

10/26/2018 **Appeal to Board of Supervisor C. Andersen**

To: PW Director Brian Balbas, PW Deputy Director Mike Carlson, Board of Supervisor C. Andersen  
From: Mary Dunne Rose, Owner of property; # MS060037 or CV14-0042; 87  
Re: Additional **Attachment to Board of Supervisor Appeal filed on June 5, 2018**  
Property: 78 Grandview Place, Walnut Creek, CA approved permit - lot split, new lot B to have UD home  
APN: 184-462-008, County File #MS 060037, confidentially requested  
Applicant: Property owner Mary Dunne (Rose), [marydunne1@gmail.com](mailto:marydunne1@gmail.com); 1966 Tice Valley Blvd. #190 WC, CA

Applicant requests reasonable accommodation to allow her to pay the drainage fee only; and that CCC, follow CCC RA "internal policy" process of an exception, or adjustment to a rule, policy, practice; rescind CofA **42, 43, 44, 45, 49, 53 and 54** so applicant is not required to comply with these excess CofA as their removal is necessary and critical for a person with a disability to have an equal opportunity to use and enjoy a dwelling and to prevent discriminatory treatment against disabled people as other non-disabled projects have been granted special privileges and not required to comply with these type CofA. This will help put applicant in the same position as someone without a disability and therefor provide equal opportunity to housing of our choice.

#### **Police Power, General Plans, The 1987 Mitigation Fee Act ("AB 1600")**

CCC police power is the inherent authority of governments to regulate private behavior in the public interest, subject to constitutional limits. When CCC makes land use and environmental decisions, they wield this police power. Local zoning is the form of the police power that's most familiar in land use settings. The power of CCC Board of Supervisors to approve private development projects also implies the power to attach Conditions of Approvals to those project approvals. Counties have multiple legal authorities to impose conditions such as: The inherent police power; General plans and specific plans that create standards for conditions; The Subdivision Map Act and local subdivision ordinances and standards and others not mentioned here.

Land use planners and their legal advisors recommend that local officials use their General Plans to spell out the Board of Supervisors and community's goals and standards. The courts uphold implementation measures that flow from well-articulated policy statements in General Plans as expressions of the public interest. These adopted goals and policies then become the legal basis for County Ordinances regulating parcel sizes, setting public works standards such as drainage and flood control.

#### **Less Discriminatory Alternative**

Title VI Housing Act requires CCC (Federal Funds recipients) to implement a "less discriminatory alternative" if it is feasible and meets their legitimate objectives. Elston, 997 F.2d at 1407, 1413; Georgia State Conf., 775 F.2d at 1417. Even if the recipient of Federal funds CCC, demonstrates a substantial legitimate justification per their policy and actions, the challenged policy will nevertheless violate Title VI if the evidence establishes an alternative that meets this test exists and was not offered to applicant.

**A "reasonable accommodation (RA)" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.**

The RA laws are of a higher Federal and State jurisdiction and my appeal should be handled as such under CCC administrative and police powers.

### **Disability Physical Impairment**

1. Applicant's Husband - Cancer Survivor, Childhood and Adult Type One Diabetes, Hip Problems, Age over 62 years. This impairment substantially limits major life activity to keep blood sugar "at safe levels" – eating; along with walking with hip problems. 2. Applicant's Disability - X-Rays show Deformed Right Foot, (2 surgeries already), ongoing physical pain. This impairment substantially limits major life activity of walking; including difficulty walking, mobility issues, balance issues. 3. Applicant's Disability - X-Rays showing of Bone on Bone Big Toe Joint Left Foot; Bones on Bottom foot bones not healed, ongoing physical pain. These impairments substantially limit major life activity of walking: including difficulty walking, mobility issues, balance issues. The feet problems create barriers safe walking. Also, difficult to socialize as had done in past, difficulty in walking.

### **CCC Acknowledgement that Applicant is Qualified Person with Disability**

CCC has acknowledged they verified applicant suffers from a qualifying RA feet disability as defined by the Acts (qualified person) and "...basis of our review, we have already determined and accepted that you do have a disability," per email from Deputy Director A. Bhat dated 4/25/2018. Further verification, at subsequent at 6/13/2018 meeting, with applicant visually revealing and displaying both feet X-Rays and actual bare feet's, to DCD Director and DCD Deputy Director for visual confirmation; verbal acknowledgement again. Email and agenda provided upon request.

### **Use of Housing by Applicant & her Family**

Applicant intends to live and use the UD disabled friendly home to age in place safely with UD ground floor modifications.

### **RA is necessary to make specific housing of their choice available to disabled applicant**

Very important is the medical based accommodation requested: the propose UD home is only about 6 to 8 minutes to Kaiser hospital, applicant's family medical offices, which is necessary for easy access given applicants mobility impairments which substantially limit major life activity of walking. Also, necessary quick access to the hospital given her partner's diabetic issues along with his ongoing cancer testing and hip issues. Moreover, applicant chooses to age in place. Chooses not to live in "assisted living, skilled nursing or board and care" (warehoused). Instead, we choose to age safely in place in our ground floor disability friendly home.

