

# 1900 Brush Creek Road Appeal



# Threshold Issues

Not a neighbor dispute; appeal is disputing Staff's application of Code to these facts

- Issue 1:
  - Heritage redwood tree removal
    - Insufficient mitigation
    - Procedural deficiencies
- Issue 2:
  - Home addition violates development standards

# Heritage Tree Removal Flawed Decision

## Abuse of Discretion

- The City abused its discretion by applying 17-24.050 (tree removal where development is proposed on property) instead of applying 17-24.040 (tree removal where no development is proposed on property)
  - At the time of the removal, there was no development application submitted. The tree was voluntarily removed months in advance of any project and should be subject to the four (4) specific findings detailed under 17-24.040(B). The Director failed to make ANY findings in approving the tree removal.
- No qualified arborist report was ever submitted to the City in support of the application.
- The Applicants justifications for removing the tree evolved throughout investigation:
  1. Encroaching into home foundation at time of purchase and causing damage to roof (no evidence in home inspection report of either).
  2. Fire hazard claim from undocumented “arborist” letter (does not qualify as evidence).
  3. Safety hazard for people using the yard (hearsay opinion from unknown source).

# Heritage Tree Removal

## Timeline

- October 2019: tree removed
- September 1, 2020: Jesse Oswald informs appellant that Heritage Tree Removal is referred to City Attorney for input.
- September 17, 2020: City issues notice of violation and provides a copy of Tree Ordinance (17-24)



### **17-24.140 Violation—City approvals.**

The owner or occupant of any property on which a violation of the provisions of this chapter was committed, if such violation was committed by the owner or a lawful occupant thereof, or committed with the permission or consent of either such person, shall be denied, for a period of two years from the date of the City's discovery of such violation, any approval or permit which otherwise might have been issued by the City for the development or further improvement of such property. Prohibited approvals or permits shall include, but not be limited to, conditional use permits, variances, and building or demolition permits. The provisions of this section shall not apply to any approval or permit which is needed or required to maintain the health or safety of those occupying existing improvements on the property. If the violation has been established by the final judgment of a court, the Director shall, by appropriate notice to the owner of the property and the pertinent City departments and agencies, implement the provisions of this section. If an alleged violation of this chapter has not been the subject of a court

RE: [EXTERNAL] Deputy Sheriff/Contractor - Illegal Build

From: Oswald, Jesse (joswald@srcity.org)

To: kathleendpamell@yahoo.com

Cc: kmahre@srcity.org

Date: Tuesday, September 1, 2020, 07:07 AM PDT

Good morning Ms. Parnell,

My apologies for delays in response and the difficulties you have endured. Thank you for the detailed information on the matter next door. The details will definitely assist with the investigation.

Since beginning the investigation on the matter, our Code Enforcement and Planning Divisions have worked with the owner of 1900 Brush Creek Rd. to determine a path to legalize the addition. In no instance will any aspect of the project be "rubber-stamped". Any and all projects are required to meet all regulations administered by this department. If any variances are required, appropriate applications for them will be required and that-being an entitlement – will require public notification.

The process is still in infancy with plan development and evaluation by the professionals charged with ensuring compliance with all applicable zoning codes, building codes, and applicable regulations.

The matter of a tree removal without approvals has been referred to our City Attorney's Office for input.

## Jesse Oswald email to City staff 11/16/20

Adam (and realistically Andrew):

1. When I talk to the complainant and explain the realistic approvals – should I explain that when submitted – the application will be approved and no moratorium will be set on the property for two years for applications. If she wishes to appeal this she can to the Director?

I am anticipating a bit of a “conversation” on that.

## Andrew Trippel email to City staff 11/23/20

2. Mr. Robertson’s letter indicates that a tree image is attached; however, I didn’t receive an image of the tree. Could you request that image for the record? In the interim – and lacking an arborist’s report specifying that the tree is an imminent hazard – Planning would approve the tree removal as part of the approval of the project and require mitigation of a tree removed in accordance with City Code [Section 17-24.050 Permit category II – Tree alteration.](#)

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- September 18, 2020: Developer issues statement to City justifying tree removal.



September 18, 2020

Director

Planning and Economic Development Department

100 Santa Rosa Avenue Room 3

Santa Rosa, CA 95404

Dear Sir or Madam:

We are the current owners of the property at 1900 Brush Creek Road Santa Rosa, CA 95404, which we purchased in July, 2019. Upon purchase, an immediate concern of ours was the redwood tree located on the north side of our property line. Our initial concerns with the tree were the root system that was encroaching on the existing foundation as well as limbs that were overlaying our roofline and causing damage to the existing shingles. Additionally, the overlaying braches and limbs also posed a foreseeable threat during windy conditions as well as eliminated the defensible space recommendation in an already high-risk fire zone. Due to the aforementioned reasons, it was recommended that we have the tree removed, which was completed in or around October 2019. Secondly, we are in the process of applying for a permit for an addition to our home on this property that also would have required the removal of this tree.

We sincerely apologize for our naïve actions in removing the tree without the proper permit; we were were unaware of this requirement. We are writing this

To: Daniel & Amber Lichau

The Coastal Redwood, *Sequoia sempervirens*, at 1900 Brush Creek Rd. Santa Rosa, CA 95404 was approximately 55 feet in height. DBH was approximately 70 inches. The tree was encroaching on the foundation of the house. The tree had previously failed limbs and the drip line was overhanging the roofline posing a fire hazard. This tree was also a co dominant stem with included bark within the first 5-7 feet of the trunk above grade.

September 24, 2020

## Mark email to Developer @ 2:55 PM

The paper work submitted for the removal of the redwood tree is incorrect. The report as to why the redwood tree was removed must be on company letter head, meaning the arborist that had removed the tree needs to have the report on his letter head. This is the second request regarding the tree issue.

## Developer response back to Mark @ 9:52 PM

As far as the requested letter for the tree, please excuse us for not getting you the correct document. We are seemingly at a point that we must request for alternative corrective actions than the requested letter. We consulted and hired an individual to cut down the tree and were given the details about the trees that were outlined in the submitted letter at the time. We contacted the individual who cut down the tree to obtain the requested info on the tree and were given the letter without letterhead or a signature. Upon further contact today, we were informed that the individual that cut down the tree was not an arborist nor does he own the tree company for which he works for and therefore drafted the letter with the requested information and sent it to us but without a signature or letterhead. I've had extensive contact with the arborist and owner and although he did write us up the letter with your office's requested information that we had given to you, he's not able to sign his name because he did not personally see the tree prior to it being cut. He said he's willing to talk to whomever regarding the situation but won't be able to sign for the provided information because it was his employee (and father) that cut down the tree. Can you please advise us on how to proceed without an arborist

## Robertson Engineering letter dated 10/30/20

It is my understanding that they had to remove an existing Coastal Redwood tree. I have reviewed a photograph of that tree. It was a 55' tall tree that was encroaching into the foundation of the house and had failed limbs fall onto the roof where the tree dripline was overhanging. The gentleman that removed the tree felt that it posed a fire hazard and a safety hazard for the existing house and people who may be using the yard. This tree, which had a split trunk was also a co-dominant stem, which included bark within the first 5'-7' of the trunk above the existing ground. The diameters of the split double tree at chest height was approximately 48" and 26" respectively. Attached is a photo of the tree prior to its removal.

# Heritage Tree Removal Cont.

## Inconsistent and Varying Justifications

1. Roots Encroaching into home foundation at time of purchase and causing damage to roof (no evidence in home inspection report).
2. Fire hazard claim from undocumented “arborist” letter (does not qualify as evidence). Staff repeatedly asked for qualified arborist report.
3. Safety hazard for people using the yard (hearsay opinion from unknown source).

