

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

June 12, 2024 (Agenda)

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Agenda Item 7

LAFCO 21-05 *Faria Southwest Hills Reorganization: Annexations to City of Pittsburg, Contra Costa Water District (CCWD), and Delta Diablo (DD), and Detachments from County Service Area (CSA) P-6 and Ambrose Recreation and Park District*

APPLICANT City of Pittsburg – Resolution No. 21-13907 – Pittsburg City Council  
February 22, 2021

SYNOPSIS This item was continued from the April 10, 2024 LAFCO meeting.

The proposed project is located southwest of the City of Pittsburg's (City) existing city limits, within the City's Urban Limit Line (ULL) and the Southwest Hills planning area. The project site includes approximately 606± acres (eight parcels) bounded by vacant land, the approved Bailey's Estates Subdivision, and Bailey Road to the east, the Concord City limits and closed Concord Naval Weapons Station to the south and west, and existing residential development (San Marcos and Vista Del Mar subdivisions) to the north and northeast.

The applicant proposes to build up to 1,500 single-family residential units along with 265± acres of preserved open space.

BACKGROUND In 2009, at the request of the City of Pittsburg and Discovery Builders, LAFCO prepared an Initial Study/Negative Declaration to expand the spheres of influence (SOIs) for the City of Pittsburg, Contra Costa Water District (CCWD), and Delta Diablo (DD) to coincide with the voter-approved Urban Limit Line (ULL). LAFCO served as the Lead Agency and prepared an Initial Study (IS)/Negative Declaration (ND) in accordance with the California Environmental Quality Act (CEQA). The Commission approved the SOI expansions on a 4-3 vote. Subsequently, LAFCO approved two boundary reorganizations, including the Montreux Reorganization in 2016 and the Tuscany Meadows Reorganization in 2017. The City prepared individual Environmental Impact Reports (EIRs) for each project.

In February 2021, the Pittsburg City Council approved the Faria Southwest Hills boundary reorganization proposal, which was submitted to LAFCO in June 2021. In March 2021, Save Mt. Diablo (SMD) filed a lawsuit challenging the City's approval of the *Faria/Southwest Hills Annexation Project* for failure to comply with the California Environmental Quality Act (CEQA), State Planning and Zoning law, and other statutes.

In February 2022, the Court issued a statement of decision, finding as follows: “*the City violated CEQA because 1) the Project description failed to include the 150 ADUs; 2) the Environmental Impact Report (EIR) failed to describe the baseline of biological resources, specifically, special status plant species; 3) the EIR failed to consider the water supply impact on 1,650 units; and 4) the discussion of air pollution impacts and mitigation measures is too vague. In addition, the Court finds that while the First Tier EIR was not required to more specifically address geologic hazards related to grading and appropriate measures for grading and filing, effect on streams, and existence of agricultural lands, these impacts must be considered in subsequent environmental review.*”

The Court issued a Writ of Mandate compelling the City to set aside the project approvals and certification of the EIR, noting that “any further consideration of the project must comply with this order.” The City noted that, while the Court identified three specific items that needed to be addressed to comply with CEQA, several items challenged by SMD were found by the Court to have been properly disclosed and mitigated. Additional information pertaining to the City's environmental documents is discussed in the “Environmental Impact of the Proposal” section of this report.

In August 2022, the City set aside the project approvals and the EIR certification, in compliance with the writ of mandate.

On February 14, 2023, the Pittsburg Planning Commission voted 4-1 “to not recommend that the City Council approve the Development Agreement, Amendments to the General Plan and Rezoning Designations, and Adoption of a Master Plan for the Faria/Southwest Hills Annexation Project.”

On April 17, 2023, the City Council approved the Faria Southwest Hills Annexation project for a second time. The City’s action included: certifying a revised and updated final EIR, and adopting CEQA findings, adopting a statement of overriding considerations, adopting a mitigation monitoring and reporting program (MMRP), approving General Plan amendments, adopting a rezoning ordinance and master plan, adopting a development agreement, and initiating annexation proceedings. On April 19, 2023, the City filed a Notice of Determination for the proposed project with the County Clerk. SMD did not further challenge the adequacy of the CEQA review because no lawsuit challenging the City’s EIR certification was filed within the 30 days after April 19, 2023.

In May 2023, the City resubmitted an updated application to LAFCO, which is before the Commission today. The City’s 2023 LAFCO application is extensive and includes the required LAFCO application materials; a “Plan for Services” which includes cost estimates for services; specialized reports (e.g., fire, water, wastewater and fire service assessments, etc.), and other supporting documents.

**DISCUSSION:** In LAFCO’s review of a boundary change, the Commission must consider various factors pursuant to Government Code (“GC”) §56668. In the Commission’s review of these factors, no single factor is determinative. In reaching a decision, each factor is to be evaluated within the context of the overall proposal.

- 1. Consistency with the Sphere of Influence (SOI) of Any Local Agency:** LAFCO is charged with regulatory and planning functions. Changes of organization (e.g., annexation and reorganization) are a regulatory act. For the Commission to approve a boundary change, it must be consistent with the local agency’s SOI. The subject area is within the voter-approved Urban Limit Line (ULL).The subject area is also within the SOIs of the City of Pittsburg, CCWD and DD as approved by LAFCO in July 2009. The 2009 decision was difficult and challenging for LAFCO and it was approved by the Commission on a 4-3 vote.
- 2. Land Use, Planning, and Zoning – Present and Future:** The Faria property is primarily vacant except for one existing dwelling unit, two roadway segments (San Marco Boulevard and Rosa Blanca Drive) and utilities (including water main lines and sewer infrastructure). The City’s General Plan and zoning designations are noted in the table below. The land use designations for the subject area were amended in 2023. The County’s General Plan and zoning designations currently regulate and guide land use in the subject area. In anticipation of future annexation, the City approved “pre-zoning” designations would become effective upon LAFCO’s approval of the reorganization.

The Commission, as a condition of annexation to a city, shall require that the city pre-zone the subject territory. However, the Commission shall not specify how the territory shall be pre-zoned (GC §56375(a)(7)). The current County and City land use and pre-zoning designations are shown below.

	County	City
<b>General Plan</b>	Agricultural Land	Hillside Density and Open Space
<b>Zoning</b>	Agricultural Preserve (majority of subject area); 8.33 acres is General Agriculture	Pre-zoned RS-4-P (Single Family Residential with 4,000 square foot minimum lot size; and Master Plan Overlay and Open Space with Master Plan Overlay Districts

**Note:** The City’s General Plan does not specify what land use designations coincide with specific zoning amendments and allows for one to five units per acre.

The 4,000 minimum square foot lot size is consistent with the City’s recently adopted Low-Density Residential designation, which was specifically designed to be consistent with the project’s pre-zoning amendments, allows for one to five units per acre.

The application notes that the subject property has not been used for commercial agricultural purposes and is used by the property owner for occasional grazing/weed abatement. The property is not currently grazed for commercial purposes.

Existing surrounding land uses include vacant and open space to the east (as well as an approved 255-unit residential development - Bailey Estates); the closed Naval Weapons Station with open space to the south and west; and existing residential development and neighborhoods to the north.

**3. The Effect on Maintaining the Physical and Economic Integrity of Agricultural Lands:**

LAFCOs are charged with promoting orderly development, balancing development with sometimes competing state interests of discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services. In 2016, the Commission adopted LAFCO’s *Agricultural and Open Space Preservation Policy (AOSPP)*. The purpose of the policy is threefold: 1) to provide guidance to the applicant on how to assess the impacts on prime agricultural, agricultural and open space lands of applications submitted to LAFCO, and enable the applicant to explain how the applicant intends to mitigate those impacts; 2) to provide a framework for LAFCO to evaluate and process in a consistent manner, applications before LAFCO that involve or impact prime agricultural, agricultural and/or open space lands; and 3) to explain to the public how LAFCO will evaluate and assess applications that affect prime agricultural, agricultural and/or open space lands. The AOSPP includes Goals, which “are intended to be the outcome LAFCO wants to achieve;” Policies, which “provide direction with regard to how those Goals should be achieved by providing specific guidance for decision makers and proponents;” and Guidelines, which “give stakeholders procedures and practical tips regarding what information LAFCO commissioners and staff need to evaluate an application that affects prime agricultural, agricultural, and/or open space lands.”

This application included an Agricultural and Open Space Impact Assessment (AOSPP Guideline 1), which included sufficient information to allow staff to evaluate the application under the AOSPP, Government Code section 56377, and Government Code section 56668(e) and (f), as follows:

The proposal area is not currently used to produce agricultural commodities for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program. Further, the project is not currently under a Williamson Act contract.

The project site is currently zoned by Contra Costa County as “Agricultural Preserve” with a County General Plan designation of “Agricultural Land.” The proposed project site does not include Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. There are no agricultural lands adjacent to the development site. The City’s EIR concluded that “*soil types on the Southwest Hills site are generally of low quality*” and that “*the Faria property does not qualify as Prime Agricultural land.*” The project site is not currently used for agricultural purposes. Cattle are sporadically brought to the site to manage vegetation and fire risks; however, there is no cattle operation that qualifies as agricultural use.

The areas to be designated as open space will be subject to a conservation easement and may continue to be used for grazing purposes. The City's application notes *"there will be preservation of 265 acres of open space and a greenbelt buffer along the western edge of the Faria project."*

Also, the East Bay Regional Park District (EBRPD) and Faria Land Investors, LLC previously reached an agreement regarding the Faria planned residential development project and EBRPD's planned Thurgood Marshall Regional Park. The agreement includes Faria's public access easements and design standards for the Faria project and other terms.

Based on the above and the entire record, LAFCO concludes that the application meets the goals of the LAFCO *Agricultural & Open Space Preservation Policy (AOSPP)*, including Goal 1, which is to "minimize the conversion of prime agricultural land and open space land to other land uses while balancing the needs to ensure orderly growth and development and the efficient provision of services."

#### **4. Topography, Natural Features, and Drainage Basins:**

The project site consists mostly of rolling hills with valleys, ridges, and vegetation. The site generally slopes varying from approximately 8% to 20% in the easterly and westerly direction. The site elevations range from elevation 500 feet to elevation 900 feet. As previously noted, there is a valley area located approximately in the middle/center portion of the project site where the future development is proposed preserving the surrounding hills. Open space and greenbelt areas will be preserved on the eastern and western portions of the project site.

#### **5. Population:**

Currently, there is one existing dwelling unit on the subject property which appears to be vacant. The proposed use of the subject property is the construction of 1,500 single-family residential units. The application notes that the recent U.S. Census Bureau projects an average of 3.2 persons per household, generating a projected population of approximately 4,800 persons.

#### **6. Fair Share of Regional Housing:**

One of the factors the Commission must consider in its review of a proposal is the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. Regional housing needs are determined by the State Department of Housing and Community Development; the councils of government throughout the State allocate to each jurisdiction a "fair share" of the regional housing needs (GC §65584).

In Contra Costa County, the Association of Bay Area Governments (ABAG) determines each city's fair share of regional housing needs. Each jurisdiction is required to incorporate its fair share of the regional housing needs into the Housing Element of its General Plan. In December 2021, ABAG adopted the Final Regional Housing Needs Allocation (RHNA) Plan for the San Francisco Bay Area (2023-2031). The RHNA Plan includes the following allocations for the City of Pittsburg: total RHNA is calculated at 2,052 units; and includes 894 above moderate-income units, 346 moderate income units, 296 low-income units, and 516 very low-income units.

The proposal includes up to 1,500 single family homes throughout the site with proximity and access to public transit. It is anticipated that these units will be sold at market rate; however, pursuant to a Developer Agreement between the City and Discovery Builders, the latter would be obligated to pay the City's In Lieu of Affordable Housing fee in the amounts and rates prescribed by the Pittsburg Municipal Code (PMC) Chapter 18.86.

The application notes that the City of Pittsburg’s progress toward its Fifth Cycle RHNA Allocation for 2016-2023 obligation of 1,063 units for above-moderate income households is 68.39%, its progress toward units for low-income households is 89.37%, and its progress toward units for very low-income households is 5.87%. For the now-operative Sixth Cycle RHNA Plan for 2023-2031, the City of Pittsburg will need to construct an additional 894 above moderate-income units, 346 moderate-income units, 296 low-income units, and 516 very low-income units.

**7. Governmental Services and Controls – Need, Cost, Adequacy, and Availability:**

In accordance with GC §56653, whenever a local agency submits an annexation application, the local agency must also submit a plan for providing services to the annexation area. The plan shall include all of the following information and any additional information required by LAFCO:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

The City submitted a plan for providing services that covers water, wastewater, storm drainage, roadways, fire and emergency services, police, parks and recreation, street lighting, library services, refuse collection, schools, electricity/gas, transit, and pedestrian/bicycle trail. The level and range of services to be extended to the subject area will be comparable to services currently provided within the City. Some services will be provided by other public agencies. as summarized below.

***Fire and Emergency Medical*** services will be provided by Contra Costa County Fire Protection District (CCCFPD). CCCFPD has 36 fire stations and serves an area of 495+ square miles. CCCFPD provides fire prevention, suppression, and emergency medical response services for advanced and basic life support to 12 cities, including the City of Pittsburg and the project site, along with the unincorporated areas of Alhambra Valley, Bay Point, Bethel Island, Byron, Clyde, Discovery Bay, El Sobrante, Knightsen, Marsh Creek/Morgan Territory area, and Pacheco. CCCFPD has four fire stations within four miles of the project site (see table – Page 6).

The DEIR (page 4.11-8) notes that “The CCCFPD’s current response time goal for emergency and non-emergency calls is five minutes to 90 percent of all calls received. According to CCCFPD, actual response times vary, However, the CCCFPD response time, as of September 2016, “was within approximately 8 minutes and 55 seconds 90 percent of the time.” This data indicates that CCCFPD does not achieve its goal. The DEIR concluded that “Based on the analysis below and the lack of feasible mitigation related to a conflict with location and response time standards established by the General Plan, the impact would be *significant and unavoidable*.” This issue was noted in the City’s Statement of Overriding Considerations. In recent years, CCCFPD relocated Fire Station 86 to 10 Globe Drive in Bay Point adjacent to Highway 4, less than 1.5 miles north of the northern boundary of the Project site, further demonstrating adequate fire and emergency response. The *Plan for Services* also noted that through the City review process, CCCFPD could impose Project specific mitigations or conditions of approval, including traffic signal preemption system, construction of adequate emergency vehicle access roadways, or implementation of wildland/urban interface vegetation management, to enhance the necessary emergency services it provides.

Fire Station	Location	Distance from Project Site (miles)	Equipment
84	1903 Railroad Ave	3.5	1 ladder truck 1 reserve ladder truck
85	2331 Loveridge Rd	4.2	1 Type 1 engine 1 Type 3 engine
86	10 Globe Drive	1.5	1 Type 1 engine 1 Type 3 engine
87	800 W. Leland Road	2.5	1 Type 1 engine 1 Type 3 engine

The Pittsburg City Council formed a Community Facilities District (CFD) to help finance emergency medical and fire protection services, including equipment or personnel costs. Funds are generated through the assessment of an annual special tax on properties within the CFD 2017-1. The project sponsor will annex the project site to CFD 2017-1 and pay applicable fire service development impact fees per unit at the time of building permit issuance.

**Parks and Recreation** – The subject area is currently within the Ambrose Recreation and Park District (ARPD) and East Bay Regional Park District (EBRPD) service areas. The proposal includes detachment from the ARPD. The City of Pittsburg provides its own parks and recreation services including classes, programs, parks and facilities.

In March 2021, the Pittsburg City Council amended the City zoning map to include a Master Plan open space overlay on the subject property. The project Master Plan is consistent with the City’s open space policies by preserving open space and promoting trail connections, park, facilities and recreation.

Pittsburg residents have access to trails and regional parks near the project site. Southeast of the site is Black Diamond Mines Regional Preserve, owned and operated by EBRPD. Black Diamond Mines Regional Preserve provides 65 miles of hiking trails within 5,985 acres. As part of the proposed development, a substantial portion of the project site will be undeveloped and preserved for open space uses. It is anticipated that a “greenway” linear park/trail path will be planned and will be integrated into the overall land plan along the westerly edge of the project site (adjacent to the former Concord Naval Weapon Station) connecting the pedestrian walkways in the existing San Marco development to the north and City approved future Bailey Estates Development to the south. These enhancements are designed to provide pedestrian connectivity in the southwest hills area and provide view corridors at strategic locations.

Also, neighborhood and in-tract pocket parks will be integrated into the site development at a centralized location providing outdoor uses for the residents and the public. Greenbelts and walkways will be interspersed between the neighborhoods and along local collector roadways, providing integrated pedestrian connections throughout the development, access to the open space and neighboring community trails/pathways.

It should be noted that site-specific information such as overall concept, locations, sizes, trail widths, and specific amenities for the parks and trail design have not yet been developed. The specific details will be prepared in conjunction with the entitlement process following the annexation process as required by the City.

Regarding funding, the project sponsor will meet their park dedication requirements with either a dedication and construction of park facilities, or payment of in-lieu fees, or a combination of both, in accordance with the City’s municipal requirements. Costs for development of park facilities as required by applicable conditions of approval will be borne by the project sponsor.