Discrimination is defined by various laws that includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when **such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling of their choice,**" §3604(f)(1)(A) and (f)(3)(B) or otherwise deny or make unavailable. Building our UD, mobility friendly home will eliminate barriers to walking, entering our home safely, showering, cooking, walking to the street for socializing, performing daily activities that other non-disabled folks enjoy on a daily basis such as getting the newspaper and mail, taking out the garbage, walking her land to performing maintenance checks on our home.

### **No Undue Financial or administrative burden to CCC**

Every requested RA below and attached information are just changes to 2006 erroneous and unfair conditions of approval imposed upon disabled applicant in a discriminatory manner. Applicants proposed changes below are necessary to remove inequitable CofA that are prejudiced against disabled person and these type of CofA are not always imposed on other similarly situated, non-disabled builders. CCC in 2018 fiscal year has a huge budget of approximately \$3.4 billion, including general fund and other special funds. The requested changes below will not cause undue financial or administrative burden.

**No fundamental alteration in the nature of CCC programs or laws, including land use and zoning**

None of these changes will fundamentally alter the nature of CCC programs or laws, including land use and zoning. In fact, they will uphold many of CCC General (GP) Plan Housing Element policies and state and federal laws surrounding RA processing and disabilities and civil rights. CCC General Plan include many references to RA and committing to building for disabled, special needs persons. These RA requests below will allow CCC to comply with their own GP! Also, important, Cal code 65583 (c)(3) states, "Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities." There are many more laws applicant will refrain from listing.

**Building Site of UD disability friendly home Near Downtown, Transit, Medical Offices, Hospital**

Very important, is the medical RA accommodation requested: the lot is only about 6 to 8 minutes to Kaiser hospital, applicant's medical offices which is necessary for easy access given applicants mobility impairments which substantially limit major life activity of walking. If CCC doesn't rescind CofA **42, 43, 44, 45, 49, 53 and 54**, applicant will not be able to build her families home of our choice which is essential to provide equal opportunity to housing to disabled folks. Finally, this project represents infill development and its very near to the bus stop, downtown Walnut Creek, 680 and 24 freeways, along with BART, near downtown and transit. The construction of the road, etc. will block emergency vehicles from servicing my homes above the targeted DIA construction improvements.

**RA is being requested for various Conditions of Approval (CofA) imposed by CCC**

September 2006 applicant met with CCC DCD staff Ms. Rose Marie Pietras to discuss the application. Applicant informed Ms. Pietras of my foot deformity, showed her the foot and told her that applicant needed to plan for her old age as the foot also had increasing rheumatoid arthritis. CCC staff Ms. Pietras was callously indifferent to my protected Civil Rights, disability status. Staff Ms. Pietras proceeded to intentionally create unequitable, discriminatory CofA. Some examples of the following RA requested changes to CofA were created by staff intentionally discriminating against applicant by imposing certain CofA that have excessive restrictions and certain unfair, unequitable and unjust, mistake conditions to satisfy to build the dwelling of our choice. It is discriminatory (see the Acts) and illegal to create unreasonable conditions approval in a manner that renders a project infeasible for development and penalizes disabled applicant when other non-disabled similarly situated people are not burdened with these excessive, disparate CofA, for very small project such as applicants. These following examples of CoA show inequitable costs, adverse impacts and barriers imposed on the applicant by CCC's CofA that has not been required of other developers of like projects in the past.

CCC BofS has an affirmative duty to establish a "blueprint" for a discrimination free and error free procedural due process, documenting their commitment to a constitutional rights compliant land use application and processing practices **for all persons**, including disabled, senior, special needs, distributing this "blueprint" to the public and making it available to everyone, including proper training of CCC personnel to carry out these duties, to prevent future staff errors. **For example, applicant requested a lot split and permit to subdivide her property in year 2006, years ago, filing an application with CCC. September 2006 applicant met with CCC DCD staff Ms. Rose Marie Pietras to discuss the application. Applicant informed Ms. Pietras of my foot deformity, showed her the foot and told her that applicant needed to plan for her old age as the foot also had increasing rheumatoid arthritis. CCC staff Ms. Pietras was callously indifferent to my protected rights, she maliciously created certain conditions of approval for my project that are discriminatory, inappropriate and punitive. CCC staff Ms. Pietras did not inform applicant of the Reasonable Accommodation (RA) laws at any point in the process. Nor did staff provide a CCC written RA**

policy to applicant. Nor did any other CCC staff or personal (supervisors) inform applicant of the RA laws. Nor were there any posters in the DCD office, flyers or any information on the internet relating to applicant's rights to RA process at CCC. This "no written policy for years" caused applicant to be denied her 1<sup>st</sup> Amendment right to Exercise Free Speech to request RA rights and equal protection and due processes rights and be free of discrimination. If proper RA processing had occurred in 2006, applicant never would have been given the certain "special different treatment" CofA that are near impossible conditions to satisfy, discriminatory and her home could have been built by now.