17-24-010: The City Council finds and declares that trees contribute greatly to the health, safety and general welfare of all of the City’s citizens and that the preservation and proper maintenance of trees is a matter of citywide concern. The City Council further finds and determines that it is necessary to enact regulations prohibiting unnecessary damage, removal, or destruction of trees.

The enforcement provision detailed under 17-24.140 is the Council’s legislative response to codify the policies under the intent and purpose of this Chapter in the Code.



# Home Addition Compliance

- Fails to comply with conditions of approval from original parcel map approval.
- Fails to comply with building envelope restrictions imposed at time of parcel map.
- Fails to comply with current zoning standards for setbacks.

### Planning Condition 3:

3. Building setbacks shall be shown on the local agency sheet of the final map. Front setbacks for one story structures shall be 50 feet from the Brush Creek Road pavement and 100 feet for the two story portion of the structure.

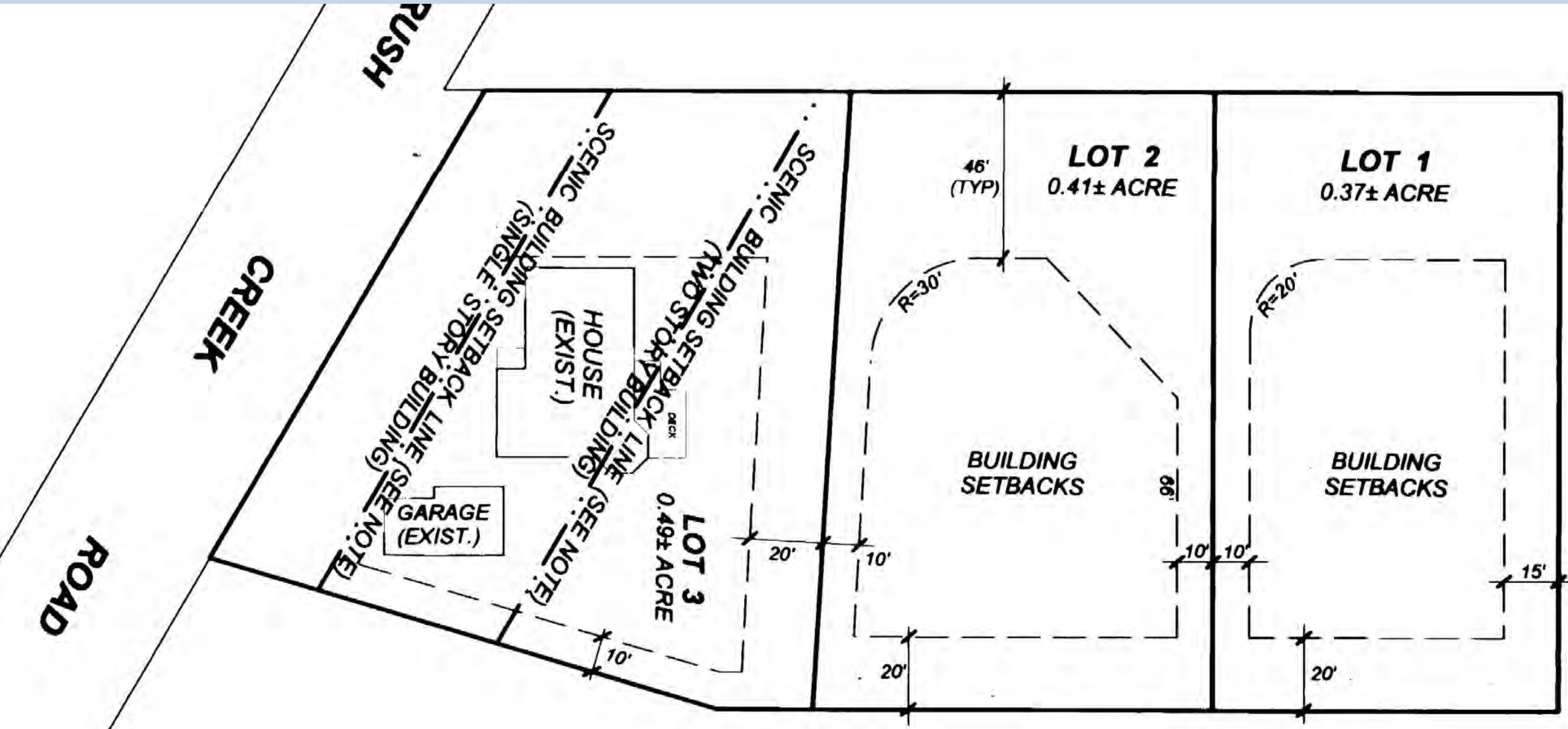
### Planning Condition 8 (c):

- c. A 10 foot separation shall be maintained between the edge of pavement and existing house.

### Engineering Condition 11:

11. Turn around capability on the common driveway shall be provided with clear backup of 46 feet from garage face to opposing face of curb and with a continuation of the common driveway 10 feet beyond the last driveway access point.

