COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING SERVICES DIVISION

EJ Ivaldi
Deputy Director of Planning

HEARING DATE: May 22, 2014
TIME: 11:00 a.m.
ITEM NO.: 4

TO: Placer County Planning Commission

FROM: Development Review Committee

SUBJECT: **LUNDBERG RESIDENCE**
VARIANCE (VAA 20140026)
CATEGORICAL EXEMPTION
SUPERVISORIAL DISTRICT 5, MONTGOMERY

GENERAL PLAN: North Tahoe Area General Plan

GENERAL PLAN DESIGNATION: Residential

ZONING: Plan Area Statement - 020 Kingswood West Residential

ASSESSORS PARCEL NUMBER: 112-230-028

STAFF PLANNER: Lisa Carnahan, Associate Planner

LOCATION: The subject property is located at 1346 Kings Way in the Kingswood West Subdivision in the Tahoe Vista area.

APPLICANT: Martin Wood, on behalf of the property owners, Alan and Alvina Lundberg

PROPOSAL:
The applicant requests approval of a Variance to a side setback to allow an existing upper and lower deck to remain 0.41 feet from the southern property line, and a Variance to allow the existing corner of the residence to remain 4.93 feet from the southern property line, where a five-foot setback is required along the southern property line for both the decks and residence.

CEQA COMPLIANCE:
This project is categorically exempt from environmental review pursuant to provisions of Section 15301 of the California Environmental Quality Act Guidelines and Section 18.36.030 of the Placer County Environmental Review Ordinance (Class 1 – Existing facilities).

PUBLIC NOTICES AND REFERRAL FOR COMMENTS:
Public notices were mailed to property owners of record within 300 feet of the project site. Other appropriate public interest groups and citizens were sent copies of the public hearing notice, including the North Tahoe Regional Advisory Council. Copies of the project plans and application were transmitted to the Community Development Resource Agency Staff, the Department of Public Works, Environmental Health Services, the Air Pollution Control District and the Department of Facility Services for their review and comment. At the time this staff report was prepared, correspondence regarding the Project had been received from the adjacent property owner to the south, Vinita Varma, and from her representative. This correspondence will be discussed below within the "Discussion of Issues" section.

PROJECT DESCRIPTION:
The applicant requests approval of a Variance to the five-foot side setback requirement to allow an existing upper and lower deck to remain 0.41 feet (approximately five inches) from the southern property line, and a Variance to allow the existing corner of the residence to remain 4.93 feet (approximately four-feet, eleven-inches) from the southern property line.

BACKGROUND:
The original home and upper deck were constructed during the years of 1977 and 1978 by a prior owner. At that time, the total side setback requirement was 15 feet, with a minimum of 5 feet, as it is today. However, the Zoning Ordinance at that time allowed unenclosed porches, or stairways, fire escapes or landing places to extend into the side setback three feet (Section 1726 (c)(2)). Based upon the site plan submitted in 1977, the home and deck were both to be located on the property and outside of the five-foot setback. The building plans were approved and the house and deck were subsequently constructed.

The Lundberg's purchased the property in 1985. Then in April of 2008, a minor boundary line adjustment was recorded which added 6,102 square feet of property from the adjacent property to the north onto the north side of the Lundberg's property. Also in 2008, the County received plans submitted on behalf of the Lundberg's to rebuild the pre-existing home and deck. Those site plans showed the corner of the deck touching the southern property line. The plans were approved by Placer County in May of 2010 and again with revisions, in August of 2010. County staff indicated on the plans that the upper deck corner was "existing", although a 5-foot minimum side setback was noted under the "Setback Requirement" area for the proposed new square footage, which included the lower deck.

The Lundbergs were in the process of rebuilding their home and deck when they were notified by Placer County Code Enforcement that a citizen's complaint had been filed against their property. The complaint claimed that the Lundberg's deck was encroaching onto the neighbor's property to the south. Code Enforcement staff visited the Lundberg's parcel and subsequently issued a courtesy notification to the Lundbergs on December 28, 2012 to apprise them of the situation. Code Enforcement has been working with the Lundbergs and the complainants since that time to resolve the situation.

A Record of Survey was recorded by Webb Land Surveying, Inc. for Vinita Varma on March 5, 2013, which showed that the deck under construction was built over the south property line. (A copy of the Record of Survey is included as Attachment B.) On May 20, 2013, a Stop Work Notice was issued to the Lundbergs for the rear decks until the property line issues

2

could be resolved. The Lundberg's subsequently removed a section of their upper deck (approximately two feet by 12 feet), and filed an application for a Variance on January 31, 2014 to allow the resultant upper and lower decks as well as the corner of the house to remain within the five-foot, south side setback.

The Lundberg's representative and licensed Land Surveyor, Martin Wood, has signed and stamped the project site plan attached to this staff report, and has indicated that based upon his reading of the Record of Survey No. 3250, recorded in Book 22 of Surveys, Page 25 of the Placer County records, and taking into account the approximately 2 feet of deck which was removed by the owner's contractor, the remaining corner of the deck is 0.41-foot (approximately 5 inches) from the south property line, which results in a total of 67 square feet of deck area (33.5 square feet each for both the upper and lower decks) currently encroaching within the five-foot side setback. The applicant also stated that the corner of the house encroaches within the south, side setback by .07-foot (7/8-inch), or 0.01 square foot.

SITE CHARACTERISTICS:

County staff conducted a field review of the site in February of 2014. The topography of the approximately 0.45-acre subject property slopes fairly significantly from the northwest corner of the property to the southeast corner. According to the site plan prepared by the Lundberg's land surveyor, the topography of the parcel averages approximately 22 percent. The structures are all located towards the west side of the property, close to Kings Way. The property is located within the Kingswood West residential subdivision, and is bordered on the north by a single-family residence, on the west by Kings Way, by an undeveloped residential parcel to the south, and by a large, open space/recreational parcel on its east side.

EXISTING LAND USE AND ZONING:

Location	Zoning	General Plan	Existing Conditions and Improvements
Site	PAS - 020 Kingswood West Residential	Residential	Residence
North	same as project site	same as project site	Residence
South	same as project site	same as project site	Undeveloped Residential Lot
East	024A – North Tahoe Recreation Area	Recreation	Open Space
West	same as project site	same as project site	Residence

DISCUSSION OF ISSUES:

The following analyses, findings and recommendations for the Variance are separated into two sections: the lower deck, and the corner of the house and the upper deck.

Lower Portion of the Deck

The August 2010 site plans approved by the Placer County Building Services Division in Tahoe note that although the upper deck was "existing" and would be allowed to be re-built in its previous location, any new portions of the construction would need to adhere to the five-foot side setback. This five-foot setback would therefore apply to the newly-constructed lower deck, and the building plans showed that the deck would comply with the five-foot setback.

Since the five-foot side setback requirement was noted on the approved drawings for any new construction and the lower portion of the deck was clearly new construction, and because the applicants showed the lower deck complying with the setback, staff cannot support the requested Variance to allow the lower portion of the deck currently located within the setback to remain.

Corner of the House and Upper Deck

There is merit to the arguments that the pre-existing residence and upper deck had been in place for approximately 36 years, the remodeled house and upper deck do not encroach any farther into the setback than the original house and deck, and that the most recent site plans for the residence and deck remodel were reviewed and approved by both the Tahoe Regional Planning Agency (TRPA) and Placer County, with the upper deck designated as "existing" by County staff.

The Lundberg's have attempted to resolve the encroachment issue by removing the portion of their upper deck which was found to encroach onto the neighbor's property. This small, triangular piece of deck which had been encroaching is illustrated within "Detail A" on the attached site plan (Attachment C). In order not to ruin the architecture of the deck, an additional portion of the deck was cut off in conjunction with the encroaching section. In total, approximately 24 square feet (two feet in width by 12-plus feet in length) was cut off of the upper deck. A triangular, approximately 33.5 square-foot section of the upper deck, as well as a very minute corner of the house (0.01 square feet) still remain within the five-foot setback on the south side of the Lundberg's property, and they are requesting a Variance to allow these portions of their residence and deck to remain within the side setback. As mentioned previously, at the time the house was originally constructed in 1978, the deck would have been able to extend three feet into the required five-foot side setback. Utilizing the 1978 Zoning Ordinance setback exceptions, the applicant has calculated that only approximately 4.1 square feet of the current upper deck would require a Variance based upon the setbacks which were in effect at the time the house and deck were originally constructed.

Correspondence has been received from both Vinita Varma, the neighbor who owns the undeveloped property directly adjacent and south of the Lundberg property, as well as her representative. The correspondence is included within this staff report as Attachments D and E. Primary issues identified in the correspondence include the perceived fire and safety impacts, as well as alleged access issues, and the opinion that the project deprives the Varma's of privileges enjoyed by the rest of the community. To assure a thorough analysis of the major issues identified in the correspondence, specific responses are provided below.

A. Fire and Safety

In her correspondence to the County, Ms. Varma states that "...[h]aving a house in such close proximity in a sever fire hazard zone is unacceptable." Similarly, the representative for Ms. Varma states that approval of the "...Lundbergs' deck Variance would be a danger to public safety and a fire danger...".

Staff Response

According to the North Lake Tahoe Fire Protection District Fire Chief, as long as the brush is kept down between the Lundberg's residence and any future adjacent

4

residence to the south, and because any future residence on the Varma's property will be required to utilize construction materials which comply with current building codes, there would not be an increased risk due to fire or safety if the Lundberg's deck and residence are allowed to remain in their current position. Based upon the telephone response from the Fire Chief, staff has concluded that there is no additional risk from fire or safety hazards, should the Planning Commission decide to approve the upper deck and corner of the house portions of the Variance.

B. Access

Ms. Varma also states in her correspondence to the County that "...it is necessary to establish the setback to provide the Lundbergs the space they need to continue their activity without continually trespassing onto our property."

Staff Response

In discussions with Ms. Lundberg, she has stated that any future maintenance required on the house or deck can be accomplished from the Lundberg's side of the property. In staff's site visit of the property, there appeared to be ample room for the Lundbergs to maintain the deck and house from their side of the property line, without the need to trespass on Ms. Varma's property. Therefore, Ms. Varma's concern of the Lundberg's perceived lack of access to the deck and house are unfounded.

C. Use of Varma's Property

Lastly, Ms. Varma claims that if the Lundberg's are granted their Variance, it will "adversely affect" the Varma's ability to build and will deprive them of the privileges enjoyed by the rest of the community. The Varma's representative further goes on to say that approval of a Variance for the Lundberg's would "negatively affect the usage, rights and enjoyment of the Varma Property."

Staff Response

The Placer County Building Services Division in Tahoe has stated that approval of the Lundberg Variance would not increase nor affect the setback for any future construction on Ms. Varma's property. Therefore, approval of the Variance for the corner of the house and the upper deck would have no bearing on where Ms. Varma chooses to construct her future house, nor would it affect her usage, rights or enjoyment of her property.

Based upon the facts that the original house and top deck were constructed approximately 36 years ago, the remodeled house and top deck involve no further encroachment into the setback than what previously existed, the upper deck was denoted as "existing" on plans approved by the County, and because the requested Variance for the upper deck and the corner of the house to remain is a minimal departure from the required setback, staff is in support of the requested Variance to allow the corner of the residence and the portion of the upper deck currently encroaching within the setback to remain in place.

RECOMMENDATION:

Based on the analysis described above, the Development Review Committee recommends that the Planning Commission:

1. Determine that the project is categorically exempt from CEQA review; and
2. Deny the Variance request for the portion of the lower deck which is within the five-foot side setback and require the Lundberg's to remove said portion of lower deck within 60 days of this action.
3. Approve the Variance for the upper portion of the deck and the corner of the house which are within the five-foot setback, subject to the following findings and attached recommended conditions of approval contained within Attachment A.

Findings for Denial of the portion of the Lower Deck within the setback:

CEQA:

This project is categorically exempt from environmental review pursuant to provisions of Section 15301 of the California Environmental Quality Act Guidelines and Section 18.36.030 of the Placer County Environmental Review Ordinance (Class 1 – Existing facilities).