***Police Services*** – Law enforcement services are currently provided to the annexation area by the Contra Costa County Sheriff’s Department. Upon annexation, police services will be provided by the City of Pittsburg. The Pittsburg Police Department (PPD) operates out of its headquarters located at 65 Civic Avenue, approximately 4.5 miles northeast of the project site, and has an authorized staff level of 81 sworn officers. The Pittsburg Police Department anticipates opening a substation in the Oak Hills Shopping Center (660 Bailey Road) In Fiscal Year 2024-25. The substation will be 1.5 miles northeast of the project site.

Based on an increase in population of approximately 4,800 new residents and 1,500 single-family units, there will be an increased demand for law enforcement services, sworn officers, staff, and equipment. It is anticipated that the project will be annexed to the Community Facilities District (CFD) 2005-1 to ensure the availability of PPD to provide services to the project site. As noted in the *Plan for Services*, the project sponsor will annex the project into CFD 2005-1 for public safety services prior to recordation of the first Final Map, which will provide for increased police coverage for the project site.

***Streets and Roadways*** – The annexation area is served by on- and off-site roadways as detailed in the *Plan for Services*.

San Marco Boulevard will be the primary collector road traversing north/south across the project site, connecting the existing San Marco development to the north and the future Bailey Estates development to the south. The extension will provide a direct connection from State Route 4 to Bailey Road to the south and will provide primary access and circulation for the proposed neighborhoods within the project site. It is anticipated that San Marco Blvd will have two northbound and two southbound lanes and bike lanes in each direction, landscaped medians, dedicated left turn pockets for access to local collector roadways connecting the neighborhoods on the east and west sides of San Marco Boulevard, sidewalks, and landscaped parkways with a combined right of way width of 100 feet. Traffic signals (as needed) will be installed at major intersections to enhance vehicular circulation and pedestrian safety.

As noted in the *Plan for Services*, specific information related to the roadways, widths, geometrics, and alignments for the various roadway segments, as well as locations of traffic signals has not yet been developed. However, these will be prepared in conjunction with entitlement process after the annexation process is complete and as required by the City prior to entitlement approval. It should be noted that such site-specific roadway widths and sections would typically be determined by the City and incorporated into the final site development plan preparation during the entitlement process.

***Sanitary Sewer Services*** – The City of Pittsburg maintains and owns the local sewage collection system and is responsible for collecting and conveying wastewater to the Delta Diablo (DD) Wastewater Treatment Plant (WWTP). DD owns and operates the regional interceptors and wastewater treatment plant. The project site is located within DD’s SOI but is not currently within DD’s service area. Annexation to DD is included with the LAFCO application.

DD currently serves an area of 53.1± square miles and serves the cities of Antioch and Pittsburg and the unincorporated Bay Point community. Services include water resource recovery services, including secondary treatment of wastewater, recycled water production and distribution, pollution prevention, energy recovery, beneficial reuse of biosolids, street sweeping, and household hazardous waste collection.

The City of Pittsburg will be responsible for the wastewater collection system from the project site to the designated DD regional wastewater conveyance facility. Effluent treatment is provided to the City of Pittsburg under contract with DD. The regional conveyance facilities transport wastewater to the DD WWTP located in Antioch. After secondary treatment, the effluent is either discharged through a deep-

water outfall to New York Slough, or further processed through DD's Recycled Water Facility to tertiary Title 22 recycled water standards and distributed for reuse.

The WWTP National Pollutant Discharge Elimination System (NPDES) Permit allows an average dry weather flow (ADWF) of 16.5 million gallons per day (MGD), and DD's WWTP has an ADWF design capacity of 19.5 MGD.

The WWTP has a 2023 average annual wastewater flow of 14.3 MGD and an average dry weather flow (ADWF) of 13.5 MGD (2023 flows).

Since the WWTP serves the cities of Pittsburg and Antioch and the unincorporated Bay Point community, it is important to consider future potential growth in all three communities. Pittsburg and Antioch have a combined RHNA (6th Cycle) of 5,068. DD, like many other wastewater districts, uses an average wastewater flow of 200 gallons per day (gpd) per residential connection to estimate wastewater flows. Future flows to the WWTP are expected to increase by 1.01 MGD. The 1.01 MGD increase is within the remaining capacity of the WWTP, approximately 5 MGD for average dry weather flows (Pittsburg, Housing Element, 2023). The calculated remaining capacity is based on average dry weather flow and does not consider peak wastewater flows. During rainy periods, peak flows increase, and the ability (capacity) of the WWTP to accommodate peak flows is an important factor. The Delta Diablo Resource Recovery Facility 2022 Master Plan includes phased treatment plant expansion to increase the plant's solid loading capacity beyond the current capacity of 58,000 pounds biological oxygen demand (BOD) per day in order to accommodate the anticipated General Plan buildout for the communities of Pittsburg, Antioch, and unincorporated Bay Point (Pittsburg, Housing Element, 2023). DD's Master Plan projects that the current solids loading capacity will be exceeded sometimes between 2030 and 2037. This means the treatment plant must be expanded to treat more solids (i.e., not to treat additional flow). It is not clear whether, or to what extent, the City and/or project sponsor will contribute toward this physical expansion project.

Following an analysis by *Woodard & Curran* in December 2021, it was determined that there is adequate capacity in the existing offsite sanitary sewers to serve the proposed project. Subsequently, DD issued an updated will-serve letter for the project.

Based on the generation rate from the *City of Pittsburg General Plan* of 220 gpd for single-family developments, the proposed project is anticipated to generate approximately 330,000 gpd (0.33 MGD). The addition of 0.33 MGD of effluent to the WWTP would result in a total wastewater volume of 13.73 MGD, which would not exceed the permitted capacity of the WWTP of 16.5 MGD. Therefore, the additional wastewater generated by the Faria project is not anticipated to exceed WWTP's capacity.

The City of Pittsburg is in DD's Zone 2. Each zone pays different connection fees based on the value of wastewater transmission facilities serving each zone. Wastewater sewer service charges are the same for each zone and are identified by zone on property tax bills used as the means to collect DD's sewer service charges. The costs for construction of the sanitary sewer collection system infrastructure and connection fees to the City of Pittsburg will be borne by the project sponsor.

## **8. Timely Availability of Water and Related Issues:**

The City's EIR and *Plan for Services* indicates that there is adequate water supply to serve the proposed annexation area and future development. The City's water supplies include purchased surface water from CCWD, ground water supplies from two City wells, and recycled water supplies provided by DD.

Surface water and ground water are conveyed to the City's water treatment plant, treated, and conveyed via the City's potable water distribution system. The City's municipal water system consists of a water treatment facility, groundwater wells, storage reservoirs, pump stations transmission and distribution mains, fire hydrants, and pressure-reducing valves. The City's water service area is divided into five



pressure zones and will eventually be expanded to service future development in the southeast and southwest hills areas.

In May 2022, the City commissioned a new, updated water management plan to assess the adequacy of the City's water suppliers and projected water demand for the subject project. The updated plan and the City's final environmental impact report note that the City's water supplies are adequate to meet the projected water demand for the subject project.

As described in the *Plan for Services*, it is anticipated that a population growth of approximately 4,935 people and a projected increase in water demand of 572 acre-feet per year would occur as a result of this project. The increases in population and water demand are consistent with the City's 2011 General Plan 10-year update and 2020 Urban Water Management Plan.

Although the City is expected to have sufficient water supplies to meet anticipated demand with or without prolonged drought conditions, the City has developed a water shortage contingency plan to address potential water shortage conditions, reduce demand, and ensure water reliability.

Further, the City has water waste prevention ordinances which are permanent water use restrictions as detailed in the *Plan for Services*.

The *Plan for Services* notes that "for the purpose of this application, design details and plans for the water line alignment, water tank, booster pump station and pressure reducing valves locations have not yet been developed and will be prepared in conjunction with entitlement and/or site improvement plans preparation phase after the annexation process is complete as required by the City for review prior to entitlement approval or issuance of site construction permits. Such site-specific design and information will be specific to the Project site plan development for the purposes of water distribution within the proposed development and will not change the availability and adequacy of water supplies or capacity for the Project."

The costs to finance the infrastructure, including design and construction, will be borne by Discovery Builders. Discovery Builders may also pursue formation of a Community Facilities District to finance the infrastructure. The project sponsor will also pay the City of Pittsburg Facilities Reserve Charge for water service and meter on each single-family dwelling unit. The City has a Water Utility Enterprise Fund used to finance maintenance and operations. The *Plan for Services* notes that the City's water enterprise is currently in strong financial condition, with a Net Position of approximately \$89 million, and an annual operating surplus of over \$7.4 million.

Although the Project site is within the CCWD SOI, it is not currently within the CCWD service area. As a result, the project site will need to be annexed to CCWD's service area and included in the Central Valley Project (CVP) area. Discovery Builders, Inc. (Project Sponsor) will provide all necessary documentation required by the CCWD for its application for inclusion of the project site into the CCWD service boundary.

## **9. Storm Drainage:**

The City of Pittsburg's existing drainage system is comprised primarily of channelized creeks fed by surface runoff and underground storm drains. The City maintains the flood control system within the incorporated area. In the unincorporated parts of the City's Planning Area, the Contra Costa County Flood Control and Water Conservation District maintains major channels and creeks over which they hold land rights, while the County Department of Public Works maintains road drainage systems and several detention basins.

The project site is tributary to the Lawlor Creek watershed which drains into Suisun Bay. Most of the Lawlor Creek watershed south of Bay Point is currently undeveloped, though residential development exists south of State Route (SR) 4. Most runoff is conveyed by natural channels, except for storm drains located in developed areas and culverts under SR 4. Minor watersheds are located west of Lawlor Creek, between Lawlor and Kirker Creeks, and adjacent to the northeastern boundary of the Kirker Creek watershed north of SR 4. The minor watersheds are drained by small natural channels without official names. The Contra Costa Canal also intersects both the Lawlor Creek and Kirker Creek watersheds.

The project site currently consists primarily of two tributary drainage areas, the northerly and southerly portions of the project site. The northerly portion of the site is within the Contra Costa County Flood Control Drainage Area 48B (DA 48B). DA 48B drains through the existing San Marco project located to the north, then under SR 4 and through the Bay Point area to Suisun Bay. The southerly portion of the project site naturally drains through the undeveloped approved Bailey Estates project area to the east into a drainage system that crosses under Bailey Road into Lawlor Ravine, which also drains under SR 4 through the Bay Point Area to Suisun Bay. In accordance with the City of Pittsburg and Contra Costa County drainage requirements, any development, (including the subject development), must maintain more or less the same volume of runoff as the predevelopment condition, and the post development peak flow runoff should not exceed the pre-development condition. Given the two separate existing watersheds within the project site, the proposed drainage design, alignment, and sizing will need to comply with City and County requirements. Details regarding the drainage areas are provided in the *Plan for Services*.

The costs for construction of storm drainage infrastructure will be borne by the project sponsor. Ongoing maintenance will be provided by the City and paid for by homeowners through a CFD or drainage fees assessed by the City, the County Flood Control District, and the collection of local taxes.

#### **10. Assessed Value, Tax Rates, and Indebtedness:**

The annexation area is within tax rate area 79004. The assessed value is \$7,900,026 (2022-23 Roll). The territory being annexed shall be liable for all authorized or existing taxes comparable to properties presently within the annexing agencies, if applicable. The City will rely on the master tax transfer agreement for this annexation.

#### **11. Environmental Impact of the Proposal:**

In 2009, at the request of the City and Discovery Builders, LAFCO prepared and approved an Initial Study/Negative Declaration (IS/ND) to expand the SOIs for the City of Pittsburg, CCWD, and DD. It was noted that any future annexations would be subject to a “project level” environmental review.

Previous City of Pittsburg boundary changes, including the Montreux Reorganization (2016) and Tuscany Meadows Reorganization (2017), were supported by individual Project Level Environmental Impact Reports (EIRs) for each reorganization.

In October 2018, the City prepared and released a Program Level Draft EIR for the subject project which addressed the environmental consequences of a proposed Master Plan for the Faria Southwest Hills Annexation Project. Based on comments received on the Program Level Draft EIR, in 2019 the City released a *Partially Recirculated Draft EIR*, which focused on Transportation, Traffic, and Circulation. As noted above, in March 2021, SMD filed a lawsuit challenging the City’s approval of the *Faria/Southwest Hills Annexation Project* for failure to comply with CEQA, State Planning and Zoning law, and other statutes. In August 2022, following the conclusion of litigation, the City set aside the project approvals and the EIR certification, in compliance with the writ of mandate issued by the court.

On April 17, 2023, the City approved the Faria/Southwest Hills Annexation project for a second time. As noted above, the City’s CEQA actions included: certifying a revised and updates final EIR, adopting CEQA findings, a statement of overriding considerations, and a MMRP.

Between 2010 and 2023, LAFCO submitted 10 comment letters to the Pittsburg City Council and Pittsburg Planning Commission commenting on the Faria Southwest Hills project. Other than climate change, most of LAFCO's comments were not addressed in conjunction with the CEQA process and City actions. However, the most recent updated LAFCO application submitted in 2023 addressed LAFCO's comments and concerns.

For this boundary reorganization, LAFCO is a "responsible agency" under CEQA. A responsible agency cannot act until it has considered the project's environmental affects as described in the final EIR certified by the lead agency. In this case, the City is the lead agency and certified a revised and updated final EIR for the project. Although LAFCO submitted 10 comment letters commenting on the project, and most of LAFCO's comments were not addressed in conjunction with the City's CEQA process, LAFCO must rely on the revised and updated final EIR certified by the City on April 17, 2023. Under Public Resources Code §21167.3, a responsible agency is required to treat the environmental documents of a lead agency as legally adequate even when these documents are the subject of pending litigation against the lead agency. (*City of Redding v. Shasta County LAFCO* (1989) 209 Cal.App.3d 1169.) Here, the City filed a Notice of Determination for the project on April 19, 2023, and it appears no lawsuit challenging the City's EIR certification was filed within 30 days after April 19. Thus, LAFCO must treat the final EIR as legally adequate because no circumstances exist under CEQA Guidelines section 15162 that would allow LAFCO to assume the lead agency role or prepare its own subsequent EIR.

It should also be noted that under GC §56886 (in the CKH Act), LAFCO cannot impose any conditions on its approval of the project that "directly regulate land use, property development, or subdivision requirements". LAFCO's CEQA findings, prepared in its capacity as a responsible agency, are attached (Attachment 2).

All of the City's environmental documents are available on the City's website at <https://www.pittsburgca.gov/services/community-development/planning/advanced-planning-special-projects/faria-southwest-hills-annexation>.

## **12. Land Owner Consent and Consent by Annexing Agencies:**

The landowner, City of Pittsburg, CCWD and DD consent to the proposed boundary change. No objections were received from Contra Costa County or the Ambrose Recreation and Park District.

## **13. Boundaries and Lines of Assessment:**

The annexation area is within the SOIs of the City of Pittsburg, CCWD and DD and is contiguous to the agency boundaries. Corresponding detachments from CSA P-6 and ARPD are also proposed. A map and legal description to implement the proposed boundary changes was received and is subject to final approval by the County Surveyor.

## **14. Environmental Justice:**

LAFCO is required to consider the extent to which a change of organization or reorganization will promote environmental justice. As defined by statute, environmental justice means "the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the location of public facilities and the provision of public services, to ensure a healthy environment for all people such that the effects of pollution are not disproportionately borne by any particular populations or communities." [Gov. Code §56668(p)] The proposed boundary reorganization is not expected to either promote or discourage the fair treatment of minority or economically disadvantaged groups.

## 15. Disadvantaged Communities:

In accordance with state law, local agencies and LAFCOs are required to plan for disadvantaged unincorporated communities (DUCs). Many of these communities lack basic infrastructure, including streets, sidewalks, storm drainage, clean drinking water, and adequate sewer service. LAFCO actions relating to Municipal Service Reviews, SOI reviews/amendments, and annexations must take into consideration DUCs, and specifically the adequacy of public services, including sewer, water, and fire protection needs or deficiencies, to these communities. According to the County Department of Conservation and Development, the area proposed for annexation is not a DUC.

## 16. Comments from Affected Agencies/Other Interested Parties:

To date, LAFCO has received nearly 400 “*Save the Ridge*” letters opposing the Faria Southwest Hills reorganization. Reasons cited include protection of wildlife, open space, and the Thurgood Marshall Regional Park; lack of a Site Plan; noise, light, pollution, and other impacts; and nearly 13,000 daily vehicle trips generated by this project. Comments also requested that LAFCO require a larger buffer.

LAFCO also received letters from Raymond O’Brien; Shute, Mihaly & Weinberger, LLP; and HansonBridgett (attached).

## 17. Regional Transportation and Regional Growth Plans

In its review of a proposal, LAFCO shall consider a regional transportation plan adopted pursuant to GC §65080 [GC §56668(g)]. Further, the Commission may consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or sub-regional basis (GC §56668.5). Regarding these sections, LAFCO looks at consistency of the proposal with the regional transportation and other regional plans affecting the Bay Area.

