



# California Fair Political Practices Commission

February 1, 1988

Robert N. Joehnck  
Town Attorney  
Town of Loomis  
801 12th Street, Suite 500  
Sacramento, CA. 95814

Re: Your Request for Advice  
Our File No. A-87-322

Dear Mr. Joehnck:

You have written seeking advice on behalf of Loomis Planning Commissioner Hazel Hineline regarding pending decisions on the Loomis Oaks subdivision proposal.

## QUESTIONS

1. Is Ms. Hineline disqualified from participation in decisions on the Loomis Oaks subdivision because of the location of her own property nearby?
2. Is Ms. Hineline disqualified from participation in decisions on the Loomis Oaks subdivision because of the pending dispute over putative rights to water for the subdivision from the Boardman Canal, which traverses Ms. Hineline's property?

## CONCLUSIONS

1. Ms. Hineline should disqualify herself from participating in decisions on the rezone, planned unit development use permit, and subdivision map for the Loomis Oaks project because of the reasonably foreseeable effects upon the value of her nearby property.
2. Ms. Hineline should disqualify herself from participating in these same decisions because of the dispute over putative water rights and water transport from the Boardman Canal to the project site.

## FACTS

Ms. Hineline is a member of the Town of Loomis Planning Commission. She is the chair of the commission for 1988. Ms. Hineline's home is situated in the southern portion of the town, which is geographically divided by Interstate 80. North of the freeway is the more urbanized portion of the generally rural town. The southern area, where Ms. Hineline resides, is

rural in character and sparsely populated. The overall population of the town currently is between 5,000 and 8,000.

#### Ms. Hineline's Property Interests

Ms. Hineline's home is recently constructed. The value of her property with the home is no less than \$400,000. It is in an area where the properties are all zoned AR-B, 4.6 ac., Agricultural Residential Combining Building Site, with a requirement of 4.6 acres minimum per dwelling unit. Thus, her parcel, which is 13.1 acres, could not currently be split into more than two parcels, one in addition to her own home. (See attached copy of zoning map.)

Ms. Hineline's home is located near the top of a knoll, in the southeast corner of her parcel. Her home is situated at an elevation of approximately 500 feet, according to the contour map which you have provided. Her parcel does not front on Barton Road, but is situated to the east of Barton Road and to the south of Wells Avenue, near its intersection with Barton Road. ~~Ms. Hineline's property is situated approximately 500 feet to the east of the east right-of-way line of Barton Road, a 60-foot right-of-way owned by the town.~~

Ms. Hineline previously owned the parcel of property between the north half of her property and Barton Road. However, it was sold a few years ago to Ms. Muncy. At the time of sale, Ms. Hineline retained a 60-foot easement across the southern boundary of the Muncy parcel for access back to Ms. Hineline's 13-acre parcel. This easement connects with Barton Road directly across Barton Road from the southern boundary of the Chatfield property. (See attached assessor's map.)

#### The Loomis Oaks Proposal

The Chatfield property (Loomis Oaks) is the subject of the decisions which will be coming before the planning commission beginning on February 2, 1988. Charles Chatfield has purchased three adjacent parcels totalling 105 acres. Two of those parcels total approximately 44.3 acres; the other is approximately 61.3 acres. All parcels are currently zoned AR-B, 4.6 acres minimum. The 44.3-acre portion lies to the east of the larger parcel and borders along the western right-of-way of Barton Road, with its southern boundary situated directly opposite the exit point of Ms. Hineline's 60-foot access easement. The 61.3-acre parcel is situated to the west of the smaller portion and extends north to the southern right-of-way of Rocklin Road, forming an L-shaped property when combined with the smaller parcels. (See attached zoning map.)

Mr. Chatfield is proposing a planned unit development for the entire 105-acre property, known as the Loomis Oaks subdivision. He is proposing that the 61.3-acre parcel be rezoned to allow residences on a minimum of 1 acre per residence rather than the current 4.6 acres per residence.<sup>1/</sup> The 44.3-acre portion is not proposed for rezone.

Mr. Chatfield is also seeking a use permit for the planned unit development to allow the averaging of the densities for the two portions if the 61.3-acre parcel is upzoned. By combining the two portions and averaging the density, the total number of residences (69 or 70) for the entire 105 acres would be the same as for the 61.3 acres at one residence per acre and the 44.3 acres at one residence per 4.6 acres. This, of course, exceeds the currently allowable maximum number of residences for the entire property of 22.9. Thus, the total increase in the number of residences on the property would be 40 or 41, if both the rezone and the planned unit development proposal are approved.<sup>2/</sup> The property is currently undeveloped

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<sup>1/</sup> Because of several discrepancies in the materials provided, you and I have had several conversations to clarify the material facts relating to this request. In addition to the written materials which you have provided, you have also supplied several maps, two photographs, and a list of several names and agencies who could provide further information. Despite statements in the environmental impact report and in the Loomis General Plan, both of which you have furnished to me and both of which I have reviewed, you have repeatedly assured me that all parcels making up the project are currently zoned AR-B, 4.6 acres minimum. The two documents indicate that the larger parcel has been designated or zoned for 1 acre minimum lot sizes. The current tentative map, which you have provided to me, does state that the current zoning is AR-B, 4.6 acres; however, it does go on to base its planned unit development computations on the larger parcel being zoned for 1 unit per acre. In the face of these discrepancies, I have based my statement of the facts in this letter on your representations on this issue.

<sup>2/</sup> If the general plan has already designated the 61.3 acres for one home per acre (see fn. 1, supra), then the increase for the total parcel would be nil. The rezone of the parcel would merely bring the zoning into consistency with the general plan designation. However, the averaging of the densities across the zones still has the effect of upzoning the 44.3-acre parcel and increasing the density in the area most proximate to Ms. Hineline's property from the currently allowable 9 homes to 26 homes.

with the exception of a few existing structures situated near Barton Road.

Another facet of the zoning change is that the required minimum setbacks for structures would be reduced. In addition, there would be a 100-foot "scenic easement" along the border adjacent to Barton Road, which would not permit construction within that area.

The project is designed to have one entrance point, with controlled access, on Rocklin Road. A private system of 50-foot wide roads would service the entire project, with no other entrances from public roads. (However, two 50-foot road easements are proposed for possible future expansion to the west of the project.)

The project expects to be served with potable public water through the Placer County Water Agency via an extension of a 14-inch main on Rocklin Road. There is a nearby water storage tank across Rocklin Road in the vicinity of the project. (See attached location map.) Its elevation should be sufficient to serve the lots throughout the project, although district engineer Dave Campbell indicated that some private pumping facilities might be necessary in order to assure peak demand pressure for homes at higher elevations.