Variance:

1. There are **not** special circumstances applicable to the lower portion of the deck within the setback, such as any type of legal, non-conforming status, due to the lower deck being new construction, and not a reconstruction of an existing structure.

2. The granting of the Variance for the portion of the lower deck currently existing within the required five-foot side setback **would** constitute a grant of special privileges inconsistent with limitations upon other residential properties in the vicinity and in the zone district, as the lower deck is new construction, and any new construction is required to meet the minimum five-foot side setback, per the August 2010 site plans approved by the County.

Findings for Approval of the Corner of the House and the portion of the Upper Deck within the setback:

CEQA:

This project is categorically exempt from environmental review pursuant to provisions of Section 15301 of the California Environmental Quality Act Guidelines and Section 18.36.030 of the Placer County Environmental Review Ordinance (Class 1 – Existing facilities).

Variance:

1. There are special circumstances applicable to the property. Although special circumstances generally includes size, shape and topography, the word "includes" does not necessarily exclude other applicable special circumstances. In this case, the original residence and upper deck were constructed approximately 36 years ago, and the upper deck and residence remodel do not extend beyond the limits of the original construction. Additionally, the upper deck was noted as an "existing" structure on the both the May of 2010 and August 2010 plans submitted by the Lundberg's, and these plans were reviewed and approved by both the Placer County Building Services Division in Tahoe, and the Tahoe Regional Planning Agency. Lastly, the requested Variance for the upper deck and the corner of the house to remain has a minimal impact on light, air and open space and meets the spirit and intent of setbacks and because of such circumstances, the strict application of this chapter would deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

2. The granting of this Variance does not constitute a grant of special privileges inconsistent with limitations upon other residential properties in the vicinity and in the zone district. According to other County staff members in Tahoe, it is not unheard for applicants to apply for a Building Permit without including a legal survey to the County. Based upon the site plan submitted to the County in 1979, the house and deck were represented to meet the setbacks. There are other instances within the Tahoe area of residences inadvertently having been built over property lines or within the setbacks. In those instances, either approval of a Variance or a property line adjustment would be the method utilized to correct the problem.

3. The granting of this Variance does not authorize a use that is not otherwise authorized in the zoning district. Approval of this Variance would authorize an existing deck and house to remain; both types of structures are allowed within this zoning district.

4. The granting of this Variance does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, or injurious to nearby property or improvements. According to the Placer County Building Services Division and North Lake Tahoe Fire Protection District, approval of the Variance would not adversely affect the setback of the neighboring property to the south, nor would it cause additional risk of fire or safety hazards.

5. The Variance is consistent with the objectives, policies, general land uses and programs as specified in the North Tahoe General Plan. Approval of the Variance would be consistent with the Plan's objectives, policies and general land uses with regards to residential development.

6. The Variance is the minimum departure from the requirements of Chapter 17 (Zoning Ordinance) necessary to grant relief to the applicant, consistent with sections (a) and (b) above. The corner of the house and upper deck portion of the Variance request a total of 33.5 square feet (or approximately 4.1 square feet using the 1978 Zoning Ordinance) of deck area and 0.01 square feet of the corner of the house to remain within the 5-foot side setback. This is considered a minimal departure from the setback requirements in order to grant relief to the applicant.

Respectfully submitted,

Lisa Carnahan

Lisa Carnahan, Chairperson
Development Review Committee

ATTACHMENTS:
Attachment A – Recommended Conditions of Approval
Attachment B – Record of Survey 3250, March 5, 2013 for Vinita Varma
Attachment C – Lundberg Site Plan
Attachment D – Correspondence from Vinita Varma
Attachment E – Correspondence from Attorney for Vinita Varma, dated March 19, 2014

cc: Michael Johnson - Agency Director
Karin Schwab - County Counsel's Office
Sharon Boswell - Engineering and Surveying Division
Justin Hansen - Environmental Health Services
George Rosasco – Placer County Code Enforcement
Tim Alameda – North Lake Tahoe Fire Protection District
Alan and Alvina Lundberg – Owners
Diepenbrock Elkin LLP – Attorney for Owners
Porter Simon – Attorney for Vinita Varma

RECOMMENDED CONDITIONS OF APPROVAL – VARIANCE "LUNDBERG RESIDENCE" FOR UPPER DECK AND CORNER OF RESIDENCE (PVAA 20140026)

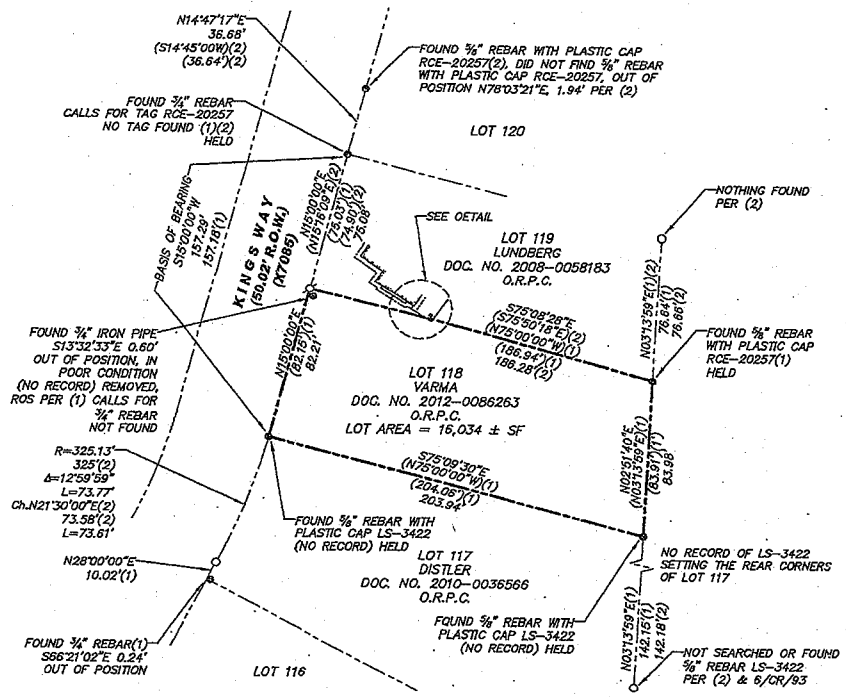
THE FOLLOWING CONDITIONS SHALL BE SATISFIED BY THE APPLICANT, OR AN AUTHORIZED AGENT. THE SATISFACTORY COMPLETION OF THESE REQUIREMENTS SHALL BE DETERMINED BY THE DEVELOPMENT REVIEW COMMITTEE (DRC), COUNTY SURVEYOR, AND/OR THE PLANNING COMMISSION.

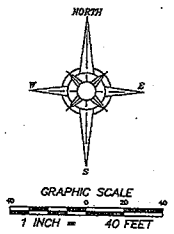
1. Approval of this Variance (PVAA 20140026) allows a triangular, approximately 33.5 square-foot section of the upper deck to remain 0.41 feet from the southern property line, and approximately 0.01 square feet of the corner of the residence to remain 4.93 feet from the southern property line, where a five-foot south side setback is required. (Refer to Detail "A" on the site plan included as Attachment C.) (PLN)

2. The applicant shall defend, indemnify, and hold harmless the County of Placer, the County Board of Supervisors, and its officers, agents, and employees, from any and all actions, lawsuits, claims, damages, or costs, including attorney's fees awarded in any proceeding brought in any State or Federal court, challenging the County's approval of that certain Project known as the Lundberg Variance (PVAA 20140026). The applicant shall, upon written request of the County pay, or at the County's option reimburse the County for, all reasonable costs for defense of any such action and preparation of an administrative record, including the County staff time, costs of transcription and duplication. The County shall retain the right to elect to appear in and defend any such action on its own behalf regardless of any tender under this provision. This indemnification obligation is intended to include, but not be limited to, actions brought by third parties to invalidate any determination made by the County under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) for the Project or any decisions made by the County relating to the approval of the Project. Upon written request of the County, the applicant shall execute an agreement in a form approved by County Counsel incorporating the provisions of this condition. (PLN)

3. A portion of the existing detached garage is affected by an existing 10' Multipurpose Easement (MPE) (ref: Kingswood West, recorded in Book I of Maps, Page 73). Prior to any Building Permit final approval, the applicant shall process an abandonment of the public's interest in the portion of the easement that is affected by the encroachment (contact the County Right-of-Way agent, John Weber at 530-745-7564). (ESD)

4. This Variance (PVAA 20140026) shall expire on June 1, 2016, unless previously exercised with a final inspection for the house and upper deck. (PLN)





BASIS OF BEARINGS

THE MERIDIAN OF THIS SURVEY IS BASED ON THE FOUND MONUMENTS, SHOWN HEREON, AND LABELED AS SUCH, S 15°00'00" W, 157.29', PER KINGSWOOD WEST SUBDIVISION, BOOK "I" OF MAPS, PAGE 73, OFFICIAL RECORDS PLACER COUNTY.

NOTES

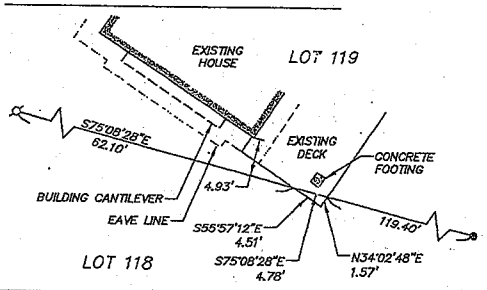
THE PURPOSE OF THIS SURVEY WAS TO SET THE NORTHWEST PROPERTY CORNER OF LOT 118, KINGSWOOD WEST SUBDIVISION, OFFICIAL RECORDS PLACER COUNTY.

ALL DISTANCES SHOWN HEREON ARE GROUND DISTANCES. NOTE: THE KINGSWOOD WEST SUBDIVISION MAP (1), IS GRID. TO OBTAIN GRID DISTANCES PER (1) FROM GROUND DISTANCES PER (1) SHOWN, DIVIDE THE GROUND DISTANCES BY 1.0004062.

LEGEND

- ● FOUND MONUMENT AS SHOWN HEREON
- ⌀ SET 5/8" REBAR WITH YELLOW PLASTIC CAP L.S. 7429
- ○ DIMENSION PT (NOTHING FOUND OR SET)
- (1) RECORD PER KINGSWOOD WEST SUBDIVISION 1/MAPS/73
- (2) RECORD PER RECORD OF SURVEY #2859 19/RS/105

ENCROACHMENT DETAIL



SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME, OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT, AT THE REQUEST OF VINITA VARMA, DURING MARCH, 2013.

LICENSED LAND SURVEYOR — MATTHEW S. WEBB — No. 7429 — STATE OF CALIFORNIA

3/1/13 DATE

Matthew S. Webb

MATTHEW S. WEBB, P.L.S. 7429
EXPIRES DECEMBER 31, 2013

COUNTY SURVEYOR'S STATEMENT

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS ACT THIS 4TH DAY OF MARCH, 2013.

BY: _____

CHARLES B. GRANT, PLS 6158
PLACER COUNTY SURVEYOR
LICENSE EXPIRES 03/31/2014

LICENSED LAND SURVEYOR — LESLIE AMSBERRY — No. 6584 — Exp. 12-31-13 — STATE OF CALIFORNIA

BY: _____

LESLIE AMSBERRY, PLS 6584
DEPUTY COUNTY SURVEYOR
LICENSE EXPIRES 12/31/2013

RECORDER'S STATEMENT

FILED THIS Fifth DAY OF March, 2013 AT 8:30 A.M. IN BOOK 22 OF SURVEYS, AT PAGE 25, AT THE REQUEST OF MATTHEW S. WEBB.

FEE: $8.00

DOC. NO: 2013-0021132

JIM MCCAULEY
COUNTY RECORDER

BY: _____ DEPUTY

RECORD OF SURVEY

No. 3250

FOR: VINITA VARMA

BEING LOT 118, KINGSWOOD WEST SUBDIVISION, FILED IN BOOK 'I' OF MAPS 73, O.R.P.C. ALSO LOCATED IN A PORTION OF THE NORTHWEST ¼ OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 17 EAST, M.D.B. & M.

