

January 8, 2016

**VIA E-MAIL**

James Castañeda, AICP  
County of San Mateo  
Planning & Building Department  
455 County Center  
Redwood City, CA 94063

Re: Ascension Heights Subdivision Project

Dear Mr. Castañeda:

We are writing on behalf of our client, San Mateo Real Estate, Inc., the applicant for the proposed 19-home Ascension Heights Subdivision Project (the "Project"). As you know, the Planning Commission approved the Project on October 14, 2015. The Baywood Park Homeowners Association filed an appeal of the Planning Commission's approval of the Project, which is scheduled to be heard by the Board of Supervisors on January 26, 2016. We believe that the Planning Commission's approval of the Project should be upheld for the myriad reasons previously articulated by the applicant, County staff, and the Planning Commission. To assist the staff and the decision-makers in that regard, we respectfully submit below suggested clarifying changes to the Findings, Conditions of Approval, and Resolutions as approved by the Planning Commission.

**I. COMMENTS ON FINDINGS AND CONDITIONS OF APPROVAL.**

A. Findings.

1. Environmental Review.

We suggest that the Findings be modified slightly to track CEQA Guidelines section 15090. For instance, the Findings should note that the EIR was "completed in compliance" with CEQA, reflects the agency's independent judgment "and analysis," and "was presented to the Board of Supervisors as the decision-making body of the County and that the Board of Supervisors reviewed and considered the information contained in the EIR prior to approving the project."

Here, the FEIR is referred to as the Revised FEIR and in other documents it is referred to as the FEIR. For ease of reference, it may be simpler to refer to the document proposed for certification as the "EIR," noting that the EIR consists of the Draft EIR, the Final EIR, and the Errata to the EIR. Also note that the Final EIR is comprised of two volumes: Volume I-Response to Comments and Volume II-Revised Draft EIR.

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We also suggest that the staff add a finding to note that technical revisions have been made to certain mitigation measures as reflected in the Mitigation Monitoring and Reporting Plan (“MMRP”) and that all of the revised mitigation measures are equal or more effective than the original measures in avoiding or substantially lessening the significant environmental effects of the Project. We suggest adding this same finding to the resolutions certifying the EIR and adopting the MMRP and CEQA Findings.

2. Major Subdivision.

We suggest that the staff add a finding specifying that the design and improvement of the proposed subdivision is consistent with the County General and specific plans. *See* County Subdivision Ordinance § 7013(3)(b). We also suggest that finding 5 be revised to specifically note that the site is physically suitable for the type of development and the proposed density of development. *Id.*

3. Grading Permit.

We suggest revising this finding slightly to note that the granting of the “permit” will not have a significant adverse effect on the environment. *See* County Grading Ordinance § 8604.6(a).

B. Conditions.

We respectfully request that the following changes be made to the conditions of approval as approved by the Planning Commission:

- Condition 8.a: revise reference to Condition 8.l to reference Condition 8.j. Also revise this condition per the Planning Commission’s action to specify that landscaping must minimize fire hazards and use water-efficient irrigation systems and to reference the 30-day public review and comment period on the submitted landscaping plan.
- Condition 8.b: replace “shall not exceed” with “shall comply with” in the first paragraph; strike “or more” in the first and second bullets.
- Condition 8.c: add back first bullet regarding covering trucks off-hauling materials.
- Condition 8.w: specify location of existing 30-inch diameter storm water drain pipe.
- Condition 8.a.i: replace all instances of “should” with “shall.”
- Condition 15: revise condition per the Planning Commission’s action to require that the hauling plan address traffic and safety control measures, including the provision of flagging personnel.

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- Condition 19a(a): revise to read “The subdivision shall not be gated or restrict access in any way to the general public in order to provide public access and use of the sidewalks and proposed trail system and overlook areas from sunrise to sunset in accordance with County Park Department standards.”
- Condition 19a(b): insert “average” after “maximum.”
- Condition 19a(c): revise to read “Dwelling designs shall incorporate styles presented as part of the Ascension Heights Design ~~Guidelines~~ Handbook proposed by the applicant and presented to the Planning Commission on October 14, 2015 and included as Appendix J to the Final EIR.”

## **II. COMMENTS ON RESOLUTIONS.**

### **A. Resolution Certifying EIR.**

We suggest that the clarifying changes listed below be made to this resolution.

On page 1, move the second recital to the top of page 2 so that it is in chronological order and correct the date in the third recital to October 4, 2013.

On page 3, add a recital to indicate the date and contents of Volume II of the Final EIR and strike the second recital which duplicates the recital on page 2. Also add a recital describing the date and contents of the Errata to the EIR.

On page 4, replace “prepared in accordance” with “completed in compliance” in item 1; add “and analysis” after “judgment” in item 4; and replace “and processed in accordance” with “in compliance” in item 5. On this same page, add an item noting that “the EIR was presented to the Board of Supervisors as the decision-making body of the County and the Board of Supervisors reviewed and considered the information contained in the EIR prior to approving the project.”

### **B. Resolution Adopting the MMRP and CEQA Findings.**

#### **1. MMRP.**

We suggest that the clarifying changes listed below be made to this resolution.

On page 1, in the second paragraph, change “21801” to “21081” and add a note explaining that technical corrections have been made to the EIR mitigation measures, with additions shown by underlining and deletions shown by strike-through.

#### **2. CEQA Findings.**

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We respectfully request that the staff make the clarifying changes listed below to the CEQA Findings.

In general, we ask the staff to please ensure that the mitigation measures reflect the text of the final MMRP. We also ask the staff to confirm that all of the findings match the text of Public Resources Code section 21081: “Changes or alterations have been required in, or incorporated into, the Project<sup>1</sup> which mitigate or avoid the significant effects on the environment.” We also suggest that findings be added rejecting the alternatives as infeasible and/or for failing to achieve most of the basic project objectives.