The project is situated west and slightly north of Ms. Hineline's property. It is at a lower elevation, with elevations shown on the tentative map in the range of 330 to 380 feet, as compared to her property, which ranges in elevation from 400 to 500 feet, with her home situated near the top of a knoll at about 500 feet. Consequently, from her home, Ms. Hineline has a view of most of the project site, from a distance of approximately 1,000 feet or more. Views into the project will be buffered to some extent by the 100-foot "scenic easement" along Barton Road. However, because of the elevation difference, her view into the interior areas of the project is likely to continue unobstructed. These and other impacts are discussed in the lengthy environmental impact report which you have provided to me.

The environmental impact report includes information on traffic, noise and air pollution impacts from the project. It also discusses the provision of services, including sewer for the project. The project lies within the South Placer Municipal Utility District. The report indicates that service will be obtainable from the district by an extension of the sewer line to the project. A letter from the district contained in the environmental impact report includes the requirement that: Proposed off-site, and possibly on-site,

trunk lines must conform to the District's Master Plan. A conversation with a district engineer, Richard Stein, confirmed that it is the district's standard policy to require developers of new projects to extend the sewer mains and to size their systems to accommodate eventual additional sewage flows from surrounding properties which would feed into those systems on the basis of gravity flow. That would include properties nearby at higher elevations. Ms. Hineline's property is one of the properties to the east of Barton Road which is both within the sewer district's boundaries and at a higher elevation than Loomis Oaks.

### The Water Rights Dispute

The project's proponent claims a right to receive untreated irrigation water from a ditch called the Boardman Canal, which is also operated by the Placer County Water Agency. This open ditch traverses a portion of the Hineline property and has a pre-existing turnout on the Hineline property for water delivery, to which the project's proponent claims a right. Ms. Hineline disputes this right; in particular, she disputes any claim of right to transport water from the Boardman Canal across her property to the project.

Obtaining such water for the project for irrigation purposes and possible use for the two lakes shown for the project would be beneficial to the proponent because of the reduced cost of untreated water for non-domestic purposes. It is not clear whether litigation might result from this dispute. However, the district engineer, Mr. Campbell, advises that before the proponent could obtain water deliveries from the ditch, he would have to show the district that he has the appropriate easements to allow delivery across any intervening properties.

## ANALYSIS

### General Provisions

The Political Reform Act (the "Act")<sup>3/</sup> provides that no public official shall make, participate in making, or use her

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<sup>3/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

official position to influence a governmental decision in which she has a financial interest. (Section 87100.) An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect on the official, her immediate family, or on any real property in which she has an interest of \$1,000 or more. (Section 87103(b).)

As a member of the Loomis Planning Commission, Ms. Hineline is a public official and will be involved in a governmental decision if she participates in the planning commission decisions on the rezone, use permit, and subdivision map for the Loomis Oaks project. However, even if a decision's reasonably foreseeable effects will be material as to an official's economic interests, disqualification will not be required if the decision's effects will be substantially similar to the effects upon the public generally or a significant segment of the general public. (Section 87103; Regulation 18703.)

#### Reasonable Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner (1975) 1 FPCC Ops. 198.) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

#### Material Financial Effect

The Commission has adopted regulations to assist in determining whether the reasonably foreseeable effects of a decision will also materially affect real property in which an official has an interest worth \$1,000 or more. Clearly Ms. Hineline's interest in real property is worth \$1,000 or more. You have stated that her property is valued at \$400,000 or more. Her easement interest in the Muncy parcel also constitutes an interest in real property if it is worth at least \$1,000. (Section 82033.) Since the easement represents the only means of access to her parcel from the public roadway and covers a piece of land totaling almost 3/4 acre in size, the easement's value is most likely at least \$1,000.

The guidelines for determining if the effects upon these real property interests will be material are found in Commission Regulation 18702(b)(2), which reads as follows:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

The issues then are whether the reasonably foreseeable effects of the planning commission decisions on her real property interests will be material and will be distinguishable from the effects on the public generally. On the question of materiality, the threshold for disqualification would be a change, up or down, in the fair market value of her real property interests of \$2,000 or more.

#### Reasonably Foreseeable Effects of the Project if Approved

##### 1. Intensity of Land Use

The proposed project would represent a marked change in the use of the property. The rezone and use permit being requested would increase the density level threefold from its presently allowable use. This will result in aesthetic impacts upon Ms. Hineline's property. The project will also alter the dynamics of the development prospects of other properties in the immediate vicinity. To the extent that the project will extend water and sewer services to the immediate vicinity of her property, it will do much to foster the future development of her property to a more intensive use. Without such services, the level of use under present zoning is probably about the maximum which can be expected, utilizing wells and septic systems.

A discussion with one of the engineers for the South Placer Municipal Utility District indicates that it is the district's normal procedure in dealing with development proposals to seek to extend the ability of the district to ultimately service all of its service area. It is reasonably foreseeable that the sewer system which would be required to be installed in the development would be sized so as to be able to accommodate additional add-ons from the surrounding area which can utilize gravity flow. This would include Ms. Hineline's property.

Furthermore, the rezone and development of the project would very likely lead to a similar request by the owner of the approximately 40-acre parcel which would be surrounded on the west and south by the Loomis Oaks subdivision. All of the subdivision's lots bordering on that parcel will be in the range of 1.0 acre to 1.4 acre in size. The parcel on the southwest corner of Rocklin Road and Barton Road is currently zoned AR-B, 4.6 ac., as is the Loomis Oaks property. A rezone of the neighboring parcel would further the pressures for increasingly intensive use of the properties in the area.

With respect to Ms. Hineline's property, it is served by a 60-foot easement from Barton Road, immediately across from the eastern boundary of the project. With increasing intensity of use and the extension of sewer service within a few hundred feet of her property, and with the ability to run a full-width road up to her property on a 60-foot wide easement, it is reasonably foreseeable that the value of her property will change by at least \$2,000 in anticipation of future development if the Loomis Oaks project is approved and constructed.

## 2. Effect Upon Surrounding Land Prices

In addition to the potential for increased density of development in the area, there is the prospect of increased land prices in the area resulting from the type of development proposed. The project is designed to have controlled access through a gate with a private road system. Given the exclusivity of such a design and the "country estate" character of the development, with its extensive proposed covenants, conditions and restrictions, and the "water amenities" afforded by the lakes, it is obvious that the prices for the lots in the subdivision will be substantially higher than current land

prices in the surrounding area. <sup>4/</sup>

It is reasonably foreseeable that the prices of lots in the Loomis Oaks subdivision will affect the prices for surrounding properties, even if the surrounding properties are only developed at currently allowable densities. It is reasonably foreseeable in the case of property of the size and proximity of Ms. Hineline's that the effect upon the fair market value would be at least \$2,000 as a result of the development of the project.