COUNTY OF PLACER MARCH 2013 CALIFORNIA

WLS
WEBB LAND SURVEYING, INC.
LAND SURVEYING SERVICES
AGENCY PROCESSING
3190 Fabian Way, Unit C.
Tahoe City, CA 96145
P.O. Box 1222
Cornelian Bay, CA 96140
(530) 581-2599
FAX (530) 581-3231
matt@webblandsurveying.com

©

200300 ROS.DWG

ATTACHMENT B

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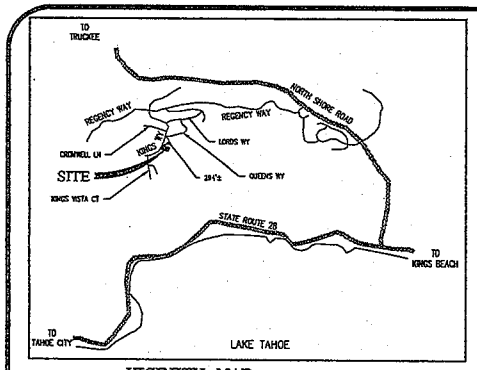
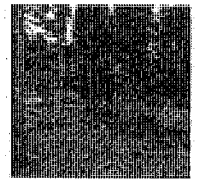
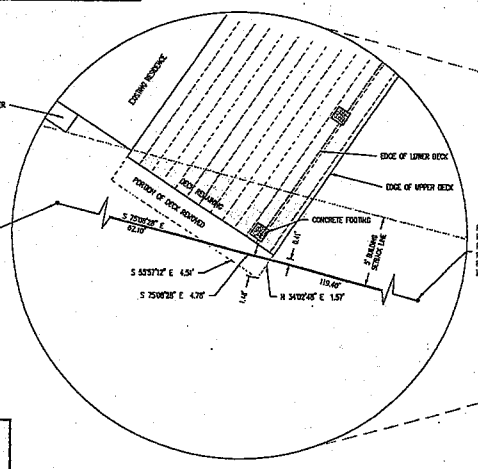


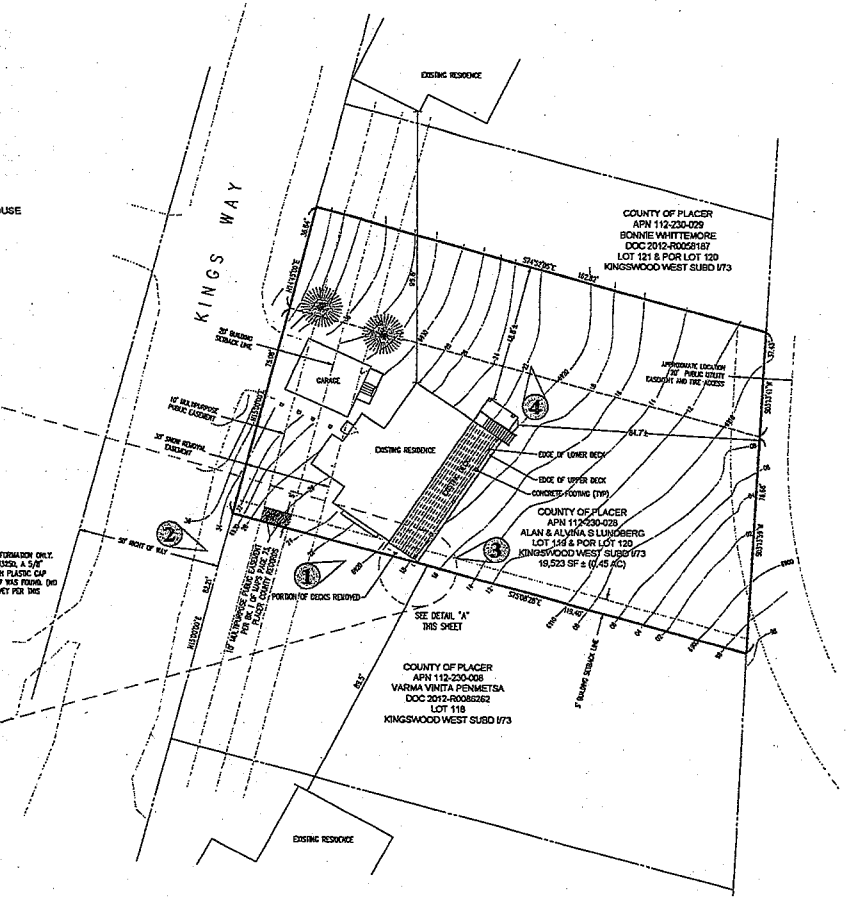
VICINITY MAP
NO SCALE



4 VIEW FROM SITE TO NORTHEASTERLY HOUSE



DETAIL "A"
SCALE 1"=4'



PROJECT INFORMATION

OWNER
ALAN AND ALVINA LUNDBERG
744 CORTLANDT DR
SACRAMENTO, CA 95864

PROPERTY ADDRESS
1346 KINGS WAY
TAHOE VISTA, CA 96140

MAP PREPARED BY
SCO PLANNING & ENGINEERING, INC.
140 LITTON DRIVE, SUITE 240
GRASS VALLEY, CA 95645
(530) 272-5841
CONTACT: MARTIN WOOD

ASSESSOR'S PARCEL NUMBER
112-230-028

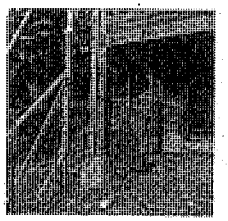
PROJECT SITE AREA
0.31 ACRES (13,364 SF)

BUILDING SQ. FT.
(E) HOUSE: 3,110 SF
(E) GARAGE: 488 SF

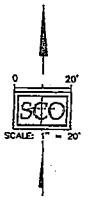
NOTE:
1. DECK OVERHANGMENT SHOWN PER DETAIL IDENTIFIED ON RECORD OF SURVEY No. 3250 RECORDED IN BOOK 22 OF SURVEYS, PAGE 25, PLACER COUNTY RECORDS ALONG WITH PORTION OF DECK REMOVED BY CONTRACTOR.
2. EXISTING BOUNDARY AND FEATURES ARE SHOWN FROM A COMBINATION OF RECORD SOURCES INCLUDING RECORD OF SURVEY No. 2828 (BK. 19 OF SURVEYS, PG. 105, PLACER COUNTY RECORDS), RECORD OF SURVEY No. 3250 (BK. 22 OF SURVEYS, PG. 25, PLACER COUNTY RECORDS), AND KINGSWOOD WEST TRACT No.173 (BK. 1 OF MAPS, PG. 73, PLACER COUNTY RECORDS), ALONG WITH THE PLACER COUNTY APPROVED TOPOGRAPHIC "AS-BUILT" MAP (SHEET ALA) OF LOT 119 PREPARED BY CARL DAGNAVON, CIVIL ENGINEER AND PETER S. GORDON, ARCHITECT, ACCEPTED BY PLACER COUNTY AUGUST 9, 2010.
3. THIS MAP DOES NOT REPRESENT A NEW FIELD SURVEY.

1 VIEW OF DECK "CUT BACK"

2 VIEW FROM STREET DOWN SOUTH LOT LINE



3 DECK FOOTING



NO.	REVISIONS	DATE

DESIGNED: MW
DRAWN: JPD
PROJ. NO: 201401
DATE: FEBRUARY 2014

LUNDBERG VARIANCE

1346 KINGS WAY, TAHOE VISTA CA

LOT 119, KINGSWOOD WEST

SCO PLANNING & ENGINEERING & SURVEYING
GRASS VALLEY
(530) 272-5841
TRUCKEE
(530) 582-0143
FAX (530) 272-5880

ATTACHMENT C

Subject: FW: 1348 Kings Way, Tahoe Vista
Attachments: Trespass Pictures 05.17.13.zip; Attorney Correspondence.zip; Our Surveys.zip; Placer County.zip; Encroachment Pictures 10.18.12.zip

-----Original Message-----
From: vinita varma [mailto:vinitavarma@hotmail.com]
Sent: Monday, February 10, 2014 7:42 PM
To: Paul Thompson
Cc: George Rosasco; Jennifer Montgomery; Steve Kastan; Beverly Roberts
Subject: 1348 Kings Way, Tahoe Vista

Dear Mr. Thompson,

Good evening. My name is Vinita Varma. I own the parcel located at 1348 Kings Way in Tahoe Vista. I received a call from George Rosasco. He informed me that the variance application filed by Mr. And Mrs. Lundberg is being handled by your office.

I believe that you were included on the thread regarding my complaint to Placer County Code Enforcement concerning the illegal encroachment of the structure at 1346 Kings Way into the mandatory side setbacks and onto my property itself. If not, I would be happy to forward the correspondence thread to you

My attorney, Brian Hanley, will be contacting you regarding the variance application and our objection to it.

I would personally like to add a few points to our objection. We purchased this property on September 18, 2012, with the intention of building our dream home. 17 months later, we are no closer to beginning construction. We have had to put our building plans on hold indefinitely. I cannot begin to explain the hardship and disruption this is causing to our lives.

Mr. and Mrs. Lundberg's home was not built according to the plans that were submitted and approved by Placer County. For many years, that home has been illegally encroaching into the mandatory side setbacks and onto my property. They have misrepresented facts for their own personal gain.

A brief timeline of events:

10/16/12: Our surveyor, Matt Webb, marked the corners of our property and did a boundary survey.

10/18/12: James Roberts Construction erected a boundary line fence according to Matt Webb's findings. Construction was done within the envelope of our property. 'No Trespassing' signs were placed along the fence. We did not touch the erosion control fencing and temporary power pole that the Lundbergs were illegally maintaining on our property.

10/22/12: Our attorney sent a letter to the Lundbergs informing them of the encroachment, to stop construction encroaching into the setback and over the property line and to cease and desist all trespassing onto our property.

10/26/12: Alvina Lundberg sent the sheriff to our property claiming that we had trespassed and erected a fence on their property.

12

ATTACHMENT D

10/29/12: We filed a complaint with Place County Code Enforcement.

11/06/12: Our attorney received a response from Eileen Diepenbrock, the Lundberg's attorney. They disputed the encroachment and suggested a meeting. They also told us to remove the fence 'that we had erected on their property'.

11/13/12: Our attorney sent a 2nd letter, this time to Eileen Diepenbrock. The letter stated that we were out of the country and unable to meet with them; that our survey was being prepared to be recorded and, as requested, we would provide them with a copy; and asked for documentation from their side supporting their claims.

11/14/12: Alan and Alvina Lundberg crossed our boundary fence and trespassed onto our property to take measurements. Our contractor witnessed this.

Nov 2012: Alvina Lundberg called Matt Webb to refute his findings. Matt, in turn, did an encroachment survey to detail the encroachment by the Lundbergs and verify the placement of the boundary fence.

03/05/13: Record of Survey detailing the encroachment was recorded with Placer County.

04/26/13: The Lundbergs (or their agents) cut through and damaged our boundary fence, trespassed onto our property and installed new erosion control fencing on our property to meet their building requirements. Our contractor repaired our fence. He did not touch the fencing that the Lundbergs illegally installed on our property.

05/09/13: Our attorney sent a 3rd letter, to Eileen Diepenbrock. It stated that we had not received a response to our 11/13/12 letter. It stated that the Lundberg's had resumed construction on the disputed structure and continued to trespass. We asked for a meeting on site by May 17, 2013, and to circulate all documents either party would rely on to prove their case. We reiterated that they do not have permission to trespass on our property. We did not receive a response.

05/17/13: Alvina Lundberg cut through and damaged our boundary fence again, trespassed onto our property and removed the erosion control fencing that they were illegally maintaining on our property. When asked, by our contractor, what she was doing on our property, she questioned his authority to ask and stated that the Placer County Building Department told her to trespass and remove the fencing. We have photographic evidence and there were three witnesses. We called the Sheriff's department.