SB 375, a landmark state law, requires California’s regions to adopt plans and policies to reduce the generation of greenhouse gases (GHG), primarily from transportation. To implement SB 375, the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC), in July 2013, adopted Plan Bay Area as the “Regional Transportation Plan and Sustainable Communities Strategy” for the San Francisco Bay Area through 2040. Plan Bay Area focuses on where the region is expected to grow and how development patterns and the transportation network can work together to reduce GHG emissions. The Plan’s key goals are to reduce GHG emissions by specified amounts; and plan sufficient housing for the region’s projected population over the next 25 years.

In October 2021, ABAG and MTC adopted *Plan Bay Area 2050*, which serves as the Bay Area’s official long-range plan for housing, economic development, transportation, and environmental resilience for the next four years. While prior iterations of *Plan Bay Area* focused on transportation and housing, the 2050 plan expands the scope introducing strategies for long-term economic development and environmental resilience, while meeting federal and state requirements.

## ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials submitted, the Commission should consider taking one of the following actions:

**Option 1** Adopt this report and approve LAFCO Resolution No. 21-05 (Attachment 1), approve and adopt CEQA findings (Attachment 2) and approve the proposal, to be known as *Faria Southwest Hills*

*Reorganization: Annexations to City of Pittsburg, Contra Costa Water District, Delta Diablo and Detachments from County Service Area P-6 and Ambrose Recreation and Park District.*

LAFCO urges the City of Pittsburg, Discovery Builders, and Save Mt. Diablo to work together on a mutually agreed open space buffer zone in the subject area and permanent protection of the open space and provide an update to LAFCO within six months of LAFCO approval.

**Option 2** Adopt this report and DENY the proposal.

**Option 3** If the Commission needs more information, CONTINUE this matter to a future meeting.

**RECOMMENDATION:** Option 1

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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

Exhibit

Map - 21-05 - Annexations to City of Pittsburg, CCWD, and DD and Detachments from CSA P-6 and ARPD.

Attachments

1. Draft LAFCO Resolution 21-05
2. LAFCO CEQA Findings
3. City of Pittsburg Resolution No. 23-14269 - CEQA Findings
4. City of Pittsburg Mitigation Monitoring and Reporting Program
5. City's Applicable General Plan Goals and Policies
6. Save the Ridge List of Petitioners & Example Letter (received nearly 400)
7. Save Mt. Diablo Letter
8. Hanson Bridgett Letter

c: Garrett Evans, City Manager, City of Pittsburg  
Louis Parsons, Discovery Builders  
Rachel Murphy, General Manager, CCWD  
Vince DeLange, General Manager, DD  
Doug Long, General Manager, ARPD  
Contra Costa County Distribution List

**RESOLUTION NO. 21-05**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
MAKING DETERMINATIONS AND APPROVING ANNEXATIONS  
TO CITY OF PITTSBURG, CONTRA COSTA WATER DISTRICT (CCWD), AND  
DELTA DIABLO (DD) AND DETACHMENTS FROM COUNTY SERVICE AREA  
(CSA) P-6 AND AMBROSE RECREATION AND PARK DISTRICT (ARPD)**

**WHEREAS**, the above-referenced proposal was filed with the Executive Officer of the Contra Costa Local Agency Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (§56000 et seq. of the Government Code); and

**WHEREAS**, the Executive Officer examined the application and executed her certification in accordance with law, determining and certifying that the filing is sufficient; and

**WHEREAS**, at the time and in the manner required by law, the Executive Officer gave notice of the Commission's consideration of the proposal; and

**WHEREAS**, the Executive Officer reviewed available information and prepared a report including her recommendations therein, and the report and related information were presented to and considered by the Commission; and

**WHEREAS**, at a public hearing held on June 12, 2024, the Commission heard, discussed, and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendations, the environmental documents and determinations, applicable General and Specific Plans, consistency with the spheres of influence, and related factors and information including those contained in Gov. Code §56668; and

**WHEREAS**, information satisfactory to the Commission has been presented that no affected landowners/registered voters within the subject area object to the proposal; and

**WHEREAS**, the applicant has delivered to LAFCO an executed indemnification agreement providing for the applicant to indemnify LAFCO against any expenses arising from any legal actions to challenge the annexation; and

**WHEREAS**, the Local Agency Formation Commission determines the proposal to be in the best interest of the affected area and the organization of local governmental agencies within Contra Costa County and the City of Pittsburg.

**NOW, THEREFORE**, the Contra Costa Local Agency Formation Commission **DOES HEREBY RESOLVE, DETERMINE AND ORDER** as follows:

1. The Commission is a Responsible Agency under the California Environmental Quality Act (CEQA), and in accordance with CEQA, considered the environmental effects of the project as shown in the City of Pittsburg's Revised and Updated Final Environmental Impact Report (EIR). The Commission finds that all changes or alterations in the project that avoid or substantially lessen its significant environmental effects are within the responsibility and jurisdiction of the City of Pittsburg and not LAFCO, and that these

changes have been, or can and should be, adopted by the City of Pittsburg as the lead agency.

2. Annexations to City of Pittsburg, CCWD, and DD and Detachments from CSA P-6 and ARPD (APNs 092-010-002-1, 092-010-006-2, 092-020-002-9, 091-040-002-7, 092-020-003-7, 092-040-008-2, 092-050-002-2, 092-030-012-6, and 208-700-082-0) are hereby approved.
3. The subject proposal is assigned the following distinctive short-form designation:  
**ANNEXATIONS TO CITY OF PITTSBURG, CONTRA COSTA WATER DISTRICT, AND DELTA DIABLO, AND DETACHMENTS FROM COUNTY SERVICE AREA P-6 AND AMBROSE RECREATION AND PARK DISTRICT**
4. The boundary of the subject area is found to be definite and certain as approved and set forth in Exhibit A, attached hereto and made a part hereof.
5. The subject area shall be liable for any authorized or existing taxes, charges, and assessments currently being levied on comparable properties within the annexing agencies.
6. The subject area is uninhabited.
7. No affected landowners or registered voters within the subject area object to the proposal, and the conducting authority (protest) proceedings are hereby waived.
8. All subsequent proceedings in connection with this annexation shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

\*\*\*\*\*

PASSED AND ADOPTED THIS 12<sup>th</sup> day of June 2024, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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CHAIR, CONTRA COSTA LAFCO

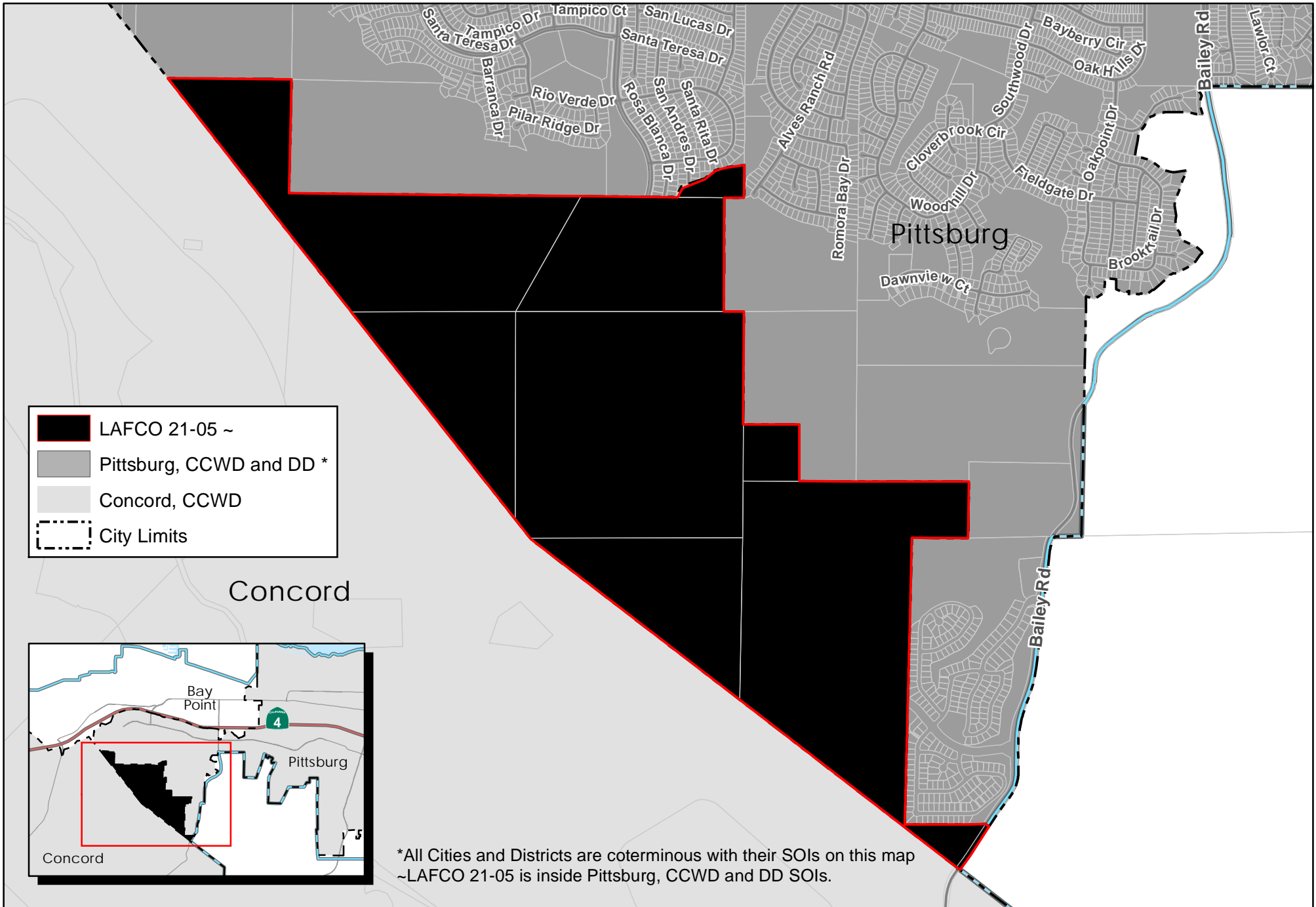
*I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated.*

Dated: June 12, 2024

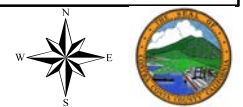
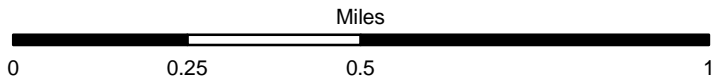
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Lou Ann Texeira, Executive Officer

# LAFCO 21-05 - Faria Southwest Hills - Annexations to City of Pittsburg, Contra Costa Water District, and Delta Diablo. Detachment from CSA P-6 and Ambrose Recreation and Park District



\*All Cities and Districts are coterminous with their SOIs on this map  
 ~LAFCO 21-05 is inside Pittsburg, CCWD and DD SOIs.





## **CEQA FINDINGS**

Under the State CEQA Guidelines, with respect to the Faria Southwest Hills project, the Contra Costa Local Agency Formation Commission (“LAFCO”) is a Responsible Agency and the City of Pittsburg (“City”) is the Lead Agency. As the Lead Agency, the City prepared and certified the Revised and Updated Final Environmental Impact Report for the project (Final EIR). The City also adopted mitigation measures and findings related to mitigation measures, project alternatives, and a Statement of Overriding Considerations.

As a Responsible Agency, LAFCO’s role is limited:

“A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.” (CEQA Guidelines, § 15096(g)(1)).

“When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.” (CEQA Guidelines, § 15096(g)(2), emphasis added).

### **FINDINGS PURSUANT TO PUBLIC RESOURCES CODE SECTION 21081 AND CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15091 AND 15096**

#### **1. CONSIDERATION OF THE EIR**

The City of Pittsburg served as Lead Agency in preparing and accepting the environmental documents for the Faria Southwest Hills project. LAFCO has considered the environmental effects of the project as shown in the Revised and Updated Final EIR (certified by the City on April 17, 2023). Pursuant to CEQA Guidelines section 15096(f), LAFCO certifies that it has reviewed and considered the EIR documents prior to approving this proposal. In addition, all voting Commissioners have reviewed and considered testimony and additional information presented at or prior to the public hearing on June 12, 2024.

#### **2. LOCATION OF RECORD OF PROCEEDINGS**

Pursuant to CEQA Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which this decision is based are in the custody of the LAFCO Executive Officer, 40 Muir Road, First Floor, Martinez, CA 94553.

The record of proceedings for LAFCO’s decision on the Project includes, but is not limited to, the following documents:

- (1) Public notices issued by LAFCO in conjunction with the Project;
- (2) The resolution of application adopted by the Pittsburg City Council;

- (3) The application for reorganization submitted to LAFCO;
- (4) The environmental documents as noted above;
- (5) Any minutes and recordings of all information sessions, public meetings, and public hearings held by LAFCO in connection with the Project; and
- (6) All reports, studies, memoranda, maps, staff reports, or other planning documents related to the Project prepared by LAFCO;
- (7) All documents submitted to LAFCO by other public agencies or members of the public in connection with the Project;
- (8) Any other materials required for the record of proceedings by Public Resources Code § 21167.6, subdivision (e).

### **3. FINDINGS REGARDING SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS**

There are no identified direct significant environmental impacts of the proposed reorganization itself, which is a legislative act. Therefore, no findings required by CEQA Guidelines Section 15096(h) are needed for direct impacts of the reorganization itself.

Further, the final EIR was certified by the City of Pittsburg. The final EIR identified one or more significant environmental effects for the project. As specified in the City's CEQA findings, the final EIR identified the following potentially significant impacts that are mitigated to a less-than-significant level:

- Aesthetics (Impact 4.1-3)
- Biological Resources (Impacts 4.4-1, 4.4-2, 4.4-3, 4.4-4, 4.4-5, 4.4-8, 4.4-12, 4.4-14, 4.4-15)
- Cultural and Tribal Resources (Impact 4.5-2)
- Geology and Soils (Impacts 4.6-1, 4.6-2, 4.6-3, 4.6-4, 4.6-5)
- Hazards and Hazardous Materials (Impacts 4.7-1, 4.7-2, 4.7-4)
- Hydrology and Water Quality (Impacts 4.8-1, 4.8-2, 4.8-3)
- Land Use and Planning (Impact 4.9-1)
- Noise (Impacts 4.10-2, 4.10-3)
- Public Services and Utilities (Impacts 4.11-1, 4.11-2)
- Transportation, Traffic, and Circulation (Impacts 4.12-4, 4.12-7, 4.12-10)

As specified in the City's CEQA findings, the final EIR also identified the following potentially significant, unavoidable impacts:

- Aesthetics (Impact 4.1-2)
- Air Quality and Greenhouse Gas Emissions (Impacts 4.3-1, 4.3-2, 4.3-4, 4.3-5)
- Public Services and Utilities (Impacts 4.11-4, 4.11-10)
- Transportation, Traffic, and Circulation (Impacts 4.12-2, 4.12-3, 4.12-5, 4.12-8, 4.12-9, 4.12-11)

As to each of the impacts listed above and specified in the City's CEQA findings, LAFCO finds that all changes or alterations that would avoid or substantially lessen the significant environmental effects as identified in the final EIR are within the responsibility and jurisdiction of the City of Pittsburg and not LAFCO. LAFCO further finds that all changes

or alterations in the project that avoid or substantially lessen its environmental effects are within the responsibility and jurisdiction of the City and not LAFCO, and that these changes have been, or can and should be, adopted by the City as the Lead Agency.

#### **4. FINDING THAT MITIGATION OF CERTAIN IMPACTS IS WITHIN THE RESPONSIBILITY AND JURISDICTION OF ANOTHER PUBLIC AGENCY**

The City of Pittsburg prepared a *Mitigation Monitoring and Reporting Program* (MMRP) for the Faria Southwest Hills project. The MMRP provides mitigation measures in the following categories: Aesthetics; Air Quality and Greenhouse Gas Emissions; Biological Resources; Cultural and Tribal Resources; Geology, Soils, and Seismicity; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use and Planning; Noise; Public Services and Utilities; and Recirculated Transportation, Traffic, and Circulation. Also noted in the MMRP, prior to submittal of a project tentative map, the applicant will submit to the City a Cultural and Historical Resource Survey.

The CEQA Guidelines provide that a responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance or approve. (CEQA Guidelines § 15096(g)(1)). CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws (CEQA Guidelines Section 15040(b)). LAFCO's jurisdiction to impose conditions on this reorganization is limited under the Cortese-Knox-Hertzberg Local Government Reorganization Act and CEQA Guidelines Sections 15040 and 15096. Under Government Code section 56886, LAFCO cannot impose any conditions on its approval of the project that "directly regulate land use, property development, or subdivision requirements."

LAFCO has reviewed the mitigation measures and alternatives identified in the EIR prepared by the City. None of the mitigation measures or alternatives addresses the issues over which LAFCO has discretion in considering the application for reorganization. The proposed mitigation measures identified in the Final EIR that might reduce or eliminate the significant adverse indirect environmental impacts of the project are not within the limited jurisdiction of LAFCO in considering approval of this reorganization. For these reasons, LAFCO cannot impose the identified mitigation measures as LAFCO conditions of approval.

