitled Ring
Mountain Subdivision, Paseo Marisol Phase 1, Tiburon, Marin
County, California, filed for record October 26, 1988 in Volume
20 of Maps at page 46, Marin County Records.

2. The title is subject to the restrictions contained in the "Declaration of
Covenants, Conditions and Restrictions for Ring Mountain (Paseo Mirasol-Blackfield
Phase)" recorded with the Marin County Recorder's Office.

3. RING MOUNTAIN ASSOCIATES, DOES 1 THROUGH 10, and all other
persons claiming any legal or equitable right, title, estate, lien or interest in the property
described in the Complaint, defendant(s) herein, own no right, title, estate, interest, or
lien, whatever, in the property.

Dated: 11.28.06


Honorable John A. Sutro
Judge of the Superior Court

THIS INSTRUMENT IS A CORRECT
COPY OF THE ORIGINAL ON FILE
IN THIS OFFICE






Attest: DEC 11 2006

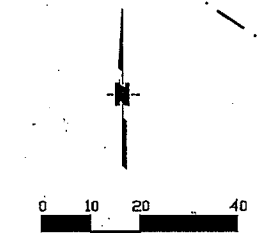
DAVID LURNER
COUNTY CLERK
MARIN COUNTY SUPERIOR COURT
By: Joey Dale Deputy

Site Plan/Proposed Improvements

81
Paseo Mirasol

LEGEND

-  (N) CONC. STAIRS/ LANDINGS
-  (N) FENCE LINE w/ GATE - 6' HIGH OVERALL; 4x4 P.T. WOOD POSTS w/ DEER FENCE MESH/WIRE; TOP RAIL 2 x 4 P.T. WOOD
-  (N) NATIVE TREES
-  EXISTING CULVERT
-  EXISTING FIRE HYDRANT



RECEIVED
AUG 07 2008
PLANNING DIVISION

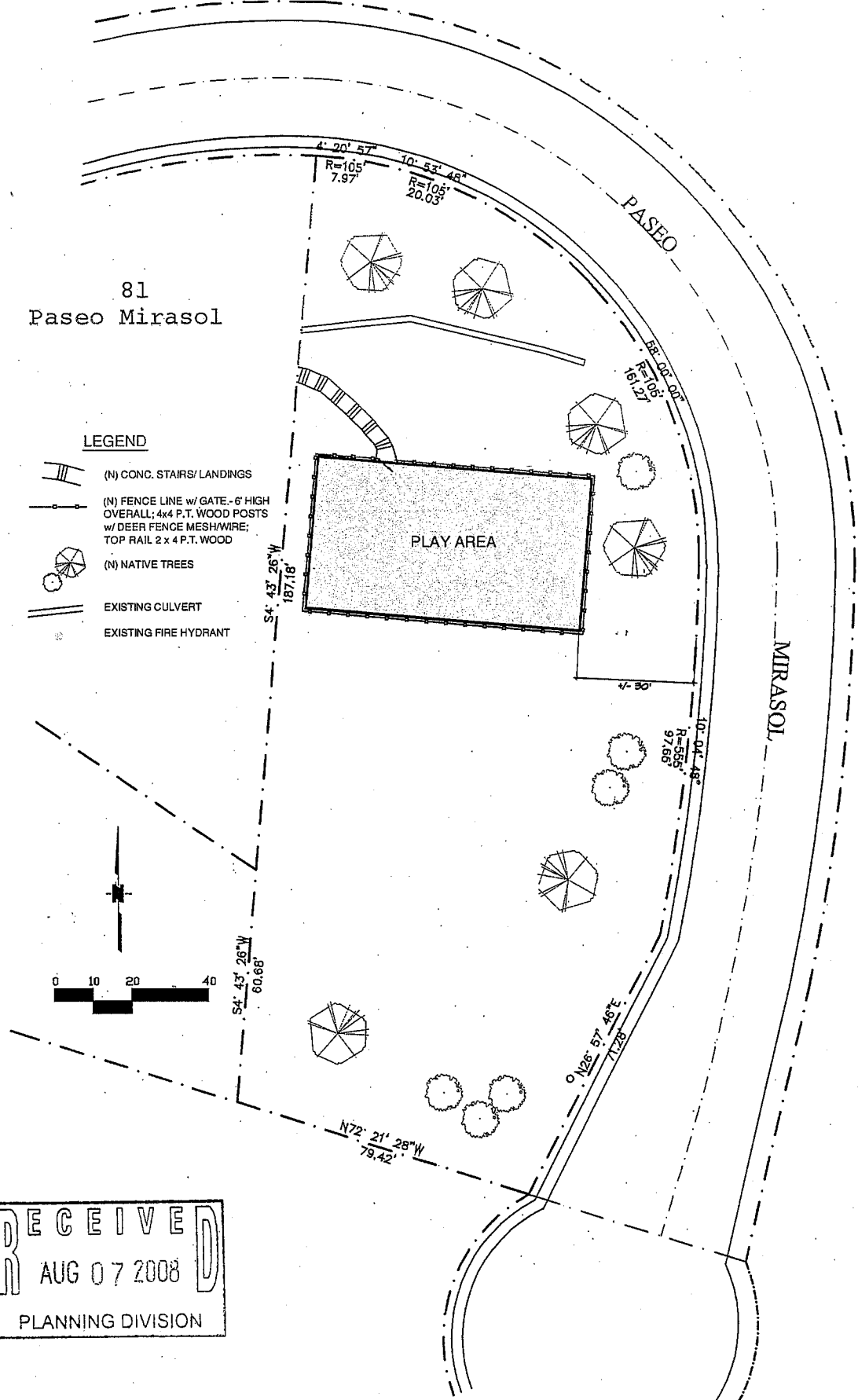
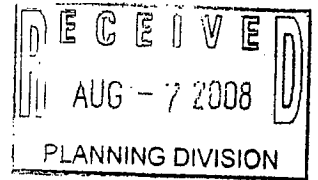


