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April 16, 2023

VIA E-MAIL (jfunderburg@pittsburgca.gov)

Mayor Scales-Preston
City Council of the City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Re: Faria/Southwest Hills Annexation Project; AP-10-717 (GP, RZ, DA)

Dear Mayor Scales-Preston and Members of the Pittsburg City Council:

As you know, our office represents Discovery Builders, Inc. and Faria Land Investors, LLC in connection with the above-referenced Faria/Southwest Hills Annexation Project (the "Project"). This letter provides a brief response to the April 14, 2023 letter submitted by Save Mount Diablo ("SMD").

SMD's most recent letter is nearly identical to a previous letter that SMD submitted prior to the February 14, 2023 Planning Commission hearing. Our office has already responded to the arguments in SMD's February 14 letter in four of our prior letters, which we have attached here for your reference as Exhibits 1 through 4:

- 1. Exhibit 1: February 8, 2023 Letter:** This letter explains that recirculation of the Environmental Impact Report ("EIR") is not required. In this case, the revisions in the Revised and Updated Final EIR merely clarify the EIR's existing findings regarding Project impacts; they do not result in any new significant impacts, or in a substantial increase in the severity of the significant impacts addressed in the Draft EIR. Recirculation is not required when "new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an [otherwise] adequate EIR." (14 Cal. Code Reg., § 15088.5, subd. (e).)
- 2. Exhibit 2: First February 14, 2023 Letter:** This letter explains that the Project is carefully designed to protect ridgelines. The Project site does not contain designated major or minor ridgelines, and a greenbelt buffer will be established between the proposed development and the urban limit line along the western Project boundary to limit development on or adjacent to the ridgeline. (See Draft EIR at 4.1-30.)
- 3. Exhibit 3: Second February 14, 2023 Letter:** This letter showed that many of the arguments raised by SMD were rejected by the Contra Costa Superior Court and cannot be re-litigated. Among other things, the Court agreed that the Project, including the proposed master plan, did not violate City planning laws; the Project complies with hillside protection policies; the Project EIR adequately disclosed potential hillside impacts; and the Project is consistent with Measure P. This letter also explained that the

Project complies with the City's inclusionary housing requirements, and the Revised and Updated Final EIR fully complies with the California Environmental Quality Act (including all mitigation requirements).

4. **Exhibit 4: April 13, 2023 Letter:** This letter explains that the City's legal consideration of the Project entitlement package is limited to the affordable housing revisions in the development agreement. This letter also shows that the City's legal considerations of the EIR are limited to only three issues: (i) the revisions to the water supply analysis, (ii) greenhouse gas mitigations, and (iii) inventory of biological resources. The Revised and Updated Final EIR's analysis of all these topics complies with CEQA.

We look forward to your further consideration of the Project, after more than 20 years of work and planning by City staff, numerous rounds of environmental review and public comment, and the City's previous approval in 2021. We assure the City Council that the Revised and Updated Final EIR and revised Project entitlements meet all legal requirements under CEQA and the City's local ordinances.

If you have any further questions, please do not hesitate to contact us.

Very truly yours,

Hanson Bridgett LLP



Ellis F. Raskin
Senior Counsel

Attachments: Four (4) Exhibits

cc: Garrett Evans, City Manager
Donna Mooney, City Attorney
Jordan Davis, Director of Community and Economic Development
Client

19521503.1

Exhibit 1:

February 8, 2023 Letter

February 8, 2023

VIA E-MAIL jfunderburg@pittsburgca.gov

John Funderburg
Assistant Director of Planning
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Re: Revised and Updated Final EIR for the Faria/Southwest Hills Annexation Project

Dear Mr. Funderburg:

On behalf of our client, Discovery Builders, Inc. (DBI), this letter is submitted in response to recent comments from Save Mount Diablo's legal counsel (SMD), alleging that the Revised and Updated Final Environmental Impact Report (RUF EIR) for the above-referenced project must be circulated for public review and comment. In this case, however, the RUF EIR made only minor revisions to the original Draft EIR and Partially Recirculated Draft EIR (Draft EIR). Here, the provisions of the California Environmental Quality Act (CEQA) are clear: the RUF EIR's minor revisions to the Draft EIR do not warrant recirculation.

Under CEQA, only the draft EIR must be circulated for public review and comment. (See Pub. Res. Code § 21091-21092; 14 Cal. Code Reg. §§ 15087, 15105, 15205.) A lead agency *may*, but is not legally required to, provide an opportunity for public review of a final EIR. (14 Cal Code Reg. § 15089(b).) In some cases, after a draft EIR is published for public review and comment, but before the final EIR is certified, recirculation can be required if "significant new information is added to the EIR." (14 Cal. Code Reg. § 15088.5.) On the other hand, recirculation is not required if "the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an [otherwise] adequate EIR." (14 Cal. Code Reg. § 15088.5(e).) Ultimately, an agency's determination not to recirculate an EIR is given substantial deference and is presumed to be correct if it is supported by substantial evidence. (*Beverly Hills Unified Sch. Dist. v. Los Angeles Cnty. Metro. Transportation Auth.* (2015) 241 Cal.App.4th 627, 661, citing *W. Placer Citizens for an Agric. & Rural Env't v. Cnty. of Placer* (2006) 144 Cal.App.4th 890, 903.) As such, courts must resolve any reasonable doubts in favor of upholding the agency decision. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1135; 14 Cal. Code Reg., § 15088.5(e).)