#### **5. STATEMENT OF OVERRIDING CONSIDERATIONS**

LAFCO has determined that the reorganization itself, which is a legislative act, will not cause any unavoidable adverse environmental effects. Therefore, it is not required to engage in the balancing of the benefits of the reorganization against unavoidable adverse environmental effects under CEQA Guidelines § 15093. Nonetheless, out of an abundance of caution, LAFCO has reviewed and considered the Statement of Overriding Considerations approved by the City of Pittsburg and the evidence that supports that Statement as set forth in the Final EIR and, based thereon, has concluded that any adverse environmental effects of the project are "acceptable."

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In The Matter of:

Certification of the Revised and Updated Final )  
EIR, and Adoption of CEQA Findings, a )  
Statement of Overriding Considerations, and )  
a Mitigation and Monitoring Reporting Program )  
for the "Faria/Southwest Hills Annexation )  
Project, AP-10-717" )

RESOLUTION 23-14269

The Pittsburg City Council FINDS AND DETERMINES as follows:

WHEREAS, the Faria/Southwest Hills Annexation Project (proposed project) includes applications for a General Plan amendment, change in rezoning designations, adoption of a Master Plan, approval of a development agreement, and initiation of annexation proceedings, for a 606-acre site located in the hills southwest of the existing city limits, including APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002 (now APN's 091-040-002, 092-010-002 & -006, 092-020-002 & -003, 092-040-008, 092-050-002, and a portion of 092-030-012); and,

WHEREAS, in 2001, the current Pittsburg General Plan was adopted with a planned land use development pattern for the southwest hills (outside current city limits) that included a combination of Low Density Residential, Hillside Low Density Residential, and Open Space. The 2001 General Plan land use map for this area has not been amended since its initial adoption; and,

WHEREAS, on November 5, 2005, the voters of the City of Pittsburg approved a ballot initiative entitled, 'Measure P (City of Pittsburg Voter Approved Urban Limit Line and Rezoning Act)', which established a new Urban Limit Line (ULL) for the City of Pittsburg and rezoned certain properties, including the entire 606-acre Faria project site (as described above), to HPD (Hillside Planned Development) and OS (Open Space) Districts, consistent with existing General Plan residential and open space designations; and,

WHEREAS, on July 8, 2009, the Contra Costa Local Agency Formation Commission (LAFCo) approved an extension of the Pittsburg Sphere of Influence (SOI), as well as the SOIs for the Contra Costa Water District and Delta Diablo SOI, to include the project site; and,

WHEREAS, on September 24, 2010, Louis Parsons, on behalf of Faria Land Investors, LLC, filed Annexation Application No. 10-717, requesting that the City initiate proceedings to annex the approximately 606-acre site into the municipal boundary, as well as into the Contra Costa Water District and Delta Diablo service areas; and,

WHEREAS, the City has discretionary authority over the project and is identified as the lead agency under the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et seq.) and the State CEQA Guidelines (14 Cal. Code Regs.

Section 15000, et seq.) because it is the public agency with the authority and principal responsibility for reviewing, considering, and potentially approving the proposed project. An Initial Study was prepared for the proposed project and released for public review in 2011. Extensive comments were received on the Initial Study, requesting further analysis in an Environmental Impact Report (EIR); and,

WHEREAS, in 2014, the project was modified to include a request for amended rezoning for an Interim Study Overlay (-S) District, to designate the site as an area where zoning regulations would remain under study until such time when the developer provided a development plan. The 2011 Initial Study was updated to reflect the revised project proposal. The revised Initial Study preliminarily analyzed the amended project and its potential impacts. Through this Initial Study, it was determined that the project could potentially have adverse impacts in the areas of aesthetics, agriculture and forest resources, air quality, biological resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, public services, transportation and circulation, utilities and services systems, and mandatory findings of significance. All other areas of potential environmental impact were determined to have no potential unmitigable adverse impacts under the project and were eliminated from further analysis. This Initial Study is included in Appendix C of the Draft EIR; and,

WHEREAS, on March 10, 2014, in accordance with Section 15082 of the State CEQA Guidelines, a Notice of Preparation (NOP) of the Draft EIR was released for a 30-day public review. During the NOP review period, a public scoping meeting was held on April 3, 2014, to receive verbal comments on the scope of the EIR; and,

WHEREAS, after substantial comments were received on the 2014 NOP, the project was revised again to incorporate the currently proposed Master Plan Overlay (-P) District, in place of the Interim Study Overlay (-S) District. Along with this change in the project, the approach for the environmental analysis was modified to study project-level impacts (rather than only more general programmatic-level impacts) to the greatest extent feasible, assuming a maximum development scenario of 1,500 new residential units as envisioned in the General Plan; and

WHEREAS, on March 8, 2017, a new NOP for the revised project was circulated to the public, local, state and federal agencies, and other interested parties for 30 days to solicit comments on the project and scope of the EIR. After releasing the 2017 NOP, a public scoping session was held on April 4, 2017, to receive additional comments. All concerns raised in response to the NOP were considered during preparation of the Draft EIR. The NOP and full text of comments on the NOP are presented in Appendix B of the Draft EIR; and,

WHEREAS, in accordance with Public Resources Code (PRC) Section 21080(d), an EIR was prepared to analyze the potential impacts of the project. On October 10, 2018, the Draft EIR (SCH# 2017032027) was released for a 45-day public review period that was extended to November 30, 2018, and a public workshop on the Draft EIR was held on November 15, 2018. The Draft EIR contains a description of the project, description of the environmental setting, identification of project impacts and mitigation measures for impacts

found to be potentially significant, and an analysis of project alternatives. The Draft EIR was provided to interested public agencies and the public and was made available for review at City offices and on the City's website. A total of 123 comment letters were received from state and local agencies and other interested parties regarding the Draft EIR; and,

WHEREAS, based on the comments received regarding the Draft EIR, the City determined that recirculation of Chapter 4.12, pertaining to Transportation, Traffic, and Circulation, was necessary to comply with CEQA; and,

WHEREAS, on October 17, 2019, a Partially Recirculated Draft EIR was released for a 45-day public review period from October 18, 2019 to December 2, 2019; and

WHEREAS, on July 17, 2020, the Final EIR was released for public review; and, the Final EIR, consisting of both the Draft EIR and Partially Recirculated Draft EIR, comments received on both documents, responses to those comments, and revisions made to the Draft and Partially Recirculated Draft EIR, was finalized and released for public review in compliance with Public Resources Code Section 21092.5; and

WHEREAS, on July 28, 2020, following a duly noticed public hearing, the Planning Commission adopted Resolution No. 10154, recommending City Council approval of the request for a General Plan amendment, annexation initiation, pre-zoning amendments (including the proposed Master Plan) and development agreement; and.

WHEREAS, on February 22, 2021, the City Council adopted Resolution Nos. 13906 and 13907 approving: 1) the General Plan amendments requested for the project; and 2) a petition for annexation into the City, the Contra Costa Water District (CCWD) service area and Delta Diablo Sanitation District (DDSD) service area; and

WHEREAS, on March 15, 2021, the City Council adopted Ordinance No. 21-1484 approving: 1) amendment of the pre-zoning designations of the Project Site from HPD and OS to Single Family Residential, 4,000 Square Foot Minimum Lot Size with a Master Plan Overlay (RS-4-P) and Open Space with a Master Plan Overlay (OS-P) Districts, with a Master Plan Overlay in place of the previously proposed Interim Study Overlay District; 2) the Faria/Southwest Hills Master Plan; and 3) a Development Agreement; and

WHEREAS, on March 2021, the non-profit organization Save Mount Diablo (SMD) filed a Petition for Writ of Mandate challenging the approval of the project based on CEQA, among other theories. The lawsuit, entitled Save Mount Diablo v. City of Pittsburg, et al., was filed in Contra Costa Superior Court; and

WHEREAS, on February 10, 2022, the Court issued a Statement of Decision in the action, rejecting the majority of SMD's allegations, apart from a limited number of items, and ordering that a, "Writ of Mandate shall issue compelling the City to set aside the Project approvals and the certification of the FEIR." The limited number of items requiring further consideration are detailed below; and

WHEREAS, on June 16, 2022, the Court issued a Peremptory Writ of Mandate (Writ) commanding the City to set aside the 2021 project approvals within 75 days of service of the Writ; and

WHEREAS, on August 15, 2022, the City Council adopted Resolution No. 22-14158, repealing and setting aside project approvals for the project in compliance with the Writ; and.

WHEREAS, in response to the Writ described above, the City has prepared a Revised and Updated Final Environmental Impact Report (RUF EIR) to address the few items determined by the Court to require further analysis. The RUF EIR has been prepared to address, through the inclusion of new memoranda and supporting analysis and data, the inadequacies of the original Final EIR, as determined by the Court. The new memoranda demonstrates that the analyses and conclusions prepared and presented in the Draft EIR and Partially Recirculated Draft EIR are supported by substantial evidence, and the conclusions remain valid. Specifically, the following issues identified by the Court have been further addressed: (1) ADUs have been eliminated as a requirement under the development agreement, and thus no analysis of environmental impacts associated with construction or operation of the ADUs is required, (2) the level of detail included in mitigation to address potential air quality and greenhouse gas (GHG) emission impacts has been addressed, (3) the baseline description of biological resources has been confirmed, and (4) the adequacy of the Draft EIR's water usage analysis has been confirmed. The RUF EIR contains revisions to the Final EIR based on the new memoranda. The updated information does not constitute "significant new information" that would require recirculation of the EIR. Instead, the additional technical reports and memoranda support and reaffirm the conclusions in the EIR; and

WHEREAS, the RUF EIR and its associated Mitigation Monitoring and Reporting Program (MMRP) has been available to the public since January 31, 2023, when they were posted on the City's website at (<https://www.pittsburgca.gov/services/community-development/planning/advanced-planning-special-projects/faria-southwest-hills-annexation>), and also have been available for public review and inspection at Pittsburg City Hall; and

WHEREAS, the City subsequently clarified information in the MMRP, and posted an updated MMRP on the City's website on March 2, 2023; and

WHEREAS, the RUF EIR identifies the potential for significant effects on the environment from implementation of the project, most of which can be substantially reduced through mitigation measures; therefore, CEQA Guidelines section 15091 requires that approval of the project must include findings. These required findings are set forth in Exhibit A, Section 1, below, and incorporated herein as though set forth in full; and,

WHEREAS, significant effects related to aesthetics, air quality and greenhouse gas emissions, public services and utilities, and transportation, traffic and circulation identified in the RUF EIR cannot be lessened to a level of less than significant; therefore, CEQA Guidelines sections 15091 and 15093 require that approval of the project must include findings and a Statement of Overriding Considerations (which states that significant

adverse project effects are acceptable because expected project benefits outweigh unavoidable adverse environmental impacts). These required findings are set forth in Exhibit A, Section 2; Exhibit B; and Exhibit C, below, all of which are incorporated herein as though set forth in full; and

WHEREAS, CEQA Section 21081.6 requires the preparation and adoption of an MMRP for any project for which mitigation measures have been imposed to ensure compliance with the adopted mitigation measures. The MMRP is set forth in Exhibit D, below, which is incorporated herein as though set forth in full; and

WHEREAS, on or before April 7, 2023, in accordance with Government Code sections 65090 and 65091, and PMC section 18.14.020, a "Notice of Public Hearing" for the April 17, 2023, City Council public hearing on this item was published in the East County Times; was posted at City Hall and in the "Public Notices" section of the City website; and was mailed via first class or electronic mail to the applicant/property owner, all property owners and/or residents within 800-feet of the site, all local service agencies expected to provide future services to the site, and to individuals who had previously filed written request for such notice. In addition, all though not required, the notice was also published on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed members in the following Nextdoor neighborhoods: Oak Hills South, San Marco, San Marco Villas, Toscana and Vista Del Mar; and,

WHEREAS, on April 17, 2023, the City Council held a duly-noticed public hearing on the appeal of the Planning Commission Decision to not Recommend Planning Application No. 10-717 (GP, RZ, DA, ANNEX), at which time oral and/or written testimony was considered; and

WHEREAS, documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based, are located at the City of Pittsburg Planning Division, located at 65 Civic Avenue in Pittsburg, California 94565.

NOW, THEREFORE, the City Council DOES RESOLVE as follows:

Section 1: Recitals.

The recitals set forth above are true and correct statements, and they are hereby incorporated by reference, in their entirety, in these findings.

Section 2: Certification of the EIR (RUF EIR).

- A. The project was processed, including but not limited to all public notices, in the time and manner prescribed by state and local law, including CEQA and the State CEQA Guidelines.
- B. The EIR for this project consists of the Draft EIR, dated October 2018; the Partially Recirculated Draft EIR, dated December 2019; the Revised and Updated Final EIR



dated March 2023; and all appendices thereto, collectively referred to as the RUF EIR. The RUF EIR is incorporated by this reference.

- C. Agencies and interested members of the public have been afforded ample notice and opportunity to comment on the project and the RUF EIR. Prior to taking action, the City Council has heard, been presented with, reviewed, and considered the information and data in the administrative record, including oral and written testimony.
- D. Based on the evidence and oral and written testimony presented at the public hearings, and based on all the information contained in the Planning Division's files on the project, including but not limited to the RUF EIR for the project and the City Council staff report entitled "Appeal of the Planning Commission's Determination to not Recommend for City Council Approval 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)," dated April 17, 2023, the City Council hereby declares, finds, and certifies that:
1. The City Council has independently considered the administrative record before it.
  2. The RUF EIR has been completed in compliance with CEQA and fully analyzes and discloses the potential impacts of the proposed project, and that those impacts have been mitigated or avoided to the extent feasible for the reasons set forth in the Exhibits hereto.
  3. The RUF EIR was presented to the City Council. The City Council has reviewed and considered the information in the RUF EIR, and the RUF EIR reflects the independent judgment of the City Council.
  4. Information presented in written and oral testimony does not constitute new information requiring recirculation of the RUF EIR under CEQA. None of the information, including written comments submitted by Shute, Mihaly & Weinberger on behalf of SMD, has deprived the public of a meaningful opportunity to comment upon a substantial environmental impact of the proposed project or a feasible mitigation measure or alternative that the City has declined to implement.
  5. The RUF EIR is hereby certified as being in compliance with CEQA. The EIR adequately describes the project, its environmental impacts, reasonable alternatives, and appropriate mitigation measures.

Section 3: Adoption of Findings, Statement of Overriding Considerations, and Mitigation, Monitoring and Reporting Program.

- A. The City Council adopts the following with respect to the project:

1. Mitigation Findings Pursuant to CEQA Guidelines Section 15091, as set forth in Exhibit A to this resolution and incorporated herein by reference.
2. Findings Concerning Alternatives, as set forth in Exhibit B to this resolution and incorporated herein by reference.
3. Statement of Overriding Considerations, as set forth in Exhibit C to this resolution and incorporated herein by reference.
4. Mitigation Monitoring Reporting Program, attached as Exhibit D to this resolution and incorporated herein by reference.

Section 4: Notice of Determination.

The City Council hereby directs staff to file a Notice of Determination as set forth in Public Resources Code Section 21152.

Section 5: Effective Date.

This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg on the 17th day of April, 2023, by the following vote:

AYES: Adams, Killings, Lopez, Scales-Preston  
NOES: None  
ABSTAINED: None  
ABSENT: Banales [Recused]

  
Shanelle Scales-Preston, Mayor

ATTEST:

  
Alice E. Evenson, City Clerk

**Findings Pursuant to CEQA Guidelines Section 15091 For Approval of the Faria/Southwest Hills Annexation Project**

SECTION 1:

FINDINGS ON POTENTIALLY SIGNIFICANT IMPACTS THAT ARE MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

*Aesthetics*

Impact 4.1-3. Creation of new sources of substantial light or glare that would adversely affect day or nighttime views in the area.

Mitigation Measure 4.1-3. In conjunction with the submittal of any development applications for future development on the project site, the applicant shall prepare and submit a detailed lighting plan showing that light would not trespass onto adjacent properties to the City of Pittsburg Community Development Department for review and approval as part of the development review process. The lighting plan shall include, but not necessarily be limited to, the following provisions:

- Shield or screen lighting fixtures to direct the light downward and prevent light from spilling onto adjacent properties and nearby open space areas within the City of Concord;
- Place and shield or screen flood and area lighting needed for construction activities and/or security so as not to disturb adjacent residential areas and passing motorists;
- For public lighting, prohibit the use of light fixtures that are of unusually high intensity or brightness (e.g., harsh mercury vapor, low-pressure sodium, or fluorescent bulbs) or that blink or flash; and
- Use appropriate building materials (such as low-glare glass, low-glare building glaze or finish, neutral, earth-toned colored paint and roofing materials), shielded or screened lighting, and appropriate signage to prevent light and glare from adversely affecting motorists on nearby roadways.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring that future lighting would not trespass onto adjacent properties (Draft EIR pages 4.1-32 through -33). Applicable land use and development regulations, including outdoor lighting regulations that would apply to all future development occurring under buildout of the proposed project site, are memorialized in the Draft Master Plan. (See, e.g., Regulation C.3.a and Regulation C.3.b; see also Draft EIR pages 4.1-32 through -33.)

Furthermore, future development would be subject to other applicable regulations included in the Pittsburg Municipal Code (PMC) related to light and glare. For example, Section 18.56.090(I) of the PMC includes regulations requiring redirection and/or shielding of exterior lighting so as to prevent direct illumination of roadways

and light spillage onto adjacent properties, while Section 18.56.090(M)(6) requires that street lighting in residential areas be designed to emit the minimum light intensity required to provide public safety. (Draft EIR page 4.1-33.)