### 3. Effects of the Water Rights Dispute

Lastly, there is the dispute over the right to deliver water from the Boardman Canal across Ms. Hineline's property to the development. This right is in dispute and conceivably could result in litigation. If the developer were to obtain approval from the town to go forward, the desirability of obtaining the cheaper irrigation water from the ditch would increase.

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The Placer County Water Agency advises that before it would permit water to be taken from the ditch, the developer would have to demonstrate that he had the necessary easements to allow for transport of the water from the ditch to his property. The claim to water delivery appears to be based not upon any recorded easement but merely upon a prescriptive easement which has since arguably been abandoned. Therefore, it is reasonably foreseeable that either litigation will ensue to attempt to establish the prescriptive easement or that the developer will wish to purchase an easement across the property from Ms. Hineline.

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<sup>4/</sup> An undeveloped 20.1-acre parcel adjacent to Ms. Hineline's is currently listed for sale at \$210,000, or \$10,000 per acre. (See attached assessor's map.) In your letter, you have stated regarding the Loomis Oaks project:

The developer estimates that lots in the development will be marketed at a minimum price of \$130,000-\$135,000 per lot.

This would be for the smallest lots, which are one acre in size. Utilizing the standard multiplier of the building industry, a finished home (including the lot) will be priced at 3 to 4 times the price of the developed lot. Therefore, sales prices for the homes to be built would be in the \$400,000 to \$500,000 range, at a minimum, when the project is developed.

The first of these would result in a material financial effect on Ms. Hineline and her immediate family of \$250 or more for litigation expenses. (Regulation 18702.1(a)(4), copy enclosed.) The second of these two courses of action would result in an increase in the value of her real property, equivalent to the amount that the proponent would be willing to pay for the easement. The fact that Ms. Hineline does not currently desire to grant such an easement does not alter the effect which the prospective purchase of an easement would have upon the price which her property might bring. (See, In re Legan (1985) 9 FPPC Ops. 1, copy enclosed.) While it is not possible to ascertain a value of the easement right at this time, its value to the project proponent will incorporate the savings to be derived, over time, of utilizing the less expensive water for irrigation instead of treated water. The value is likely to exceed \$2,000.

#### 4. Overall Effect

Even if the foregoing reasonably foreseeable effects were not individually material, we conclude, as the Commission did in In re Oglesby (1975) 1 FPPC Ops. 71, 81, that the combination of all of these effects upon Ms. Hineline's various interests will be material.

#### The Public Generally Exception

We now must examine whether these reasonably foreseeable effects upon Ms. Hineline's economic interests are substantially similar to the effects upon a significant segment of the public within Loomis. (Regulation 18703, copy enclosed.) Certainly, the effects which result from the dispute involving the delivery of water from the Boardman Canal will not affect more than one or two other property owners at most. Any litigation would most likely involve only her property and possibly the Muncy property. Likewise, the acquisition of an easement could possibly involve the Muncy property or another intervening landowner's parcel at a different location, but no more than that. This would not constitute a significant segment of the public.

With respect to the impacts upon surrounding land prices due to the development, either because of growth inducement or because of price differentials, those effects will be more widespread. However, the growth inducing impacts will be somewhat limited because of the various and inconsistent boundaries of the governmental agencies which regulate and service the surrounding area. The South Placer Municipal Utility District, which would provide sewer service, does not include the property which is immediately across Rocklin Road

to the north of the project. Thus, the extension of sewer lines to the project will not have the same degree of effect upon that property as it will foreseeably have upon other nearby properties such as Ms. Hineline's. This is also true of property directly to the south of the project which has not been annexed into the district. Other properties, which lie within the district, may not be able to avail themselves of the extension of service into the vicinity of Barton Road and Wells Avenue because of topographical considerations which would not permit the gravity flow of effluent from their properties to that location. Consequently, the effects of the sewer extension will not be shared by all that many properties.

The effects of the increased prices for lots in Loomis Oaks will be diminished by the distance from the project. Thus, those properties which are closer will experience effects which are distinguishable from effects upon other properties which are more distant.

For the Loomis Planning Commission, the public generally consists of the entire town. (In re Legan, supra; In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) While the south area of Loomis is a significant segment of the public, the small portion of that area which immediately surrounds the project site would not constitute a significant segment of the general public. Consequently, we cannot conclude that Ms. Hineline's interests will be affected in a substantially similar manner to those of a significant segment of the general public. Hence, her disqualification is required as to the upcoming decisions before the Loomis Planning Commission.

#### Participation in Governmental Decisions

You have indicated that Ms. Hineline has just recently begun serving a one-year term as the chair of the planning commission. She should be aware that the prohibition on participating in a decision in which she has a financial interest includes chairing the meeting during the time the item is under consideration. (In re Biondo (1975) 1 FPPC Ops. 54, copy enclosed.) Nor may she use her official position to influence the decisions by lobbying her fellow commission members outside of the hearings. However, she may, if she wishes, address the planning commission or the Town Council as any other member of the public so long as she speaks only on her own behalf as a property owner and not on behalf of anyone else, other than herself and members of her immediate family. (Regulation 18700.1, copy enclosed.)

Robert N. Joehnck  
February 1, 1988  
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Waiver of Conflict by Proponent

In your letter, you have indicated that the project's proponent is willing to "waive" any conflict of interest on the part of Ms. Hineline as a result of the water rights dispute. The Act's conflict-of-interest provisions contain no procedure for a waiver. The Act seeks to protect the public's interest in unbiased decision-making by preventing even the appearance of a conflict of interest. (Witt v. Morrow, supra.)