As you can see by their own actions, the Lundbergs have no regard for the law and property rights of others. Prior to our purchase of this property, the TRPA has taken action against the Lundbergs for illegally, and without knowledge of the previous owners, cutting down protected trees on our property in order to enhance their view. In my opinion and based on what we have heard, judging by the placement and angle of their home, it seems like they were trying to bully the owners of our property into selling to them for a below market price. Of course, I can't prove this. Had we known about the problems that we are facing now, we would not have bought this lot. Addressing this issue has cost us tens of thousands of dollars. That is money that should have gone towards our home. That is our hard earned money completely wasted because of the ill intentions of others. This is such a crime.

Setbacks were established for the safety and preservation of the Tahoe basin. Having a house in such close proximity in a severe fire hazard zone is unacceptable. We are aware the question is 'not if a fire happens, but when a fire happens' in this area. We will not have a defensible space as long as this encroachment continues. For the safety of everyone in the neighborhood, this structure needs to be brought into compliance.

Also, it is necessary to establish the setback to provide the Lundbergs the space they need to continue their activity without continually trespassing onto my property. Our privacy is very important to us. Our safety, from the ill intentions of others, can not be compromised.

The Lundbergs have claimed that their decks are pre-existing, so are exempt from any setback requirements. We have repeatedly asked the owners and the County to provide documentation supporting their claim. The owners have not provided a single piece of evidence to this day. The County sent us the building permits that I have attached. No where in those permits is there a mention of permitting a deck to be built within the setback. This work was done illegally, prior to applying for a variance. According to Placer County laws, that does not constitute a hardship and a variance will not be issued.

This will be the site of our future and permanent home. It has been and will become the biggest investment of our lives. We want to be able to build without hindrance, obstruction and according to code. The encroachment is on the upslope of our property. When building, we have to build from the upslope. Therefore, this encroachment will adversely affect our ability to build and the value of our home. It deprives us of the privileges enjoyed by the rest of the community.

Will there be a hearing? When is the hearing scheduled for? When will the neighbors, including me, be informed?

I have gone through the guidelines for a variance. As Placer County has previously told the Lundbergs, their case does not fit any of the criteria.

Awaiting resolution of this matter. My phone number is (661) 547-5055.

Warm regards,

Vinita Varma

14

Louis A. Basile
Kelley R. Carroll*†
Peter H. Cuttitta*
Steven C. Gross*
Brian C. Hanley*
Stephen C. Lieberman
James L. Porter, Jr.*
James E. Simon

PORTER SIMON
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Catherine E. Blaber*

Dennis W. De Cuir, A Law Corporation, *Of Counsel*

† *Certified Specialist in Estate Planning, Trust & Probate Law*
* *Also licensed in Nevada*

March 19, 2014

RECEIVED
MAR 21 2014
PLANNING DEPT.

VIA CERTIFIED U.S. MAIL AND EMAIL: lcarnaha@placer.ca.gov

Placer County Planning
Attn: Lisa Carnahan
775 North Lake Boulevard
P.O. Box 1909
Tahoe City, CA 96145

Re: Variance Application PVAA 20140026 for 1346 Kings Way, Tahoe Vista, Placer County, California (the "Lundberg Property")
Comments by Neighboring Property Owner, Vinita Varma

Dear Ms. Carnahan:

My office represents Vinita Varma, the owner of 1348 Kings Way, Tahoe Vista, California (the "Varma Property"). The Varma Property is immediately adjacent to the Lundberg Property at 1346 Kings Way, and the Lundbergs' illegal decks negatively affect the Varma Property. The decks (upper and lower) on the Lundberg Property currently encroach into the Placer County mandatory-minimum five-foot setback adjacent to the Varma Property under Placer County Code section 17.54.130 and the North Tahoe Area General Plan, April 1996 for Kingswood West. These encroachments were verified in late 2012 with a survey by Matt Webb, which was eventually recorded on March 22, 2013, at Book 22 of Surveys, Page 25, Document No. 2013-0021132 (See Exhibit H). After denying the existence of the encroachment and the true property line for months, the Lundbergs have finally acknowledged this encroachment, removed portions of the deck on the Varma Property, and have applied for a variance (PVAA 20140026) even though the legal requirements for a variance are clearly not satisfied under these circumstances.

While we have already submitted a February 12, 2014, letter to Placer County concerning why a variance would be inappropriate under Placer County Code and California law, this letter will specifically address the deficiencies in the Lundbergs' variance application as well as comment on the Lundbergs' conduct during this process in light of their claims of good faith in the application. (See Exhibit A, February 12, 2014, letter, incorporated herein by reference.)

Therefore, my client hereby submits her further comments and opposition to the variance application for the Lundberg Property.

BRIEF BACKGROUND – LUNDBERGS' CLAIMED LACK OF "FAULT"

In their application, the Lundbergs mention repeatedly that they did not know of the encroachment and the fault lies with the original builder of their house and deck. Although the

TRUCKEE 40200 Truckee Airport Road, Truckee, California 96161 phone (530) 587-2002 fax (530) 587-1316
TAHOE CITY • RENO

Lundbergs' claimed "lack of fault" is not grounds for granting a variance (and is not even mentioned in Placer County Code or the Government Code), it should be noted that the Lundbergs spent months denying the encroachment, trespassing on my client's property, and attempting to continue with their construction after being informed of these issues in late 2012. They do not have clean hands in addressing these encroachments.

It also appears that inaccurate drawings were also provided to Placer County to document the "as built" deck structures that were actually over the property line and through the entire side setback. Contrary to the Lundbergs' statements in the first sentence of their application that their decks were built as "designed, constructed and previously approved by Placer County Building Department," these deck structures were *never* approved by Placer County to encroach into the side setback, and have no grandfather or non-conforming use status. The decks were, in fact, built illegally and then noted as an "existing use" even though they were never authorized into the setback (nor could Placer County do so without approving a variance) in the first place; once Placer County investigated the issue, the County agreed with my client's position in its May 21, 2013, Stop Work Notice to the Lundbergs, which is attached hereto as Exhibit G.[1] (See also Porter Simon's May 23, 2013, letter, attached as Exhibit E.)

These encroachment issues have persisted for more than a year due to the Lundbergs' recalcitrance to even acknowledge the encroachment, much less take steps to adequately address these issues. On behalf of my client, I have exchanged correspondence with the Lundbergs' attorney and Placer County several times concerning the encroachment of the Lundbergs' deck onto my client's property (finally removed last year) and the encroachment of the Lundbergs' deck into the Placer County side setback (the subject of this variance application). I enclose some of these letters in further support of this opposition as Exhibits – October 22, 2012 (Exhibit B), November 6, 2012 (Exhibit C), May 9, 2013 (Exhibit D), and May 23, 2013 (Exhibit E) – all of which are incorporated herein by reference. These letters make clear that the Lundbergs not only denied the encroachment despite clear survey evidence to the contrary, but continued to trespass on my client's property despite being repeatedly told this was unauthorized and unacceptable. These letters paint quite a different picture from the Lundbergs' application, where the Lundbergs claim they are innocent persons who merely inherited the encroachment.

Further, in Placer County's January 31, 2013, letter, the County acknowledges that an unrecorded 2003 Kenneth Barrow survey showed the encroachment. (See Exhibit F.) Given the 2003 survey, the Lundbergs have quite possibly known of this issue for some time or at least should have known of this issue. Further, the Lundbergs' survey by SCO submitted with their application appears to note that the southwest lot corner on the Lundberg Property is "record not found" even though Matt Webb recently replaced the corner when he did the survey, which he

[1] The corner of the Lundbergs' house also encroaches slightly into the side setback and they have also built two decks into the side setback. Despite the continuing encroachment, my client does not seek the removal of the encroachment of the house into the side setback because it is a relatively minor encroachment and there would be substantial hardship in moving the entire house. However, the lower deck is a newer structure that was not in the side setback before the most recent remodel, and the Lundbergs have attempted to build another structure into the side setback – one they cannot blame on their predecessor. Both decks must comply with the side setback.

discovered was out of place. This suggests that this corner marker has either been ignored or, worse, intentionally removed during this pendency of this issue.

Even were the Lundbergs' good faith or lack of fault a relevant consideration for supporting a variance, which it is not, putting one's head in the sand and ignoring an issue does not mean one is entitled to a variance to continue the unlawful use. The Lundbergs must show the legal requirements for a variance are met here, which they cannot do as summarized in detail below.

LEGAL STANDARD FOR VARIANCES

Placer County Code section 17:60.100(D)(1) sets forth the findings that the planning commission must make to approve a variance, including the following:

> Approval or conditional approval may be granted only when the granting authority first determines that the variance satisfies the criteria set forth in California Government Code Section 65906 by finding that:
>
> a. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, and because of such circumstances, the strict application of this chapter would deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
>
> b. The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district.
>
> c. The variance does not authorize a use that is not otherwise allowed in the zoning district.
>
> d. The granting of the variance does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

"The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship . . . ." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1007.) The standard set forth in Government Code section 65906 "contemplates that at best, only a small fraction of any one zone can qualify for a variance." (*Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166.) The facts set forth in the required findings must address "the critical issue whether a variance was necessary to bring the [owner of the subject parcel] into substantial parity with other parties holding property interests in the zone." (*Id.*) Factors such as qualities of the property and project, the desirability of the proposed development, the attractiveness of the design, the benefits to the community, or the economic difficulties of developing the property in conformance with current zoning "***lack legal significance and are simply irrelevant*** to the

controlling issue of whether strict application of the zoning rules would prevent the would-be developer from utilizing his or her property ***to the same extent as other property owners in the same zoning district.***" (*Id.*, emphasis added)

THE LUNDBERGS CANNOT MEET THE LEGAL ELEMENTS FOR A VARIANCE

The Lundbergs' application is accompanied by a three-page application request prepared by SCO Planning Engineering & Surveying. This application only superficially touches on the legal requirements for a variance, focuses on irrelevant information and fails to show how the various tests are met by merely repeating the legal standard without evidence or analysis of how the high legal standards for a variance are met in this case.

The principal deficiency with the Lundberg's application is that it focuses on topography and grade as to the Lundberg Property only. However, the critical question under Placer County Code 17.60.100(D)(1)(a) and California law is whether a strict application of the side setback requirement would deprive the Lundberg Property of privileges enjoyed by other properties in the vicinity. In other words, what special site characteristics deprive the Lundberg Property of building a deck similar to other properties in the vicinity? What makes the Lundberg Property different such that they cannot build a deck without violating the setback requirements as compared to other properties? Judging by the application's failure to discuss other properties, the answer is that there is no evidence of special site characteristics that make the Lundberg Property different from other parcels in the vicinity. As the application admits, the Lundbergs can build a deck without encroaching into the setback. Thus, the Lundbergs seek an unauthorized special privilege and cannot meet the legal test for a variance. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 522.)

Further, the Lundbergs' application also focuses on practical considerations – the large Lundberg Property lot and the degradation of visual appeal of a modified deck – that are simply irrelevant to the variance issue under Placer County Code and the *Orinda Assn, supra,* 182 Cal.App.3d at 1166, case cited above. Attractiveness and other potential beneficial qualities of the project or the variance *are irrelevant to the variance analysis.* The large Lundberg lot is also irrelevant as the mandatory-minimum side setback is five feet regardless of how big the setback is on the other side of the Lundberg Property. The application admits that the Lundbergs could build a deck on the Lundberg Property that complies with the side setback requirement, but argues it would be aesthetically unpleasant. This is not a valid grounds to grant a variance. Critically, the application fails to show special circumstances that would show the side setback requirement would deprive the Lundbergs of the benefits afforded to other lots in the area. Thus, the Lundbergs cannot meet the legal test for a variance.