### *Biological Resources*

Impact 4.4-1. Have a substantial adverse effect, either directly or through habitat modifications, on special-status plant species.

Mitigation Measure 4.4-1(a). Prior to the issuance of grading or construction permits for each phase of development of the project, the applicant shall pay the applicable ECCC HCP/NCCP per-acre Development Fee in effect for Zone II in compliance with Section 15.108.070 of the Pittsburg Municipal Code. The Development Fee will cover the development of habitat that primarily includes annual grassland. At the discretion of the East Contra Costa County Habitat Conservancy, the fee may also be required for the 72.9 acres of Open Space that would be temporarily disturbed by grading. Payment of the Development Fee would address the loss of potential habitat of special-status plant species associated with grasslands. The fees would be used in part to protect these affected special-status plant species by bringing existing populations of the species under protection.

Alternately, the project applicant may, in accordance with the terms of Pittsburg Municipal Code Chapter 15.108, offer to dedicate land or create and restore wetlands in lieu of some or all of the mitigation fees. All applicable mitigation fees shall be paid, or an "in-lieu-of fee" agreement executed, prior to the issuance of a grading permit for the project.

The Pittsburg Community Development Department and the Contra Costa County Conservancy shall approve the final method of compliance with the ECCC HCP/NCCP provisions.

Mitigation Measure 4.4-1(b). Prior to the issuance of grading or construction permits for each phase of development of the project, additional rare plant surveys shall be conducted for bent-flowered fiddleneck, big tarplant, round-leaved filaree, Mt. Diablo fairy-lantern, Mt. Diablo buckwheat, fragrant fritillary, Diablo helianthella, Brewer's western flax, showy golden madia, Mt. Diablo cottonweed, woodland woollythreads, adobe navarretia, shining navarretia, and rock sanicle. The surveys shall be appropriately timed and shall cover all potentially suitable on-site habitats. If none of the species occurs in the project development area, further mitigation is not required.

Mitigation Measure 4.4-1(c). If any of the above species occurs in the project development area, future development plans shall be designed to avoid such species, to the maximum extent feasible. If avoidance of the identified species is unavoidable, the project applicant shall notify the East Contra Costa County Habitat Conservancy of the construction schedule so as to allow the East Contra Costa County Habitat Conservancy the option to salvage the population(s) in accordance with HCP/NCCP Conservation Measure 3.10 (Plant Salvage when Impacts are

Unavoidable) described below. In addition, the project applicant shall confirm with the East Contra Costa County Habitat Conservancy that the take limits of the HCP/NCCP for the species identified in Impact 4.4-1 have not been breached (at the time of writing this EIR, the take limits have not been breached for the special-status plant species in question).

#### *Perennial Covered Plants*

Where removal of covered plant species cannot be avoided by approved covered activities, such as construction activities associated with development of the project site, the East Contra Costa County Habitat Conservancy has the option of salvaging the covered plants. Salvage methods for perennial species shall be tested for whole individuals, cuttings, and seeds. Salvage measures shall include the evaluation of techniques for transplanting as well as germinating seed in garden or greenhouse and then transplanting to suitable habitat sites in the field. Techniques shall be tested for each species, and appropriate methods shall be identified through research and adaptive management. Where plants are transplanted or seeds distributed to the field they shall be located in preserves in suitable habitat to establish new populations. Field trials shall be conducted to evaluate the efficacy of different methods and determine the best methods to establish new populations. New populations shall be located such that they constitute separate populations and do not become part of an existing population of the species, as measured by the potential for genetic exchange among individuals through pollen or propagule (e.g., seed, fruit) dispersal. Transplanting within the preserves shall only minimally disturb existing native vegetation and soils. Supplemental watering may be provided as necessary to increase the chances of successful establishment, but must be removed following initial population establishment. See also All Covered Plants below.

#### *Annual Covered Plants*

For annual covered plants, mature seeds shall be collected from all individuals for which removal cannot be avoided (or if the population is large, a representative sample of individuals). If storage is necessary, seed storage studies shall be conducted to determine the best storage techniques for each species. If needed, studies shall be conducted on seed germinated and plants grown to maturity in garden or greenhouse to propagate larger numbers of seed. Seed propagation methods shall ensure that genetic variation is not substantially affected by propagation (i.e., selection for plants best adapted to cultivated conditions). Field studies shall be conducted through the Adaptive Management Program to determine the efficacy and best approach to dispersal of seed into suitable habitat. Where seeds are distributed to the field, they shall be located in preserves in suitable habitat to establish new populations. If seed collection methods fail (e.g., due to excessive seed predation by insects), alternative propagation techniques will be necessary. See also All Covered Plants below.

#### *All Covered Plants*

All salvage operations shall be conducted by the East Contra Costa County Habitat Conservancy. To ensure enough time to plan salvage operations, project proponents shall notify the East Contra Costa County Habitat Conservancy of their schedule for removing the covered plant population.

The East Contra Costa County Habitat Conservancy may conduct investigations into the efficacy of salvaging seeds from the soil seed bank for both perennial and annual species. The soil seed bank may add to the genetic variability of the population. Covered species may be separated from the soil through garden/greenhouse germination or other appropriate means. Topsoil taken from impact sites shall not be distributed into preserves because of the risk of spreading new nonnative and invasive plants to preserves. For salvage operations, the East Contra Costa County Habitat Conservancy shall transplant new populations such that they constitute separate populations and do not become part of an existing population of the species, as measured by the potential for genetic exchange among individuals through pollen or propagule (e.g., seed, fruit) dispersal. Transplanting or seeding "receptor" sites (i.e., habitat suitable for establishing a new population) should be carefully selected on the basis of physical, biological, and logistical considerations (Fiedler and Laven 1996); some examples of these are listed below.

- Historic range of the species;
- Soil type;
- Soil moisture;
- Topographic position, including slope and aspect;
- Site hydrology;
- Mycorrhizal associates (this may be important for Mount Diablo manzanita);
- Presence or absence of typical associated plant species; and
- Presence or absence of herbivores or plant competitors. Site accessibility for establishment, monitoring, and protection from trampling by cattle or trail users.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring participation in and compliance with the ECCC HCP/NCCP, which provides a mechanism to adequately mitigate impacts to special-status plant species (Draft EIR pages 4.4-42 through -46).

Impact 4.4-2. Have a substantial adverse effect, either directly or through habitat modifications, on special-status bird species, including those covered under the East Contra Costa County HCP/NCCP, such as Swainson's hawk, tricolored blackbird, burrowing owl, and golden eagle.

#### *Golden Eagle*

Mitigation Measure 4.4-2(a). Implement Mitigation Measure 4.4-1(a).

Mitigation Measure 4.4-2(b). The project shall implement the following avoidance measures for potential effects on golden eagles during construction:

- Based on the potential for active nests, prior to implementation of construction activities, including tree removal, a qualified biologist shall conduct a pre-construction survey to establish whether an active golden eagle nest is present on the project site or within 0.5 mile of the project site to the extent the biologist can gain access. If an active nest is not present, further mitigation is not required. If an occupied nest is present, minimization requirements and construction monitoring shall be required, as detailed below.
- Construction activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the construction activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the East Contra Costa County Habitat Conservancy shall coordinate with CDFW/USFWS to determine the appropriate buffer size.
- Construction monitoring shall ensure that no construction activities occur within the buffer zone established around an active nest. Construction monitoring shall ensure that direct effects to golden eagles are avoided.

*Swainson's Hawk*

Mitigation Measure 4.4-2(c). Implement Mitigation Measure 4.4-1(a).

Mitigation Measure 4.4-2(d). The project applicant shall implement the following avoidance measures for potential effects on Swainson's hawk nests during construction:

- Prior to ground disturbing activities during the nesting season (March 15 through September 15), a qualified biologist shall conduct a pre-construction survey no more than one month prior to construction to establish whether occupied Swainson's hawk nests occur on or within 1,000 feet of the area of proposed construction. If occupied nests are not found, then further mitigation is not required.
- If occupied nests are found, project construction activity shall not occur within a 1,000-foot buffer zone distance from the nest unless a lesser buffer zone is approved by the City in consultation with CDFW. During the nesting season, construction activities shall be avoided within the established buffer zone to prevent nest abandonment. Construction monitoring shall be required to ensure that the established buffer zone is adhered to. If young fledge prior to September 15, construction activities can proceed normally without a buffer zone. If an active nest site is present but shielded from view and noise by other development or other features, the City may waive this avoidance measure (establishment of a buffer zone) if approved by the CDFW.

## *Burrowing Owl*

Mitigation Measure 4.4-2(e). Implement Mitigation Measure 4.4-1(a).

Mitigation Measure 4.4-2(f). The project applicant shall implement the following measures to avoid or minimize impacts to western burrowing owl:

- No more than 14 days prior to initiation of ground disturbing activities, the project applicant shall retain a qualified burrowing owl biologist to conduct a take avoidance survey of the proposed project site, any off-site improvement areas, and all publicly accessible potential burrowing owl habitat within 500 feet of the project construction footprint. The survey shall be performed in accordance with the applicable sections of the March 7, 2012, CDFW's Staff Report on Burrowing Owl Mitigation guidelines. If the survey does not identify any nesting burrowing owls on the proposed project site, further mitigation is not required. The take avoidance survey shall be submitted to the City of Pittsburg Community Development Department for review. The survey periods and number of surveys are identified below:
  - o If construction related activities commence during the non-breeding season (1 September to 31 January), a minimum of one take avoidance survey shall be conducted of that phase and all publicly accessible potential burrowing owl habitat within 500 feet of the construction footprint of that phase.
  - o If construction related activities commence during the early breeding season (1 February to 15 April), a minimum of one take avoidance survey shall be conducted of that phase and all publicly accessible potential burrowing owl habitat within 500 feet of the construction footprint of that phase.
  - o If construction related activities commence during the breeding season (16 April to 30 August), a minimum of three take avoidance surveys shall be conducted of that phase and all publicly accessible potential burrowing owl habitat within 500 feet of the construction footprint of that phase. If construction related activities commence after 15 June, at least one of the three surveys shall be completed after 15 June.
  - o Because the owls are known to occur nearby and may take up occupancy on a site under construction, the take avoidance survey shall be conducted prior to the start of any new phase, and/or if construction-related activity is delayed or suspended for more than 30 days.
- If active burrowing owl dens are found within the survey area in an area where disturbance would occur, the project applicant shall implement measures consistent with the applicable portions of the March 7, 2012, CDFW's Staff Report on Burrowing Owl Mitigation guidelines. If needed, as determined by the biologist, the formulation of avoidance and minimization approaches would be developed in coordination with the CDFW. The avoidance and minimization approaches would likely include burrow avoidance buffers during the nesting season (February to August). For burrowing owls present on-site, outside of the nesting season, passive exclusion of owls from the burrows could be utilized under a CDFW-approved burrow exclusion plan.



Mitigation Measure 4.4-2(g). If active owl burrows are present and the project would impact active burrows, the project applicant shall provide compensatory mitigation for the permanent loss of burrowing owl habitat at a ratio of 2.5 acres of higher quality owl habitat for every one acre of suitable owl habitat disturbed. The calculation of habitat loss may exclude acres currently occupied by hardscape or structures. Such mitigation may include the permanent protection of land that is deemed to be suitable burrowing owl habitat through a conservation easement deeded to a non-profit conservation organization or public agency with a conservation mission, or the purchase of burrowing owl conservation bank credits from a CDFW-approved burrowing owl conservation bank. A record of the compensatory mitigation provided by the project applicant shall be submitted to the City of Pittsburg Community Development Department prior to initiation of ground disturbing activities.

*Tricolored Blackbird and Other Special-Status Avian Species*

Mitigation Measure 4.4-2(h). Implement Mitigation Measure 4.4-1(a).

Mitigation Measure 4.4-2(i). If construction activities commence anytime during the nesting/breeding season of native bird species potentially nesting on or near the project site (typically February through August in the project region), a pre-construction survey for nesting birds shall be conducted by a qualified biologist within two weeks of the commencement of construction activities.

If active nests are found in areas that could be directly affected or are within 500 feet of construction and would be subject to prolonged construction-related noise, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted within them shall be a minimum of 500 feet for raptors, and a minimum of 50 feet for other species, and may be enlarged by taking into account factors such as the following:

- Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;
- Distance and amount of vegetation or other screening between the construction site and the nest; and
- Sensitivity of individual nesting species and behaviors of the nesting birds.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring participation in the ECCC HCP/NCCP, which provides a mechanism to adequately mitigate impacts to birds covered under the ECCC HCP/NCCP, including Swainson's hawk, tricolored blackbird, burrowing owl, and golden eagle (Draft EIR pages 4.4-46 through -52).

Impact 4.4-3. Have a substantial adverse effect, either directly or through habitat modifications, on special-status mammals, including San Joaquin kit fox, San Joaquin pocket mouse, American badger, and special-status bats.

*San Joaquin Kit Fox, San Joaquin pocket mouse, and American Badger*

Mitigation Measure 4.4-3(a). Implement Mitigation Measure 4.4-1(a).

*San Joaquin Kit Fox*

Mitigation Measure 4.4-3(b). The project shall implement the following avoidance measures for potential effects on San Joaquin kit fox during construction:

- Prior to any ground disturbance, a USFWS/CDFW-qualified biologist shall conduct a pre-construction survey within the proposed disturbance footprint and a surrounding 250-foot radius. The survey shall establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (USFWS 1999). The pre-construction survey shall be conducted no more than 30 days prior to ground disturbance. On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. Adjacent parcels under different land ownership are not required to be surveyed. The status of all surveyed dens shall be determined and mapped. Written results of pre-construction surveys shall be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. Concurrence is not required prior to ground disturbance.
- If San Joaquin kit foxes and/or suitable dens are identified in the survey area, the measures described below shall be implemented.
  - o If a San Joaquin kit fox den is discovered in the proposed development footprint, the den shall be monitored for 3 days by a USFWS/CDFW-qualified biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.
  - o Unoccupied dens shall be destroyed immediately to prevent subsequent use.
  - o If a natal or pupping den is found, USFWS and CDFW shall be notified immediately. The den shall not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFW.
  - o If kit fox activity is observed at the den during the initial 3-day monitoring period, the den shall be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of the biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).

- If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances shall be demarcated. The configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). Ground disturbance activities shall not occur within the exclusion zones. Exclusion zone radii for potential dens shall be at least 50 feet and shall be demarcated with four to five flagged stakes. Exclusion zone radii for known dens shall be at least 100 feet and shall be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

#### *San Joaquin Pocket Mouse*

Mitigation Measure 4.4-3(c). Grading and vegetation clearing activities shall be conducted in a uniform direction to allow mobile animals, such as San Joaquin pocket mouse, the ability to escape the disturbance area into adjacent undisturbed habitat, and to prevent creating fragmented islands of habitat that would eventually be cleared/graded. The language of this mitigation shall be included, via notation, on any grading plans approved within the Draft Master Plan development area.

#### *American Badger*

Mitigation Measure 4.4-3(d). A pre-construction survey for potential den sites shall be conducted by a qualified biologist no more than four weeks before commencement of initial ground disturbance activities. If an occupied den is found (and if young are not present), then any badgers present shall be removed from the den either by trapping or the use of exclusionary devices. Prior to implementation, the removal method shall be approved by CDFW. If trapped, the badgers shall be moved to other suitable habitat. Once any badgers are trapped or excluded, the dens shall be excavated by hand and refilled to prevent reoccupation. Exclusion shall continue until the badgers are successfully excluded from the site, as determined by a qualified biologist. Badgers shall not be relocated if it is determined by the biologists that young are or may be present.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring participation in the ECCC HCP/NCCP, which provides a mechanism to adequately mitigate impacts to the San Joaquin kit fox. Additionally, while the American badger and San Joaquin pocket mouse are not covered species under the ECCC HCP/NCCP, the on-site grassland foraging habitat potentially used by both species is the same type and acreage of habitat whose loss would be mitigated by payment of the Development Fee pursuant to the HCP/NCCP, or execution of an "in-lieu-of fee" agreement (Draft EIR pages 4.4-53 through -56).

Impact 4.4-4. Have a substantial adverse effect, either directly or through habitat modifications, on California tiger salamanders.

Mitigation Measure 4.4-4(a). Implement Mitigation Measure 4.4-1(a).

Mitigation Measure 4.4-4(b). Prior to any ground disturbance, a USFWS/CDFW–approved biologist shall identify potential breeding habitat for CTS. If the project fills or surrounds suitable breeding habitat, the project proponent shall notify USFWS, CDFW, and the East Contra Costa County Habitat Conservancy of the presence and condition of potential breeding habitat, as described below. Preconstruction surveys are not required.