Conclusion

Based upon the foregoing discussion, it is the Commission's advice that Ms. Hineline should disqualify herself with respect to the pending major decisions on the Loomis Oaks subdivision proposal. I orally advised you of this conclusion on January 29. As I stated to you at that time, if upon review of this letter you believe that I have failed to understand or consider all the material facts pertinent to this question, please do not hesitate to contact this agency for further assistance. Otherwise, I trust that this letter has adequately responded to your questions. Should you have further questions regarding the contents of the letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

*Robert E. Leidigh*  
By: Robert E. Leidigh  
Counsel, Legal Division

REL:jaj  
Enclosures

**Robert N. Joehnck**

Attorney at Law

Dec 25 11:20 AM '87

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December 22, 1987

Robert Leidigh, Esq.  
Fair Political Practices Commission  
428 J Street  
Sacramento, California 95814

Dear Mr. Leidigh:

~~The undersigned is the Town Attorney for the Town of Loomis~~  
("Town") in Placer County. This letter is written to request the Commission's written advice concerning the ability of a member of the Town's Planning Commission ("Commission") to act in connection with certain land use decisions. These will come before the Commission in connection with the requested approvals by a developer for a seventy unit single family subdivision in the Town. The member in question is Commissioner Hazel Hineline who as of January 1st, 1988, will become the Chair of the Commission for the calender year 1988.

General Town Background

The Town became incorporated on December 17, 1984. The Town currently has a population of approximately 5700 persons. There are about 4540 acres of land within the Town limits. The Town is within the Loomis Basin which is a part of Placer County experiencing very considerable residential, commercial and industrial development. It is fair to say that local concerns for control over land use and development decisions was a primary factor which probably led to a favorable vote to incorporate the Town.

General Plan

The Town adopted its first General Plan in October, 1987, (Govt. Code 65800 et. seq. Loomis is physically divided in half by Interstate 80. With exceptions not deemed relevant the entire southern part of Loomis is presently designated as low density rural residential permitting only residential land uses generally with aggregate densities no greater than 1 dwelling unit per acre and often requiring a development density of no greater than 1 dwelling unit per 4.6 acres of land.

The part of the Town south of Interstate 80 is sometimes referred to as "South Loomis" or the "South Area". The latter designation is more commonly used to refer to that area in the southern part of Town bounded roughly by Rocklin Road to the north as that road would exist if extended to the easterly boundary of the Town, and bounded on the south, east and west by the Town limits south of Rocklin Road. This "south area" was the subject of much discussion and debate in the General Plan adoption process. The Commission formally recommended to the Town Council that the entire south area remain designated for land use purposes as "rural agricultural" which allows dwelling units with average densities of no greater than 1 dwelling unit for every 4.6 acres of land. The council generally accepted this recommendation but in an important digression from the Commission recommendation designated a large parcel of land in the south area as permitting average densities of as low as 1 dwelling unit per acre.

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#### The Development Proposal

Barton Properties (the "Developer") owns approximately 105 acres of land in the south area. Roughly 60+ acres of this land is the parcel just referred to which the Town Council designated as 1 acre minimum per dwelling unit while the balance is composed of 40+ within the rural agricultural 4.6 acre minimum land use classification under the general plan.

The Developer proposes to develop an 70 unit planned development subdivision within the 105 acre project with lot sizes ranging from 1 to 5.6 acres in size with an average lot size of approximately 1.6 acres. The planned development designation if approved will allow the clustering or averaging of densities within the project area across zoning lines.

The Developer will not be the actual builder of houses within the development but will sell individual finished lots (all utilities in, roads and common improvements completed) to individuals and builders. All lots will be subject to the provisions of homeowner association covenants and restrictions which will provide for the upkeep and maintenance of the developments common areas. The Developer estimates that lots in the development will be marketed at a minimum price of \$130 - 135 thousand dollars per lot.

The Hineline Property

The Hineline property is about 13 acres in size. At its closest proximity to the development it is about 450 feet from the property line of the developments boundaries. The Hineline property is valued at no less than \$400,000.00. The Hinelines have a large recently built home toward the easterly portion of their property at an elevation of roughly 50-100 feet above the Development. On a clear day substantial parts of the Development site are visible from the Hineline residence.

The Hinelines previously owned additional property adjacent to their present ownership, a part of which is separated from the project only by Barton Road, a 60 foot wide right of way owned and maintained by the Town. The Hinelines did retain a 60 foot access easement to their property from Barton Road through the property they previously sold. This easement is the only access from their property to a public street. To the extent they are developed at all the properties in the vicinity of the Hinelines are generally at least on 4.6 acres of land.

The Water Line

The present Hineline property is crossed by the Boardman Canal. That canal is an open ditch non-domestic water delivery system now owned by the Placer County Water Agency (PCWA). PCWA is the successor in ownership to various previous canal owners. The canal has existed in this area since at least the turn of the century.

It has been the practice in the past for PCWA or its predecessor owners of the canal to grant connection rights to various applicants willing to pay for water from the system. It appears that the general practice was for some PCWA official to authorize a connection of a certain size and perhaps supervise the installation of the original connection. PCWA however did not concern itself with how its customer actually transported the water from the canal to the property where the customer actually used the water.

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The Developer is claiming in the present case that it has a right to take water from the Boardman Canal and transport it over a part of the Hineline property to provide irrigation or non-domestic water for the development. It claims that when it purchased the property it proposes to develop it acquired rights to a certain PCWA connection and the right to transport that water to its property.

PCWA records show that a water "turnout" (diversion pipe) owned or purportedly owned by one Yaffe (the predecessor in interest to the Developer on its property) was locked in 1978 after being turned on in 1975. It further appears that this turnout was either an existing or enlargement of a turnout in place since at least 1965 (Baldwin application for Mayer property).

In all events, there is no existing complete delivery line from the turnout to the Developer's property and any user of that turnout in the future would require a new or almost completely new diversion system (pipe) to be installed from the canal to the Developer's property. There are no recorded "easements" to establish the Developer's claim to the water diversion rights in question. The Developer's rights, if any, to divert water from the canal over the Hineline property could obviously involve factual data relating to concepts of prescriptive easements, abandonment, etc., wholly outside the scope of the Town's ability to make determinations in an expeditious and economical manner. The Highlines dispute that the developer has any present right to deliver water across their property and are not interested in granting the Developer any such rights if they do not now exist.

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The development proposal will be ultimately passed on by the Town Council as the approval process will require a rezoning of the entire property to place a zoning density limitation on it and a rezoning of about 60 acres to a zoning classification permitting 1 acre average lot sizes. Both of these rezoning changes will of course first be the subject of a public hearing before the Commission with the Commission having the opportunity to formally recommend to the Town Council whether to approve or disapprove the requested zone changes.

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Additionally, a Planned Development classification is proposed for the Development to permit an averaging of densities within the development. This takes the form of a conditional use permit under the applicable zoning regulations. The decision to grant or deny such a permit is a decision which is final with the Planning Commission unless appealed to the Town Council.

Finally, the entire development is a subdivision under the Subdivision Map Act and the Developer must obtain approval of a tentative subdivision map from the Planning Commission. This approval is in essence final unless again it is appealed to the Town Council.