In this case, the revisions in the RUF EIR merely clarify the EIR's existing findings regarding project impacts; they do not result in any new significant impacts, or in a substantial increase in the severity of the significant impacts addressed in the Draft EIR.

SMD incorrectly asserts that section 15088.5 does not apply, and that public review of the RUF EIR is “mandatory,” citing *Mountain Lion Coalition v. Fish & Game Comm.* (1989) 214 Cal.App.3d 1043, 1052. SMD’s letter failed to note, however, that the superior court in *Mountain Lion Coalition* expressly ordered that the EIR be recirculated, in the final writ that was issued to the lead agency. (*Id.*, at 1047-48.)¹ Notably, the EIR in *Mountain Lion Coalition* originally included no cumulative impact analysis. In response to the writ, the lead agency merely provided a four-page, conclusory summary that there would be no cumulative impacts associated with its proposed decision to allow the hunting of mountain lions. (*Mountain Lion Coalition*, supra, at p. 1046.) The appellate court found the lead agency’s response to be “woefully inadequate” and directed the agency to comply with the clear order on the writ, to provide substantial evidence and empirical evidence to support the cumulative impact analysis. (*Id.*, at 1047-48.)

Ultimately, section 15088.5 of the CEQA Guidelines incorporated the holding from *Mountain Lion Coalition* into the definition of “significant new information”:

“Significant new information” requiring recirculation include[s], for example, a disclosure showing that... (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(14 Cal. Code Reg. § 15088.5(a)(4).) SMD’s claim that section 15088.5 does not apply therefore has no merit, and is contradicted by SMD’s own citation to *Mountain Lion Coalition*, supra.

Further, in this case, the final writ (which was ordered by the court and ultimately prepared by SMD) did not expressly require recirculation of the EIR or preparation of a supplemental EIR. Moreover, the court did not find the EIR in this case to be fundamentally inadequate. In fact, the opposite is true: *the court rejected the vast majority of SMD’s claims and found the EIR to be adequate on nearly every claim raised by SMD.* A writ was issued to rescind the project approvals based on a few, limited issues: (1) a provision in the development agreement that required the construction of 150 ADUs within the project area was not included in the EIR project description; (2) in turn, ADUs were not properly accounted for in the EIR’s analysis of water supplies for the proposed project; (3) the Draft EIR did not include an up-to-date baseline description of biological resources [although this portion of the order has since been superseded by recent case law]; and (4) the greenhouse gas mitigation measures were not sufficiently enforceable.

In response to the court’s order, the only substantive change made to the project is that the contractual requirement to build 150 ADUs in the project area was removed from the development agreement. As such, ADUs need not be described in the EIR project description, or in its water supply analysis. In addition, minor revisions were made to the analysis in the EIR, to provide further support for the analysis of project-related impacts and mitigation measures for greenhouse gases and biological resources. As noted in detail in the RUF EIR, none of the

¹ Likewise, in *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal. App. 4th 1109, cited by SMD, the court expressly ordered the lead agency “to prepare a focused supplemental EIR on viticultural issues prior to further consideration of permit approval” for the proposed New Los Padres Dam and Reservoir project. No such order to prepare a supplemental EIR was included in the final writ in SMD’s challenge to the Faria project.

revisions to the EIR resulted in new significant impacts that were not previously analyzed, or the substantial severity of previously analyzed impacts, or feasible mitigation measures that the City is opting not to adopt. As such, none of the findings have been met that would require recirculation of the EIR. (See 14 Cal. Code Reg. § 15088.5(a)(1)-(4).)

As the RUF EIR noted, revisions were made to the Draft EIR to address the Superior Court's comments related to Accessory Dwelling Units (ADUs), the level of detail included in the Draft EIR's mitigation to address potential air quality and greenhouse gas (GHG) emission impacts, the Draft EIR's baseline description of biological resources, and the adequacy of the Draft EIR's water usage analysis. The technical reports attached to the RUF EIR provide the substantial evidence necessary to support a finding by the City that recirculation of the RUF EIR and Draft EIR are not required.

Ultimately, SMD's argument that section 15088.5 does not apply has no merit. SMD's purported reliance on *Mountain Lion Coalition* and *Galante Vineyards* is misplaced, and section 15088.5 is clearly the applicable CEQA guideline section for evaluating whether recirculation is required. In addition, SMD's reference to *Woodward Park Homeowners' Assn., Inc. v. City of Fresno* (2007) is irrelevant, as SMD lifted the quoted language from the introductory paragraph, which has no legal bearing on the court's actual ruling in that case.

In summary, our office has reviewed the RUF EIR and all attached exhibits and, in the context of the above authorities, recirculation of the RUF EIR or Draft EIR is not warranted in this case.

Sincerely,

Hanson Bridgett LLP

Robin R. Baral
Senior Counsel

RRB

cc: Donna Mooney, City Attorney
Ginetta Giovinco, Special Counsel
Client

Exhibit 2:

First February 14, 2023 Letter

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February 14, 2023

VIA E-MAIL jfunderburg@pittsburgca.gov

Elissa Robinson
Chair, Pittsburg Planning Commission
c/o John Funderburg, AICP
Assistant Director of Planning
City Hall Council Chamber
65 Civic Avenue
Pittsburg, CA 94565

Re: Recommendation for City Council Approval of a Development Agreement, Amendments to the General Plan and Rezoning Designations, and Adoption of a Master Plan for the Faria/Southwest Hills Annexation Project; AP-10-717 (GP, RZ, DA)

Dear Chair Robinson and Members of the Planning Commission:

As you know, our office represents Discovery Builders, Inc. in connection with the above-referenced Faria/Southwest Hills Annexation Project ("Project"). We submit this letter in response to comments that ask the City of Pittsburg ("City") to "change the project so that the ridge is saved."¹ To be clear, the Project has been carefully designed to protect existing ridgelines.