On page 3, under Impact 4.1-1, revise the first sentence to match the description of the impact on EIR page 4.1-13 and to correct misspelling of Parrott Drive.

On page 4, correct cross-reference to Condition 8.j in line 2 and make revisions to Mitigation Measure 4.1-1b as noted in Condition 8.b above. Under “Facts in Support of the Findings,” add reference/discussion of Ascension Heights Design Handbook and in next to last sentence, replace “consistent” with “consist” and “if” with “in.”

On page 5, strike reference to “or require all trucks to maintain at least 2 feet of freeboard” in the first bullet under Mitigation Measure 4.2-1a.

On page 6, under Impact 4.2-8, replace “gasses” with “gases” and explain that when measured against the operational threshold, the Project’s construction-related greenhouse gas emissions would be less than significant even assuming they were all to occur in one year or, alternatively, if amortized over 30 years and added to annual operational emissions as is customary in several jurisdictions.

On page 7, under Impact 4.3-3, replace “This is a potentially significant impact” with text added on EIR page 4.3-23. In the next paragraph, spell out California Department of Fish & Wildlife before abbreviating it as CDFW.

On page 9, under Impact 4.3-4, replace “These impacts are significant” with text added on EIR page 4.3-25. In this same paragraph, spell out Migratory Bird Treaty Act before abbreviating it as MBTA.

On page 10, under Impact 4.3-6, strike “This impact is significant.”

On page 11, under “Facts in Support of the Findings,” strike 4.3-1 and 4.3-2 and under Impact 4.4-1, spell out best management practices before abbreviating it as BMPs.

On page 14, insert discussion of Impact 4.4-4.

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<sup>1</sup> Sometimes, the findings refer to the project as the “Proposed Project” and other times as the “Project.” We suggest revising references throughout the findings to be consistent.

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On page 19, revise Mitigation Measure 4.6-3b per comments to Condition 8.w above.

On page 21, under Impact 4.7-2, strike “This is considered a potentially significant impact.”

On page 23, before “Facts in Support of the Findings,” insert discussion of Impact 4.7-5. We also recommend further explaining the rationale and conservative nature of the significant construction noise impact (Impact 4.8-1) given that construction activities will be less than 90 dB and prohibited from occurring outside the hours authorized by the County Noise Ordinance.

On page 24, before “Facts in Supports of the Findings,” insert discussion of Impact 4.8-2; under Impact 4.10-2, discuss location of existing storage tank and add discussion of significant cumulative impact.

On pages 25-26, under Impact 4.10-3, add discussion of significant cumulative impact. On page 26, before Impact 4.10-5, add reference to Mitigation Measures 4.6-3a and b and add these measures to the list of mitigation measures in “Facts in Support of the Findings” at the end of this section.

On page 28, before Mitigation Measure 4.10-5, add reference to Mitigation Measures 4.7-3 and 4.10-2a and add these measures to the list of mitigation measures in “Facts in Support of the Findings” at the end of this section.

On page 29, under Impact 4.11-4, replace reference to Figure 3-6 with Figure 3-7. Revise Mitigation Measure 4.11-4 per comments to Condition 8.a.i above.

### **III. EIR ERRATA.**

We respectfully suggest that an Errata to the EIR be prepared addressing the following technical, non-substantive corrections to the EIR as well as any others identified by the EIR consultant or County staff.

In the discussion of Impact 4.2-8 on EIR page 4.2-28, the EIR text should be revised to note that the absence of a construction-related threshold suggests that the air district does not believe that such temporary and relatively minor emissions need be factored into the discussion of global climate change. Further, the EIR should note that when measured against the operational threshold, the Project’s construction-related greenhouse gas emissions would be less than significant even assuming they were all to occur in one year or, alternatively, if amortized over 30 years and added to annual operational emissions as is customary in several jurisdictions.

In Table 4.2-10 on EIR page 4.2-30, the total operational emissions of greenhouse gas emissions is listed as 291.98, but the first year operational-related greenhouse emissions is listed as 884.42. The figures should be corrected or a note added to explain the discrepancy.

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On EIR page 4.3-27, in the second bullet at the top of the page, the tree replacement ratio is listed as 1:1 instead of 3:1.

In Table 4.5-1 on EIR page 4.5-10, correct references to Urban Land Use policies, which appear to be off by one numeral (e.g., Policy 8.13 should be Policy 8.14, Policy 8.14 should be Policy 8.15, etc.). Please make corresponding changes to the EIR text.

On EIR page 4.6-16, revise the second and third sentences of the third paragraph to reflect that the system not only meets the County's 10-year storm requirement, but is capable of managing a 100-year storm event. Staff can cite to the January 2, 2016 email correspondence from Project engineer Jim Toby to Laurel Nagle et al. in support of this point.

In the discussion of Impact 4.8-1 on EIR pages 4.8-11 to 4.8-13, the EIR should explain the rationale and conservative nature of the significant construction noise impact given that construction activities will be less than 90 dB and prohibited from occurring outside the hours authorized by the County Noise Ordinance.

On EIR pages 6-1 to 6-2, add as project objectives: (1) substantially increase tax revenues to the County and other public agencies and (2) implement substantial and permanent erosion and soil stabilization measures to prevent uncontrolled runoff off-site. Please make corresponding changes to EIR page 3-7.

On EIR page 6-7, revise second line to replace "three" with "four."

In the References section on EIR page 8-6, add references to Lea & Braze reports.

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Thank you for your consideration of our client's views on this matter. Please do not hesitate to contact me with any questions regarding this correspondence.

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

cc: Steve Monowitz  
Lisa Aozasa  
Tim Fox  
Dennis Thomas