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Commissioner Hineline wishes to participate in the review and approval process relating to the development. The Developer is willing to have her participate and is willing to waive any claim to disqualification of Commissioner Hineline that the Developer might have. Other than the potential effect of the development on the value of her residence property and the dispute over any water right that may or may not exist as it affects her property there are no other potential points of conflict known to any of the concerned parties.

Neither Ms. Hineline nor the Town is in any position to attempt a formal appraisal of her property to determine what measurable effect the development would have on the value of her property. However, both believe that the materiality of and the existence of any impact is speculative at best.

Further, even if the impact were certain and deemed substantial the Town believes that the large lot residential owners in the general southwest quadrant of the Town constitute a "significant segment of the public" of which Ms. Hineline in her property ownership role is a part. The Town does not view that it is likely that Ms. Hineline's property would be affected in a different manner that all other properties in that general area.

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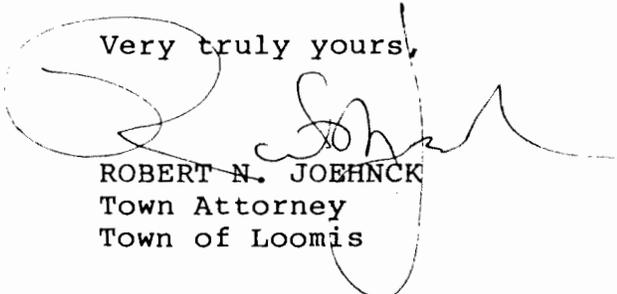
Lastly, the Town views the possible threat of litigation between the developer and Ms. Hineline over the right to place a water diversion line on her property not to be a matter affecting a "financial interest" within the meaning of Government Code Section 87103. Therefore, assuming that there will be some costs incurred in litigation, that issue or perhaps some monetary settlement of that issue does not appear will constitute a "financial interest" within the meaning of Section 87103.

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Enclosed with this letter are various documents pertaining to the Development and the Hineline property to further your review. The Town will of course supply any further existing documentation you may require in your analysis of the issues presented here. Also enclosed is a consent letter executed by Ms. Hineline.

Very truly yours,



ROBERT N. JOEHNCK  
Town Attorney  
Town of Loomis

RNJ/ds

cc: Mayer/Council  
Hazel Hineline  
Barton Properties

**ENCLOSURES WITH HINELINE**

**OPINION LETTER REQUEST**

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2. EIR draft for Loomis Oaks together with subdivision map (proposed).
3. Assessor's map showing Hineline property in relation to surrounding parcels.
4. Area maps showing relative positions of Hineline and Barton Property parcels.
5. PCWA waterline map.

Contact Numbers

Hazel Hineline

H - 652-6010

Robert Joehnck

W - 442-2140

H - 791-4621

Stan Eisner, Town Manager - 652-9204

Barton Properties

c/o Charles Chatifled  
209-727-3771

Barton Properties Engineer

Jim Gee - 723-0210

Placer County Water Agency

Dave Campbell (Engineering Division) 823-4886  
re: Turnout # 500 + 10  
Service Order # 8205

December 22, 1987

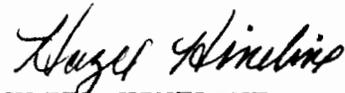
Robert Leidigh, Esq.  
Fair Political Practices Commission  
428 J Street  
Sacramento, California 95814

Dear Mr. Leidigh:

---

This is to officially notify the Commission that I have read the letter of Robert Joehnck, Loomis Town Attorney, dated October 22, 1987 addressed to you, and consent to the request for an opinion from the Commission set out in that letter.

Very truly yours,



HAZEL HINELINE  
Loomis Planning Commissioner

cc: Robert Joehnck, Esq.



# California Fair Political Practices Commission

December 24, 1987

Robert N. Joehnck  
801 12th Street  
Sacramento, CA 95814

Re: 87-322

Dear Mr. Joehnck:

Your letter requesting advice under the Political Reform Act was received on December 24, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Bob Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:jaj

**Robert N. Joehnck**  
Attorney at Law

801 12th Street, Suite 500  
Sacramento, California 95814

(916) 442-2140

December 22, 1987

Robert Leidigh, Esq.  
Fair Political Practices Commission  
428 J Street  
Sacramento, California 95814

Dear Mr. Leidigh:

The undersigned is the Town Attorney for the Town of Loomis ("Town") in Placer County. This letter is written to request ~~the Commission's written advice concerning the ability of a~~ member of the Town's Planning Commission ("Commission") to act in connection with certain land use decisions. These will come before the Commission in connection with the requested approvals by a developer for a seventy unit single family subdivision in the Town. The member in question is Commissioner Hazel Hineline who as of January 1st, 1988, will become the Chair of the Commission for the calender year 1988.

General Town Background

The Town became incorporated on December 17, 1984. The Town currently has a population of approximately 5700 persons. There are about 4540 acres of land within the Town limits. The Town is within the Loomis Basin which is a part of Placer County experiencing very considerable residential, commercial and industrial development. It is fair to say that local concerns for control over land use and development decisions was a primary factor which probably led to a favorable vote to incorporate the Town.

General Plan

The Town adopted its first General Plan in October, 1987, (Govt. Code 65800 et. seq. Loomis is physically divided in half by Interstate 80. With exceptions not deemed relevant the entire southern part of Loomis is presently designated as low density rural residential permitting only residential land uses generally with aggregate densities no greater than 1 dwelling unit per acre and often requiring a development density of no greater than 1 dwelling unit per 4.6 acres of land.

The part of the Town south of Interstate 80 is sometimes referred to as "South Loomis" or the "South Area". The latter designation is more commonly used to refer to that area in the southern part of Town bounded roughly by Rocklin Road to the north as that road would exist if extended to the easterly boundary of the Town, and bounded on the south, east and west by the Town limits south of Rocklin Road. This "south area" was the subject of much discussion and debate in the General Plan adoption process. The Commission formally recommended to the Town Council that the entire south area remain designated for land use purposes as "rural agricultural" which allows dwelling units with average densities of no greater than 1 dwelling unit for every 4.6 acres of land. The council generally accepted this recommendation but in an important digression from the Commission recommendation designated a large parcel of land in the south area as permitting average densities of as low as 1 dwelling unit per acre.

#### The Development Proposal

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Barton Properties (the "Developer") owns approximately 105 acres of land in the south area. Roughly 60+ acres of this land is the parcel just referred to which the Town Council designated as 1 acre minimum per dwelling unit while the balance is composed of 40+ within the rural agricultural 4.6 acre minimum land use classification under the general plan.