As explained below, the Project includes a 150-foot greenbelt ridgeline buffer along the Project's western boundary, in which development would not be allowed. Furthermore, future development will be clustered behind ridgelines to preserve prominent views of the on-site hillsides from the cities of Bay Point and Pittsburg to the north, and to minimize adverse visual effects when viewed from the City of Concord to the west. Accordingly, no changes are needed; the ridgelines are already protected.

1. Project Background

As discussed in further detail in your staff report, the Project represents the culmination of a two-decade long planning and robust environmental review process, involving rigorous public scrutiny and input.

Since 2001, the City's General Plan has envisioned that the approximately 606 acres comprising the Project site could accommodate a maximum buildout of 1,500 dwelling units. In 2005, City voters approved an initiative entitled "Measure P (City of Pittsburg Voter Approved

¹ As of the evening of February 13, 2023, the City has posted 13 largely identical emails that appear to have been copied and pasted from the same template. All 13 emails contain this quoted language.

Urban Limit Line and Pre-zoning Act),” which pre-zoned the entire project site to HPD (Hillside Planned Development) and OS (Open Space) Districts, consistent with existing General Plan residential and open space designations. In 2007, the City Council adopted Resolution No. 07-10700, which established a framework for incorporating a greenbelt buffer into the Project design.

Over the past thirteen years, the City and Discovery Builders have conducted extensive environmental review and have responded to years of public feedback. The Project has been redesigned multiple times to respond to public input and recommendations from environmental experts.

2. The Project Is Carefully Designed to Protect Ridgelines

The Project site does not contain designated major or minor ridgelines. However, as noted above, a greenbelt buffer would be established between the proposed development and the urban limit line along the western Project boundary to limit development on or directly adjacent to the ridgeline. (Draft Environmental Impact Report [“EIR”] at 4.1-30.)

Specifically, the Project would include a 150-foot greenbelt ridgeline buffer along the Project’s western boundary, in which development would not be allowed. That buffer consists of existing ridgelines that would sit at a higher elevation than future development on the site and would act as a buffer between proposed development and lands to the west of the Project site. The development of this greenbelt ridgeline buffer would ensure that substantial impacts to views of the hillside area from the City of Concord would not occur. (Revised Updated Final EIR at 2-5 [Master Response to Comments 3(b)].)

Furthermore, as explained in the EIR, future development will be subject to Design Review Guidelines in the Project’s Master Plan. These Guidelines will ensure that future development is clustered in a manner that minimizes adverse visual effects:

“Future development would be subject to the Design Review Guidelines included in the Draft Master Plan. The Design Review Guidelines are derived from existing General Plan policies, and are intended to provide a framework for the design of future development within the project site. For example, the Neighborhood and Subdivision Design section of the Design Review Guidelines would require clustering of hillside development behind ridgelines to preserve prominent views of the on-site hillsides from the north and to minimize adverse visual effects to the City of Concord to the west.”

(Draft EIR at 4.1-20.)

As noted in your staff report, in 2021, Save Mount Diablo filed a lawsuit that alleged the Project did not comply with the General Plan’s hillside protection policies and that the Project’s EIR failed to disclose impacts to hillsides and ridgelines. The Contra Costa County Superior Court rejected these arguments. The Court ruled that the EIR’s disclosures complied with the California Environmental Quality Act. (“CEQA,” Public Resources Code, § 21000, et seq.) The Court also upheld the City’s conclusion that the Project is consistent with the General Plan’s hillside protection policies, including Policy 2-G-8, which states that the City should “[e]nsure that hillside development enhances the built environment, improves safety through slope

stabilization, is respectful of topography and other natural constraints, and preserves ridgelines and viewsheds.”

Because these issues were decided by the Superior Court, they are no longer subject to dispute and cannot be re-litigated. (See *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782.)

In summary, the Project will be designed in a manner that is sensitive to the existing natural topography. The 150-foot greenbelt buffer and Design Guidelines ensure that substantial impacts to views of the hillside area from the City of Concord would not occur.

3. Conclusion

We appreciate all of the work of City staff and its consultants, and we commend the City for its thorough work on the Revised Updated Final EIR, which fully complies with the requirements of CEQA.

We urge the Planning Commission to approve the Project, in accordance with staff’s recommendation. Should you have any questions, please do not hesitate to contact our office.

Very truly yours,



Ellis F. Raskin
Senior Counsel

EFR

cc: Garrett Evans, City Manager
Donna Mooney, City Attorney
Jordan Davis, Director of Community and Economic Development
Client

Exhibit 3:

Second February 14, 2023 Letter

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February 14, 2023

VIA E-MAIL jfunderburg@pittsburgca.gov

Elissa Robinson
Chair, Pittsburg Planning Commission
c/o John Funderburg, AICP
Assistant Director of Planning
City Hall Council Chamber
65 Civic Avenue
Pittsburg, CA 94565

Re: Response to Save Mount Diablo's February 14, 2023 Letter Regarding the Faria/Southwest Hills Annexation Project; AP-10-717 (GP, RZ, DA)

Dear Chair Robinson and Members of the Planning Commission:

As you know, our office represents Discovery Builders, Inc. in connection with the above-referenced Faria/Southwest Hills Annexation Project ("Project"). We submit this letter in response to late comments submitted by Save Mount Diablo.¹ For the reasons discussed below, Save Mount Diablo's arguments are meritless.