EXHIBIT 5
p. 1 of 2



ATTACHMENT TO PRECISE PLAN AMENDMENT APPLICATION – "PARCEL A"

Brief description of the proposed project:

The landowners seek to change the designation of Parcel A in the Ring Mountain Precise Plan from "Open Space" to "Private Recreation." This precise plan amendment will allow the landowners to construct a play area for their children surrounded by a modest fence and appropriate landscaping. The Town's zoning of the Parcel is "Residential Planned Development" and the General Plan shows the parcel as "Medium Density Residential."

Parcel A was a remnant parcel from the subdividing of the Ring Mountain Development. While originally designated as "open space" in the Ring Mountain Precise Plan, the parcel was rejected by a number of public agencies, likely due to the location of the Paseo Mirasol street and the manner in which the parcel was cut off from surrounding open space and was located directly adjacent to the residence at 81 Paseo Mirasol.

While the responsibility for Parcel A has always been that of Doug and Leslie Barry pursuant to the CCRs for the subdivision, they became the fee owners to the parcel by a November 28, 2007, Superior Court judgment.

Now, the Barrys wish to effectuate the requested zoning change in order to construct a 72'x40' flat play area with a surrounding 6' fence. The play area would be screened by 6-10 indigenous trees and serviced by steps from the adjacent residence. The cut and dirt retaining wall already in place from the winterization of the site would be maintained as part of the project.

RESOLUTION NO. 2008-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON
RECOMMENDING TO THE TOWN COUNCIL APPROVAL OF
AN AMENDMENT TO THE RING MOUNTAIN PRECISE PLAN (PD #10)
FOR PROPERTY LOCATED ADJACENT TO 81 PASEO MIRASOL
ASSESSOR PARCEL NO. 038-410-01

WHEREAS, the Planning Commission of the Town of Tiburon does resolve as follows:

Section 1. Findings.

- A. The Town has received and considered an application (File #30802) filed by Doug and Leslie Barry for an amendment to the Ring Mountain Precise Plan (PD #10) to amend the Precise Plan map to change the designation from Open Space to Private Recreation on property located adjacent to 81 Paseo Mirasol designated as Parcel "A" on the recorded subdivision map and further identified as Assessor Parcel 038-410-01. The application consists of the following:
1. Application form and supplemental materials, dated August 7, 2008.
 2. Site Plan/Proposed Improvement Drawing, date-stamped received by Town of Tiburon on August 7, 2008.
- B. The Planning Commission held a duly-noticed public hearing on September 10, 2008, and heard and considered testimony from interested persons.
- C. The Planning Commission has found that the project is exempt from the requirements of the California Environmental Quality Act per Section 15301 of the CEQA Guidelines.
- D. The Planning Commission finds, based upon application materials and analysis presented in the September 10, 2008 Staff Report, as well as visits to the site and testimony received from the applicant, that the project is generally consistent with the overall intentions of the Ring Mountain Precise Plan and related approvals granted subsequent thereto.
- E. The Planning Commission finds the project to be consistent with the goals, policies and general objectives of the Tiburon General Plan.

Section 2. Approval.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends amendment of the Ring Mountain Precise Plan (PD #10) to the Town Council, subject to the following conditions:

1. The Ring Mountain Precise Plan map, specifically Sheet C-1 dated January 1983 and revised April 11, 1983, is hereby amended for the subject property to delete text reading "Portion of Parcel D" and replace said text with text reading "Private Recreation (play area) appurtenant to Lot 11, see Town Council Resolution No. [insert #]".
2. Private recreational improvements shall be generally limited to not more than those shown on and described in Exhibit "A", the Site Plan/Proposed

Improvements drawing, and Exhibit "B", Brief Description of the Project, both of which are attached hereto and made a part of this Resolution, with the understanding that play equipment would be installed within the fenced play area.

3. All physical improvements shall be subject to prior approval of Site Plan & Architectural Review by the Town, as well as issuance of building permit where required.
4. The Design Review Board shall review and approve appropriate landscaping for the parcel. The Board shall consider substantially enhancing the landscaping shown on the Site Plan drawing as appropriate; said landscaping shall be installed and maintained at the expense of the permit-holder.
5. Prior to issuance of a building permit, a qualified civil engineer shall review the proposed improvements with respect to the existing drainage facilities within Parcel "A" and submit a report and recommendations to the Building Official. Said review and report shall be funded by the permit-holder.
6. Any stairs or landings should be kept entirely outside of the drainage easement.
7. This approval shall in no way alter other provisions of the Ring Mountain Precise Plan not specifically described herein.

PASSED AND ADOPTED at a regular meeting of the Tiburon Planning Commission on _____, 2008, by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

EMMETT O'DONNELL, CHAIRMAN
Tiburon Planning Commission

ATTEST:

SCOTT ANDERSON, SECRETARY

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