### **Background No adequate downstream drainage system**

Applicant emailed on 10/1/2018 to Board of Supervisor Andersen's office (and DCD, PW department heads) per BofS Andersen request, information regarding drainage and letters from Public Works and DK Engineering Drainage Consultants confirming the drainage for Westborough 14-unit Condo (my neighborhood) was draining to "...inadequate storm drain system." See attached drainage 7/27/2015 letter from PW to Condo Engineer AND see letter received by PW on 8/12/2015 from DK Engineering Consultants for Condo project, page 3 #16, stating "...neglecting the capacity of the inadequate storm drain system." This is the same storm drain system, same area and vicinity that applicant's storm water drains into. See Westborough CCC file and Drainage and Hydrologic Hydraulic study by DK Engineering Consultants for statement that the "... bioretention basins are designed .low flows. "Higher flows will enter the storm drain system and bypass the bioretention basins all together."

Westborough was granted special privileges inconsistent with the limitation on other properties in the vicinity. Westborough, a non-disabled applicant, was allowed to pay the drainage fee and not make drainage improvements in proportion to their project impact. Further, Westborough (not a disabled applicant) did not have to fully comply with same CCC CofA "Collect and Convey" that CCC is burdening, imposing barriers on applicant's right to build housing of disabled persons choice. Applicant also created a "list of CofA" and is working with CCC to review and correct certain ones that make building housing of our choice impracticable.

### **Preservation and Enjoyment of Substantial Property Rights**

This RA exception is necessary for the preservation and enjoyment of a substantial property rights of applicant to put disabled applicant in the same position as someone without a disability and therefore afford equal opportunity under Federal and State RA various laws to obtain a final map to build our Universal Design first floor housing of our choice and to accommodate my families handicap needs. CCC has applied the zoning ordinance unequally to similarly situated applicants compared to applicant's project.

### **Health Safety and Welfare-Collect and Convey**

Information source; see attached source document for verification of facts below. (Note: Applicant used FEMA website to print out flood maps for her project area; googled "CCC FLOODPLAIN MANAGEMENT PROGRAM Answers to Commonly Asked Questions and A Guide for Residential Construction Within Special Flood Hazard Areas Revised February 2015"; and printed out parts of Chapter 82-28 Floodplain Management Ordinance and "PW Conditions of Approval What Do They Mean?" pamphlet. See attached documents.

Very important, the granting of the RA requested rescinding CofA 42, 43, 44, 45, 49, 53 and 54 exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated. CCC Floodplain Control Ordinance, attached, FEMA flood zone maps (see attached maps printed from FEMA website and related docs) only applies to "all the lands in a... "special flood hazard areas (SFHA)". The flood zone at the bottom of Panoramic Way is in a 500-year flood "shaded" zone X, showing no immediate threat to health, safety and welfare. Repeat, the storm waters from my little project will not foster downstream property damage or adverse flooding impacts in the 500-year "shaded" zone X as it is not in designated "special flood hazard areas (SFHA)".

Moreover, applicants project is NOT in the designated special flood hazard areas (SFHA). Applicants home is in “not shaded” over 500-year zone X designated on the map as “Area of Minimal Flood Hazard”. The bottom of hill of Panoramic Way 500-year flood zone (500-year flood “shaded” zone X) does not materially, significantly, poses any immediate threat to health, safety and welfare to the public welfare or injurious to other property in this 500-year FEMA flood zone.

CCC 82-28.602 states, “this flood ordinance shall apply to...areas of “special flood hazards”...  
CCC 82-28-504 defines “special flood hazard area (SFHA)” has many zones but not the zones in my project area of Grandview Place and Panoramic Way.

Most important, CCC Ordinance Floodplain Management states at 82-28.204 - Findings of fact. CCC participates in the insurance program, National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA) which promotes the public health, safety and welfare in that it provides insurance and federal assistance in the event of flood(s) within the county's jurisdiction. In the absence of such insurance, the county's vulnerability to damage and loss resulting from flood events may be substantial and potential flood damage represents an immediate threat to the public health, safety and welfare. However, CCC own documents state they have insurance (no absence of insurance) and are not vulnerable to costly damages and there is no immediate threat to public health, safety and welfare. CCC Ord. Article 82-28.14. - Flood Hazard Zones 82-28.1402 - Lands to which this article applies. This article applies to all land in a flood hazard zone located in that portion of the Sacramento-San Joaquin Valley that is within the jurisdiction of Contra Costa County. (Ord. No. 2016-16, § II, 6-21-16). Applicant lands are not in any flood zone and of Panoramic Way road is not in any flood zone area SFHA. CCC is requiring applicant to make flood zone improvements to areas not in the required 100-year flood zones?

**Further, CCC Ord. 82-28.468 – Hardship states... aesthetic considerations, **physical handicaps...** personal preferences or ...**cannot...qualify as an exceptional hardship.** So CCC Ordinance refuses to allow **physically handicap folks** to request an exception under the Federal and State Reasonable Accommodation laws? No wonder all my RA official drainage requests are always denied! This refusal shows CCC unreasonable, discriminatory governmental interests being advanced that is purely arbitrary, capricious, and unfounded. CCC insists applicant fix all the drainage problems for the entire neighborhood, outside of FEMA “special flood hazard areas (SFHA)” map flooding area, even though CCC has FEMA flood insurance, significantly delaying and stopping her home building process when there is no immediate threat to public health, safety and welfare in the non SFHA (upper non-Flood designated area and the lower Panoramic road) area of the designated 500-year flood zone.**

It is CCC’s duty to maintain and upgrade the storm drain systems in CCC and in my neighborhood’s “500 year flood rated drainage area”; not to force, require using CCC police powers to stop my development by requiring millions of dollars of major construction improvements such as road widening, retaining walls, rebuild all drainage systems and other related improvement for one disabled person building one home less than 2500 sq. Please see CCC Flood Control & Water Conservation Draft Flood Control Capital Improvement Plan 2018 update (7-year plan). CCC has no plans and does not show any project needed in my drainage area.