Further, the Lundbergs' application also cites Placer County Code section 17.54.150 as supporting their position that a deck would be a "small deviation" from the required side setback comparing the deck to features such as chimneys, bay windows, cornices, landings, stairways, and "similar architectural features" which are sometimes allowed into the side setback areas. Unfortunately for the Lundbergs, the *express language* of this Code section does not grant such a

side setback exception to "decks thirty (30) inches or more above natural grade, porches, or other indoor or outdoor living areas," all of which are expressly subject to the full five foot side setback requirements. The Lundberg deck is well above thirty inches above natural grade and does not meet either the express or implied intent of this limited side setback exception. Such decks are by not "small deviations" as argued by the Lundbergs, which is why they are expressly excluded from the exceptions applicable to chimneys, bay windows and the like. Thus, the Lundbergs' decking is not a "small deviation" as argued by the Lundbergs, but would be a violation of the plain language of the side setback requirements (which are fully applicable to the Lundbergs' deck under the very statute cited by the Lundbergs).

Finally, although not discussed in the application, the Lundbergs also cannot meet the Placer County Code 17.60.100(D)(1)(d) findings concerning public safety and lack of injuries to adjoining properties. The side setbacks at issue (set forth in Placer County Code section 17.54.130) are designed for fire, safety and privacy purposes, by preventing neighbors from building too close to one another. That is precisely the situation here, where the Lundbergs have built their deck into the side setback and over the actual property line with the Varma Property. The fact that the Lundbergs have a large setback on the other side of their lot might be nice for their privacy and view, but is irrelevant to the mandatory-minimum side five-foot setback on the side of the lot adjacent to the Varma Property. The Lundbergs' deck variance would be a danger to public safety and a fire danger, and would also negatively affect the usage, rights and enjoyment of the Varma Property. This precludes the granting of a variance.

CONCLUSION

The Lundbergs' application fails to meet the legal requirements for a variance under Placer County Code and California law, and would be an unauthorized special privilege. The factors discussed by the Lundbergs – including the longstanding illegal use, aesthetic issues and their large lot – are irrelevant to the variance analysis, and do not support the granting of a variance. Placer County must uphold the plain language of its zoning ordinances to require the Lundbergs to comply with the mandatory-minimum five-foot setbacks.

Thank you for your consideration of these comments.

Very truly yours,
PORTER SIMON
Professional Corporation

BRIAN C. HANLEY
hanley@portersimon.com

Cc: George Rosasco, Supervising Planner (via email: grosasco@placer.ca.gov)
Paul K. Thompson, Deputy Director (via email: pkthomps@placer.ca.gov)
Client (via email)

{00425968.DOC 2 }

EXHIBIT A

Louis A. Basile
Kelley R. Carroll*†
Peter H. Cuttitta*
Steven C. Gross*
Brian C. Hanley*
Stephen C. Lieberman
James L. Porter, Jr.*
James E. Simon

Catherine E. Blaber*

Dennis W. De Cuir, A Law Corporation, Of Counsel

† Certified Specialist in Estate Planning, Trust & Probate Law
* Also licensed in Nevada

PORTER SIMON
A PROFESSIONAL CORPORATION

February 12, 2014

40073.073

VIA CERTIFIED U.S. MAIL AND EMAIL: pkthomps@placer.ca.gov

Certified Article Number

SENDERS RECORD

Placer County Planning
Attn: Paul K. Thompson, Deputy Director
775 North Lake Boulevard
P.O. Box 1909
Tahoe City, CA 96145

Re: Variance Application for Lundberg Property – 1346 Kings Way, Tahoe Vista, CA

Dear Mr. Thompson:

My office represents Vinita Varma, the owner of 1348 Kings Way, Tahoe Vista, California (the "Varma Property"). The Varma Property is next to the Lundberg Property at 1346 Kings Way. I have written Placer County several times concerning the decks on the Lundberg Property (lower and upper) that encroach onto both the Varma Property, and also into the Placer County side setback requirements. I enclose some of these letters for your reference – May 23, 2013, October 25, 2013, November 12, 2013, and December 16, 2013.

I understand that Placer County ordered the removal of the portion of the decks that encroach onto the Varma Property. (See May 21, 2013, Placer County Letter to Lundbergs.) Placer County's letter noted that the Lundbergs' deck was constructed illegally within the setbacks, and not in conformance with the County-approved plans. Our May 23, 2013, letter agreed with this analysis.

Placer County's letter also ordered the Lundbergs to "redesign your deck so it meets the required 5-foot setback from the southerly property line," or, alternatively, to apply for a variance. The letter noted that to obtain a variance to setbacks "you will need to demonstrate that special circumstances exist with regard to the size, shape or topography of the property which is depriving you of the benefits enjoyed by others in the same zone district." The letter further stated that "[b]ased on my review of the circumstances surrounding your deck, staff would most likely be unable to support such a request for a Variance." My client agrees with this analysis based on Placer County Code (which implements the standards of Government Code section 65906) and California case law.

Placer County Code section 17.60.100(D)(1) sets forth the findings that the zoning administrator or planning commission must make to approve a variance:

> Approval or conditional approval may be granted only when the granting authority first determines that the variance satisfies the criteria set forth in California Government Code Section 65906 by finding that:

{00419794.DOC 1 }

a. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, and because of such circumstances, the strict application of this chapter would deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

b. The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district.

c. The variance does not authorize a use that is not otherwise allowed in the zoning district.

d. The granting of the variance does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

e. The variance is consistent with the Placer County general plan and any applicable community plan or specific plan.

f. The variance is the minimum departure from the requirements of this ordinance necessary to grant relief to the applicant, consistent with subsections a. and b., above.

The standard set forth in Government Code section 65906 "contemplates that at best, only a small fraction of any one zone can qualify for a variance." (*Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166.) "The facts set forth in the required findings must address "the critical issue whether a variance was necessary to bring the [owner of the subject parcel] into substantial parity with other parties holding property interests in the zone." (*Id.*) Factors such as qualities of the property and project, the desirability of the proposed development, the attractiveness of the design, the benefits to the community, or the economic difficulties of developing the property in conformance with current zoning "***lack legal significance and are simply irrelevant*** to the controlling issue of whether strict application of the zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district." (*Id.*, emphasis added)

In this instance, the Lundbergs cannot meet the standards for a zoning variance under Placer County Code section 17.60.100(D)(1)(a) or (b). There is nothing unique about their property that would prevent them from abiding by the side setback requirements for their decks. Desirability of the added decking or economic difficulties in relocating the deck is irrelevant. There is simply nothing unique about the Lundberg Property that would warrant a variance; the decks could easily be located outside the side setback. Therefore, the Lundbergs cannot show that their property itself differs substantially and in relevant aspects from other surrounding parcels. The Lundbergs simply desire to be treated differently from other parcels that are required to comply with mandatory side setback requirements. Therefore, if the Lundbergs were allowed a variance, this would constitute a special privilege inconsistent with the side setbacks

applicable to every other property in the vicinity. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 522.)

Further, Placer County Code 17.60.100(D)(1)(d) findings concerning public safety and injuries to adjoining properties also cannot be met. The side setbacks at issue (set forth in Placer County Code section 17.54.130) are designed for fire, safety and privacy purposes, by preventing neighbors from building too close to one another. That is precisely the situation here, where the Lundbergs have built their deck into the side setback and over the actual property line with the Varma Property. The Lundbergs' variance would be a danger to public safety and a fire danger.

This would also be injurious to my client as it would negatively affect her ability to build her planned dream home as near to the Lundberg Property line as possible. My client has a right to do so under Placer County Code, and the Lundbergs cannot demonstrate any special circumstance applicable to their property that would deprive them of privileges of other properties in the vicinity. In fact, the Lundbergs proposed variance would *deprive* my client of her property rights, a fact which prevents granting of a variance.

Thank you for considering these comments. They are meant to be introductory in nature as we have not yet reviewed the variance application. I again renew my prior requests that a copy of the variance application (including all supporting materials), and also for notice of any hearing on the proposed variance, be sent to my office and also to my client immediately. Once I am receipt of the variance application, my client reserves the right to supplement these comments before, or at, the zoning administrator's hearing. Thank you.

Very truly yours,

PORTER SIMON
Professional Corporation

BRIAN C. HANLEY
hanley@portersimon.com

Cc: George Rosasco, Supervising Planner (via email: grosasco@placer.ca.gov)
Ben Branaugh, Code Enforcement (via email: bbranaug@placer.ca.gov)
Client (via email)

{00419794.DOC 1 }

23

EXHIBIT B

Louis A. Basile
Kelley R. Carroll*†
Peter H. Cuttitta*
Steven C. Gross*
Brian C. Hanley*
Stephen C. Lieberman
James L. Porter, Jr.*
James E. Simon

PORTER SIMON
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Catherine E. Blaber*

Dennis W. De Cuir, A Law Corporation, Of Counsel

† Certified Specialist in Estate Planning, Trust & Probate Law
* Also licensed in Nevada

October 22, 2012

VIA CERTIFIED AND REGULAR U.S. MAIL

Alan and Alvina Lundberg
744 Cortlandt Drive
Sacramento, CA 95864

Eberhardt Builders, Inc.
15212 Waterloo Circle
Truckee, CA 96161

RE: Request to Remove Encroachments and to Cease Trespassing

Dear Mr. and Mrs. Lundberg:

I am informed that you own 1346 Kings Way, Tahoe Vista, California, and are in the process of remodeling your home and a deck on your property through your contractor, Eberhardt Builders, Inc. My office represents Vinita Varma, who is your neighbor at 1348 Kings Way, Tahoe Vista, California.

My client recently discovered that your deck is encroaching on her property. To verify the encroachment, my client hired a licensed surveyor to mark the corners of her property. I have enclosed pictures with this letter documenting the property lines, and your deck's encroachment onto my client's property. In the pictures, the surveyed property line is marked with posts and orange safety fencing. These pictures clearly demonstrate that your deck is physically encroaching onto my client's property. Also, the pictures show that your deck and other structures also appear to be in violation of mandatory setback requirements under Placer County Code. (See North Tahoe Area General Plan, Kingswood Area §§ 17.54.130 though 17.54.160.)

To be clear, my client does not consent to this encroachment, which is a continuing trespass, and desires your immediate removal of all encroachments onto my client's property. Therefore, this letter is a formal request that you immediately remove the encroachments. If we do not receive confirmation from you (or your attorney, if any) by November 7, 2012, that you will remove the encroachments, I will assume you have no intention to remove the encroachments and my client reserves all her legal and equitable rights to seek their removal, and to seek all her damages, costs, and expenses from you relating to this matter.

I also understand that your permit for the remodel is still active with Placer County, and that the building plans may not show the correct property lines or the encroachments. Therefore, I have also copied the Placer County Planning and Building Departments on this letter to inform them that my client does not consent to these encroachments onto her property, or the violations of the Placer County setback requirements. These encroachments would negatively, and unfairly, affect my client's ability to construct on her property.

Certified Article Number 7196 9008 9040 1248 9729 SENDERS RECORD

Certified Article Number 7196 9008 9040 1248 9675 SENDERS RECORD

{00311593.DOC 3 }

Finally, it is apparent from the pictures that you and your contractor have also trespassed on my client's property during your construction process, including disturbing, compacting and depositing dirt on my client's property. The green fencing shown on the pictures, which was apparently placed by your contractor, is located several feet onto my client's property. The pictures clearly demonstrate compaction of soil and destruction of vegetation on my client's property. Please immediately cease and desist all trespassing on my client's property.

Thank you.

Very truly yours,
PORTER SIMON
Professional Corporation

BRIAN C. HANLEY
hanley@portersimon.com

Enclosures (pictures as stated)

Cc: Allen Breuch, Supervising Planner (Placer County Planning Department)
Braden Johnston, Associate Technician (Placer County Building Department)
Client (via email)

EXHIBIT C

40073

Diepenbrock Elkin LLP

Eileen M. Diepenbrock
T: 916-492-5024
F: 916-446-2640
emd@diepenbrock.com
www.diepenbrock.com

November 6, 2012

Brian C. Hanley
Porter Simon PC
40200 Truckee Airport Road
Truckee, CA 96161

Re: Response to Demand Letter

Dear Mr. Hanley,

We represent Alan and Alvina Lundberg, and write in response to your letter, dated October 22, 2012 regarding the properties located at 1346 and 1348 Kings Way in Tahoe Vista.