Preliminarily, Save Mount Diablo is now attempting to re-argue many arguments that were decided in the City and Discovery Builder's favor in court. Those issues are no longer subject to dispute and cannot be re-litigated. (See *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782.)

¹ For years, Save Mount Diablo has submitted comment letters only a few short hours prior to City hearings. This tactic has been repeatedly criticized by courts.

See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 567 ("There is no requirement that a lead agency respond in writing to comments submitted after expiration of the comment period."); see also *id.* at p. 568 ("We cannot, of course, overemphasize our disapproval of the tactic of withholding objections, which could have been raised earlier in the environmental review process, solely for the purpose of obstruction and delay."); Pub. Resources Code, § 21003.1 ("Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents"). The Court cautioned that "rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement." (*Id.* at 576; see also 14 Cal. Code Regs., § 15003(j).)

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Save Mount Diablo's other arguments are not supported by fact or law. The Revised and Updated Final Environmental Impact Report ("RUFIEIR") fully complies with all applicable requirements of the California Environmental Quality Act ("CEQA;" Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines ("Guidelines;" Cal. Code Regs., tit. 14, § 15000 et seq.). Furthermore, the Project fully complies with the City's inclusionary housing requirements. (Mun. Code, Chapt. 18.86.)

1. **Many of the Arguments Raised in Save Mount Diablo's Letter Were Rejected by the Contra Costa County Superior Court**

As noted in your staff report, in 2021, Save Mount Diablo filed a lawsuit that alleged the City failed to comply with CEQA, State Planning and Zoning Law, the City's General Plan, and the City's municipal code. With the exception of four narrow CEQA issues, all of Save Mount Diablo's arguments were rejected by the Court.

A number of issues raised in Save Mount Diablo's letter were decided conclusively by the Contra Costa Superior Court, and those issues cannot be re-litigated. (See *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782; *Atwell v. City of Rohnert Park* (2018) 27 Cal.App.5th 692, 699; *Citizens for Open Access ect. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1071-1072.) Those issues include:

- **The Project, including the proposed master plan, did not violate City planning laws:** Save Mount Diablo's arguments regarding the legal sufficiency of the Project Master Plan were rejected by the court. (Statement of Decision at pp. 9-11.)
- **The Project complies with hillside protection policies, and Project EIR adequately disclosed hillside impacts:** In its lawsuit, Save Mount Diablo alleged the Project did not comply with the General Plan's hillside protection policies and that the Project's EIR failed to disclose impacts to hillsides and ridgelines. The Contra Costa County Superior Court rejected these arguments. The Court ruled that the EIR's disclosures complied with CEQA. The Court also upheld the City's conclusion that the Project is consistent with the General Plan's hillside protection policies, including Policy 2-G-8, which states that the City should "[e]nsure that hillside development enhances the built environment, improves safety through slope stabilization, is respectful of topography and other natural constraints, and preserves ridgelines and viewsheds." (Statement of Decision at pp. 21-25, 35-36.)
- **The Project is Consistent with Measure P:** The Court held that the Project was consistent with the City's General Plan, including 2005 General Plan amendments that were adopted as part of Measure P. (Statement of Decision at pp. 35-36.)

2. **The Project Complies with the City's Inclusionary Housing Requirements**

The Project fully complies with all aspects of the City's inclusionary housing ordinance, including the provisions related to the payment of in-lieu fees (see Mun. Code, Chapt. 18.86). Contrary to Save Mount Diablo, the City may make the appropriate findings for an in-lieu fee. Specifically, the City may find now that situating affordable housing closer of the center of town, where there exist schools, shopping, and definitive public transportation routes makes this off-site compliance option suitable, whereas the project only contemplates residential uses and, while it

will include public transit, these routes have not yet been established. Save Mount Diablo also myopically focuses on one portion of the City's municipal code, to the exclusion of other sections that provide the City may approve off-site compliance options, such as an in-lieu fee, insofar as such options would provide an opportunity for public benefits. The benefits of locating additional housing off-site, and closer to complementary uses, reduces greenhouse gas emissions and alleviates congestion, among other benefits.

Save Mount Diablo also errs insofar it argues that a determination of the exact amount of fees is premature at this time. Section 3.09 of the Development Agreement explains that fees will be determined upon the issuance of building permits:

The In Lieu Fee(s) shall be paid upon issuance of the first building permit for the Project. If the Developer elects to construct the project in phases pursuant to Section 6.08 of this Agreement and building permit(s) are issued for only part of the Project, the In Lieu Fee(s) amount shall be based only on the number of units then permitted for construction and shall be due payable upon issuance of the first building permit for each phase. [¶] The Developer shall be required to pay the In Lieu Fee(s) established by City Council resolution and in effect at the time each building permit is issued.

3. The RUFER Complies with CEQA

As explained in further detail in the text of the RUFER, and as further discussed in our February 8 comment letter to the Planning Commission, the RUFER fully complies with CEQA and the Guidelines.