The Developer proposes to develop an 70 unit planned development subdivision within the 105 acre project with lot sizes ranging from 1 to 5.6 acres in size with an average lot size of approximately 1.6 acres. The planned development designation if approved will allow the clustering or averaging of densities within the project area across zoning lines.

The Developer will not be the actual builder of houses within the development but will sell individual finished lots (all utilities in, roads and common improvements completed) to individuals and builders. All lots will be subject to the provisions of homeowner association covenants and restrictions which will provide for the upkeep and maintenance of the developments common areas. The Developer estimates that lots in the development will be marketed at a minimum price of \$130 - 135 thousand dollars per lot.

The Hineline Property

The Hineline property is about 13 acres in size. At its closest proximity to the development it is about 450 feet from the property line of the developments boundaries. The Hineline property is valued at no less than \$400,000.00. The Hinelines have a large recently built home toward the easterly portion of their property at an elevation of roughly 50-100 feet above the Development. On a clear day substantial parts of the Development site are visible from the Hineline residence.

The Hinelines previously owned additional property adjacent to their present ownership, a part of which is separated from the project only by Barton Road, a 60 foot wide right of way owned and maintained by the Town. The Hinelines did retain a 60 foot access easement to their property from Barton Road through the property they previously sold. This easement is the only access from their property to a public street. To the extent they are developed at all the properties in the vicinity of the Hinelines are generally at least on 4.6 acres of land.

The Water Line

The present Hineline property is crossed by the Boardman Canal. That canal is an open ditch non-domestic water delivery system now owned by the Placer County Water Agency (PCWA). PCWA is the successor in ownership to various previous canal owners. The canal has existed in this area since at least the turn of the century.

It has been the practice in the past for PCWA or its predecessor owners of the canal to grant connection rights to various applicants willing to pay for water from the system. It appears that the general practice was for some PCWA official to authorize a connection of a certain size and perhaps supervise the installation of the original connection. PCWA however did not concern itself with how its customer actually transported the water from the canal to the property where the customer actually used the water.

Page Four

The Developer is claiming in the present case that it has a right to take water from the Boardman Canal and transport it over a part of the Hineline property to provide irrigation or non-domestic water for the development. It claims that when it purchased the property it proposes to develop it acquired rights to a certain PCWA connection and the right to transport that water to its property.

PCWA records show that a water "turnout" (diversion pipe) owned or purportedly owned by one Yaffe (the predecessor in interest to the Developer on its property) was locked in 1978 after being turned on in 1975. It further appears that this turnout was either an existing or enlargement of a turnout in place since at least 1965 (Baldwin application for Mayer property).

In all events, there is no existing complete delivery line from the turnout to the Developer's property and any user of that turnout in the future would require a new or almost completely new diversion system (pipe) to be installed from the canal to the Developer's property. There are no recorded "easements" to establish the Developer's claim to the water diversion rights in question. The Developer's rights, if any, to divert water from the canal over the Hineline property could obviously involve factual data relating to concepts of prescriptive easements, abandonment, etc., wholly outside the scope of the Town's ability to make determinations in an expeditious and economical manner. The Highlines dispute that the developer has any present right to deliver water across their property and are not interested in granting the Developer any such rights if they do not now exist.

\* \* \*

The development proposal will be ultimately passed on by the Town Council as the approval process will require a rezoning of the entire property to place a zoning density limitation on it and a rezoning of about 60 acres to a zoning classification permitting 1 acre average lot sizes. Both of these rezoning changes will of course first be the subject of a public hearing before the Commission with the Commission having the opportunity to formally recommend to the Town Council whether to approve or disapprove the requested zone changes.

Additionally, a Planned Development classification is proposed for the Development to permit an averaging of densities within the development. This takes the form of a conditional use permit under the applicable zoning regulations. The decision to grant or deny such a permit is a decision which is final with the Planning Commission unless appealed to the Town Council.

Finally, the entire development is a subdivision under the Subdivision Map Act and the Developer must obtain approval of a tentative subdivision map from the Planning Commission. This approval is in essence final unless again it is appealed to the Town Council.

\* \* \*

Commissioner Hineline wishes to participate in the review and approval process relating to the development. ~~The Developer is willing to have her participate and is willing to waive any claim to disqualification of Commissioner Hineline that the Developer might have.~~ Other than the potential effect of the development on the value of her residence property and the dispute over any water right that may or may not exist as it affects her property there are no other potential points of conflict known to any of the concerned parties.

Neither Ms. Hineline nor the Town is in any position to attempt a formal appraisal of her property to determine what measurable effect the development would have on the value of her property. However, both believe that the materiality of and the existence of any impact is speculative at best.

Further, even if the impact were certain and deemed substantial the Town believes that the large lot residential owners in the general southwest quadrant of the Town constitute a "significant segment of the public" of which Ms. Hineline in her property ownership role is a part. The Town does not view that it is likely that Ms. Hineline's property would be affected in a different manner than all other properties in that general area.

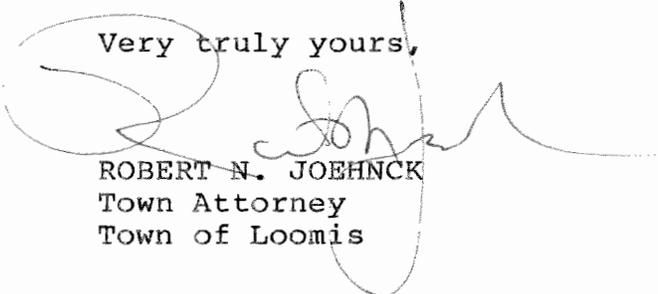
Page Six

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Very truly yours,



ROBERT N. JOEHNCK  
Town Attorney  
Town of Loomis

RNJ/ds

cc: Mayer/Council  
Hazel Hineline  
Barton Properties

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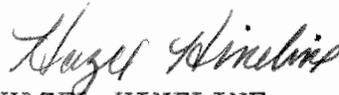
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Fair Political Practices Commission  
428 J Street  
Sacramento, California 95814