Our clients were surprised to receive your letter because they have always understood that their home and deck were built in conformity with the surveyed boundaries set forth in the map creating the subdivision. Your letter is the first time our clients have ever heard about any supposed encroachment on your client's property.

The Lundbergs purchased 1346 Kings Way in 1985. That parcel is shown as Lot 119 on the subdivision map that was recorded on Page 73 of Book 1 of the County's Book of Maps. Your client's property is Lot 118. This map established the operative boundaries for our respective clients' properties. Later recorded surveys have been consistent. Our clients' possession, occupancy and enjoyment of their property always has been in accordance with the boundaries of the subdivision map and subsequent surveys. This is also true regarding our clients' remodel project. Further, the plans for that remodel include a site plan with the property boundaries that was verified and approved by both the Tahoe Regional Planning Agency ("TRPA"), and Placer County.

We also disagree that our clients' remodel plans violate any setbacks. Again, those plans were reviewed and approved by TRPA, and by the County Building Department, on August 9, 2010. Sheet A.10 of those approved plans includes a handwritten annotation referring to the corner of the Lundbergs' East Deck, which comes closest to the property line with Lot 118, as "Existing." That annotation is accurate because the Lundbergs' remodel involved no change to the location of the deck as it existed in 1985. Plan Sheet A.10 also includes a stamp showing the County's "Setback Requirements" listing the minimum side setback. Another handwritten annotation states "New 5,'" in reference to new construction delineated in the plans. These plans thus confirm that the County carefully reviewed the remodel plans for Code Compliance, and determined

28

that the existing East Deck constituted a pre-existing condition that was not subject to the minimum five foot setback referenced in your letter.

Based on the above, we have concerns regarding the basis for the demands made in your letter. In addition to the facts stated above, we understand a survey of Lot 118 and its boundary lines has not been submitted to the County, and that no Record of Survey showing the alleged encroachment and the measurement of the encroachment has been recorded. The County has received only a "Corner of Record" application, dated October 31, 2012, recording only one front corner of Lot 118. Finally, we have reason to believe that the fencing shown in the photographs enclosed in your October 22, 2012 letter was not installed by a licensed surveyor.

Although we are confident that our clients have not encroached onto the Varma property, we would be interested in meeting with you and your client to discuss these issues further. To assist us in completing our analysis, and to help us prepare for any meeting with you and your client, we would greatly appreciate it if you would provide us with all data that you relied upon in preparing your demand letter by no later than November 20, 2012. In the meantime, it appears that the construction fencing and associated structures that your client has caused to be erected are on our clients' property. We request their immediate removal. Further, our clients will look to yours for any and all damage and/or injury that may result from their erection, placement and removal.

If you would like to discuss the matter further prior to your delivery of this requested information, please do not hesitate to contact me.

Very truly yours,

DIEPENBROCK ELKIN LLP

Eileen M. Diepenbrock

Eileen M. Diepenbrock

EMD/sya

cc: Alan and Alvina Lundberg
David A. Diepenbrock, Esq.

EXHIBIT D

Lo[illegible]-A. Basile
Kelley R. Carroll*†
Peter H. Cuttitta*
Steven C. Gross*
Brian C. Hanley*
Stephen C. Lieberman
James L. Porter, Jr.*
James E. Simon

PORTER SIMON
A PROFESSIONAL CORPORATION

Catherine E. Blaber*

Dennis W. De Cuir, A Law Corporation, Of Counsel

† Certified Specialist in Estate Planning, Trust & Probate Law
* Also licensed in Nevada

May 9, 2013

VIA REGULAR U.S. MAIL AND EMAIL: emd@diepenbrock.com

Diepenbrock Elkin LLP
Attn: Eileen Diepenbrock
500 Capitol Mall, Suite 2200
Sacramento, CA 95817

RE: Renewed Demand for Removal of Encroachment/Request for On Site Meeting
Lundberg Property (1346 Kings Way, Tahoe Vista, CA)
Varma Property (1348 Kings Way, Tahoe Vista, CA)

Dear Ms. Diepenbrock:

My office represents Vinita Varma, who owns 1348 Kings Way. You represent Alan and Alvina Lundberg, who own 1346 Kings Way.

In October and November 2012, our offices exchanged letters concerning your clients' encroachment onto my client's property. Specifically, I wrote a letter detailing the encroachment to your clients on October 22, 2012. You then wrote to me on November 6, 2012, disputing the encroachment and suggesting a meeting to discuss these issues. In turn, I wrote to you on November 13, 2012, notifying you that a Record of Survey documenting the encroachment was being prepared for recording in the Placer County Recorder's Office. As represented, the Record of Survey was recorded on March 5, 2013, as Document No. 2013-0021132 in the Official Records of Placer County. My November 13, 2012, letter also suggested that your clients should obtain a survey if they desired to challenge the accuracy of my client's survey prior to any meeting. We have not received a response from you to my November 13, 2012, letter, or any response disputing the encroachment documented on the Record of Survey.

My client has informed me that your clients have recently resumed construction on the portion of the deck encroaching in the setback, and that your clients (or their agents) have damaged the fence marking the property line and trespassed on my client's property to reinstall their green construction fencing. Please be advised that construction within ten feet of the side property lines is not only a violation of Placer County setback requirements, but is also a breach of the Declaration of Protective Restrictions, recorded against our clients' respective properties on January 23, 1970, at Book 1280, Page 335 in the Official Records of Placer County. (See Article VIII, Section 1.)

To date, your clients have not indicated a willingness to remove the encroachment or address my client's concerns. Therefore, in light of this status and in an effort to discuss this

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3/

matter prior to further legal proceedings, my client has authorized me to meet with you on site to discuss these issues as suggested in your previous letter. I suggest that we meet on site before May 17, 2013, and that everyone circulate all documents (e.g., surveys, site plans, plan approvals, etc.) they intend to rely on prior to the meeting, including all documents referenced in your November 6, 2012, letter, so that we can have a meaningful discussion about this issue. Please let me know when you are available to meet within that timeframe so that we can arrange a meeting.

Finally, to reiterate, your clients do not have permission to remove the boundary line fence, to install or maintain this green construction fencing on my client's property, to use my client's property in any fashion attendant to the construction, and/or to continue with construction of the encroaching deck on my client's property or within applicable setbacks. My client reserves all of her legal and equitable remedies under applicable law and all applicable covenants and equitable servitudes, including, without limitation, seeking injunctive relief ordering removal of the encroachment if this issue is not timely resolved to my client's satisfaction.

Thank you.

Very truly yours,
PORTER SIMON
Professional Corporation

Brian Hanley

BRIAN C. HANLEY
hanley@portersimon.com

Cc: Client (via email)

EXHIBIT E

Louis A. Basile
Kelley R. Carroll*†
Peter H. Cuttitta*
Steven C. Gross*
Brian C. Hanley*
Stephen C. Lieberman
James L. Porter, Jr.*
James E. Simon

PORTER SIMON
A PROFESSIONAL CORPORATION

Catherine E. Blaber*

Dennis W. De Cuir, A Law Corporation, Of Counsel

† Certified Specialist in Estate Planning, Trust & Probate Law,
* Also licensed in Nevada

Certified Article Number
7196 9008 9040 1739 5930
SENDERS RECORD

May 23, 2013

VIA CERTIFIED U.S. MAIL AND EMAIL: bbranaug@placer.ca.gov

Placer County
Code Enforcement Division
Attn: Ben Branaugh
3091 County Center Drive, Suite 160
Auburn, CA 95603

RE: Code Enforcement and Permit Revocation
Lundberg Property (1346 Kings Way, Tahoe Vista, CA)
Public Records Request Related to Lundberg Property

Dear Mr. Branaugh:

My office represents Vinita Varma, who owns the currently-vacant lot at 1348 Kings Way (the "Varma Property"). This letter concerns the encroachment onto the Varma Property and into Placer County side setback requirements by my client's neighbors, Alan and Alvina Lundberg, who own 1346 Kings Way (the "Lundberg Property"). As you know, this issue is of great concern and importance to my client as she desires to build her dream house on the Varma Property as close to the side setback from the Lundberg Property as possible, and this continuing encroachment is unfairly interfering with and delaying her plans, and causing her damages related thereto. Your immediate attention and response to the concerns set forth in this letter is appreciated, including providing all documentation and legal authority supporting or relating to Placer County's position.

BRIEF BACKGROUND

To briefly summarize my understanding of this issue, the upper deck on the Lundberg Property encroaches onto the Varma Property as depicted on the Record of Survey by Webb Land Surveying, Inc., dated May 1, 2013, and recorded March 22, 2013, at Book 22 of Surveys, Page 25, and as Document No. 2013-0021132 in the Official Records of Placer County. The Record of Survey also shows that the southeast corner of the house on the Lundberg Property is within five feet of the side property line, as is a substantial portion of the upper deck (including a concrete footing) on the southeastern side of the Lundberg Property. There is also a lower deck on the Lundberg Property that is approximately seven feet above grade, which also significantly encroaches into the side setback and is being built as close as one foot from the property line.

My client's primary concern is not with the encroachment of the house, but with the encroaching decks, which are currently being constructed under an active permit with Placer

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County. In contrast to the house, moving the decks to the proper side setback line would not impose significant costs or cause any hardship, and would be a fair resolution to these issues.

I am informed that the plans submitted for at least the upper deck were inaccurate in that they failed to show this encroachment, and that there is a notation on the plans by Placer County staff (by Jack Edstrom) that the structure is "existing." However, as detailed below, a review of the County permit file reveals that the "existing" structure was never approved by Placer County within the side setback and, in fact, the deck was built in contravention of the plans originally submitted for the house/deck which showed at least a five foot setback on the southern side of the Lundberg Property adjoining the Varma Property. Also, critically, the lower deck appears to be a newer structure that is being built in violation of mandatory Placer County setback requirements. (See permit file from Placer County, which is enclosed with this letter, indicating "REBUILD COVEDRED DECK – 165 sf; *NEW COVERED DECK – 48[sf]*; REBUILD DECK – 681[sf]; *NEW DECK – 634sf*" (emphasis added).)

I have written to the Lundbergs on three occasions concerning the encroachment. While they originally challenged my client's position, they have apparently finally conceded to the true property line/encroachment and to allow the County process to run its course. My client has been in communication with Placer County for many months requesting the County's attention to these issues to no avail. However, I understand from Mr. Rosasco's May 20, 2013, email that the County has finally issued a Stop Work Notice to prohibit further work on the upper deck on the Lundberg Property. This appears to be an appropriate course of action until this issue is resolved as to the upper deck; however, the Stop Work Notice must be extended to cover all decks (both upper and lower) because both decks are being improperly built within the mandatory side setbacks. Please advise immediately whether the Stop Work Notice will be extended to the lower deck and, if not, please provide all documentation and authority for allowing such construction. Please also notify me and my client prior to Placer County rescinding the Stop Work Notice on the Lundberg Property.

I also understand that Placer County is treating this as a Code Enforcement issue. Please note that my client disagrees with this assessment as the decks are being constructed under an active permit. The plans mark the upper deck as "existing," but there is no approval for construction within the five foot setback or any variance to these mandatory requirements for either the upper or lower decks. Thus, the permit itself is subject to challenge and revocation for non-compliance with mandatory side yard setback requirements of Placer County Code, as well as being a Code Enforcement issue. The Placer County Planning and Building Departments need to enforce these mandatory side setbacks in the building and permitting process.

As to Placer County Code Enforcement's position on this matter, I am also in receipt of your May 21, 2013, email in which you state the following:

> In response to your email sent on 5/20/2031 the side setbacks for the parcel in question in 1978, when the house and deck were originally built, were a total of 15 feet with a minimum of 5 feet. At the time the zoning ordinance section

> 1726c.2. also stated that "unenclosed porches, or stairways, fire escapes or landing places may extend into any required front or rear setback not exceeding(5) feet and **into any required side setback not exceeding three (3) feet.**" At this time we are requiring the owners to remove the deck encroachment across the property line and either cut back the deck to meet the (2) two foot side setback that is allowed per the zoning ordinance or apply for a variance to these requirements.