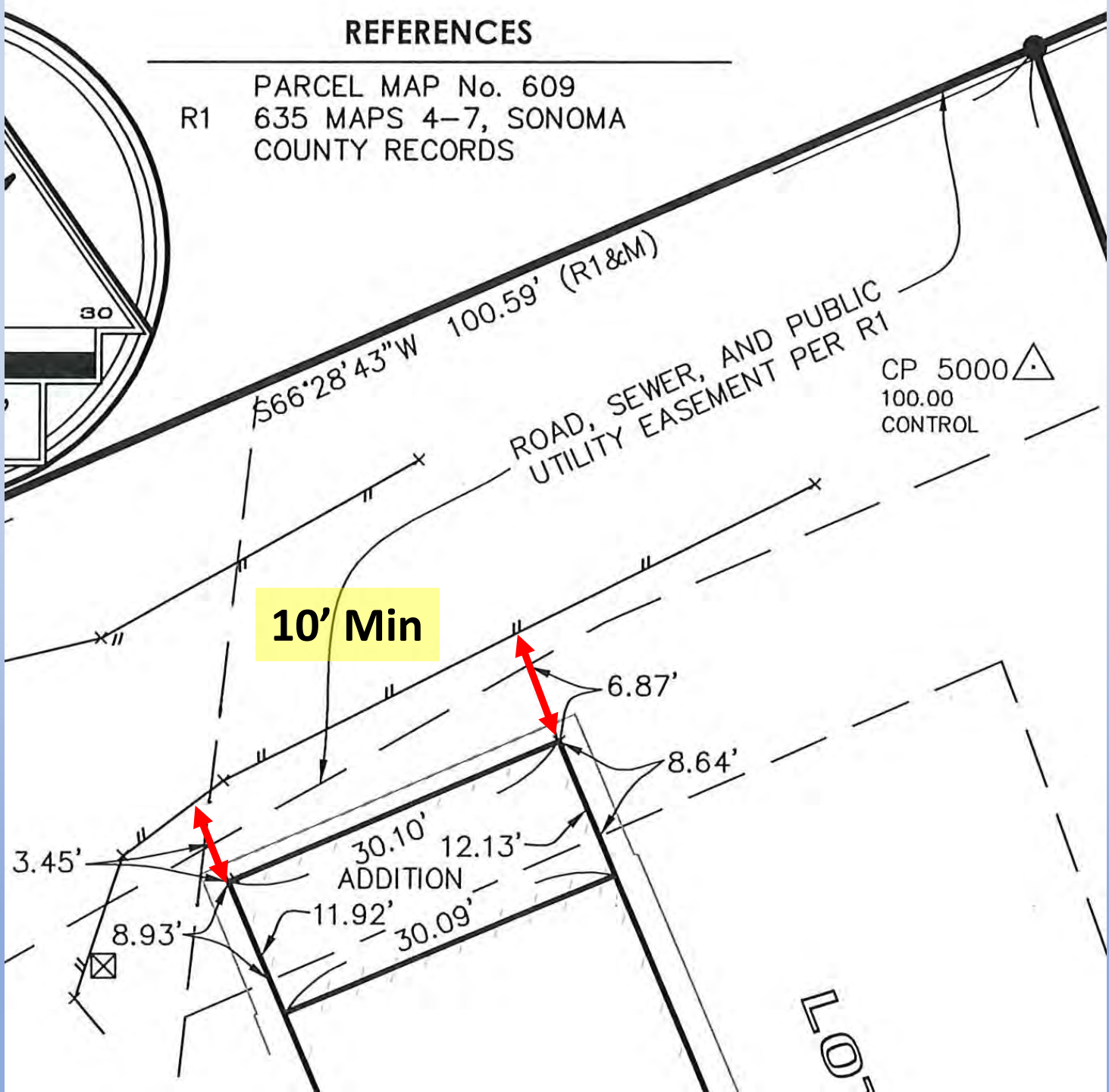


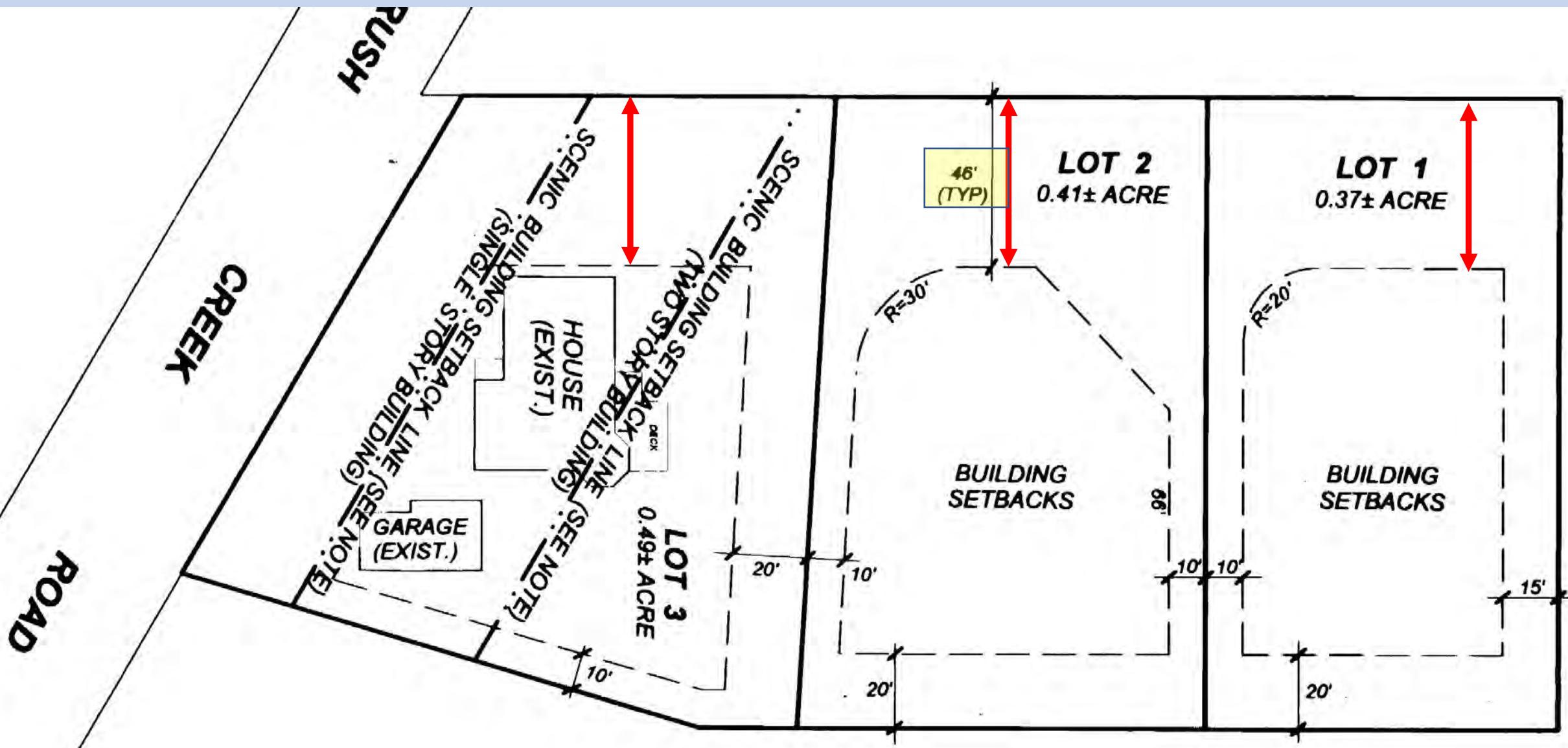


We know this because it is on the only sheet that references the 50'/100' setback for scenic roadway.

# REFERENCES

PARCEL MAP No. 609  
R1 635 MAPS 4-7, SONOMA  
COUNTY RECORDS





# Building Envelope Map Compliance

- Ray Carlson submitted his professional opinion regarding application of building envelopes to parcel maps in City of Santa Rosa.
- Mike Buti, the engineer/surveyor who prepared this specific map submitted his professional opinion on the application of the building envelope restrictions.
- The City failed to read its Code in totality to appreciate how the building envelope restrictions are applied and enforced:
  - 19-28.200(D): “All required notes and all required additional survey and map information, including but not limited to, building setback lines, building envelopes...[shall be contained on the information sheet].”
  - 19-08.040; “Building Envelope is defined as the area of a lot or parcel of real property within which structures must be confined...and which is delineated on the information sheet of the parcel map and so designated.”
- Numerous other maps containing building envelopes have been filed and accepted by the City.





Parcel Map 566

(1997)