### **Need and Applicant Requests CCC Nexus for Drainage CofA 42, 43, 44, 45, 49, 53, 54**

There should be a reasonable relationship to the impact of the proposed one small, 2 story 2500 sq. foot home to my projects requirement for construction of millions of dollars of public facilities; this CCC imposed penalty against a disabled person should really prove a proper nexus between the impacts caused by the development and the condition which advances the governmental interest; CCC needs to **demonstrate, document** the required COA are **reasonable and roughly proportional to the impacts of the on 2500 sq. foot home.**

Applicant RA requests this documentation, in writing from CCC, so she can understand the nexus and logic of CofA **42, 43, 44, 45, 49, 53, 54** and CCC continued application to her disabled

friendly home and the reasons for preventing her from living in the UD housing of her family's choice.

### **CCC Refusal to Comply with CCC own General Plan**

Applicant is in an Established Drainage Area 15A, requests to be treated as other applicants in the same drainage area with very small building footprint and wants to follow the rules in General Plan that allows charging a fee of .35 cents a sq. ft. of impervious surface instead of the areas not yet established as adopted drainage areas that do not pay standardized drainage fees but must meet the collect and convey requirements of the subdivision ordinance. CCC General Plan states: section Public Facilities/Services Element of the General Plan on page 7 states, "flood control drainage areas with established fees...Approved development projects in these drainage areas are assessed a fee based upon the impervious surface."

PUBLIC FACILITIES/SERVICES ELEMENT of CCC General Plan states... "present procedures for requiring all new development to **pay its fair share** of needed drainage infrastructure are **cumbersome and inconsistently applied**". "An additional problem is **the inconsistencies in the amounts** of drainage improvement fees **required** by the...County." The Drainage Area Plan and Fees documents states, "Following the adoption of a *drainage plan*, drainage fees can be assessed against new development within the *drainage area*. Because drainage fees can only be assessed on new developments occurring within *adopted drainage areas*, **developments built within areas not yet established as adopted drainage areas do not pay standardized drainage fees but must meet the collect and convey requirements of the subdivision ordinance**. In most cases, larger development projects are required to make ... mitigation payments, **although the requirement may not be consistently applied to smaller projects** (Translated - General Plan documents, written by CCC, proves and acknowledges CCC drainage requirements are applied in an arbitrary, discriminatory, error prone manner against disabled people need County help, impacting the decision-making processes, customs and procedures such as using the "Collect and Convey" inadequate policy and inadequate training of employees and supervisors to discriminate). (GP pg. 7-18).

Applicant respectfully requests the favorable treatment above, as a smaller project, to ensure no discrimination and removal of expensive, burdensome barriers to building the small project. Also, important, General Plan provision 4-O says, "All new development shall contribute to, or participate in, the improvement of the ...and flood control systems in **reasonable proportion to the demand impacts and burdens generated by project occupants and users**. (GP4-11)

### **Applicant Can Never Comply with "Verify Adequate" Drainage #53 #54 CCC Requirements**

Applicant will never be able to comply with CofA 53 or 54 Division 914 as it is known to CCC and Applicant that the drainage in my projects area, vicinity is "inadequate".

### **Collect and Convey # 53 and #54 CCC Division 914 ordinance says:**

**CofA 53 requires**... "water from applicants' property shall be collected and conveyed without diversion or damage to any improvement, building or dwelling to a natural watercourse having a definable bed and banks, or to an **existing public storm drainage facility having adequate capacity** to its point of discharge into a natural watercourse."

**CofA 54 requires**... "Applicant shall verify that the existing downstream drainage facilities that receive storm water runoff from this project are adequate to convey...if the applicant intends to direct project runoff to the existing roadside ditch along Panoramic Way and it is found to be inadequate, applicant shall constrict improvements to guarantee adequacy."

Applicant will never be able to comply with this condition nor CCC drainage ordinances as it is known by applicant and CCC that the drainage in my projects area is “inadequate” (even if CCC removes the word “guarantee”).