As set forth in more detail below, my client disputes Code Enforcement's assessment, analysis and proposed resolution of this matter.

LEGAL ANALYSIS

First, the ordinance (ordinance section 1726c.2) that you cite in your email appears to be inapplicable on its face. As quoted by you, this ordinance apparently applies to porches, stairways, fire escapes or landing places, all minor intrusions into the setback. The deck at issue here is approximately twenty feet above ground and covers a fairly substantial area within the setback. The deck cannot be considered a "porch" or any other minor intrusion into the setback as apparently contemplated by this old ordinance. Current Placer County Code (apparently the successor to this old ordinance) makes this crystal clear as it contains a similar exception for windows, landings, and similar architectural features, but which does not apply by its plain terms to "decks thirty (30) inches or more above natural grade." (Placer County Code § 17.54.150.) Therefore, the old ordinance cited by Code Enforcement does not apply to the decks at issue here, and there is no legal basis for the County to allow the substantial decks on the Lundberg Property to continue to extend into the minimum five foot side setback.

Second, there is no evidence that Placer County approved any variance or exception to the five foot side setback requirement, including allowing the deck under the 1978 ordinance 1726c.2. The evidence actually demonstrates that the deck and house on the Lundberg Property were actually constructed at significant variance with the builder's submissions to Placer County. There is no evidence at all that the lower deck was constructed in 1978, and there is information in Placer County's own files indicating the lower deck is a new structure and subject to current Placer County Code. (see above)

Critically, one of the original sketches submitted to Placer County for construction of the house/upper deck, which I have enclosed with this letter, shows eight foot and ten foot setbacks on the north side of the Lundberg Property. These drawings to scale measure 5/12" on the plans. The side setback on the deck on the south side of the Lundberg Property is not labeled as to feet, but shows side setbacks ranging from 6/12" on the southwest corner of the deck to 3/12" to scale on the southeast corner of the deck. If you extend these side setback calculations to scale (5/12" = 10 feet), it conclusively demonstrates that the upper deck was never intended to encroach within the five foot side setback per the plans submittals (3/12" = 6 feet). There is certainly no indication in the permit file that Placer County was ever presented with, or approved, any

intrusion into the five foot side setback. To the contrary, the evidence shows the decking was supposed to be approximately six feet from the property line at its closest point.

Comparing the plan submittal to the as built structure (depicted on the Record of Survey) makes it clear that the builder deviated from the plans submittal and oriented the proposed structure in a counterclockwise direction, which pushed both the house and upper decking closer to the property line and encroached substantially on the five foot side setback (and onto the Varma Property as well). This is not surprising as the altered orientation presented a better view of Lake Tahoe, and the Varma Property was unbuildable at the time so the odds were nobody would notice or object if the builder snuck a few feet closer to get a better view. The fact that no one hired a surveyor at the time to document or object to the side setback transgression does not justify the encroachment, however, or entitle the structure to status as a nonconforming use. (See Placer County Code § 16.60.120(B)(1); see *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791 [property owner only has right "to complete construction in accordance with the terms of the permit."].) The Lundberg Property has no right to reconstruct the upper deck to 1978 standards (which were not complied with in 1978) simply because this issue was never detected by the County, as the only right was to construct in accordance with the plans/permit/ordinance which did not allow construction of the upper deck within the five foot setback area.

Simply put, the upper deck as built did not conform to even the old Placer County ordinance cited in your letter and, thus, cannot be a legal, nonconforming use because it never complied with the old Placer County ordinance in the first place (even if the ordinance applied to substantial deck structures, which it does not as discussed above). There is simply no authority to allow the reconstruction of the deck to 1978 standards, or to retroactively apply the 1978 ordinance to the reconstruction to allow reduction of the upper deck to up to three feet into the setback; the County must apply current zoning requirements to the reconstruction because the deck never complied with zoning ordinances and was never legal in the first place. If you believe otherwise, please provide me with such authority.

Third, even if the deck was a legal, nonconforming use (which it is not), Placer County retains the discretion to refuse to allow the nonconforming use to continue when the upper deck is rebuilt. (See Placer County Code § 16.60.120(B)(1) [use of "may" to describe whether use can continue upon reconstruction].) Placer County Code section 17.54.130(B)(1) makes it clear that fire safety is of utmost importance in determining the priority of setback requirements. These concerns have only been heightened by recent fires, including the Angora Fire, and justify the County in enforcing the five foot setback here, especially because my client intends to construct on the Varma Property just outside the five foot setback along the property line shared with the Lundberg Property. There are substantial decks on the Lundberg Property that are not compliant with the setback, and there is little to no difference in the cost of reconstructing the decks to comply with the mandatory five foot setback (as proposed by my client) or the two foot setback from an inapplicable 1978 ordinance (as proposed by the County). Even if the County could allow the continuation of the nonconforming use, which it cannot, it should exercise its

discretion to disallow the continuation of the use in this circumstance given all the background set forth above.

Fourth, there is no evidence that the upper deck itself was built to current specifications in 1978. My client has information to believe that the upper deck was expanded to the south during one of the more recent remodels to the Lundberg Property and that the lower deck has been recently constructed, which would make the 1978 ordinance completely inapplicable. The County must further investigate this if it considers applying the 1978 ordinance.

Finally, it is apparent that there was a misrepresentation to Placer County during the recent plan submittal, which failed to document the encroachment onto the Varma Property. Further, the deck submittal violates Placer County Code, even as it existed in 1978 and also as it currently exists. This poses a danger to health and safety as a fire risk. All of these conditions justify revocation of the permit under Placer County Code section 17.62.170.

In conclusion, my client disagrees with the County's position and proposed resolution to this matter in light of the materials we have to date. It is apparent we do not have all the County records, though, so I have included a Public Records Request below to ensure that my client has access to all material facts and authority, and we reserve the right to provide additional evidence and/or authority to the County as we receive and review these documents.

My client is hopeful to reach an amicable resolution to this dispute with the County's enforcement of the clear minimum side setback of five feet for both decks on the Lundberg Property. This will leave a substantial deck on the Lundberg Property, will not cost substantially more to move five feet as opposed to the two feet proposed by the County, will be fair to all parties who must live by the same rules, and will respect the fire safety and other concerns why these setback requirements exist in the first place. Failing that, my client reserves all of her legal and equitable rights, including to seek mandamus to require the County to enforce these clear side setback requirements. (See *Horowitz v. City of Los Angeles* (2005) 124 Cal.App.4th 1344.)

REQUEST UNDER CALIFORNIA PUBLIC RECORDS ACT

My client hereby requests all records in the possession of Placer County relating to (i) any and all permits on the Lundberg Property for construction of the house and/or deck, including all submittals, revisions, comments, approvals, and all documents related thereto, (ii) any and all approvals by Placer County of the house and/or deck on the Lundberg Property, including variances or approval of a setback less than five feet, (iii) any and all documents prepared for, reviewed and/or relied on by Placer County in reaching the proposed resolution of this matter identified in your May 21, 2013, email, (iv) all Placer County Code provisions concerning or relating to permit submittal requirements, setbacks, nonconforming uses and/or variances as they existed in 1978, and (v) all conditions of approval for the Kingswood West subdivision (Tract No. 173), recorded at Book I of Maps, Page 73, and approved by Placer County on December 23, 1968, for the purpose of inspection and copying pursuant to the California Public Records Act (Government Code Section 6250 et seq.). The information that I

ask to inspect is as follows: all correspondence, e-mails, facsimiles, letters, photos, memoranda (including legal memoranda), drawings, sketches, notes, permits, variances, approvals, plan submittal, review and approval, and/or notices concerning the original construction, any remodeling and any reconstruction of the house and/or deck on the Lundberg Property. This request reasonably describes identifiable records or information produced therefrom, and I am not aware that there exists any provision of law exempting these records from disclosure.

If a portion of the information I have requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If you determine that an express provision of law exists to exempt from disclosure all or a portion of the material I have requested, Government Code Section 6253(c) requires notification to me of the reasons for the determination not later than 10 days from your receipt of this request. Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act "to delay access for purposes of inspecting public records."

You may feel free to provide these materials to our office provided that the cost of copies and postage does not exceed $100. Otherwise, please contact me to discuss document inspection and copying.

Thank you.

Very truly yours,
PORTER SIMON
Professional Corporation

BRIAN C. HANLEY
hanley@portersimon.com

Enclosures (as stated)

Cc: George Rosasco, Supervising Planner (via email: grosaco@placer.ca.gov)
Allen Breuch, Supervising Planner (via email: abreuch@placer.ca.gov)
Braden Johnson, Building Department (via email: bjohnsto@placer.ca.gov)
Michael Johnson, CDRA Director (via email: MJohnson@placer.ca.gov)
Jennifer Montgomery, County Supervisor (via email: JenMonten@placer.ca.gov)
Client (via email)

EXHIBIT F

COUNTY OF PLACER
Community Development/Resource Agency
Michael J. Johnson, Agency Director

PLANNING
SERVICES DIVISION

Paul Thompson
Deputy Planning Director

SET VIA ELECTRONIC MAIL TO: vinitavarma@hotmail.com

January 31, 2013

Vinita Varma
1348 Kings Way
Tahoe Vista, CA 96148

RE: Code Enforcement Complaint for the property located at 1346 Kings Way, Tahoe Vista

Ms. Varma:

This letter is to inform you that the Placer County Code Enforcement Division received your code enforcement complaint on November 28, 2012. In that complaint you state your neighbor's deck encroaches onto your property. As Officer Ben Branaugh of the Code Enforcement Division previously stated to you, both on the phone and at a meeting held at the Community Development Resource Agency, staff is processing your complaint in accordance with the Placer County Code Enforcement Procedure Manual. At this time, Officer Branaugh has made contact with the adjoining property owner, both verbally and in writing, and informed them of the complaint.

Before staff can proceed with the complaint process, the Code Enforcement Division must determine exactly where your common property line is in relationship to the adjoining property's deck, as the exact location of the property line is not clear at this time. The Record of Survey that Matt Webb has prepared should clarify the exact location of your common property line in relationship to the adjoining property's deck. The Record of Survey will need to be checked by the Placer County Surveyor and recorded as an official document of Placer County before the Code Enforcement Division can use it to make a determination. Once this has been completed, the Code Enforcement Division will resume processing your complaint.

I am aware that another survey was prepared by Kenneth Barrow in 2003 that shows the adjoining property's deck encroaching across the common property line in question. However, that survey was submitted to the Tahoe Regional Planning Agency (and not to the County), and the survey was never checked by the Placer County Surveyor or recorded as an official document. Consequently, the Code Enforcement Division cannot be sure of its accuracy and cannot use it to determine the location of the deck in relationship to the common property line.

Please be advised that the Code Enforcement Division is required to process all code enforcement complaints in accordance with the Placer County Code Enforcement Manual. I have attached a flow chart of that process for your review. To assure the rights of all interested parties are respected, the resolution of a Code complaint may take between 12 and 18 months.

Officer Branaugh has also made me aware that you have requested copies of all building permits issued and building plans approved by the County on the adjoining property. Staff is currently compiling the building permits for you and will forward this information to you as it is available. Building plans are the property of the architect or designer, consequently, staff cannot provide you with copies of building plans; however, you can come to the County and review the plans.

If you have any further questions, please feel free to contact Officer Branaugh of the Code Enforcement Division or myself between 8am and 5pm Monday through Friday, phone (530) 745-3000.

Cordially,

George Rosasco
Supervising Planner
Placer County Planning Services

cc.
Michael Johnson, Community Development Resource Agency Director
Timothy Wegner, Chief Building Official
Ben Branaugh, Code Enforcement Division
Beverly Roberts, County Executive Office

Attachment: Flow Chart

TYPICAL CODE COMPLIANCE PROCESS

The following flow-chart identifies the step-by-step process the County follows when a land-use complaint is received. In an effort to negate selective enforcement, the County only accepts signed written complaints. The primary objective of Code Enforcement is to obtain voluntary compliance. Most land use issues are rather unique and may take a substantial course of time to identify and resolve the issue at hand. Our inspection and enforcement process is focused on assisting the property owner in bringing the property into compliance with the law, and working collectively with them through education and guidance to achieve compliance.