Book 564, P. 8-10

635

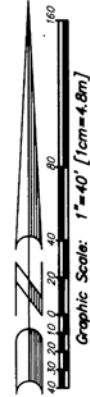
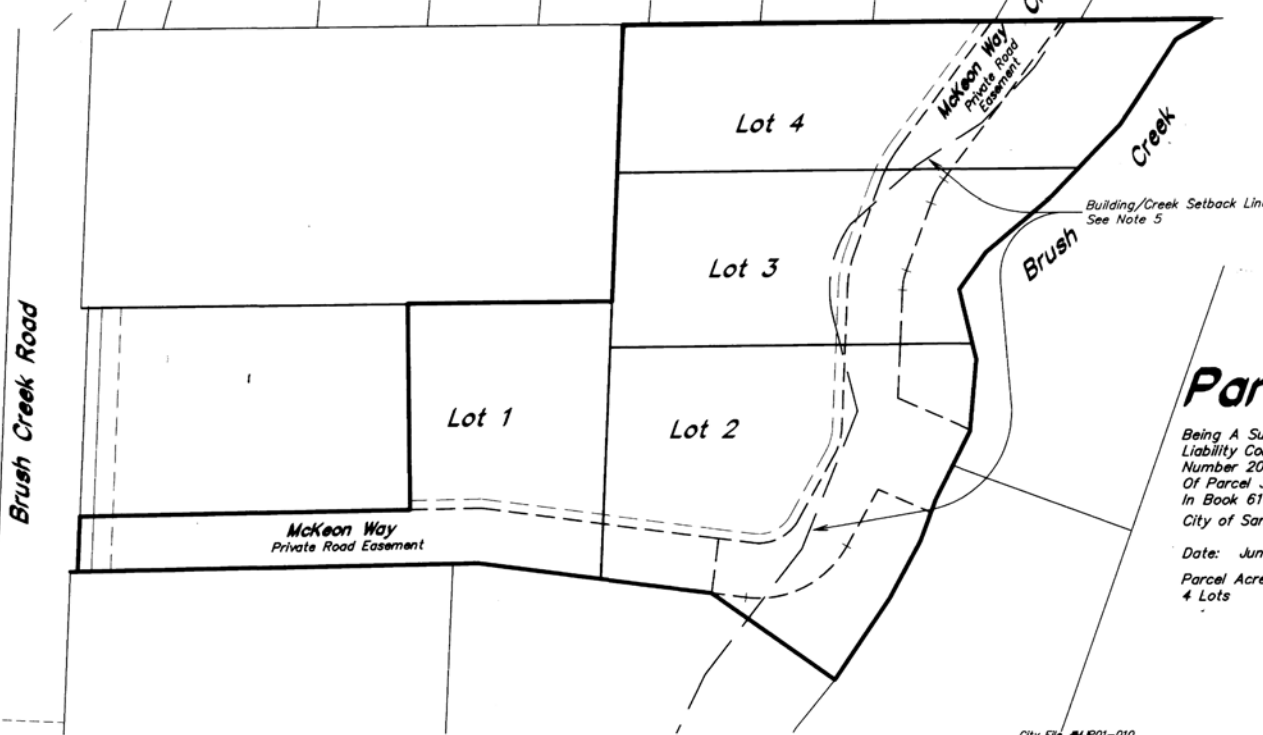
44

**AGENCY REQUIRED INFORMATION**

All "Agency Required Information" is for informational purposes describing conditions as of the date of filing of this map, and is not intended to affect record title interest. Such information is derived from public records and reports, and inclusion hereon does not imply the correctness or sufficiency of those records. All such information is subject to change, alteration or variance in accordance with State, County and/or local ordinances and local agency regulations and procedures.

- 1 Demand fees, meter installation fees, and processing fees required by the City must be paid by the applicant prior to issuance of a building permit. Non-participation fees will be required in addition to standard demand fees for services connected to mains
- 2 An extension agreement prepared by the utilities department must be signed by the developer for the extension of public mains prior to commencement of water and sewer services.
- 3 Trees may not be planted within 10' of a public sewer main. The city utilities department will not be responsible for repairs or replacement of landscaping in public utilities easements
- 4 Park acquisition and/or park development fees shall be paid at the time of building permit issuance, and the amount shall be determined by the resolution in affect at the time. This project was deemed complete on March 20, 2001.

- 5 A Building/Creek Setback Line along Brush Creek shall be 2-1/2 times the height of the creek bank plus 30 feet measured outward from the toe of the creek bank or 30 feet measured outward from the top of the creek bank, whichever distance is greater.
- 6 A soils report was prepared for this project by Giblin Associates, Consulting Geotechnical Engineers dated November 14, 1994, their Job No. 804.3.0 and supplemental letter dated November 30, 1998, Job No. 804.3.5
- 7 The shared driveway contained in the "Private Road Easement" over Lots 3 & 4 is subject to a Joint Use & Maintenance Agreement involving Lots 2, 3 & 4, which will be recorded contemporaneously with the filing of this map.
- 8 Finish Floor Elevations On Lots 1, 2, 3 & 4 Shall Be A Minimum of 263.0.
- 9 Lots 1, 2, 3 & 4 shall accept all historic drainage flows from offsite properties.
- 10 Record title interest and encumbrances were based upon a title report prepared by North Bay Title Company, Order Number 00106390-001-KLE, dated February 4, 2002
- 11 Lot 1 shall be limited to access to Brush Creek Road and be responsible for all frontage improvements required by "City of Santa Rosa, Parcel Map No. 586" related to the driveway connection
- 12 Private driveways shall include turn outs and meet Fire Department requirements
- 13 No structures may encroach on any public water or sewer easement on, above or below the surface of the ground. This includes floating and foundations or eaves from the roof of any adjacent structures.
- 14 Residential construction on Lot 4 shall be limited to one story.



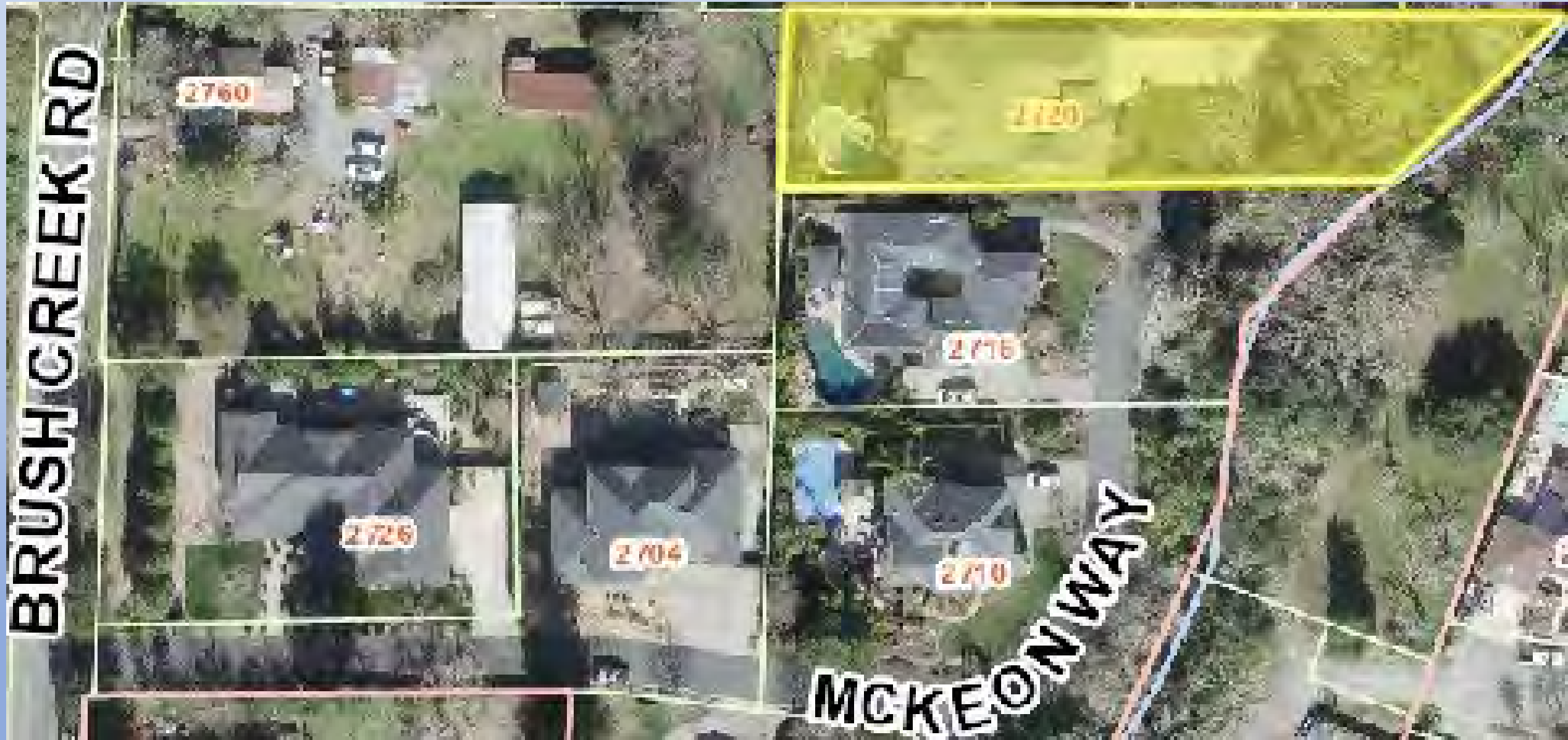
Supplemental Map Sheet  
For All Local Agency Required Information  
City of Santa Rosa  
**Parcel Map No. 618**