If CCC insists applicant appeals to the BofS for the drainage issues, the RA request is clearly futile and foredoomed as the drainage is inadequate, applicant can never comply with CofA 53 or 54 due to inadequate drainage and given statement on 10/11/2018 by CCC Slava Gospodchikov (PW) informing applicant, “...**reasonable accommodation will NEVER be (used to waiver) waived by Public Works for drainage (issues) that effects public safety.**” If CCC insists that the only reasonable accommodation action possible is to resort to the standard variance procedures this process is not reasonable either as it is futile and foredoomed as the drainage is inadequate and applicant will be again denied RA request by CCC. The opportunity and CCC process to “reasonably accommodate” will be a false, useless process resulting in additional process delays, discrimination and cost CCC more staff time. This “appeal” practice, given we all know the downstream drainage, is inadequate, will predictably cause a “adverse” effect. Applicant has a constitution right to fair due process, enjoyment of her property rights, to have CCC provide services without discrimination and all other important rights and laws for disabled individuals to have an equal opportunity to use and enjoy a dwelling and their life in America.

#### **Drainage CofA are all related:**

- **Applicant can't comply with and satisfy CofA 42, 43, 44, 49 until she satisfies CofA 45 obtaining proof of access.**
- **Applicant can't comply with CofA 53 and/or 54 as the drainage is inadequate. Period.**
- **Most important, CofA 41 exempts and provides an exception to CofA 42, 43, 44, 45, 49 by not requiring those improvements on Panoramic Way as “these improvements are not characteristic of the area.” CCC has intentionally and erroneously ignored this CofA and parts of the General Plan (apply drainage fee to small developments) as CCC continue to discriminate and violate my RA requests, stall my project, waste my time and not allow my project to move forward. CofA #42, 43 and 44, 45 are invalid as they all are superseded by CofA 41. All CCC has to do is declare CofA41 exceptions is of a high legal tier (due to my RA requested use of RA Federal and State laws), over CofA 42, 43, 44, 45, 49, 53 and 54.**

**Applicant requests under the RA request laws to preserve her privacy of her disabled condition (no public hearings).**

#### **CCC Deferred Improvement Agreements is a Discriminatory tool to stop Disabled Development**

CCC Forcing applicant to sign a Deferred Improvement Agreement (DIA) that requires **ALL Neighbors** offering to dedicate to the county or other public agency sufficient land rights for construction, is useless and discriminatory as **all** neighbors will not sign the proof of access, stalling, stopping applicant from getting a workable final map and permit.

Applicant can only believe the DIA (see DIA CCC already had applicant sign) is a tool CCC uses to stop development of those disabled persons CCC decides (discriminates against disabled) don't “belong” in a hill top neighborhood? Long term, consistently applying these punitive COA regarding forcing

applicant to sign DIA and rebuilding all downstream storm drains is intentional discrimination. Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics constitutes intentional discrimination in violation of the Housing Act. RA is an exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

**Deferred Improvement Agreement Construction Requires Proof of Access CofA #45** CofA requires "applicant to furnish proof to PW "...of neighbors "rights of ways and rights of entry and permits and easements obtained for" applicant to build CCC DIA required "roads and drainage improvements."

If CCC insists applicant obtain a copy of a duly recorded offer of dedication and rights of ways and rights of entry and permits and easements from the adjacent property owners, in a form and content acceptable to the public works director, offering to dedicate to the county or other public agency sufficient land rights for the construction, maintenance and operation of all necessary storm drainage systems and access facilities, this action will be intentionally discriminatory. Such documents shall be obtained (from all, many, many property owners and require many, many visits) between the boundaries of the subdivision and the point at which the surface waters will be discharged into a natural watercourse having definable bed and banks or an existing "**adequate" public storm drainage facility**. Since the storm drains at Panoramic Way and Olympic and Tice Valley Blvd **are known to be inadequate**, CCC will force applicant to fix all drainage on these streets per the CofAs, this will cost millions, delay, stop her project through "CCC's application and interpretation of their hidden discriminatory policies" it takes to build new drainage, roads, retaining walls, move utilities, cut down and dig up all the way down Panoramic, down Olympic Blvd to the flood drainage channel. Other non-disabled persons building a disabled friendly home are not subject to this kind of PW "police powers usage abuse".

**NEXUS ANALYSIS Panoramic Way Frontage Improvements-Deferred Improvement Agreement (CofA 41 exception applies & overrules CofA 42, 43, 44, 45, 49, 53 and 54)**

Applicant is currently her own Owner Builder.  
Applicant requests reasonable accommodation to **allow her to pay the drainage fee only**; and that CCC, follow CCC RA "internal policy" process of an exception, or adjustment to a rule, policy, practice; **rescind CofA 42, 43, 44, 45, 49, 53 and 54** so applicant is not required to comply with these CofA as their removal is necessary and critical for a person with a disability to have an equal opportunity to use and enjoy a dwelling and to prevent discriminatory treatment against disabled people as other non-disabled projects have been granted special privileges and not required to comply with these type CofA. This will help put applicant in the same position as someone without a disability and therefor provide equal opportunity to housing of our choice.

This Nexus Analysis that applicant is requesting a RA exception to the Conditions of Approval for her small 2500 sq. foot project. The exception of policies and practices to the rules, standards and customs for the siting, development of CCC required CofA construction of significant and material changes in our neighborhood, the drainage improvements requiring roads, pavement additions, retaining walls, drainage, etc. Rescinding the RA requested CofA would eliminate regulatory barriers and allow persons with disability equal opportunity to build specific housing of their choice under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) and other applicable laws. The effects of the nexus identifiable relationship analysis will demonstrate the necessary of lessening or eliminating "living disabled life difficulties" relating to CCC requiring applicant conform with **(42, 43, 44, 45, 49, 53 and 54)**.