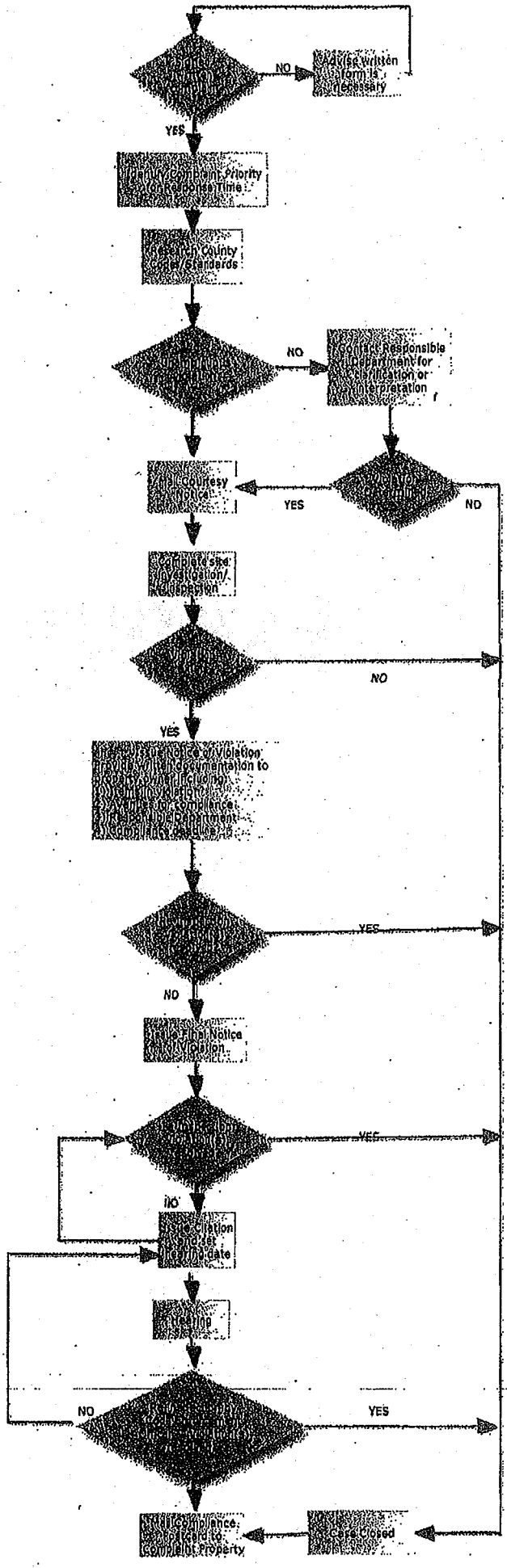

EXHIBIT G

COUNTY OF PLACER
Community Development/Resource Agency
Michael J. Johnson, Agency Director

PLANNING
SERVICES DIVISION

Paul Thompson
Deputy Planning Director

May 21, 2013

Alan and Alvina Lundberg
744 Courtland Drive
Sacramento CA, 95864

SUBJECT: Deck encroachment located at 1346 Kingswood Way, Tahoe Vista

Mr. and Mrs. Lundberg:

This letter shall supersede all previous County verbal and written communication regarding the reconstruction of the above-grade deck located on your property at 1346 Kingwood Way in Tahoe Vista California. This letter shall represent the County's official position regarding the reconstruction of the above-grade deck on your property for which a Stop-Work Notice has been issued.

Your above-grade deck, which is oriented towards your easterly property line and extends around to the southerly side of your property, was first shown to be constructed on a site plan for Building Permit B20171 in 1978 and signed off with setbacks of a total of 15 feet, with a minimum of 5 feet on the southerly property line. In 1981, in conjunction with Building Permit B23964 for the construction of a garage, the submitted plans shows your deck meeting the setbacks of a total of 15 feet, with a minimum of 5 feet on southerly property line. However, in 2010 when you submitted plans for the remodel of your residence and above-grade deck (Building Permit 32807.09), the deck adjacent to the southerly property line is shown as pre-existing and having been constructed on the southerly property line (i.e., no setback).

Because the above-grade deck for residence was originally permitted with setbacks totaling 15 feet, including a minimum 5-foot setback along the southerly property line, it would appear that the deck was originally constructed illegally and not in conformance with the County-approved plans. Based on the most current information available to the County, which is a Record of Survey recorded at the County and done by Matt Webb, a Licensed Surveyor, your deck does not meet the required setback of a total of 15 feet with a minimum of 5 feet on the southerly property line (as approved by Placer County). In fact, the Record of Survey shows that your existing deck encroaches approximately 1.5 feet onto the adjoining neighbor's property to the south of your property. Based upon this new information, a Stop-Work Notice has been posted on your property to allow for revised plans to be submitted that comply with County setback requirements.

To correct this illegal construction and violation of setbacks, you will need to redesign your deck so it meets the required 5-foot setback from the southerly property line. Alternatively, you could remove the encroaching portion of deck on the adjoining property and then apply for a Variance to setbacks. However, to obtain a Variance to setbacks, you will need to demonstrate that special circumstances exist with regard to the size, shape, or topography of the property which is depriving you of the

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Internet Address: http://www.placer.ca.gov/planning / email: planning@placer.ca.gov

benefits enjoyed by others in the same zone district. Based on my review of the circumstances surrounding your deck, staff would most likely be unable to support such a request for a Variance. That being said, it remains your right to officially apply for a Variance, should you so choose.

The County looks forward to working cooperatively with you to address the illegal construction of the above-grade deck constructed on your property, thereby bringing the construction of the deck into conformance with the applicable setbacks for your property and in a manner consistent with the County's 1978 approval. As I am sure you desire to correct the Stop-Work Notice immediately, please call me directly at 530-745-3065, and I will personally assist you in getting revised plans reviewed and approved through the County's Building Services Division.

Cordially,

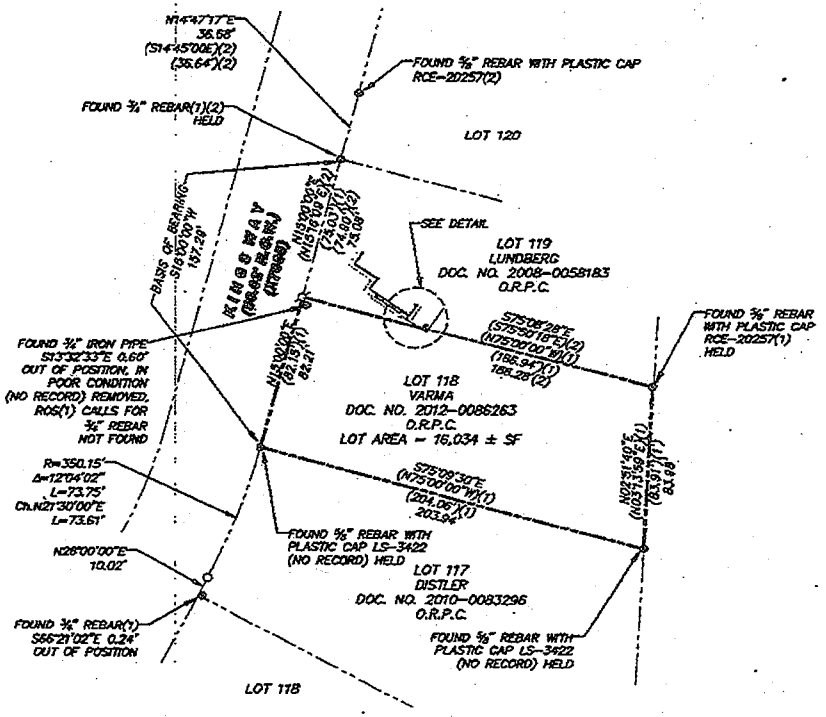
George Rosasco
Supervising Planner/Code Enforcement Division Supervisor

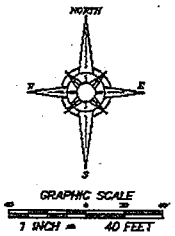
cc. Ben Branaugh, Code Enforcement

4/6

EXHIBIT H

BOOK _____ OF SURVEYS, PAGE ____





BASIS OF BEARINGS

THE MERIDIAN OF THIS SURVEY IS BASED ON THE FOUND MONUMENTS, SHOWN HEREON, AND LABELED AS SUCH, S 15°00'00" W, 157.29', PER KINGSWOOD WEST SUBDIVISION, BOOK "I" OF MAPS, PAGE 73, OFFICIAL RECORDS PLACER COUNTY.

NOTES

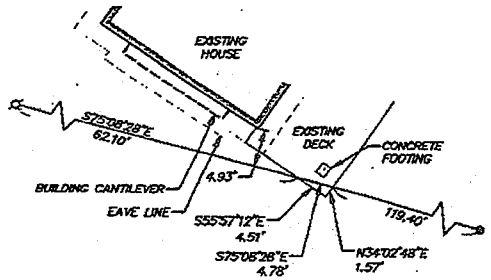
THE PURPOSE OF THIS SURVEY WAS TO SET THE NORTHWEST PROPERTY CORNER OF LOT 118, KINGSWOOD WEST SUBDIVISION, OFFICIAL RECORDS PLACER COUNTY.

DISTANCES SHOWN HEREON ARE GROUND DISTANCES. TO OBTAIN GROUND DISTANCES FROM THE SUBDIVISION MAP GRID DISTANCES, THE GRID DISTANCE IS MULTIPLIED BY 1.0004062 TO OBTAIN GROUND DISTANCE, PER I/MAPS/73, O.R.P.C.

LEGEND

- ⊙ FOUND MONUMENT AS SHOWN HEREON
- ⊄ SET 5/8" REBAR WITH YELLOW PLASTIC CAP L.S. 7429
- ○ DIMENSION PT (NOTHING FOUND OR SET)
- (1) RECORD PER KINGSWOOD WEST SUBDIVISION I/MAPS/73
- (2) RECORD PER RECORD OF SURVEY #2859 19/RS/105

ENCROACHMENT DETAIL



SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME, OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT, AT THE REQUEST OF VINITA VARMA, DURING NOVEMBER, 2012.

DATE _____ MATTHEW S. WEBB, P.L.S. 7429
EXPIRES DECEMBER 31, 2013

COUNTY SURVEYOR'S STATEMENT

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS ACT THIS ____ DAY OF _____, 2012.

BY: _____
CHARLES B. GRANT, PLS 6158
PLACER COUNTY SURVEYOR
LICENSE EXPIRES 03/31/2014

BY: _____
LESLIE AMSBERRY, PLS 6584
DEPUTY COUNTY SURVEYOR
LICENSE EXPIRES 12/31/2013

RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2012 AT _____ M. IN BOOK _____ OF SURVEYS, AT PAGE _____, AT THE REQUEST OF MATTHEW S. WEBB.

FEE: _____
DOC. NO: _____

JIM MCCAULEY
COUNTY RECORDER
BY: _____
DEPUTY

RECORD OF SURVEY

No. XXXX

FOR: VINITA VARMA

BEING LOT 118, KINGSWOOD WEST SUBDIVISION, FILED IN BOOK "I" OF MAPS 73, O.R.P.C. ALSO LOCATED IN A PORTION OF THE NORTHWEST ¼ OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 17 EAST, M.D.B. & M.

COUNTY OF PLACER NOVEMBER 2012 CALIFORNIA

WLS
WEBB LAND SURVEYING, INC.
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AGENCY PROCESSING
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Tahoe City, CA 96145
P.O. Box 1222
Cornelian Bay, CA 96140
(530) 581-2599
FAX (530) 581-3231
matt@webblandsurveying.com

SHEET 1 OF 1

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