Being A Subdivision Of The Lands Of MILITELLO LLC, a California Limited Liability Company, As Described By Deed Recorded Under Document Number 2000-094295, Sonoma County Records; Being A Division Of Parcel 3, "City Of Santa Rosa, Parcel Map No. 586", Recorded In Book 616 Of Maps, Pages 22-26, Sonoma County Records  
City of Santa Rosa, County of Sonoma, State of California

Date: June 2001  
Parcel Acreage = 2.09 Acres  
4 Lots

APN 182-040-027

**d**  
Adobe Associates, Inc.  
Civil Engineering, Land Surveying & Land Development Services  
415 Russel Avenue, Santa Rosa, CA 95403  
707 526 2664  
707 526 0331  
Job 98159 sheet 5 of 5





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Creek Meadow Drive

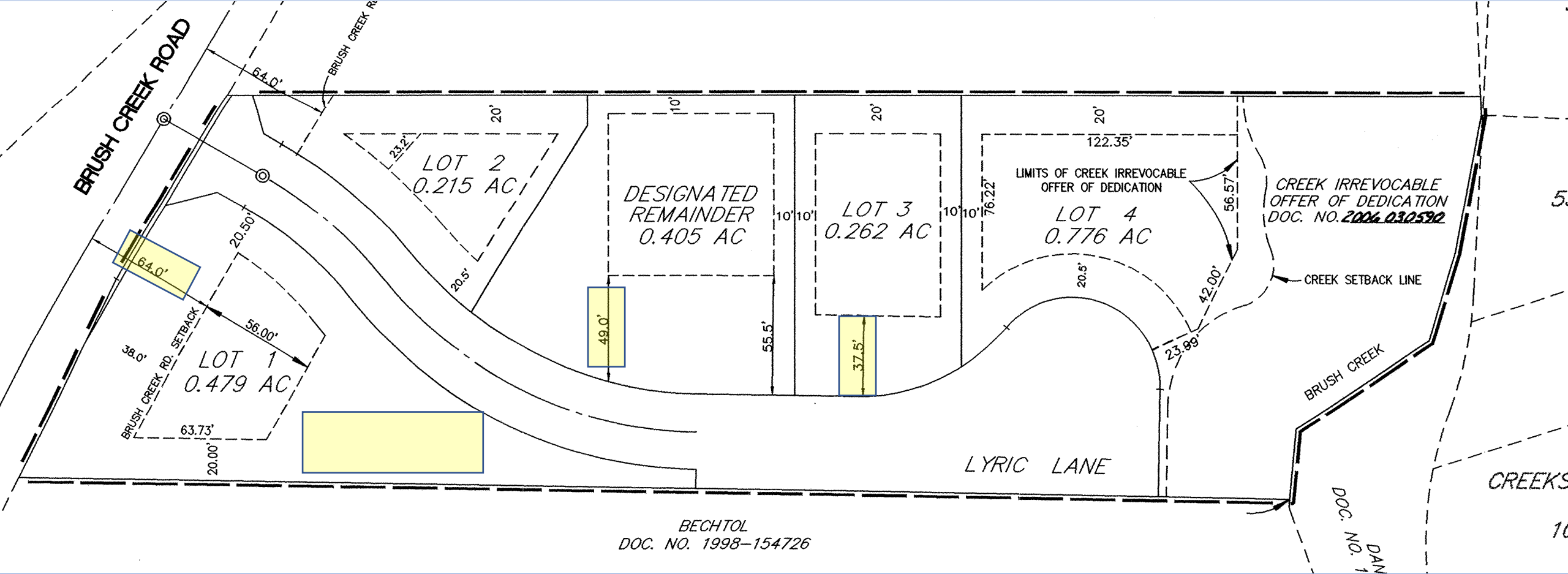


Google

# Parcel Map 639

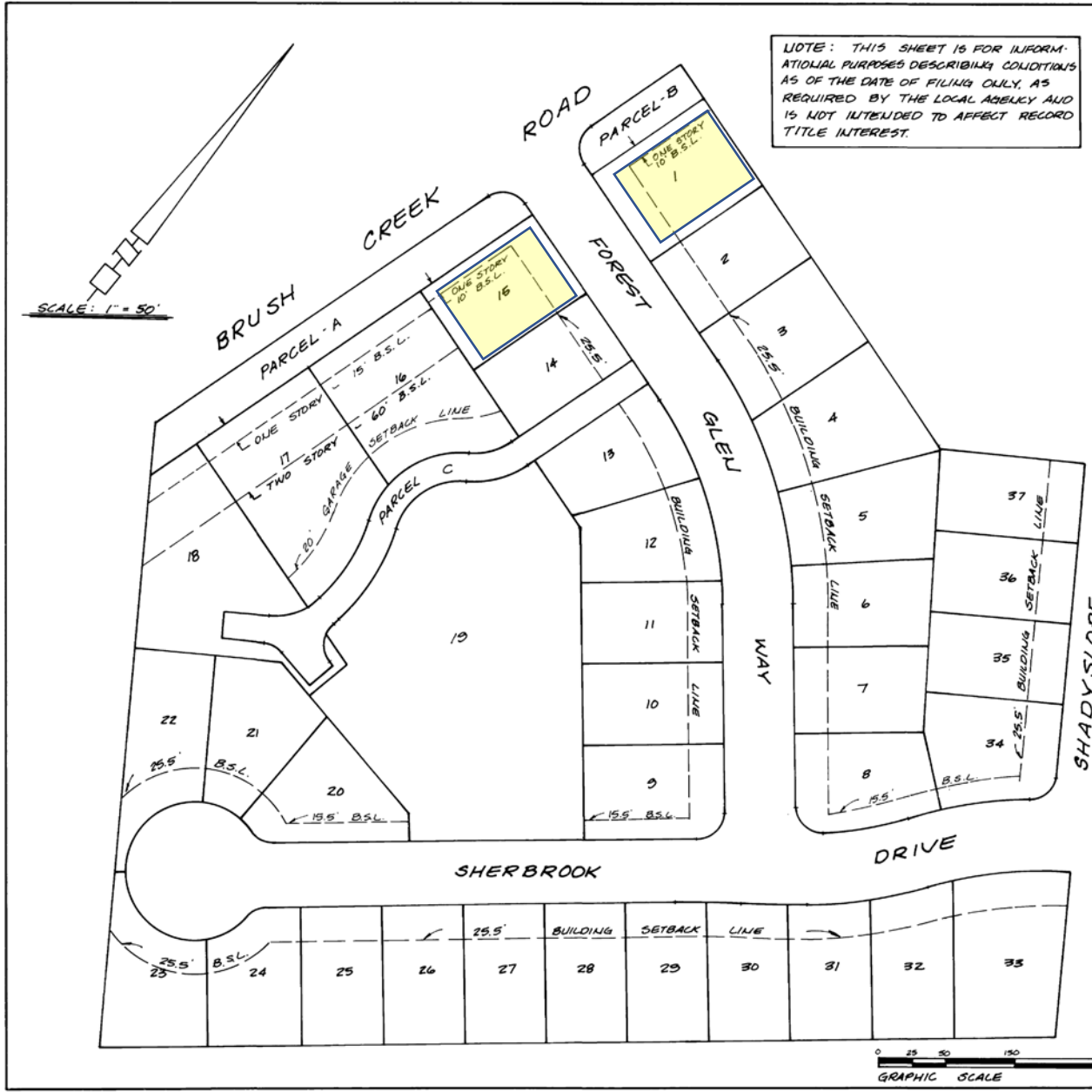
(2006)