As the RUFER noted, revisions were made to the Draft EIR to address the Superior Court's comments related to Accessory Dwelling Units (ADUs), the level of detail included in the Draft EIR's mitigation to address potential air quality and greenhouse gas (GHG) emission impacts, the Draft EIR's baseline description of biological resources, and the adequacy of the Draft EIR's water usage analysis. The technical reports attached to the RUFER provide the substantial evidence necessary to support a finding by the City that recirculation of the RUFER and Draft EIR are not required.

a. The Water Supply Analysis Complies with CEQA

The Water Supply Assessment Technical Memorandum prepared by West Yost confirms that the RUFER's analysis is adequate. The City's 2020 UWMP anticipates population growth from 74,321 persons in 2020 to 109,700 persons in 2045, a population increase of 35,379 persons. At the time that the City's 2020 UWMP was being prepared, the City was also preparing its 2040 General Plan. The future land use maps prepared for the 2040 General Plan were included in Appendix B of the City's 2020 UWMP and show the project area as part of the City's General Plan planning area and Sphere of Influence.

Consistent with the conclusions of the Draft EIR, sufficient supply would be available to serve the proposed project. Thus, the findings of the Water Supply Assessment Technical Memorandum amplify the analyses and conclusions presented in the Draft EIR and do not identify new significant impacts not previously identified in the original Final EIR related to water supply.

b. The Air Quality and GHG Mitigation Measures Comply with CEQA

As explained in further detail in the memorandum prepared by Ramboll US Consulting, Inc. (RUFIEIR, Appendix C), revisions to Mitigation Measure MM 4.3-5(b) ensure that the proposed mitigation is appropriate for this programmatic EIR, while providing clear, objective performance standards to guide the City in determining the feasibility of the proposed mitigation in future project-level reviews under CEQA. No further revisions are necessary.

Furthermore, the analysis and mitigations measures in the memorandum prepared by Ramboll US Consulting, Inc. ensure a CEQA compliant analysis of consistency with the recently released 2022 California Air Resources Board Scoping Plan (the "2022 Scoping Plan.").

The 2022 Scoping Plan outlines three distinct approaches that the lead agencies may use for evaluation the alignment of residential and mixed-use projects with the State's climate goals, as embodied in the 2022 Scoping Plan. One of these recommended approaches is for lead agencies to employ a threshold of significance recommended by the applicable air district, so long as that air district's thresholds are aligned with the State's most recent GHG reduction goals. (2022 Scoping Plan, Appendix D at p. 26). The 2022 Bay Area Air Quality Management District (BAAQMD) GHG thresholds of significance reflect the air district's "fair share" analysis to determine how projects will need to be designed and built in order to ensure consistency with statewide climate goals, including the statewide goal of carbon neutrality by 2045 underlying the 2022 Scoping Plan. (See BAAQMD Justification Report: CEQA Thresholds for Evaluating the Significant of Climate Impacts from Land Use Projects and Plans, April 2022).

The 2022 Scoping Plan further recommends that when a project's GHG emissions would result in a significant impact, on-site design mitigation measures are preferable (particularly those outlined and quantified in CAPCOA's 2021 Handbook for Analyzing Greenhouse Gas Emission Reductions), followed by off-site GHG mitigation (i.e. funding local and non-local GHG reduction projects) and purchasing and retiring of carbon offset credits. (2022 Scoping Plan, Appendix D at p 29).

The RUFIEIR includes an analysis of consistency with Statewide climate goals and proposed mitigation measures which comply with the 2022 Scoping Plan's recommendations for evaluation of a Project's consistency with State Climate Goals:

- The GHG analysis notes that the Project is being evaluated at a program level (Faria Draft Environmental Impact Report, 4.3-43); however, in analyzing and quantifying emissions from a "worst-case scenario" project, the EIR concludes that the Project cannot be verified or guaranteed to be consistent with State climate goals, and finds that the Project's is assumed to be significant and unavoidable. (Faria Draft Environmental Impact Report, 4.3-45). Similarly, the memorandum prepared by Ramboll US Consulting, Inc. (RUFIEIR, Appendix C) notes that the Project is programmatic document that will be followed by subsequent project level environmental analysis, but includes a discussion of the State's goal of carbon neutrality by 2045 and the 2022 BAQQMD GHG Thresholds.

- The RUFER includes a series of mitigation measures designed to mitigate the Project's significant and unavoidable GHG impact. Mitigation Measures 4.3-5(a) and (b) ensure that Project Level analysis will include a determination of operational GHG emission impact specifically evaluated in accordance with BAAQMD's 2022 CEQA Thresholds. If impacts are found to be significant, the RUFER sets forth a list of mandated feasible mitigation measures, including on-site design measures and off-site local GHG reduction measures (comprised, in part, of methods to reduce VMT and support building decarbonization, access to shared mobility services or transit, and EV charging). For each proposed mitigation measure, the RUFER includes an analysis of feasibility and a quantified estimate of GHG reductions pursuant to the methodology in the CAPCOA *2021 Handbook for Analyzing Greenhouse Gas Emission Reductions*.