Written notification to USFWS, CDFW, and the East Contra Costa County Habitat Conservancy, including photos and breeding habitat assessment, is required prior to disturbance of any suitable breeding habitat. The project proponent shall also notify these parties of the approximate date of removal of the breeding habitat at least 30 days prior to this removal to allow USFWS or CDFW staff to translocate individuals, if requested. USFWS or CDFW must notify the project proponent of their intent to translocate CTS within 14 days of receiving notice from the project proponent. The applicant must allow USFWS or CDFW access to the site prior to construction if they request it. Restrictions under this Plan on the nature of the disturbance or the date of the disturbance do not exist unless CDFW or USFWS notify the project proponent of their intent to translocate individuals within the required time period. In this case, the project proponent must coordinate the timing of disturbance of the breeding habitat to allow USFWS or CDFW to translocate the individuals. USFWS and CDFW shall be allowed 45 days to translocate individuals from the date the first written notification was submitted by the project proponent (or a longer period agreed to by the project proponent, USFWS, and CDFW).

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring participation in the ECCC HCP/NCCP, which provides a mechanism to adequately mitigate impacts to the California tiger salamanders (Draft EIR pages 4.4-57 through -58).

Impact 4.4-5. Have a substantial adverse effect, either directly or through habitat modifications, on California red-legged frogs.

Mitigation Measure 4.4-5. Implement Mitigation Measure 4.4-1(a).

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring participation in the ECCC HCP/NCCP, which provides a mechanism to adequately mitigate impacts to the California red-legged frog (Draft EIR pages 4.4-58 through -59).

Impact 4.4-6. Have a substantial adverse effect, either directly or through habitat modifications, on western pond turtle.

Mitigation Measure 4.4-6. Implement Mitigation Measure 4.4-1(a).

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring

participation in the ECCC HCP/NCCP, which provides a mechanism to adequately mitigate impacts to the western pond turtle (Draft EIR pages 4.4-59 through -60).

Impact 4.4-8. Have a substantial adverse effect, either directly or through habitat modifications, on western bumble bee.

Mitigation Measure 4.4-8. Implement Mitigation Measure 4.4-1(a).

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level. While the western bumble bee is not a covered species under the ECCC HCP/NCCP, the on-site grassland foraging habitat potentially used by the species is the same type and acreage of habitat whose loss would be mitigated by payment of the Development Fee pursuant to the HCP/NCCP, or execution of an "in-lieu-of fee" agreement. Therefore, payment of Development fees or execution of an "in-lieu of fee" agreement for covered ECCC HCP/NCCP species would provide similar mitigation for western bumble bee (Draft EIR pages 4.4-60 through -61).

Impact 4.4-12. Indirect impacts on adjacent lands.

Mitigation Measure 4.4-12(a). Implement Mitigation Measure 4.1-3.

Mitigation Measure 4.4-12(b). Prior to Improvement Plan approval, the project applicant shall prepare a list of recommended and prohibited landscaping plants for homes and common areas within the project site. The list shall be subject to review and approval by the City of Pittsburg Community Development Department. The list shall include a plant palette composed of non-invasive species and shall list invasive plant species that residents may not plant on the project site. The list of prohibited plants shall be compiled in cooperation with a qualified restoration specialist and distributed to future occupants of the project site as part of the Covenants, Conditions, and Restrictions (CC&R) applicable to future residential development.

Mitigation Measure 4.4-12(c). In deed disclosures, the project applicant shall notify all property owners/buyers of the potential interactions that may occur between pets and native wildlife. The disclosures shall discuss the presence of native animals (e.g., coyote, bobcat, mountain lion) that could prey on pets, and state that the property owners and/or residents shall not take any actions against native animals should they prey on pets that are allowed outdoors (unless danger of attacks on humans is present). The property owners shall be informed of the importance of keeping pets inside or within fenced yards for the pet's protection, as well as to protect nearby sensitive biological resources. The property owners shall also be informed of the importance of properly storing trash and not feeding wildlife so as not to attract non-native wildlife that could prey on native species.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring that lighting would not trespass onto adjacent properties, offering recommended and

prohibited landscaping plant types, and educating property owners (Draft EIR pages 4.4-63 through -66).

Furthermore, as stated in the Draft EIR, the portion of the Concord Naval Weapons Station that borders the project site to the south would be maintained as a park and open space by the East Bay Regional Park District. Maintaining this open space would provide opportunities for continued northwest-southeast wildlife movement in the area. Additionally, according to the ECCC HCP/NCCP, the project site is identified as being within the "lower" level of acquisition effort area in regards to "Needed Regional Connections with ECCC HCP/NCP System under the Maximum Urban Development Area." Thus, the project would not be considered to substantially interfere with the regional movement of wildlife species. (Final EIR page 2-5.)

Impact 4.4-14. Conflict with an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan.

Mitigation Measure 4.4-14. Implement Mitigation Measure 4.4-1(a).

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring payment of the applicable ECCC HCP/NCCP per-acre Development Fee in effect for Zone II (Draft EIR page 4.4-67).

Impact 4.4-15. Cumulative loss of biological resources.

Mitigation Measure 4.4-15. Implement Mitigation Measures 4.4-1(a) through 4.4-14.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring participation in the ECCC HCP/NCCP, which provides a mechanism to adequately mitigate the project's contribution to cumulative impacts to potentially-occurring sensitive species listed in the ECCC HCP/NCCP. The proposed project's individual impacts to species not covered under the ECCC HCP/NCCP would be mitigated to a less-than-significant level with the mitigation measures listed above (Draft EIR pages 4.4-68 through -69).

### *Cultural and Tribal Resources*

Impact 4.5-2. Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 1564.5, directly or indirectly destroy a unique paleontological resource or unique geologic features, or disturb any human remains, including those interred outside of formal cemeteries.

Mitigation Measure 4.5-2(a). In the event that any prehistoric subsurface archeological features or deposits, including locally darkened soil ("midden"), that could conceal cultural deposits, animal bone, obsidian and/or mortars are discovered during earth-moving activities, all work within 100 feet of the resource shall be halted, and the applicant shall consult with a qualified archeologist. Representatives of the

City and the qualified archeologist shall coordinate to determine the appropriate course of action. All significant cultural materials recovered shall be subject to scientific analysis and professional museum curation.

Mitigation Measure 4.5-2(b). If a human bone or bone of unknown origin is found during earth-moving activities, all work shall stop within 100 feet of the find, and the County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission, who shall notify the person most likely believed to be a descendant. The most likely descendant shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. No additional work is to take place within the immediate vicinity of the find until the identified appropriate actions have taken place.

Mitigation Measure 4.5-2(c). If a Native American site is discovered, the evaluation process shall include consultation with the appropriate Native American representatives.

If a Native American archeological, ethnographic, or a spiritual resource is discovered, all identification and treatment shall be conducted by qualified archeologists, who are certified by the Society of Professional Archeologists (SOPA) and/or meet the federal standards as stated in the Code of Federal Regulations (36 CFR 61), and are Native American representatives, who are approved by the local Native American community as scholars of the cultural traditions.

In the event that no such Native American is available, persons who represent tribal governments and/or organizations in the locale in which resources could be affected shall be consulted. If historic archeological sites are involved, all identified treatment is to be carried out by qualified historical archeologists, who shall meet either Register of Professional Archeologists (RPA), or 36 CFR 61 requirements.

Mitigation Measure 4.5-2(d). The applicant shall retain the services of a professional paleontologist/archaeologist to educate the construction crew that will be conducting grading and excavation at the project site. The education shall consist of an introduction to the geology of the project site and the kinds of fossils, archeological, and/or Native American resources that may be encountered, as well as what to do in case of a discovery.

Should any paleontological resources be unearthed by the construction crew, such as vertebrate fossils (e.g., teeth, bones), an unusually large or dense accumulation of intact invertebrates, or well-preserved plant material (e.g., leaves), then ground-disturbing activity shall be diverted to another part of the project site and the paleontologist shall be called on-site to assess the find and, if significant, recover the find in a timely matter. Finds determined significant by the paleontologist shall then be conserved and deposited with a recognized repository, such as the University of California Museum of Paleontology. The alternative mitigation would be to leave the significant finds in place, determine the extent of significant deposit, and avoid further disturbance of the significant deposit. Proof of the construction crew awareness

training shall be submitted to the City's Community Development Department in the form of a copy of training materials and the completed training attendance roster.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring appropriate handling of any encountered prehistoric subsurface archeological features, human remains, or Native American site, and educating the construction crew on resource discovery protocols (Draft EIR pages 4.5-14 through -17). Impact 4.5-3. Directly or indirectly disturb or destroy a unique tribal cultural resource, such as a site, feature, place, cultural landscape, sacred place or object with cultural value to a California Native American tribe.

Mitigation Measure 4.5-3. Implement Mitigation Measures 4.5-2(a) through 4.5-2(d).

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring appropriate handling of any encountered prehistoric subsurface archeological features, human remains, or Native American site, and educating the construction crew on resource discovery protocols (Draft EIR page 4.5-17).

### *Geology and Soils*

Impact 4.6-1. The project site is subject to seismic risks including fault rupture, strong ground shaking, and liquefaction that could adversely affect future development.

Mitigation Measure 4.6-1. As part of any future development application, the project applicant shall undertake a design-level geotechnical report that will include a subsurface exploration of soil borings and/or cone penetration tests within the development areas and laboratory soil testing to provide data for preparation of specific recommendations regarding grading, foundations, and drainage for the proposed construction. A California Registered Civil Engineer or Geotechnical Engineer shall produce a design-level geotechnical engineering report subject to prior review and written approval by the City Engineer. The report shall address the following:

1. The magnitude of remedial grading needed for the site;
2. Construction of high cut slopes and relatively deep fills;
3. The existence of adverse bedrock bedding;
4. The potential presence of artificial, undocumented fills;
5. The potential presence of compressible alluvial soils;
6. The liquefaction potential within alluvial-filled valley areas;
7. The anticipated effects of local groundshaking on the proposed development; and
8. Identification of the extent of liquefaction and lateral spreading in the potential development area.



Furthermore, the design-level geotechnical engineering report shall include project design measures and engineering techniques to avoid risks to people and structures from identified liquefaction and lateral spreading; address structures, structural foundations, and grading practices consistent with the CBC and any applicable City building and grading standards; and address both construction and operation of the project, as applicable. Design measures and engineering techniques may include, at a minimum, the following:

- Recommendations for strengthened foundations to resist excessive differential settlement associated with seismically-induced liquefaction;
- Removal and replacement of potentially liquefiable soils; and/or
- Densify potentially liquefiable soils with an in-situ ground improvement technique.

The Design Level Geotechnical Report shall identify the portions of the project site that cannot be graded and developed to meet CBC standards. Development shall not be allowed within those areas. The report shall be completed by a consultant selected and hired by the City of Pittsburg. The developer shall be responsible for the full cost of the report. Prior to the issuance of any Grading Permit and approval of a Tentative Map, the City Engineer shall review the Design Level Geotechnical Report and determine that the proposed grading conforms to the CBC.

Prior to issuance of building permits, the City shall site-inspect to ensure that construction is in accordance with the approved plans and incorporates all required design measures and engineering techniques, and that such measures perform as identified in the design-level geotechnical engineering report and conforms to the standards of the CBC.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring preparation of, and implementation of the recommendations within, a design-level geotechnical report that includes clear performance standards and timelines for implementation (Draft EIR pages 4.6-16 through -19).

Impact 4.6-2. Implementation of the project could result in substantial erosion or loss of topsoil.

Mitigation Measure 4.6-2. As part of any future development application, the project applicant shall submit an erosion control plan subject to prior review and written approval by the City Engineer to limit the erosion effects during construction of the proposed project. Measures shall be identified to limit and control the amount of erosion, and the transport of soils or sediment off of the construction site. Measures could include, but are not limited to:

- Hydro-seeding exposed soils;
- Placement of erosion control measures within drainageways and ahead of drop inlets;

- The temporary lining (during construction activities) of drop inlets with “filter fabric” (a specific type of geotextile fabric);
- The placement of straw wattles along slope contours and back-of-curb prior to installation of landscaping;
- Directing subcontractors to a single designation “wash-out” location (as opposed to allowing them to wash-out in any location they desire);
- The use of siltation fences; and
- The use of sediment basins and dust palliatives.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring preparation and implementation of an erosion control plan that includes clear performance standards and timelines for implementation (Draft EIR pages 4.6-19 through -20).

Impact 4.6-3. Implementation of the project could result in risks to people and structures associated with compressible soil, undocumented fill, expansive soils, and/or corrosive soil.

Mitigation Measure 4.6-3. The design-level geotechnical engineering report required by Mitigation Measure 4.6-1 shall address the potential for compressible soil, undocumented fill, corrosive soil, and expansive soil on the project site and shall identify engineering techniques to reduce any identified impacts to less than significance. The techniques shall include but not be limited to the following:

- Undocumented fill - the over-excavation of a minimum of three feet of soil to remove existing non-engineered fill in order to place engineered fill;
- Corrosive soil – If on-site soil is found to be corrosive to concrete, preventative measures such as protective treatment of concrete surfaces or the use of corrosion resistant materials shall be included in site design; and
- Expansive soil – The use of post-tensioned concrete mat foundations or similarly stiffened foundations systems which are designed to resist the deflections associated with soil expansion.

The Design Level Geotechnical Report shall identify the portions of the project site that cannot be graded and developed to meet CBC standards. Development shall not be allowed within those areas. The report shall be completed by a consultant selected and hired by the City of Pittsburg. The developer shall be responsible for the full cost of the report. Prior to the issuance of any Grading Permit and approval of a Tentative Map, the City Engineer shall review the Design Level Geotechnical Report and determine that the proposed grading conforms to the CBC.

Prior to issuance of building permits, the City shall site-inspect to ensure that construction is in accordance with the approved plans and incorporates all required design measures and engineering techniques, and that such measures perform as identified in the design-level geotechnical engineering report to address compressible soil, undocumented fill, corrosive soil, and expansive soil impacts and conforms to the CBC.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring implementation of all recommendations within the design-level geotechnical report that includes clear performance standards and timelines for implementation (Draft EIR pages 4.6-21 through -23).

Impact 4.6-4. Implementation of the project could result in risks to people and structures associated with landslides.

Mitigation Measure 4.6-4(a). The design-level geotechnical engineering report required by Mitigation Measure 4.6-1 shall address the existing landslides and the potential for landslides to occur throughout the project site. In addition, the design-level geotechnical engineering report shall include and address the following:

1. Characterization and remediation of existing large-scale landslides;
2. Description of the proximity of the project site and development areas to existing graded parcels;
3. Settlement and deflection of deep fills; and
4. Potential erosion of high cut slopes and fill slopes.

Furthermore, the design-level geotechnical engineering report shall include design measures to reduce the risks from landslides, which may include, but are not limited to, the following techniques:

- Graded cut and fill slopes over 15 feet in vertical height should be no steeper than 3H:1V (Horizontal:Vertical). Cut and fill slopes up to 15 feet in vertical height may be constructed at slope gradients no steeper than 2H:1V;
- Graded cut and fill slopes exceeding 30 feet in height may be provided with intermediate benches on the slope surface spaced no greater than 30 feet vertically. Benches should be at least at 8 feet wide with a concrete-lined J or V-ditch to intercept surface runoff;
- Mass grading should begin with construction of toe keys and subdrains. All fills should be adequately keyed into firm natural materials unaffected by shrinkage cracks. Recommended keyway sizes and locations will be determined by the Geotechnical Engineer and will be approximately shown in the final remedial grading plans. Additionally, where fills are placed along slopes, subexcavated benches should be planned above toe keys as filling progresses. The Geotechnical Engineer will determine the actual size of the keyways during plan review and supplemental recommendations provided during grading. Toe keyways should also be used along where debris benches are recommended in design-level geotechnical studies; and
- A Geotechnical Engineer shall prepare all grading and slope stability plans.

The Design Level Geotechnical Report shall identify the portions of the project site that cannot be graded and developed to meet CBC standards. Development shall not be allowed within those areas. The report shall be completed by a consultant selected and hired by the City of Pittsburg. The developer shall be responsible for the full cost of the report. Prior to the issuance of any Grading Permit and approval of a Tentative

Map, the City Engineer shall review the Design Level Geotechnical Report and determine that the proposed grading conforms to the CBC.

Prior to issuance of building permits, the City shall site-inspect to ensure that construction is in accordance with the approved plans and incorporates all required design measures and engineering techniques, and that such measures perform as identified in the design-level geotechnical engineering report to address landsliding and slope stability impacts and compliance with the CBC.

Mitigation Measure 4.6-4(b). The project applicant shall establish a GHAD encompassing the area within a 1,000-foot radius of the area affected by the 2007 landslide south of Vista Del Mar. Establishment of the GHAD shall ensure that potential future development or grading activity conducted within the vicinity includes proper mitigation techniques to ensure long-term stability of the area and reduce potential impacts related to slope instability. Specific grading techniques to ensure slope stability may include, but are not limited to, the techniques outlined in Mitigation Measure 4.6-4(a) of this EIR.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring implementation of all recommendations within the design-level geotechnical report that includes clear performance standards and timelines for implementation (Draft EIR pages 4.6-23 through -26).

Impact 4.6-5. Cumulative increase in the potential for geological related impacts and hazards.

Mitigation Measure 4.6-5. Implement Mitigation Measures 4.6-1(a), 4.6-3, 4.6-4(a), and 4.6-4(b).

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring preparation of, and implementation of the recommendations within, a design-level geotechnical report as well as preparation and implementation of an erosion control plan that includes clear performance standards and timelines for implementation (Draft EIR pages 4.6-27 through -28).