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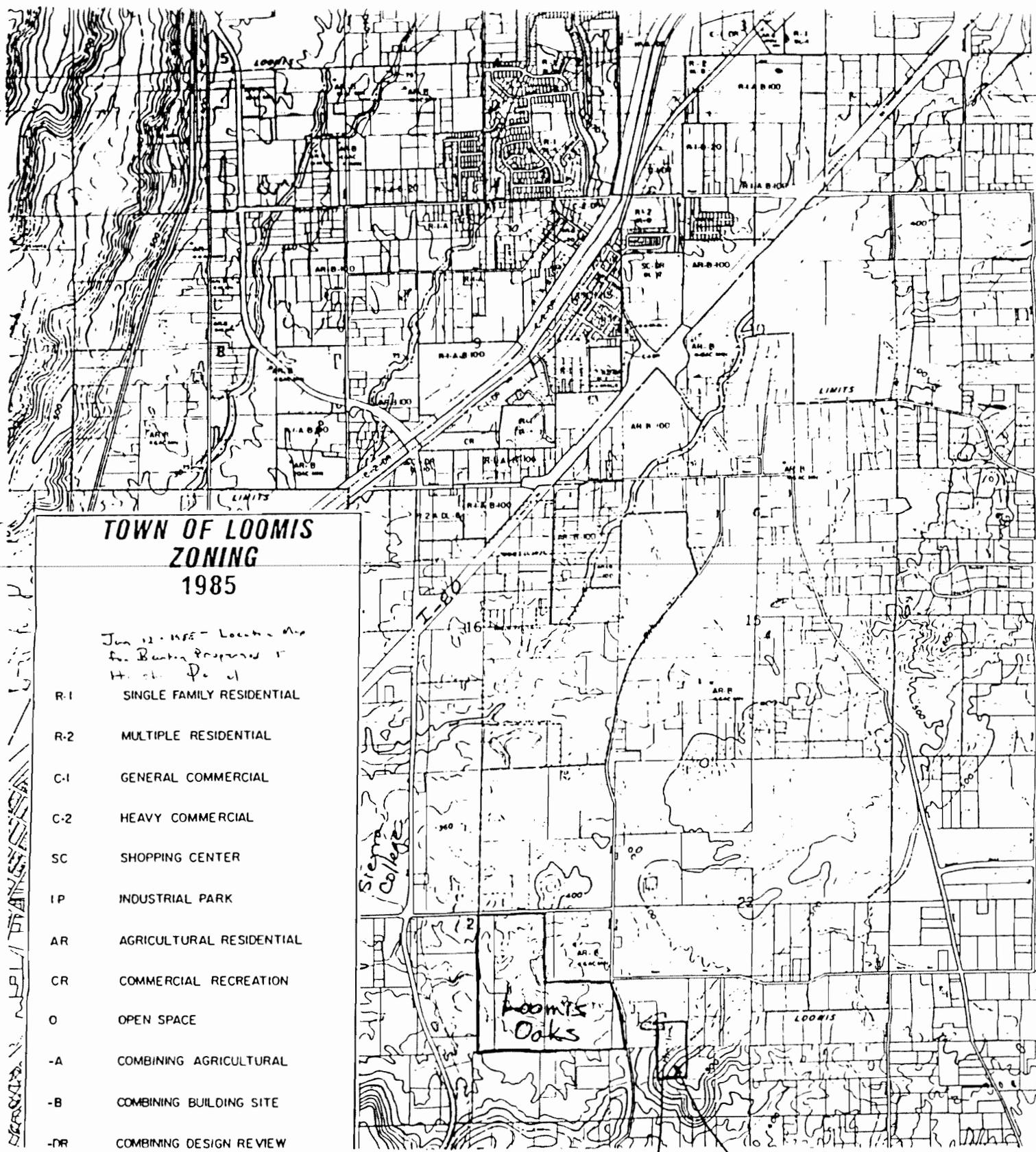
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Very truly yours,



HAZEL HINELINE  
Loomis Planning Commissioner

cc: Robert Joehnck, Esq.



**TOWN OF LOOMIS  
ZONING  
1985**

Jun 12, 1985 - Location Map  
for Building Proposed by  
H. J. P. et al

- R-1 SINGLE FAMILY RESIDENTIAL
- R-2 MULTIPLE RESIDENTIAL
- C-1 GENERAL COMMERCIAL
- C-2 HEAVY COMMERCIAL
- SC SHOPPING CENTER
- IP INDUSTRIAL PARK
- AR AGRICULTURAL RESIDENTIAL
- CR COMMERCIAL RECREATION
- O OPEN SPACE
- A COMBINING AGRICULTURAL
- B COMBINING BUILDING SITE
- DR COMBINING DESIGN REVIEW

**Zoning Map**

S 1/2 SEC. 22, T.11N., R.7E., M.DB&M.

Survey M.O.R. Bk. 2 Pg. 14

Survey M.O.R. Bk. 4, Pg. 50

Parcel Map M.O.R. Bk. 2, Pg. 62

Parcel Map M.O.R. Bk. 4, Pg. 74

Parcel Map M.O.R. Bk. 8, Pg. 59 & 68

Parcel M.O.R. Bk. 13, Pg. 10, 72832.