The RUFER's identification of the statewide 2045 carbon neutrality goal, binding commitment to use of the 2022 BAAQMD Thresholds for project level GHG analysis, and feasibility analysis and quantification of on-site and off-site GHG mitigation measures pursuant to the CAPCOA *2021 Handbook for Analyzing Greenhouse Gas Emission Reductions* is wholly consistent with the Statewide climate goal consistency evaluation and mitigation strategy recommended in the 2022 Scoping Plan. No further revisions are necessary.

c. No Revisions to the RUFER Are Required

Save Mount Diablo suggests that further revisions to the RUFER are required. Not so. In some cases, after a draft EIR is published for public review and comment, but before the final EIR is certified, recirculation can be required if "significant new information is added to the EIR." (14 Cal. Code Reg. § 15088.5) On the other hand, recirculation is not required if "the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an [otherwise] adequate EIR." (14 Cal. Code Reg. § 15088.5(e).) Ultimately, an agency's determination not to recirculate an EIR is given substantial deference and is presumed to be correct if it is supported by substantial evidence. (*Beverly Hills Unified Sch. Dist. v. Los Angeles Cnty. Metro. Transportation Auth.* (2015) 241 Cal.App.4th 627, 661, citing *W. Placer Citizens for an Agric. & Rural Env't v. Cnty. of Placer* (2006) 144 Cal.App.4th 890, 903.) As such, courts must resolve any reasonable doubts in favor of upholding the agency decision. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1135; 14 Cal. Code Reg., § 15088.5(e).) None of the information cited in Save Mount Diablo's letter requires any revisions to the RUFER.

4. Conclusion

We appreciate all of the work of City staff and its consultants, and we commend the City for its thorough work on the Revised Updated Final EIR, which fully complies with the requirements of CEQA.

We urge the Planning Commission to approve the Project, in accordance with staff's recommendation. Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

A handwritten signature in blue ink that reads "Ellis F. Raskin". The signature is written in a cursive, flowing style.

Ellis F. Raskin
Senior Counsel

EFR

cc: Garrett Evans, City Manager
Donna Mooney, City Attorney
Jordan Davis, Director of Community and Economic Development
Client

Exhibit 4:

April 13, 2023 Letter

ROBIN R. BARAL
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April 13, 2023

VIA E-MAIL (jfunderburg@pittsburgca.gov)

Mayor Scales-Preston
City Council of the City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Re: Faria/Southwest Hills Annexation Project; AP-10-717 (GP, RZ, DA)

Mayor Scales-Preston and Members of the Pittsburg City Council:

Our office represents Discovery Builders, Inc. and Faria Land Investors, LLC in connection with the above-referenced Faria/ Southwest Hills Annexation Project (the "Project"). We look forward to your further consideration of the Project, after more than 20 years of work and planning by City of Pittsburg ("City") staff, numerous rounds of environmental review and public comment, and the City's previous approval in 2021. Our role here is to reiterate and ensure that the Project complies with the myriad of environmental and land use laws, and to provide insight into the current proceedings.

As you know, the City Council is again considering the Project, in response to an order by the Contra Costa County Superior Court ("Court").¹ After the City Council approved the Project in 2021, Save Mount Diablo ("SMD") filed a lawsuit against the City of Pittsburg alleging numerous violations of state planning and zoning law and the California Environmental Quality Act ("CEQA"). In March 2022, the Court issued a Statement of Decision dismissing more than 90% of SMD's arguments. Keeping in mind the Court's ruling, you may disregard attempts to reframe many of the planning and zoning law claims that the Court already resolved entirely in the City's favor. For example, the Court dismissed all of SMD's alleged inconsistencies with General Plan policies for hillside protection, wildfires, sensitive habitats, drainage, public services, master plan circulation and rezoning.

You may also disregard attempts by SMD and others to reframe many of the CEQA claims that the Court rejected, such as claims related to Fire Hazards, Geology and Soils, Growth Inducement, Land Use, Public Services, and Traffic and Transportation. The Court's order to rescind the Project was based on a narrow set of findings in the Statement of Decision regarding (1) junior accessory dwelling units ("JADUs") in connection with the project description and water supply analysis, (2) greenhouse gas mitigation measures, and (3) the baseline survey of biological resources. The City's revised programmatic Environmental Report ("EIR") sufficiently responds to this narrow set of issues. We therefore request that you recertify the EIR and reapprove the Project.

¹ *Save Mount Diablo v. City of Pittsburg* (Super. Ct. Contra Costa County, Feb. 10, 2022, No. MSN21-0462); Statement of Decision

The City's legal consideration of the Project entitlement package is limited to the affordable housing revisions in the development agreement.

At this stage, any concerns regarding legal sufficiency of the Project entitlements (development agreement, tentative map, master plan) must be viewed in the context of the Court's continuing oversight. The Court already ruled in favor of the City on all state planning and zoning claims.² The rule of collateral estoppel prohibits any party from raising claims that were previously raised, or that could have been raised, particularly for the portion of Project entitlements that remain unchanged from their original approval.³ The collateral estoppel rule therefore applies to essentially the entire Project entitlement package, with the exception of the revised affordable housing provisions in the development agreement. The City's review of the Project entitlement package for legal sufficiency is therefore limited to the revised affordable housing provisions.

The development agreement's revised affordable housing provisions comply with the inclusionary housing ordinance in the City's Municipal Code. The development agreement requires the developer to pay in-lieu fees established by City Council resolution that are in effect at the time each building permit is issued and, in express terms, the developer "agrees not to contest the current In Lieu Fee(s) or changes to the established In Lieu Fee(s) for the duration of [the development agreement]." There is no tangible benefit to the City for establishing or vesting the amount of the in-lieu fee at this time, as SMD urges. Under the most optimistic scenario, the first building permit for the project would likely be pulled in approximately three years, after annexation and completion of Phase I horizontal improvements. The development agreement and City's municipal code provides flexibility for the City to determine the appropriate level of in-lieu fees at that time.