### *Hazards and Hazardous Materials*

Impact 4.7-1. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

#### *Asbestos-Containing Materials*

Mitigation Measure 4.7-1(a). Prior to issuance of a demolition permit for any on-site structures, the project applicant shall provide a detailed assessment to the City Planning Department pertaining to the potential presence of asbestos-containing

materials in existing on-site structures to be demolished. If asbestos-containing materials are not detected, further mitigation is not required. If asbestos-containing materials are detected, the applicant shall prepare and implement an asbestos abatement plan consistent with federal, State, and local standards, subject to review and approval by the Bay Area Air Quality Management District and the City Planning Department.

#### *Lead-Based Paint*

Mitigation Measure 4.7-1(b). Prior to issuance of a demolition permit for any on-site structures, the project applicant shall provide a detailed assessment to the City Planning Department pertaining to the potential presence of lead-based paint in existing-on-site structures to be demolished. If lead-based paint is not detected, further mitigation is not required. If lead-based paint is found, all loose and peeling paint shall be removed and disposed of by a licensed and certified lead paint removal contractor, in accordance with federal, State, and local regulations. The demolition contractor shall be informed that all paint on the buildings shall be considered as containing lead. The contractor shall take appropriate precautions to protect his/her workers, the surrounding community, and to dispose of construction waste containing lead paint in accordance with federal, State, and local regulations subject to review and approval by the Bay Area Air Quality Management District and the City Planning Department.

#### *Above-Ground Storage Tanks*

Mitigation Measure 4.7-1(c). Prior to issuance of any grading permits, the applicant shall hire a qualified geotechnical engineer to remove and abandon the two on-site ASTs in accordance with federal, State, and local guidelines, pursuant to review and approval by the City Engineer and the Contra Costa Health Services Department. In addition, an evaluation of the area surrounding the storage tanks for unusual odors, visible discoloration, or other indications of soil contamination shall be conducted. If soils suspected of being contaminated are encountered, they shall be stockpiled on plastic sheeting. Stockpiled soils shall be sampled in accordance with the San Francisco Bay Regional Water Quality Control Board guidelines, and the findings forwarded to the San Francisco Bay Regional Water Quality Control Board for review. Further remediation, if necessary, and disposal of the soils shall be conducted in accordance with State and federal guidelines.

#### *On-Site Water Supply Wells*

Mitigation Measure 4.7-1(d). Prior to initiation of any ground disturbing activities within 50 feet of a well on the project site, the applicant shall hire a licensed well contractor to obtain a well abandonment permit from the Contra Costa Health Services Department, and properly abandon the on-site wells in accordance with regional and local standards, pursuant to review and approval by the City Engineer and the Contra Costa Health Services Department.

#### *On-Site Septic Systems*

Mitigation Measure 4.7-1(e). Prior to initiation of any ground disturbing activities within 50 feet of a septic tank on the project site, the applicant shall hire a qualified geotechnical engineer to obtain a septic system abandonment permit from the Contra Costa Health Services Department, and properly abandon the on-site septic systems, pursuant to review and approval by the City Engineer and the Contra Costa Health Services Department.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring appropriate handling of potentially hazardous materials during construction and demolition (Draft EIR pages 4.7-6 through -10).

Impact 4.7-2. Emit hazardous emissions or handle hazardous materials within one-quarter mile of a school.

Mitigation Measure 4.7-2. Implement Mitigation Measures 4.7-1(a-e).

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring appropriate handling of potentially hazardous materials during construction and demolition (Draft EIR page 4.7-10).

Impact 4.7-4. Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

Mitigation Measure 4.7-4(a). Development of the proposed project shall include the installation of fire suppression systems (e.g., fire hydrants, fire sprinklers, smoke detectors) and be designed in accordance with the latest requirements of the California Fire Code. All project development plans shall be subject to review by the Contra Costa County Fire Protection District as part of the future discretionary development applications and Building Permit review processes to ensure the provisions of the California Fire Code are included in the plans. Fire-resistant roof construction, fire-resistant attachments, vegetative buffer zones, and other fire-safe measures may be required as part of their review.

Mitigation Measure 4.7-4(b). The Master Plan shall include the following language under Section 2(A)(4):

- e) Defensible space in accordance with the guidelines of the California Fire Protection Standards shall be maintained in all portions of the Master Plan Area adjacent to open space areas. If the required defensible space distances cannot be attained, structures within the defensible space shall be constructed with fire-resistant materials and practices.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring installation of appropriate fire suppression systems (Draft EIR pages 4.7-11 through -13).

### *Hydrology and Water Quality*

Impact 4.8-1. Substantially alter the existing drainage pattern of the site or area or create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site.

Mitigation Measure 4.8-1. As part of any development application, the applicant shall submit a site-specific drainage study which shall identify site design measures, source controls, and stormwater treatment and flow control measures showing that the project runoff will not exceed the capacity of existing and planned stormwater drainage systems and will not result in flooding on- or off-site. The study shall include, but not be limited to, the following:

- Calculations of pre-development runoff conditions and post-development runoff conditions, using appropriate engineering methods;
- An assessment of downstream drainage and City storm-water facilities impacted by potential project runoff in accordance with General Plan Policy 9-P-21, which requires the following:
  - Calculate potential sedimentation and runoff based on the maximum storm event and determine necessary capacity of the downstream drainage system. If the project presents potential downstream sedimentation, runoff, or flooding issues, the drainage study shall require additional mitigation including, but not limited to, limitations on grading, construction only in dry seasons, and funding for downstream improvements, maintenance, and repairs;
- Assessment of existing drainage facilities within the project area and an inventory of necessary upgrades, replacements, redesigns, and/or rehabilitation in order to accommodate the proposed project;
- Recommendation of appropriate design measures required to meet C.3 requirements, and relevant requirements from Chapter 13.28 of the City's Municipal Code; and
- A proposed maintenance program for the on-site drainage system.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring preparation of a site-specific drainage study and implementation of the proposed maintenance program (Draft EIR pages 4.8-16 through -18).

Impact 4.8-2. Violate any water quality standards or waste discharge requirements, provide substantial additional sources of polluted runoff, or otherwise substantially degrade water quality through erosion during construction.

Mitigation Measure 4.8-2. Prior to issuance of grading permits, the contractor shall prepare a Storm Water Pollution Prevention Plan (SWPPP). The developer shall file the Notice of Intent (NOI) and associated fee to the SWRCB. The SWPPP shall serve as the framework for identification, assignment, and implementation of Best Management Practices (BMPs). Construction BMPs included in the SWPPP may include, but are not limited to, the following measures:

- Silt fencing;
- Fiber Rolls;
- Vehicle washout areas and trackout control;
- Desilting Basins;
- Gravel Bag Berms; or
- Storm Drain inlet protection.

The contractor shall implement BMPs to reduce pollutants in stormwater discharges to the maximum extent practicable. Property boundaries between the project site and the Concord Hills Regional Park shall be identified, mapped, fenced, and signed for no entry. The SWPPP shall be submitted to the Director of Public Works/City Engineer for review and approval and shall remain on the project site during all phases of construction. Following implementation of the SWPPP, the contractor shall subsequently demonstrate the SWPPP's effectiveness and provide for necessary and appropriate revisions, modifications, and improvements to reduce pollutants in stormwater discharges to the maximum extent practicable.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring preparation and implementation of a Storm Water Pollution Prevention Plan and implementation of BMPs, such as silt fencing, and fiber rolls, to reduce pollutants in stormwater discharges to the maximum extent practicable (Draft EIR pages 4.8-18 through -20).

Impact 4.8-3. Violate any water quality standards or waste discharge requirements, provide substantial additional sources of polluted runoff, or otherwise substantially degrade water quality during operations.

Mitigation Measure 4.8-3. Implement Mitigation Measure 4.8-1.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring preparation of a site-specific drainage study and implementation of the proposed maintenance program (Draft EIR pages 4.8-20 through -21).

### *Land Use and Planning*

Impact 4.9-1. Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating a significant environmental effect.



Mitigation Measure 4.9-1. Prior to approval of the first tentative map for the project site, the Land Use Map for the proposed project shall be revised to remove development from all areas with elevations in excess of 900 feet. All areas within the project site with elevations in excess of 900 feet shall be designated as Open Space, and, with the exception of areas designated for development of a future water tank, future development shall not be allowed to occur in any areas of the project site with elevations exceeding 900 feet. The revised Land Use Map shall be subject to review and approval by the City of Pittsburg Community Development Department.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring that the proposed project would be consistent with all applicable land use plans, policies, and regulations of agencies with jurisdiction over the project, including (but not limited to) the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 and Contra Costa County Local Agency Formation Commission Policies (c), (d), (f), (h), (n), and (o) (Draft EIR pages 4.9-18 through 4.9-23).

### *Noise*

Impact 4.10-2. Expose persons to or generate noise levels in excess of standards established in the General Plan.

Mitigation Measure 4.10-2. As part of any development application, the applicant shall submit a site-specific noise study with an analysis of traffic and any other significant noise generators and recommended measures to reduce the exterior and interior noise levels at all future residences or other sensitive receptors to below 65 dB Ldn and 45 dB Ldn, respectively. Potential measures could include, but would not be limited to, inclusion of noise buffers in site design, restriction of two-story homes, or incorporation of noise-insulating building materials such as windows with a sound transmission class rating of 35-38 and resilient channels for walls.

Finding: The above feasible mitigation measure will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring preparation of, and implementation of the recommendations included within, a site-specific noise study (Draft EIR page 4.10-16).

Impact 4.10-3. Construction of the project could cause a substantial temporary increase in ambient noise levels.

Mitigation Measure 4.10-3(a). In compliance with Section 18.82.040 of the City's Municipal Code, construction hours shall be restricted to 8:00 AM to 5:00 PM. In addition, construction shall not occur on City-observed holidays. Such restrictions shall be noted on grading plans and other construction plans for the review and approval of the City of Pittsburg Community Development Department.

Mitigation Measure 4.10-3(b). Prior to issuance of any grading permit, the project contractor shall ensure that all equipment to be used in the construction of the project (i.e., owned, leased, and subcontractor vehicles) shall be fitted with factory equipped

mufflers and in good working order, subject to review and approval by the City Engineer. The aforementioned requirements shall be noted on the grading plans.

Mitigation Measure 4.10-3(c). If the project is constructed in phases, construction staging areas and construction activities shall be located as far from prior phases as feasible, as determined by the City Engineer. Such restrictions shall be noted on grading plans and other construction plans for the review and approval of the City of Pittsburg Community Development Department.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring construction noise occurs in allowable hours, equipment is properly maintained, and that construction phases are coordinated appropriately (Draft EIR pages 4.10-16 through -18).

### *Public Services and Utilities*

Impact 4.11-1. Result in insufficient water supply available to serve the project from existing entitlements and resources, or require the construction of new water delivery, collection, or treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

Mitigation Measure 4.11-1(a). The developer shall provide all necessary documentation required by the CCWD for its application for inclusion of the project site in the CVP. No grading or building permits shall be issued until the project site has been annexed into the CCWD service area and the developer provides the City with a "Will Serve" letter from the CCWD verifying that the project site has been included in the CVP.

Mitigation Measure 4.11-1(b). Prior to final subdivision map approval, per SB 221 (Government Code Section 66473.7), the water supplier (the City of Pittsburg) shall provide a written verification that the water supply for the proposed project is sufficient, to the satisfaction of the CCWD.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring that a "Will Serve" letter from CCWD is received prior to development (Draft EIR pages 4.11-26 through -29). CCWD has the capacity to serve the proposed project, and although deficits may occur in single- or multiple-dry years, the response to recent drought-related supply curtailments has shown that the City and CCWD could adequately respond to drought conditions and provide sufficient water supplies to the project (Draft EIR page 4.11-29).

Impact 4.11-2. Exceed wastewater treatment requirements of the applicable RWQCB, require the construction of new wastewater delivery, collection, or treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects, or require sewer service that may not be available by the area's wastewater treatment provider.

Mitigation Measure 4.11-2(a). The developer shall provide all necessary documentation required by the DDS D for its application for inclusion of the project site in the DDS D's service area. No grading or building permits shall be issued until the project site has been annexed into the DDS D service area and the developer provides the City with a "Will Serve" letter from the DDS D.

Mitigation Measure 4.11-2(b). In conjunction with the first development application within the Draft Master Plan Area, the developer shall provide to the City confirmation from the DDS D that adequate trunk sewer system capacity exists to serve the proposed project.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by ensuring that a "Will Serve" letter from DDS D is received prior to development (Draft EIR pages 4.11-29 through -31). According to the Sanitary Sewer System technical memorandum prepared for the proposed project by Isakson & Associates Inc., development of the proposed project would not result in any new capacity deficiencies at buildout (Draft EIR page 4.11-30).

#### *Transportation, Traffic, and Circulation*

Impact 4.12-4. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.

Mitigation Measure 4.12-4(a). As part of any future development applications, the project applicant shall demonstrate that the project would include bus turnouts, including shelters and bicycle racks, where appropriate. The turnouts, shelters, and bicycle racks shall be constructed with the roadway improvements consistent with General Plan Policy 7-P-29. The final location and design of the turnouts, shelters, and bicycle racks shall be submitted to the City Engineer for review and approval prior to approval of a future tentative subdivision map.

Mitigation Measure 4.12-4(b). As part of any future development applications, the project applicant shall demonstrate that the project would provide linkages to nearby pedestrian and bicycle facilities consistent with the Design Review Guidelines provided in the Draft Master Plan. The final location and design of the linkage shall be submitted to the City Engineer for review and approval prior to approval of a future tentative subdivision map.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring all future development to include provision of circulation-related facilities, as necessary, and to provide connections to nearby pedestrian and bicycle facilities (Recirculated Draft EIR pages 4.12-71 through -73).

Impact 4.12-7. Result in an internal circulation system design that does not meet City standards, substantially increase hazards due to design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment), or result in inadequate emergency access.

Mitigation Measure 4.12-7. As part of any future development applications, the project applicant shall submit a circulation plan to the City identifying how many units would be constructed before implementation of the proposed secondary access point at Bailey Road. The circulation plan shall comply with all applicable Contra Costa County Fire District standards related to emergency access.

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring submittal of a circulation plan to ensure adequate emergency access (Recirculated Draft EIR pages 4.12-78 through -79).

Impact 4.12-10. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities under Long-Term (2035) Plus Project Conditions.

Mitigation Measure 4.12-10. Implement Mitigation Measures 4.12-4(a) and 4.12-4(b).

Finding: The above feasible mitigation measures will avoid or substantially lessen the significant environmental impact described to a less-than-significant level by requiring all future development to include adequate infrastructure, including bus turnouts, shelters, bicycle racks, and linkages to nearby pedestrian and bicycle facilities, consistent with existing General Plan policies and the Design Review Guidelines included in the Draft Master Plan. (Recirculated Draft EIR page 4.12-103).

SECTION 2:  
FINDINGS ON POTENTIALLY SIGNIFICANT, UNAVOIDABLE IMPACTS

*Aesthetics*

Impact 4.1-2. Substantial degradation of the existing visual character or quality of the project site and/or the site's surroundings.

Mitigation Measure: None feasible.

Finding: Feasible mitigation to reduce the alteration of the natural topography of the project site is not available at this time. Therefore, the impact would remain significant and unavoidable (Draft EIR pages 4.1-19 through -32). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

*Air Quality and Greenhouse Gas Emissions*

Impact 4.3-1. Generation of short-term construction-related criteria air pollutant emissions in excess of 54 lbs/day for ROG, NO<sub>x</sub>, and PM<sub>2.5</sub> and 82 lbs/day for PM<sub>10</sub>.

Mitigation Measure 4.3-1. Prior to issuance of a grading permit, the project applicant shall show on the grading plans via notation that the contractor shall ensure that all off-road heavy-duty diesel-powered equipment larger than 100 horsepower (e.g., rubber tired dozers, excavators, graders, scrapers, pavers, paving equipment, and cranes) to be used for each phase of construction of the project (i.e., owned, leased, and subcontractor vehicles) shall meet USEPA emissions standards for Tier 4 engines or equivalent. The grading plans shall be submitted for review and approval by the City Engineer.

Finding: The above feasible mitigation measure will substantially lessen the significant environmental impact described by reducing construction emissions of NO<sub>x</sub>. However, NO<sub>x</sub> emissions would remain in excess of the applicable threshold of significance of 54 lbs/day. Additional feasible mitigation does not exist to reduce the NO<sub>x</sub> emissions to below the applicable threshold of significance, and the impact would remain significant and unavoidable (Draft EIR pages 4.3-32 through -34). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.3-2. Generation of operational criteria air pollutant emissions in excess of 54 lbs/day for ROG, NO<sub>x</sub>, and PM<sub>2.5</sub> and 82 lbs/day for PM<sub>10</sub> and conflict with or obstruct implementation of the 2017 Clean Air CAP, and/or the 2001 Ozone Attainment Plan.