This includes obtaining proof of access that require walking, walking high fall risks and danger to applicants body, obtain encroachments permits, destroying of old trees, ruining the scenic easement beauty of the hill along Panoramic, pay for design and supervise and physically oversee the construct of 1600sq feet pavement for road project frontage, retaining walls, longitudinal and transverse drainage and conforms for drainage for entire neighborhood and vicinity, hire consultants to create plans to submit to PW, pay for PW inspections and PW plan review fees and applicant of course will be on site to oversee that the work is done properly for the entire neighborhood.

Applicant has feet physical impairments disability, that results in significant mobility, stumbling, fall risks, balance, walking issues. This disability creates the need for the RA request allowing payment of the drainage fee instead of CCC requiring compliance with **CofA 42, 43, 44, 45, 49, 53 and 54**. Rescinding the requested CofAs and allowing applicant to pay the drainage fee instead, as other non-disabled persons are allowed, will ensure applicant safe ambulation in her neighborhood when complying with CCC conditions of approval in building her “required drainage.” This requested RA accommodation is necessary and directly linked to the applicant’s disability and the direct amelioration of a disability effect to provide equal opportunity to applicant to build and enjoy her home under safe ambulation complying with CCC drainage conditions. Further, this document and all attachments will show the request is reasonable, given the dangerous, near impossible, discriminatory results to disabled applicant when she tries to comply with conditions of approval CofA **42, 43, 44, 45, 49, 53 and 54**. Applicant will fall, damage her body if she is required walk to each neighbor home over and over again to get approval from each neighbor as required by the DIA and CofA 45 in order to comply with CofA **42, 43, 44, 45, 49, 53 and 54** also, when applicant is performing everyday normal supervision manual tasks such as overseeing and observing the construction, walking up and down the long hill to communicate and discuss the process with the contractors building the road and PW inspection of the progress, these CofA compliance will increase the walking hazards to applicant and result in difficulties preventing falls.

*Forcing applicant (with mobility issues) to walk to each neighbor’s house for procuring the voluminous “proof of access” approvals necessary per CofA45 so I can comply with CofA **42, 43, 44, 45, 49, 53 and 54** requires so much, too much walking. Those CofA violate the RA concept of “necessary of lessening or eliminating “living disabled life difficulties” Instead CCC is “increasing living disabled life difficulties”. Countless walking visits on Panoramic hill by applicant, to over 20 neighbors, some with over 60 yr. old, uneven hazardous driveways and walkways. In addition, more negotiations walking visits, more visits to offer money, extra visits for creating legal agreements, further walking visits to have them signed, then, up and down the hill with no sidewalks, blind curves, walking, slippery rain (higher risk for falling) conditions or 101-degree temperature (high risk for heat stroke, dizziness, falling) which is very injurious to disabled persons health. Next, CCC reviews proof of access docs and decrees acceptance by CCC, then more walking for disabled person after recording, back to neighbors to give them their final document. More opportunities to fall, stumble, lose balance and end up in the hospital. All due to CCC punitive requirements to have applicant increase her limit on walking distances significantly and materially more than her daily, normal disabled routine. CCC knows applicant has mobility, stability problems with her feet, applicant will fall and break a hip (go to hospital, lawsuit) or other bone while trying to obtain the documents from neighbors due to CCC refusing to grant RA request and refusal to eliminate regulatory barriers for safe building of my UD housing. Further, not all neighbors will agree, hereby stopping the project and these CCC required actions will be considered punitive, discriminatory and applicant will not be treated like non-disabled folks.*

If CCC insists applicant obtain a copy of a duly recorded offer of dedication from the adjacent property owners, in a form and content acceptable to the public works director, offering to dedicate to the county or other public agency sufficient land rights for construction, maintenance and operation of all necessary storm drainage and access facilities, this action will be intentionally discriminatory. Such documents shall be obtained (from **all, many, many** property owners and require many, many visits) between the boundaries of the subdivision and the point at which the surface waters will be discharged into a natural watercourse having definable bed and banks or an existing adequate public storm drainage facility. Since the storm drains at Panoramic Way and Olympic and Tice Valley Blvd are known to be inadequate, CCC will force applicant to fix all drainage on these streets per the CofAs, this will cost millions, slow down and delay and/or stop her project through "CCC application and interpretation of hidden discriminatory drainage and DIA policies" to build new drainage down Panoramic, down Olympic Blvd to the flood drainage channel.

In addition, understand even if every home owner along Panoramic Way hill grants proof of access and dedication and signs the form giving away their land rights (not likely), and applicant is currently her own Owner Builder, applicant intends and will indeed observe and oversee the millions-dollar improvements at the site just as is the rights of a non-disabled person, normal everyday task when someone pays for construction services. If a disabled person is forced to fund millions of downstream PW facilities and PW construction projects, that disabled has a right to oversee, be on site and be involved with the work; with PW and the construction company on site.