The City's legal considerations of the EIR are limited to the revisions to the water supply analysis, greenhouse gas mitigations, and inventory of biological resources.

Collateral estoppel also applies in the CEQA context. The rule prohibits project opponents from relitigating all CEQA comments and claims that were raised, or that could have been raised, prior to the initial certification of the EIR. As such, the City's review of the EIR for legal sufficiency is limited to the revisions that were made in response to the Court's order, namely the revised (1) water supply analysis, (2) greenhouse gas mitigation measures, and (3) updated inventory of biological resources.

(1) The Revised Water Supply Analysis Complies with CEQA

The Court took issue with the Project's water supply analysis on two grounds: (1) the City's previously adopted 2015 Urban Water Management Plan ("UWMP") did not clearly depict the Project within its projection for future growth; and (2) the EIR's Water Supply Assessment did not consider the 150 JADUs as required by the previous version of the development agreement.

In response to the Court's order, West Yost prepared a Technical Memorandum, dated August 2022, showing that the City's updated 2020 UWMP clearly accounted for the project in its projection of future water demand. Specifically, Section 3 and Appendix B of the 2020 UWMP reference the City's 2040 General Plan buildout scenarios in projecting future demand. The EIR

² *Id.*

³ *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511; *Towards Resp. In Planning v. City Council of the City of San Jose* (1988) 200 Cal.App.3d 671

incorporated the West Yost Technical Memorandum as additional evidence to support the finding that the Project will have sufficient water supplies through 2045.⁴ SMD, on the other hand, asserts that the 2020 UWMP does not include the Project, based on its practice of picking and choosing irrelevant excerpts rather than reviewing the 2020 UWMP as a whole. As detailed below, SMD's allegation that the 2020 UWMP is limited "solely" to the City's existing service area is fundamentally wrong.

The 2020 UWMP was prepared in response to detailed and prescriptive provisions of the Department of Water Resources' ("DWR") 2020 UWMP Guidebook.⁵ The 2020 UWMP Guidebook provides recommendations how the UWMP should be structured, section by section,⁶ and it provides various recommendations for water providers in completing each section. Also, note that Elizabeth Drayer, the author of the West Yost Technical Memorandum, is listed in the 2020 UWMP Guidebook as one of its Planning Workgroup Members so she is clearly a technical expert in interpreting and implementing the 2020 UWMP Guidebook.⁷

DWR's stated purpose of the 2020 UWMP is to prepare "a detailed look at current and future water use, including assessing and error-checking available baseline data and examining long-term planning documents like municipalities' General Plans and Specific Plans."⁸ In determining current water use or service area, Section 2.3 of the 2020 UWMP Guidebook instructs water providers in to indicate whether the UWMP is being prepared as part of a regional planning effort.⁹ The City responded that "the 2020 UWMP reports solely on the City's service area and is not a part of a regional alliance or regional urban water management plan (RUWMP)."¹⁰

In projecting future water use, Section 3.1 of the 2020 UWMP Guidebook instructs water providers to include "a narrative description of the proportion of the area that is already built-out versus areas of future development." Alternatively, "[o]ther documents, such as General Plans... may provide greater detail on these topics. Rather than repeating this detailed information, Suppliers may summarize the relevant information and provide a reference to the associated documents."¹¹ Here, the City responded by referencing the buildout scenarios in the City's 2040 General Plan, as expressly instructed by DWR.¹² The West Yost Technical Memorandum, authored by Elizabeth Drayer, cites Appendix B and Section 3.1 to establish that the 2020 UWMP clearly includes the Project area in its future growth projections, and in its analysis of the City's ability to meet future water demand.

Lastly, we note that the revised development agreement responds to the Court's findings by eliminating the dedication of 150 JADU's within future homes as a binding obligation for the

⁴ Revised and Updated Final Environmental Impact Report ("RUF EIR"), March 2023, p. 1-5. Note, the term "EIR" in this letter refers to the entire collection of EIR Documents prepared by the City, as detailed on the City [webpage](#) for this Project.

⁵ The 2020 UWMP Guidebook can be accessed here: <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Water-Use-And-Efficiency/Urban-Water-Use-Efficiency/Urban-Water-Management-Plans/Final-2020-UWMP-Guidebook/UWMP-Guidebook-2020---Final-032921.pdf>

⁶ 2020 UWMP Guidebook, p. 1-8 (PDF p. 28) ("DWR recommends, but does not require, that a Supplier use the organization outlined [in the 2020 UWMP Guidebook] to prepare their 2020 UWMP.")

⁷ 2020 UWMP Guidebook (PDF p. 5)

⁸ *Id.*, p. 1-2 (PDF p. 22)

⁹ *Id.*, pp. 2-5 to 2-6 (PDF pp. 41-42)

¹⁰ Pittsburg 2020 UWMP, p. 2-2 (PDF p. 17) (emphasis added)

¹¹ *Id.*, p. 3-3 (PDF p. 57.)