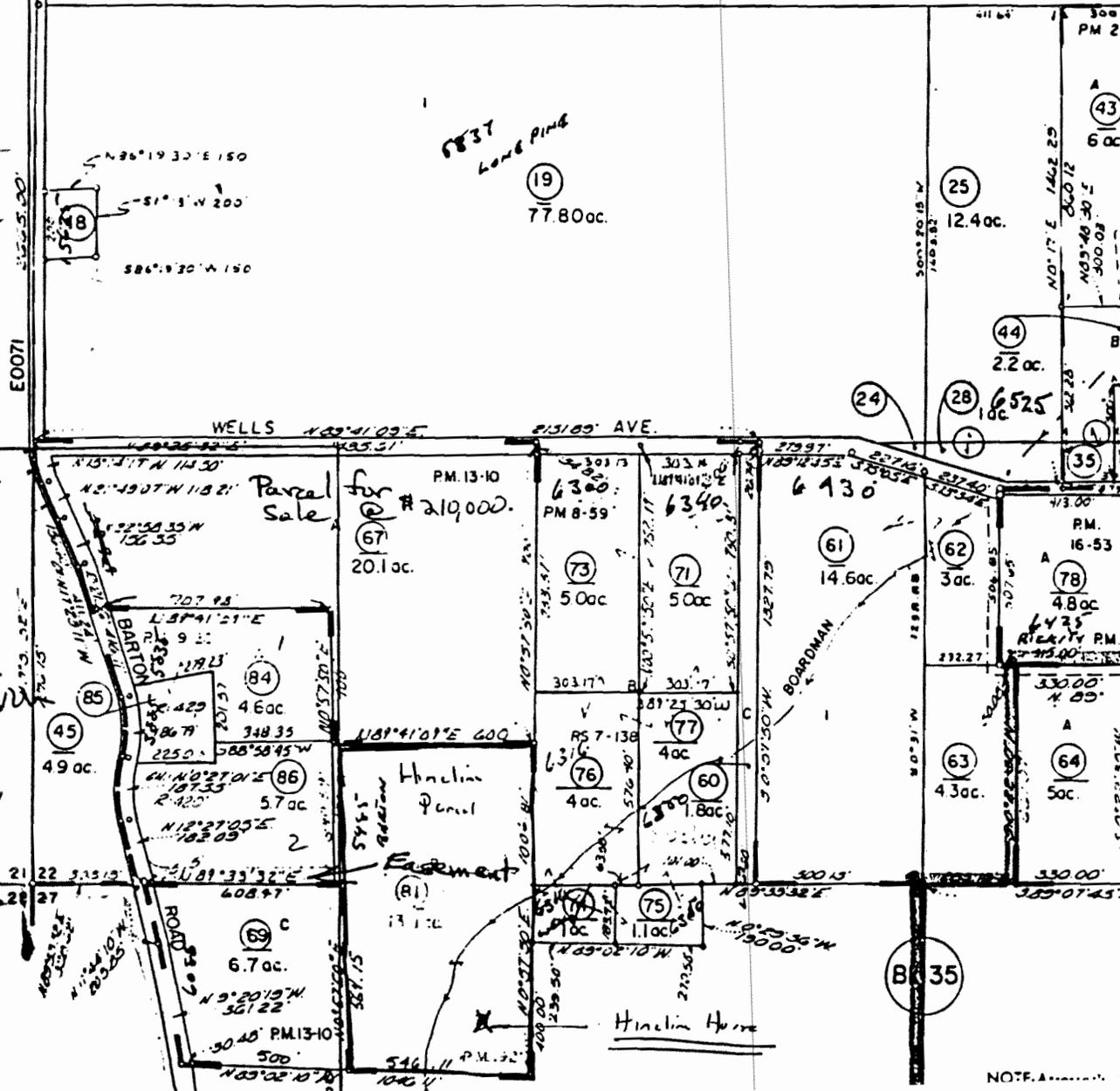
Survey M.O.R. Bk. 7, Pg. 138.

Parcel M.O.R. Bk. 16, Pg. 53, 73102

17

This map was prepared for a specific purpose and is not intended to be used for any other purpose. Official information regarding the size or use of any parcel should be obtained from recorded data and local governing agencies.

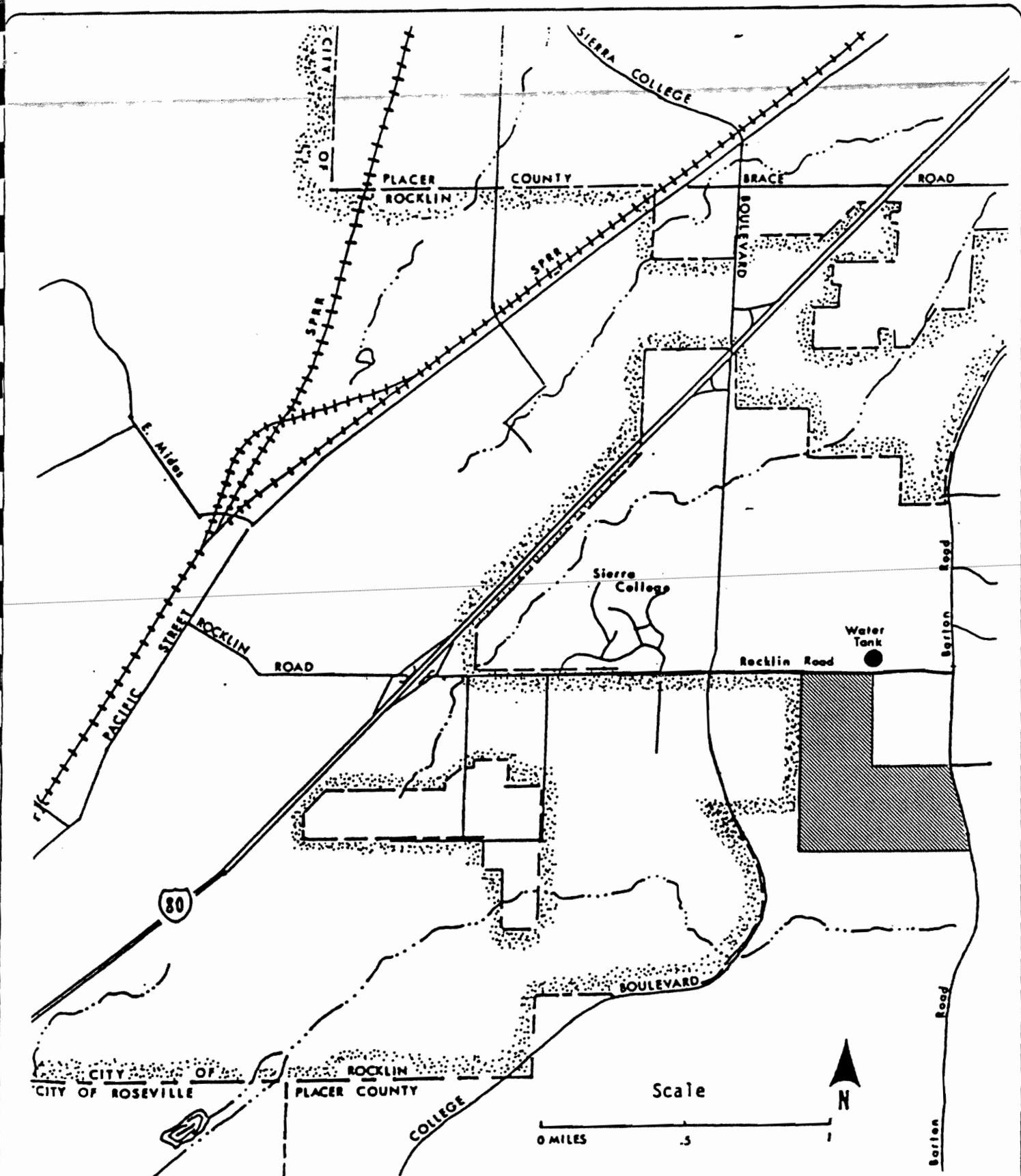
Assessor's Map



Loomis Oaks Barton Subdivision Parcel

- 1-20-83
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- 1-85-83

NOTE: A...



**PROJECT LOCATION MAP** **FIGURE C1**