Rescinding the requested CofA is necessary to reduce the... *increased walking, falling, tripping hazards and difficulties in performing manual tasks by applicant such as being on site of constructing road, observing, oversee the construction (just like a non-disabled person) of the retaining walls and road building, trying to walk safely up and down the long Panoramic hill to communicate and discuss the construction process with the contractors building the road, walking to deal with calls of complaints that will require applicant to drive to the site, park, walk on uneven construction surface, increasing the likelihood of falls, stumbling and balance problems, decreasing safe, easier mobility on hill incline of Panoramic Way daily to make sure contractors are following the construction plans as required by CCC.* The same nexus connection "hazardous walking distance and conditions" relationship results in an "unequal" opportunity to be provided to a handicapped person, hence the RA request to create a "level playing field" in housing. I will not be able to take advantage of my projects housing opportunities because of the conditions created by my disability. Treating applicant, the same as non-disabled folks, may not ensure that the disabled have an equal opportunity to use and enjoy a dwelling of their choice per the Acts.

Equally important applicant will **exercise her constitutional right to be on site, observe, communicate and oversee** the millions-dollar improvements progression if CCC compels her to build retaining walls, drainage installation, widening roads, etc. at Panoramic Way road, just like any other non-disabled owner builder person buying construction services. Requiring applicant to sign DIA and of course, then implement drainage construction on Panoramic *will increase the walking hazards to applicant and difficulties in performing everyday supervision of construction activities, normal manual tasks of persons purchasing expensive services such as site supervision, overseeing, observing the construction, checking progress of work, walking up and down the long hill to communicate and discuss the process and status (CCC has time limit requirements) with the contractors building the road, walls, drainage, along with handling the calls of complaints by neighbors that will require applicant to drive to the site, park, walk on uneven construction surface, increasing the likelihood of falls, stumbling and balance problems and subsequent hospitalization.* These are barriers that are imposed by my disability, that prevent me from obtaining a housing opportunity others can and have accessed.

Westbrough 14 condos applicant (same drainage area and vicinity as my project, 14 times larger project, non-disabled housing, also granted zoning change), was granted special privileges, by CCC being allowed to pay the drainage fee and not construct storm drain improvements that were roughly proportional to the impacts of the project. In addition, Ms16-0015, Arfa, was allowed to choose the drainage fee or make drainage improvements. These non-disabled people were granted preferential treatment whereas applicant is forced to deal with disability punishing mobility problems, near impossible mobility difficulties of CofA **42, 43, 44, 45, 49, 53, 54**. The RA granting of the request is necessary bring the applicant to parity with other property owners in the same county.

If CCC intends to **not grant RA exceptions** and not rescind CofA **42, 43, 44, 45, 49, 53 and 54**, instead refusing to apply the drainage fee only and insisting on requiring applicant to sign DIA (applicant comprehends, given past treatment of this disabled person by CCC, the DIA agreement will be called up as CCC has established it discriminates against disabled persons), applicant fully expects CCC to force action of the DIA agreement. A CCC DIA agreement is a valid contract, to hold out as otherwise is fraudulent. CCC should not legally be telling applicant, "CCC doesn't always call up and force the agreement"; applicant believes this practice of telling any applicant that the valid Ca DIA contract is "not always enforced" is deceptive, if not leading to outright elder financial abuse, CA contact law violations and unethical. This is a deceptive policy to stop certain people from exercising their right to afford handicapped persons equal opportunity to use and enjoy disabled housing.

The requested accommodation is reasonable, would not impose an undue financial or administrative burden on the County, just delete the CofAs, is not a costly action. Deleting CofA **42, 43, 44, 45, 49, 53 and 54** (which are interrelated) is not costly and will stop CCC using its police powers in an discriminatory, unlawful manner and then CCC could not force disabled people obtain a copy of a duly recorded offer of dedication and rights of ways and rights of entry and permits and easements from the adjacent property owners with her feet impairment that substantially limits major life activity of walking (stumbling, falling, tripping, balance issues); applicant will fall and end up in the hospital if is forced to get proof of access, etc. Removal of CofA#**42, 43, 44, 45, 49, 53 and 54** is necessary to ensure CCC applicant stays healthy so the property will continue to be used and accessible to applicant; if I am in the hospital, I cannot use and enjoy housing of our choice.

The change to the "CofA #**42, 43, 44, 45, 49, 53 and 54** will help put applicant in the same position as someone without a disability, building a safe and cost-effective home, not being forced by CCC to walk over and over, up and down the hill, trying to acquire over 20 "proof of access documents" from neighbors (CofA 45), many neighbors with uneven, cracked pavements, driveways and walkways, which will result in me tripping and falling, putting myself in danger due to mobility disability and therefore this CofA results in not providing equal opportunity to housing of disabled persons choice. **Applicant cannot comply with the other 42, 43, 44, 45, 49, 53 and 54 until this CofA (CofA 45) is completed by applicant.** CCC housing element goal, in General Plan, # 7 says, "Mitigate potential governmental constraints to housing development and affordability."

The requested accommodation would not require a fundamental alteration the County's land use and zoning program, just delete the CofA, only then can applicant be treated as other similarly situated non-disabled builders. In fact, the accommodation will uphold and promote the CCC Housing Element Goals and other General Plan Goals.