¹² Pittsburg 2020 UWMP, p. 3-1 (PDF p. 19)

developer to comply with the City's inclusionary housing ordinance. JADUs need not be addressed in the EIR's water supply analysis, as the construction of those units within the future homes is no longer a binding commitment of the Project developer. The revised development agreement also addresses the Court's finding that the EIR project description was inadequate, given that JADUs are no longer required to be constructed as part of the Project.

(2) The Revised GHG Mitigation Measure Complies with CEQA

The Court found the EIR's greenhouse gas ("GHG") mitigation measures were impermissibly vague in that they lacked a mechanism to enforce a measurable outcome for actually reducing GHGs. To address this issue, Ramboll US Consulting produced a report reviewing the feasibility of each proposed mitigation measure, while providing estimates of the GHG-reduction potential of each measure. Here, we note that Shari Libicki, the author of the Ramboll report, is one of the preeminent experts in quantifying GHG emissions, as she previously served as an adviser to the California Air Pollution Control Officers Association (CAPCOA) Handbook for Quantifying Greenhouse Gas Mitigation Measures.¹³

Ramboll also recommended additional measures to incorporate the Bay Area Air Quality Management District's ("BAAQMD") updated guidance in evaluating and mitigating GHG impacts. The EIR incorporated all of the recommendations in the Ramboll report and accordingly revised the Project's GHG mitigation measures to ensure that future, project-level reviews will result in enforceable, quantifiable reductions. The revised mitigation measures will also assist the Project in addressing BAAQMD's recommendations for meeting the State's 2045 GHG reduction goals, such as through the elimination of natural gas infrastructure, and reducing project-generated vehicle-miles traveled ("VMT").¹⁴

SMD asserts that the EIR must again be revised to analyze whether the Project will meet the targets set forth in the updated Scoping Plan recently approved by the California Air Resources Board. SMD's arguments ring hollow on this point. Contrary to SMD's assertions, the EIR complies with CARB's Scoping Plan because it requires all subsequent project-level reviews to implement BAAQMD guidance for meeting the State's 2045 GHG reduction goals. It is unfortunate that SMD does not recognize the impact of these new GHG reduction measures.

The CARB Scoping Plan provides pathways for meeting the State's ambitious climate goal of carbon neutrality by 2045, which requires reduction of GHG emissions 85% below 1990 levels. The 2022 Scoping Plan outlines three distinct approaches for City to evaluate whether the Project complies with that goal. One of the Scoping Plan's recommended approaches is for the City to follow the recommended guidance of an air district that is aligned with the Scoping Plan's GHG reduction goals.¹⁵ BAAQMD's updated guidance does precisely that, by recommending how projects must be designed and built to ensure consistency with state climate goals, including the statewide goal of carbon neutrality by 2045 underlying the 2022 Scoping Plan.¹⁶

¹³ The CAPCOA report can be accessed here: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/capcoa-quantifying-greenhouse-gas-mitigation-measures.pdf>

¹⁴ RUFER, p. 3-21 (see Mitigation Measure 4.3-5(a))

¹⁵ 2022 Scoping Plan, Appendix D, p. 26

¹⁶ See BAAQMD Justification Report: CEQA Thresholds for Evaluating the Significant of Climate Impacts from Land Use Projects and Plans, April 2022

The CARB Scoping Plan further recommends that on-site mitigation measures are preferred when a project's GHG emissions would result in a significant impact. The Scoping Plan further recommends the measures that are quantified in CAPCOA's 2021 Handbook for Analyzing Greenhouse Gas Emission Reductions.¹⁷

Given the above, the EIR demonstrates a clear congruency between the CARB 2022 Scoping Plan and BAAQMD's updated guidance for reducing GHGs. The EIR includes a robust set of revised mitigation measures that require subsequent project-level reviews to document their compliance with these plans and policies. The Ramboll report provides technical backup to show that measurable reductions can be made to achieve those goals. However, in analyzing and quantifying emissions in a "worst-case scenario", the EIR conservatively concludes that future reductions through 2045 or 2050 cannot be verified at this time. The new mitigation measures do not change this finding, therefore the Project's GHG impacts remain significant and unavoidable despite the addition of new mitigation measures, more robust enforcement provisions, and more detailed quantification of each measure.

(3) The Revised Biological Resources Inventory Complies with CEQA

Despite numerous biological studies that have been completed over the years for the Project, the Court found that some additional surveying and reporting was required to ensure that the EIR relied on an accurate environmental baseline of biological resources. Subsequent to the Court's ruling in this case, a CEQA decision was published clarifying that biological reports completed within one or two years prior to issuance of a Notice of Preparation are sufficient to establish the baseline of biological resources on the Project site.¹⁸ Nevertheless, City staff requested that the applicant conduct additional spring and summer surveys to physically inspect the property and confirm that no new sensitive species were present. The City incorporated those reports into the EIR and they constitute technical backup to provide additional documentation that the EIR's baseline analysis of biological resources remains valid.

In conclusion, we assure the City Council that the EIR and revised Project entitlements meet all legal requirements under CEQA and the City's local ordinances.

Sincerely,

Hanson Bridgett LLP



Robin R. Baral
Senior Counsel

cc: Garrett Evans, City Manager
Donna Mooney, City Attorney
Jordan Davis, Director of Community and Economic Development
Client

¹⁷ 2022 Scoping Plan, Appendix D, p. 29

¹⁸ *Save N. Petaluma River & Wetlands v. City of Petaluma* (2022) 86 Cal.App.5th 207, 221-26