Book 694, P. 1-5



Parcel Map 639  
(2006)  
Book 694, P. 1-5





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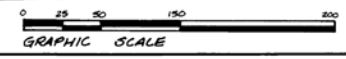
NOTES

1. FUTURE SUBDIVISION LOT OWNERS ARE HEREBY INFORMED THAT CITY ACCESS AND FIRE PROTECTION IMPROVEMENT REQUIREMENTS SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
2. SEWER AND WATER DEMAND FEES & WATER METER FEES HAVE NOT BEEN PAID AND ARE PAYABLE PRIOR TO ISSUANCE OF A BUILDING PERMIT. IN ADDITION, THE OWNER OR PARTY APPLYING FOR A BUILDING PERMIT FOR LOTS 16, 17, 18, 34, 35, 36, AND 37 OF THIS SUBDIVISION IS RESPONSIBLE FOR THE PAYMENT OF INDIVIDUAL PARTICIPATING WATER AND SEWER LINE REIMBURSEMENT FEES.
3. LOTS 16, 17, 18, AND 19 SHALL HAVE TWO GUEST PARKING SPACES SEPARATE FROM GARAGES AND DRIVEWAYS IN ACCORDANCE WITH ZONING ORDINANCE SECTION 20-05.851.
4. NO ACCESS SHALL BE ALLOWED ALONG THE BRUSH CREEK ROAD FRONTAGE OF LOTS 1, 15, 16, 17, AND 18.
5. LOTS 1 AND 15 SHALL BE RESTRICTED TO A SINGLE STORY RESIDENCE.
6. THIS SUBDIVISION IS LOCATED WITHIN THE RINCON VALLEY SCHOOL DISTRICT, THE FACILITIES OF WHICH WILL BE ADVERSELY AFFECTED BY THE STUDENTS EXPECTED TO BE GENERATED BY THIS SUBDIVISION. TO MITIGATE THIS EFFECT, THIS SUBDIVISION IS MADE SUBJECT TO THE CITY'S POLICY WITH REGARD TO SUCH IMPACTS AS THAT POLICY NOW EXISTS OR AS IT MAY BE AMENDED, EXTENDED, OR REVISED IN THE FUTURE. PRESENT CITY POLICY REQUIRES THE PAYMENT OF SCHOOL IMPACT FEES FOR EACH BUILDING PERMIT ON EACH LOT INCLUDED WITHIN THE FINAL MAP OF THIS SUBDIVISION. THE EXACT SCHOOL IMPACT FEE, IF ANY, THE DEVELOPER APPLIES FOR BUILDING PERMITS FOR RESIDENTIAL STRUCTURES WITHIN THIS SUBDIVISION.
7. A SOILS REPORT HAS BEEN PREPARED BY DONALD HERZOG ASSOC. DATED FEB. 19, 1988, AND IS ON FILE WITH THE CITY OF SANTA ROSA BUILDING DEPARTMENT.
8. THIS SUBDIVISION LIES WITHIN A HIGH PRESSURE ZONE. INDIVIDUAL PRESSURE REGULATORS ARE REQUIRED FOR ALL LOTS WITHIN THIS SUBDIVISION.
9. PARCEL "C" IS OWNED AND MAINTAINED IN COMMON BY LOTS 16, 17, 18, AND 19.
10. LOTS 16, 17, 18, AND 19 ARE SUBJECT TO A JOINT ACCESS AND MAINTENANCE AGREEMENT WHICH WILL BE RECORDED CONTEMPORANEOUSLY WITH THE FILING OF THIS MAP.

MAP OF BRUSH CREEK PARK

BEING A DIVISION OF THE LANDS OF PEDRAZZINI DEVELOPMENT CO. AS DESCRIBED IN DOCUMENT NO. 88-022137, SONOMA COUNTY RECORDS, LYING WITHIN THE RANCHO CABEZA DE SANTA ROSA. CITY OF SANTA ROSA A.P. No. 33-070-22 STATE OF CALIFORNIA 9.36 AC. 37 LOTS

OBERKAMPER & ASSOCIATES  
CIVIL ENGINEERS, INC.  
SANTA ROSA CALIFORNIA



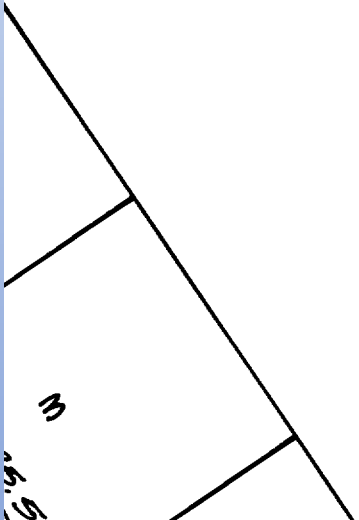
TENTATIVE MAP FILE NO. 87-0158 SHT 4 OF 4