The RA exception is necessary for the preservation and enjoyment of a substantial property rights of the applicant. There are special circumstances applicable to the subject property because of its size, shape, topography, location, historical drainage patterns, large, old shade trees along Panoramic Way street edge of pavement and semi-rural surroundings. Also, there are unusual circumstances or conditions affecting the property; the strict application of the respective zoning regulations deprives the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

**Paving widening is not characteristic, nor it is even necessary or needed given the existing right of way constraints**, the features the hillside, topography, built out nature of the very old neighborhood. The neighborhood is built out, why expand the road? Very important, Panoramic does not have much traffic at all; no significant amounts of traffic, why widen the road? See next paragraph. The DIA proposes a storm drain system that is not following historical drainage patterns. The DIA proposes a storm drainage system that is not characteristic of the facilities in our neighborhood.

The DIA construction requiring additional paving space will need to cut into my hillside (look at topo map, location of my property). **CCC will cause a landslide of applicant's property by undermining and compromising the stability of my hill at its foot base and along the side. When the landslide occurs, applicant will be unable to escape in time given her feet mobility disability.** How can applicant enjoy her housing if she dies in a landslide? This cutting into the hill side will violate the CofA regarding the scenic easement. Applicant understands widening the road will lead to spoiling and not preserving the character of the hillside and neighborhood, destroying and razing old established beautiful Oaks and other large shading trees all along Panoramic Way edge of payment to install roads and longitudinal and transverse drainage and digging of above ground ditch drainage, changing historical drainage patterns of the entire neighborhood all to install unneeded and unnecessary road way expansion for one little house (home footprint less than 1300 sq. ft.) It would be a great benefit to all of the neighborhood if: the trees were not destroyed to put in the drainage and widen the road, if the character of the neighborhood was not changed; if the hillside was not carved and dug into, and huge ugly retaining wall put in, just leave the scenic entry and drive to Grandview Place in its beautiful, natural state.

The DIA building of the roadway will take an exceedingly long time, blocking traffic including firetrucks, ambulances (causing safety problems) and sanitation removal trucks (causing health problems). If my spouse has another diabetic emergency (had one this summer, called 911 to get his blood sugar back up 32) and the road is block to emergency vehicles he could die. Also, neighbors will be delayed going to necessary doctor appointments, moms won't be able to pick up their children from school on time (causing welfare problems) as the road is not wide enough to have pull out area to go around. The DIA and related construction will cause many health and safety problems in the neighborhood over a long period of time .

Additional side note, applicants lot exhibits unique physical characteristics that exist to justify relief from zoning, DIA regulations and further, other non-disabled persons, similarly situated, have been granted this relief. The requested accommodation is reasonable and necessary, the cost of rescinding CofA#**42, 43, 44, 45, 49, 53 and 54** is materially null. Equal treat is just requiring a standard drainage fee and not requiring millions of dollars of improvement, forcing applicant to walk on uneven surfaces to try to get proof of access and applicant overseeing, supervising the work and walking on dangerous surfaces, falling...so she can complete all linked and connected water drainage CofA#**42, 43, 44, 45, 49, 53 and 54**. Again, CCC in the past has allowed no DIA requiring drainage construction to other non disabled builders,, instead allowing just the drainage fee and this use of police powers would not be an undue hardship or substantial burden to CCC. Whereas, the benefits to applicant who faces daily mobility barriers are huge and life changing, instrumental to living as close to a normal life as possible when building her home of her choice.

Applicants lot exhibits unique physical characteristics that exist to justify RA exception relief from the road pavement widening and DIA RA exception and further, other non-disabled persons, similarly situated, have been granted non-RA relief in the past or even have properly, non-discriminatory written CofA at the beginning of the process. Also see Nexus Analysis dated 7/18/2018 given by applicant to CCC for BofS appeal hearing.

Applicant respectfully requests CCC rescind **42, 43, 44, 45, 49, 53 and 54**, understanding this is a small project and CCC changes the **COA to say Applicant is in Establish Drainage Area15A, requests to be treated as other applicants in the same drainage area with very small building footprints and will follow the rules in General Plan that allows charging a fee of .35 cents a sq. ft. of impervious surface** instead of the areas with not yet established as adopted drainage areas that do not pay standardized drainage fees but

must instead meet the collect and convey requirements of the subdivision ordinance. This change recognizes flood control systems costs can be fairly allocated to the applicant in a reasonable proportion to the demand impacts and burdens generated by project occupants, while removing costly, overly burdensome governmental impediments to a small building project. **Also, given the exception examples documented above for the Collect and Convey exception, please grant relief from those CofA also.** Thank you.

I, Mary Dunne Rose, applicant and appellant, have read the forgoing document and understand its contents. With the contents that I have personal knowledge, I know and believe them to be true of my knowledge. I verify my belief that the above statements are true. Regarding the contents that I do not have personal knowledge of, I believe them to be true based on specified information, documents or both. I assert the truth and my belief in the truth of those matters under penalty of perjury.

Please process this RA appeal to the BofS ASAP!

Date 10/26/2018

Name mary dunne Rose

Mary Dunne Rose

**Many Attachments**