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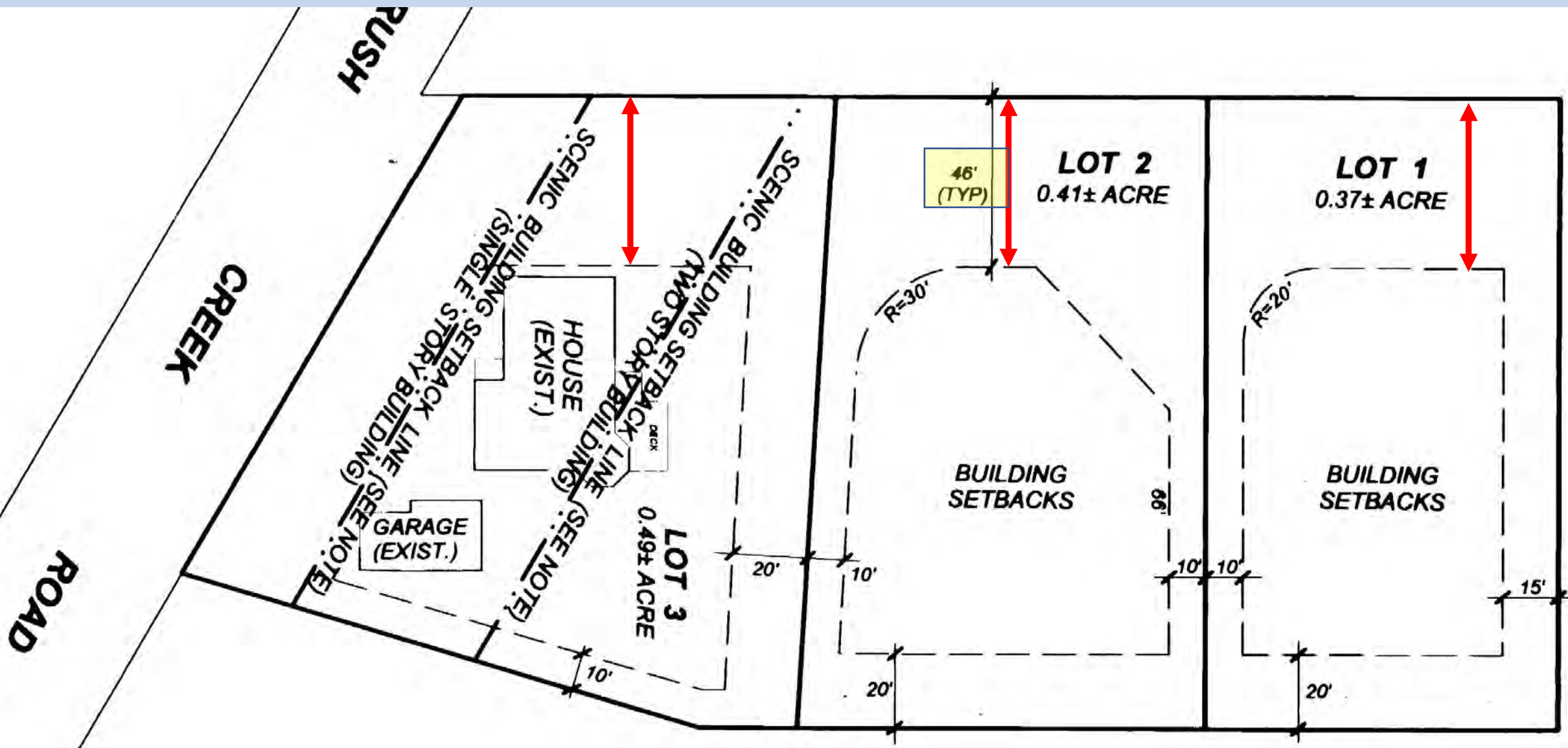


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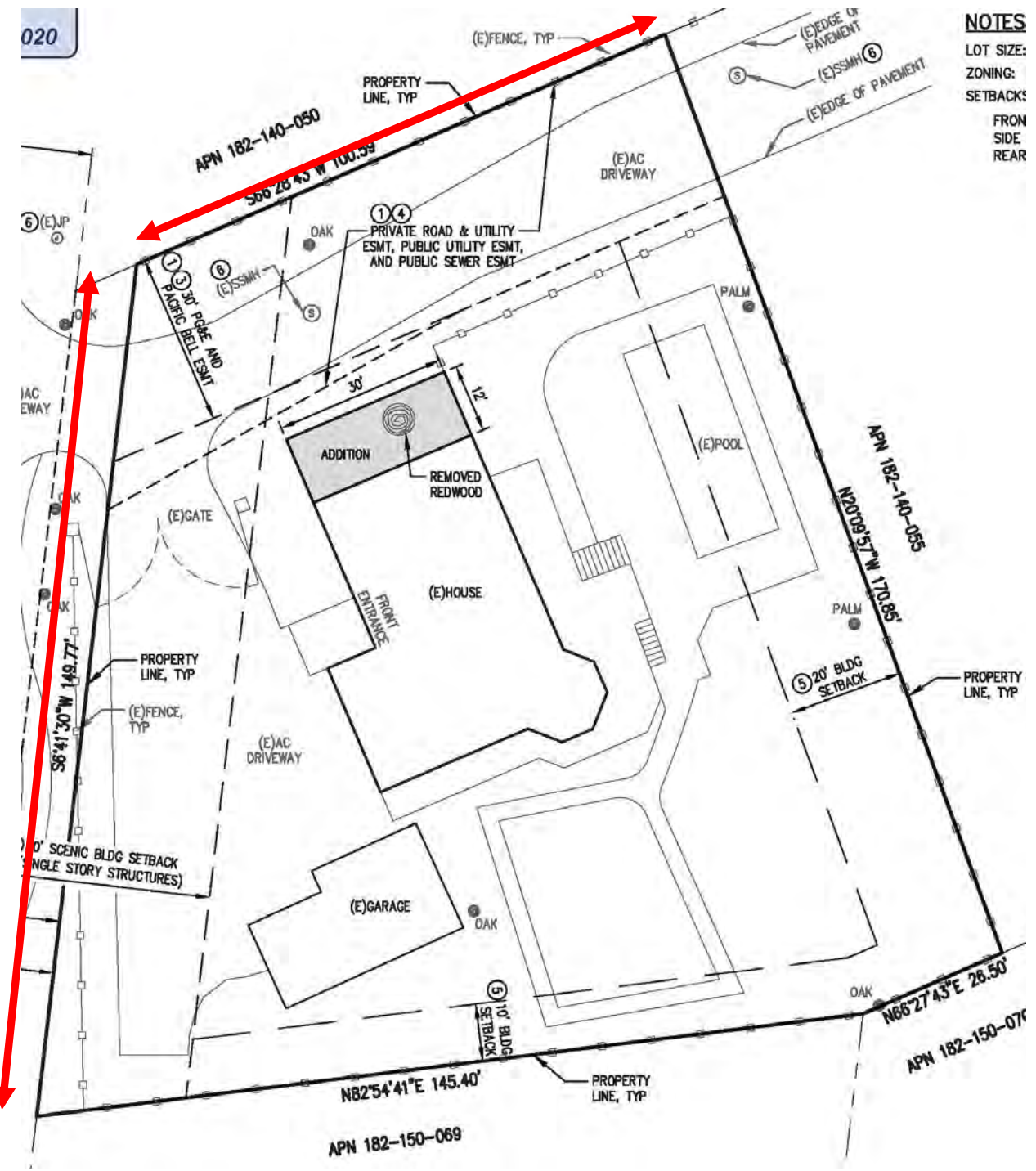




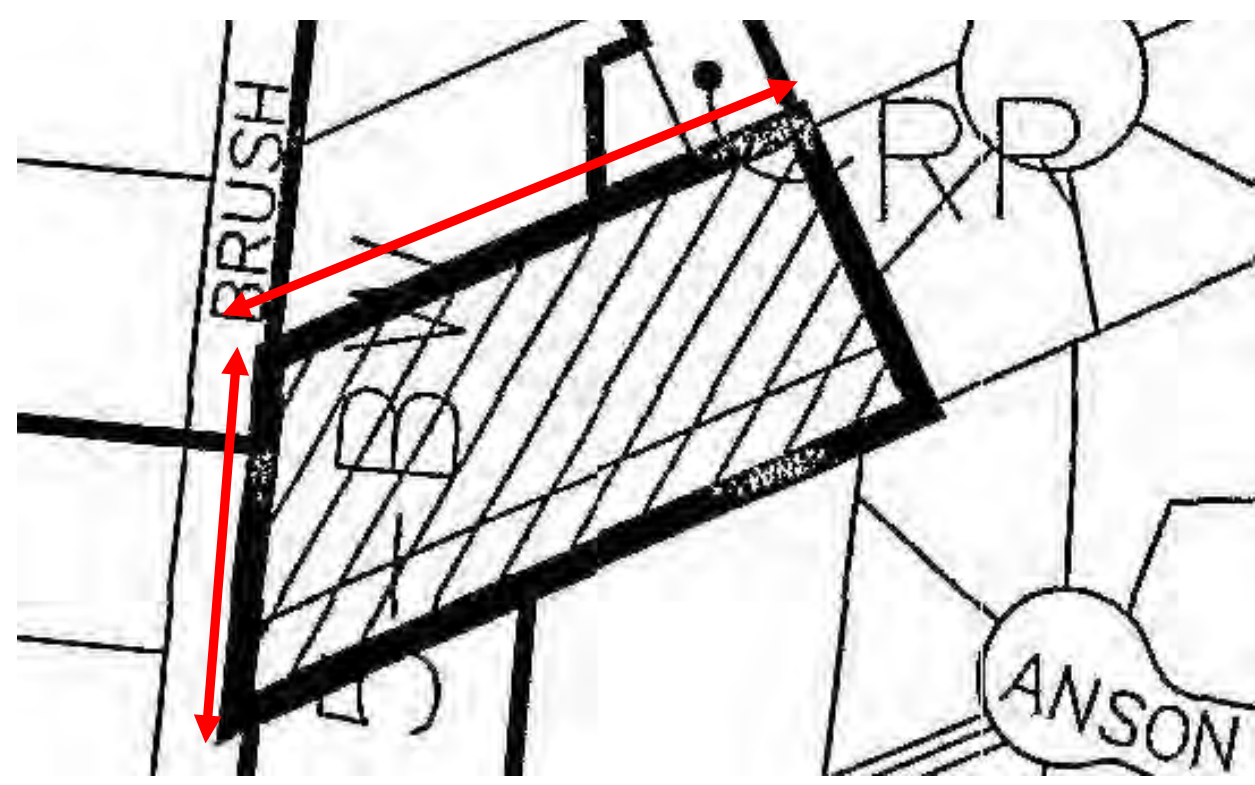


# Defining Front Setback

- 20-30.110(C)(1) “the front setback shall be across the narrow dimension of the lot...”



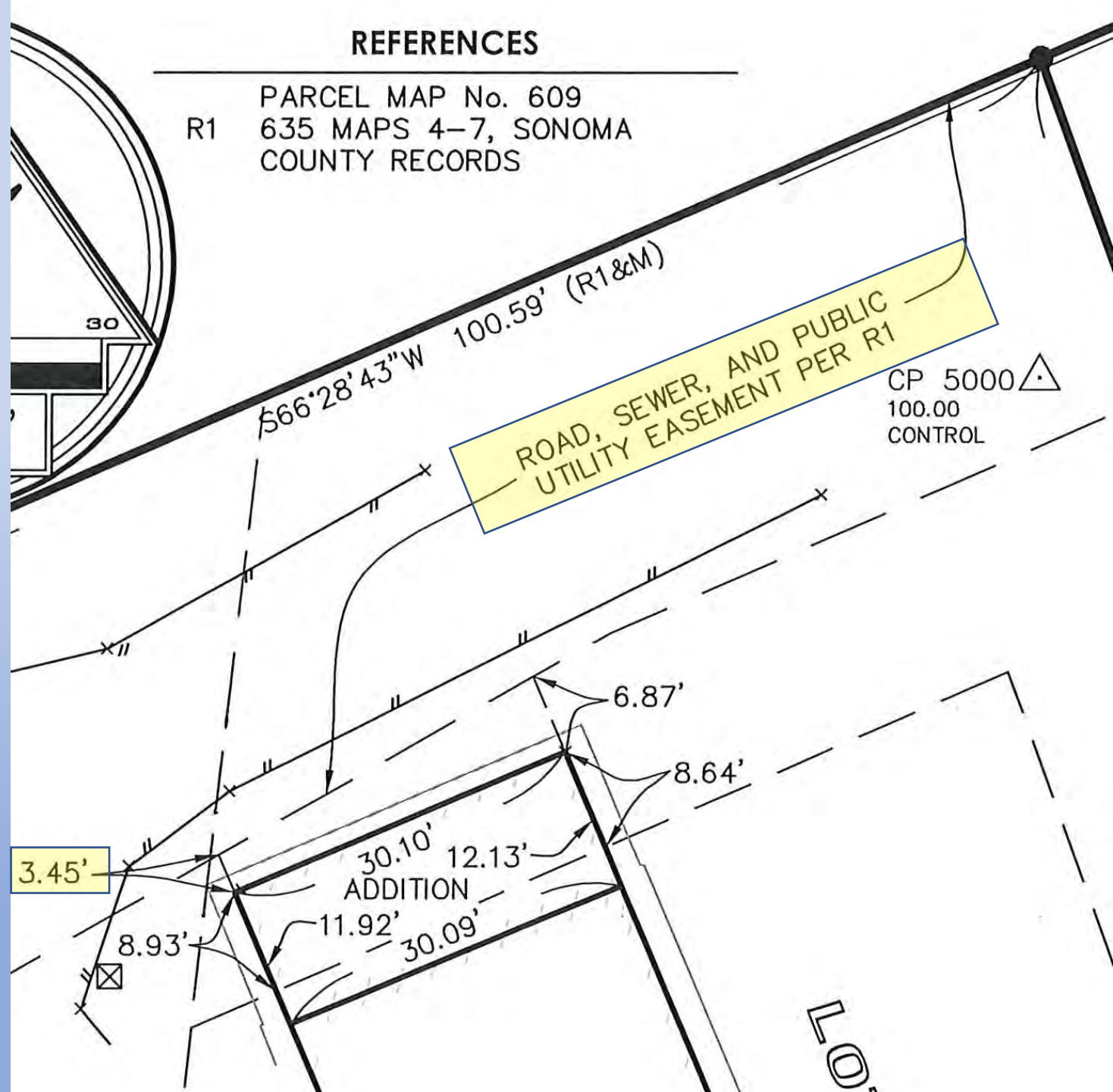
**NOTES**  
 LOT SIZE:  
 ZONING:  
 SETBACKS:  
 FROM  
 SIDE  
 REAR



Direction	Length
North	100.59'
West	149.77'
South	171.90'
East	170.85'
N+S	272.49'
W+E	320.62'

## From Where Do You Measure?

- 20-30.110(C)(1)(a) “a required front setback shall be measured by the *most restrictive* of the following methods to the nearest point on the front wall of the building...(4) the edge of an easement for a private road or driveway.”
- R-1-15 SR Zoning District requires 20’ for front yard setback!
- As depicted in Ray Carlson’s exhibit, the illegal construction affords only 3.45’.



# Conclusions

The Council should uphold this appeal and overturn the Director's initial decision in arbitrarily grant the retroactive tree removal permit and after-the-fact building permit, which was affirmed by the Planning Commission.

The Code is clear that the applicant *shall* be denied any approval or permit for development or further improvements to the property for a period of two years. The decision to approve the tree removal was completed on November 23, 2020, weeks before the City accepted the final application for the building permit. While this may feel like a harsh penalty, it was legislatively adopted by the Council (1990) to prohibit illegal (heritage) tree removal.

Regardless of whether the tree removal itself prohibits the granting of a building permit, the necessary findings for approving the construction project in conformance with the Code cannot be made due to setback and parcel map constraints that require independent actions that are not subject of this application or appeal.

# 1900 Brush Creek Road Appeal





1. Request that Planning Commission enforce maximum fines on the heritage tree removal to deter future illegal conduct on Scenic Roads

2. Enforce Municipal Code section 17-24.140 (i.e. No permit approvals for a period of 2 years), given the unpermitted heritage tree removal and unpermitted build

3. Restore the build to its proper set-back (i.e. demolish the build that extends beyond the northern building setback)

4. Plant trees and restore the fence along the private road/shared driveway to improve the scenic quality of the road

In the alternative, with respect to #3 only, pull the unpermitted build back 6 feet (half of the total build)

Request an outside investigation into the items addressed with regard to the City's process and lack of transparency/candor