Mitigation Measure 4.3-2. In conjunction with the submittal of each application for any development within the proposed project area, a project-level, detailed air quality analysis shall be performed. The analysis shall include, but not be limited to, quantification of operational criteria air pollutant emissions, a determination of operational air quality impacts, and identification of mitigation measures necessary to reduce any significant impacts in such a manner that ROG and NO<sub>x</sub> emissions associated with project operations would not exceed the BAAQMD 54lbs/day thresholds of significance. Mitigation measures shall be developed in coordination with the BAAQMD and shall include, those measures set forth in Mitigation Measure 4.3-5(a) and the following measures listed below:

- Use zero-VOC paints, finishes, and adhesives only;
- Install smart meters and programmable thermostats;
- Improve bike and pedestrian network (complete sidewalks, connection to adjacent areas, connection to bike network, etc.);
- Implement bicycle and pedestrian facilities such as bike lanes, routes, and paths, bike parking, sidewalks, and benches;
- Promote ridesharing, transit, bicycling, and walking for work trips;
- Promote use of public electric vehicle charging infrastructure;
- Provide traffic calming features;
- Pre-wire homes for photovoltaic systems;
- Use water efficient landscapes and native/drought-tolerant vegetation; and
- Provide electrical outlets outside of homes to allow for use of electrically powered landscaping equipment.

If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and are equal to the pollutant type and amount of the project impact being offset. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where BAAQMD would commit to reducing the type and amount of emissions identified in the agreement.

The analysis and proposed mitigation measures shall be reviewed as part of the development review process.

Finding: The above feasible mitigation measure will substantially lessen the significant environmental impact described by reducing operational emissions of ROG and NO<sub>x</sub>. However, until further project-level design details are available and a project-level air quality analysis can be performed to show otherwise, the impact is assumed to remain significant and unavoidable (Draft EIR pages 4.3-34 through -37). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR.

The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.3-4. Generation of cumulative criteria air pollutant emissions in excess of 10 tons/year for ROG, NO<sub>x</sub>, and PM<sub>2.5</sub> and 15 tons/yr for PM<sub>10</sub>.

Mitigation Measure 4.3-4. Implement Mitigation Measure 4.3-2.

Finding: The above feasible mitigation measure will substantially lessen the significant environmental impact described by reducing operational emissions of ROG and NO<sub>x</sub>. However, until further project-level design details are available and a project-level air quality analysis can be performed to show otherwise, the impact is assumed to remain significant and unavoidable (Draft EIR pages 4.3-41 through -42). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.3-5. Generation of a cumulatively considerable contribution to GHG emissions in excess of 1,100 MTCO<sub>2e</sub>/yr or 4.6 MTCO<sub>2e</sub>/SP/yr by 2020, 660 MTCO<sub>2e</sub>/yr or 2.76 MTCO<sub>2e</sub>/SP/yr by 2030, or an 80 percent reduction from 1990 levels by 2050.

Mitigation Measure 4.3-5(a). In conjunction with the submittal of each application for any development within the proposed project area, a project-level, detailed air quality analysis shall be performed. The analysis shall include, but not be limited to, quantification of operational criteria air pollutant emissions, a determination of operational air quality impacts, and identification of mitigation measures necessary to reduce any significant impacts in such a manner that project GHG emissions would not exceed 2.76 MTCO<sub>2e</sub>/SP/yr threshold of significance. Mitigation measures shall be developed in coordination with BAAQMD and shall include, but not be limited to, BAAQMD's recommended mitigation measures as follows:

- Use of cool roof materials;
- Planting of shade trees;
- Improvement of bike network (connection to adjacent areas, connection to bike network, etc.);
- Improvement of pedestrian network (complete sidewalks, connection to adjacent areas, etc.);
- Extension of transit service into project site.
- Implementation of bicycle facilities;
- Community-based traveling;
- Participation in bike sharing programs;
- Providing of charging stations and preferential parking spots for electric vehicles;
- Minimizing the use of cul-de-sacs and incomplete roadway segments;
- Installation of energy star appliances;

- Installation of solar water heating;
- Exceeding minimum CALGreen standards (e.g., adopt Tier 1 or Tier 2 voluntary measures);
- Providing community composting facilities or curbside food waste services;
- Elimination of natural gas infrastructure; and
- Reduction of VMT by 15 percent per capita consistent with SB 743 targets and OPR technical guidance.

Mitigation Measure 4.3-5(b). The project-level air quality analysis required by Mitigation Measure 4.3-5 (a) shall include an analysis of project-level GHG emissions. Such project level analyses shall include, but not be limited to, quantification of GHG emissions, as well as determination of operational GHG emission impacts which shall be evaluated prior to any tentative map approval and in accordance with the BAAQMD CEQA Guidelines adopted in April 2022, which align with the State's 2030 and 2045 carbon targets. The project-level GHG emissions shall be reduced through the implementation of the mitigation measures identified in Mitigation Measure 4.3-5 (a) designed to reduce operational GHG emissions. During future project-level reviews, the effectiveness of each implementation measure shall be quantified using the methodology shown in the 2022 Ramboll Report or using other methods supported by substantial evidence in light of project-level details included in the subject application. The City shall deem all measures in Mitigation Measure 4.3-5(a) feasible or presumptively feasible unless the applicant can demonstrate otherwise with substantial evidence.

Finding: Implementation of the above feasible mitigation measures would reduce the significant impact associated with the generation of GHG emissions. However, unless subsequent GHG emissions analysis can be performed to show otherwise, the impact is assumed to remain cumulatively considerable and significant and unavoidable (Draft EIR 4.3-42 through -45). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

### *Public Services and Utilities*

Impact 4.11-4. Result in substantial adverse physical impacts associated with the provisions of new or physically altered fire protection facilities, and/or the need for new or physically altered fire protection facilities, the construction of which could cause significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection facilities.

Mitigation Measure 4.11-4. Prior to recordation of a Final Map for any portion of the proposed project site, the project applicant shall provide proof, to the City of Pittsburg Community Development Department, that the proposed project site has been annexed into CFD 2017-1.



Finding: The above feasible mitigation measures will lessen the significant environmental impact described, as inclusion of the project site within CFD 2017-1 would ensure that special taxes would be assessed on future development within the project site, which would support the provision of emergency medical and fire protection services. However, the project site is located outside of the 1.5-mile response time radius of the nearest fire station, and mitigation that would establish project consistency with the location criteria goals prescribed in General Plan Policy 11-P-26 does not exist. No other mitigation measures were recommended to the City during the public comment period for the Draft EIR to address this impact. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.11-10. Development of the proposed project, in combination with future buildout in the City of Pittsburg, would increase demand for additional public services and utilities.

Mitigation Measure: None feasible.

Finding: The proposed project's incremental contribution to increases in demand for fire protection services would be considered significant and unavoidable (Draft EIR pages 4.11-40 through -42). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

#### *Transportation, Traffic, and Circulation*

Impact 4.12-2. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the study intersections under Existing Plus Project Conditions.

Mitigation Measure 4.12-2(a). As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Capital Improvement Program for the 2015 Update to the Contra Costa CMP (Project 1028). Such improvements would include, but would not necessarily be limited to, the following:

1. The EB SR-4 Ramps/Willow Pass Road intersection shall be signalized, a southbound left turn lane shall be added, the shared southbound through-left lane shall be restriped to be a through lane, and the eastbound approach shall be restriped to be an eastbound left turn lane and a shared eastbound through-right lane; and
2. The WB SR-4 Ramps/Willow Pass Road shall be signalized, a northbound left turn lane shall be added, the northbound shared through-left turn lane shall be restriped to be a through lane, and the westbound approach shall be restriped to be two westbound left turn lanes and a shared westbound through-right lane.

Proof of payment shall be submitted to the City of Pittsburg Community Development Department.

Mitigation Measure 4.12-2(b). As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Concord CIP (Project 2049). Such improvements would include, but would not necessarily be limited to, the following:

- The southbound approach at the Concord Boulevard and Bailey Road intersection shall be widened and restriped to include a southbound left turn lane, a southbound through lane, and a southbound right turn lane. The northbound approach shall be widened to be a northbound left turn lane and a shared through-right turn lane;
- The northbound and southbound approach shall be modified from split phasing to protected phasing; and
- The Bailey Road and Myrtle Drive intersection shall be signalized, a southbound left turn lane shall be added, and the shared southbound through-left lane shall be restriped to be a through lane.

Finding: The above feasible mitigation measures would reduce some impacts to the intersections found to operate unacceptably. However, impacts at the following study intersections would remain significant and unavoidable (Recirculated Draft EIR pages 4.12-47 through -66):

- EB SR 4 Ramps/Willow Pass Road (Intersection #2);
- WB SR 4 Ramps/Willow Pass Road (Intersection #3);
- W. Leland Road/San Marco Boulevard (Intersection #6);
- WB SR-4 Ramps/San Marco Boulevard (Intersection #18); and
- Concord Boulevard and Bailey Road (Intersection #35).

No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.12-3. Conflict with an applicable congestion management program, including, but not limited to, LOS standards, and travel demand measures, or other standards established by a county congestion management agency for designated roadways.

Mitigation Measure 4.12-3. Prior to issuance of building permits, the project applicant shall pay the necessary East Contra Costa Regional Fee. Proof of payment shall be submitted to the Community Development Department.

Finding: While implementation of the above feasible mitigation measure would alleviate some of the impacts associated with unacceptable delay index, the City of Pittsburg would not be able to guarantee the construction of any improvements on the freeway. As such, even with mitigation, the impact is significant and unavoidable

(Recirculated Draft EIR pages 4.12-66 through -71). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.12-5. Result in a projected future over-capacity freeway condition where current long-range planning studies show an under-capacity condition at a freeway segment under Existing Plus Project Conditions.

Mitigation Measure 4.12-5. Implement Mitigation Measure 4.12-3.

Finding: While implementation of the above feasible mitigation measure would reduce the above impact, the necessary improvements would require cooperation and coordination with Caltrans and CCTA. Therefore, because the City of Pittsburg would not be able to guarantee the construction of any improvements on the freeway, the impact remains significant and unavoidable. (Recirculated Draft EIR pages 4.12-73 through -76). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.12-8. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the study roadway intersections under Long-Term (2035) Plus Project Conditions.

Mitigation Measure 4.12-8(a). Prior to occupancy of the proposed buildings, the project applicant shall complete the following improvements at intersections within the City of Concord, subject to coordination with and approval by the City of Concord Traffic Engineering and Transportation Planning Division.

- The northbound approach at the Avila Road and Willow Pass Road intersection shall be restriped to include one through lane and one right turn lane;
- The southbound approach at the Clayton Road and Bailey Road intersection (Intersection #40) shall be restriped to be a southbound left-turn lane, a shared southbound through/right-turn lane, and a southbound right-turn lane; and
- The intersection timing splits at the following intersections shall be optimized: Clayton Road/Treat Boulevard (Intersection #39) and Concord Boulevard/Port Chicago Highway (Intersection #48).

Mitigation Measure 4.12-8(b). As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Capital Improvement Program for the 2015 Update to the Contra Costa CMP (Project 1832). Such improvements would include, but would not necessarily be limited to, the following:

- The southbound right turn lane at the WB SR-4 Ramps and Willow Pass Road intersection shall be converted to a free right turn lane.

Or

If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.

Mitigation Measure 4.12-8(c). As part of future development applications, the project improvement plans shall show that an eastbound left turn lane would be added to the Rio Verde Circle and San Marco Boulevard intersection. Implementation of the required improvements shall be accomplished by way of one of the following methods:

If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the proposed residences. If the improvements are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.

Or

If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.

Mitigation Measure 4.12-8(d). As part of future development applications, the project improvement plans shall show that the eastbound approach of the EB SR 4 ramps and San Marco Boulevard intersection would be restriped to be an eastbound left turn lane, a shared left-through-right lane, and an eastbound right turn lane. Implementation of the required improvements shall be accomplished by way of one of the following methods:

If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the first proposed residence. If the improvements are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.

Or

If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.

Mitigation Measure 4.12-8(e). As part of future development applications, the project improvement plans shall show that a northbound right turn lane at the W. Leland Road and Bailey Road intersection would be striped, and the shared northbound through-right lane would be restriped to be through lane. In addition, the project improvement plans shall show that a southbound right turn overlap phase and a westbound right turn overlap phase would be implemented. Implementation of the required improvements shall be accomplished by way of one of the following methods:

If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the first proposed residence. If the improvements are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.

Or

If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.

Mitigation Measure 4.12-8(f). As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP (Project S-16) to the City of Pittsburg Community Development Department. Such improvements would include optimization of timing splits at the following intersection:

1. W. Leland Road and Burton Avenue.

Proof of payment shall be submitted to the City of Pittsburg Community Development Department.

Mitigation Measure 4.12-8(g). As part of future development applications, the project improvement plans shall show that the eastbound left turn phase and westbound left turn phase at the W. Leland and Crestview Drive intersection would be changed from protected to permitting phasing. Implementation of the required improvements shall be accomplished by way of one of the following methods:

If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the first proposed residence. If the improvements are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.

Or

If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.

Mitigation Measure 4.12-8(h). Implement Mitigation Measure 4.12-2(b).

Mitigation Measure 4.12-8(i). As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP (Project ST-27) to the City of Pittsburg Community Development Department. Such improvements would include widening of Bailey Road from two lanes to four lanes. Proof of payment shall be submitted to the City of Pittsburg Community Development Department.

Finding: Implementation of the above feasible mitigation measure would reduce some of the potentially significant impacts associated to study intersections. Nonetheless, because several intersections are located outside of the City of Pittsburg's jurisdiction, completion of the proposed improvements cannot be guaranteed. Therefore, the project impact would remain significant and unavoidable. (Recirculated Draft EIR pages 4.12-79 through -98). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.12-9. Impacts related to Central and East County Routes of Regional Significance under Long-Term (2035) Plus Project Conditions.

Mitigation Measure 4.12-9. Implement Mitigation Measure 4.12-3.

Finding: Two freeway segments would not meet the MTSO criteria for Routes and Regional Significance and, thus, the project could be inconsistent with the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 and Contra Costa County Local Agency Formation Commission Policy (g). While implementation of Mitigation Measure 4.12-3 would reduce the above impact, the necessary improvements would require cooperation and coordination with Caltrans and CCTA. Therefore, because the City of Pittsburg would not be able to guarantee the construction of any improvements on the freeway, the impact remains significant and unavoidable. (Recirculated Draft EIR pages 4.12-98 through -103). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

Impact 4.12-11. Result in a projected future over-capacity freeway condition where current long-range planning studies show an under-capacity condition at a freeway segment under Long-Term (2035) Plus Project Conditions.

Mitigation Measure 4.12-11. Implement Mitigation Measure 4.12-3.

Finding: While implementation of the above feasible mitigation measure would reduce the above impact, the necessary improvements would require cooperation and coordination with Caltrans and CCTA. Therefore, because the City of Pittsburg would not be able to guarantee the construction of any improvements on the freeway, the impact remains significant and unavoidable. (Recirculated Draft EIR pages 4.12-103 through -109). No other mitigation measures were recommended to the City during the public comment period for the Draft EIR. The applicant has agreed to all mitigation measures included in the Draft EIR. Specific benefits of the project outweigh these significant impacts, as further set forth in the Statement of Overriding Considerations in Exhibit C, below.

SECTION 3:  
ADDITIONAL FINDINGS

1. The City Council finds and determines there was procedural compliance with the mandates of CEQA and that the Final EIR provides adequate, good faith, and reasoned responses to all comments raising significant environmental issues.

2. CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR, but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide examples of significant new information under this standard. The City recognizes that the Revised and Updated Final EIR incorporates information obtained by the City since the Draft EIR was completed, and contains additions, clarifications, modifications, and other changes. With respect to this information, the City Council finds that the clarifications do not cause the project to result in new or substantially more severe adverse environmental effects, or otherwise require recirculation of the EIR.

3. In making its determination to certify the Revised and Updated Final EIR and to approve the project, the City Council recognizes that a range of technical and scientific opinion exists with respect to the environmental issues. The City Council has reviewed and considered, as a whole, the evidence and analysis presented in the Draft EIR and Partially Recirculated Draft EIR, the evidence and analysis presented in the comments on the Draft EIR and Partially Recirculated Draft EIR, the evidence and analysis presented in the Revised and Updated Final EIR, the information submitted on the Revised and Updated Final EIR, and the reports prepared by the experts who prepared the EIR, the City's consultants, the applicants' consultants, and by staff, addressing those comments. The City Council has gained a comprehensive and well-rounded understanding of the environmental issues presented by the project. In turn, this understanding has enabled the City Council to make its decisions after weighing and considering the various viewpoints on these important issues. Accordingly, the City Council certifies that its findings are based on full appraisal of all of the evidence contained in the Revised and Updated Final EIR, as well as the evidence and other information in the record addressing the Revised and Updated Final EIR.

4. These findings provide the written analysis and conclusions of the City Council regarding the environmental impacts of the project and the mitigation measures identified in the Revised and Updated Final EIR and adopted by the City Council as conditions of approval for the project. In making these findings, the City Council has considered the opinions of other agencies and members of the public, including opinions that disagree with some of the thresholds of significance and analysis used in the Revised and Updated Final EIR. The City Council finds that the analysis and determination of significance thresholds are judgments within the discretion of the City Council; the analysis and significance thresholds used in the Revised and Updated Final EIR are supported by substantial evidence in the record, including the expert opinion of the EIR preparers and City consultants and staff; and the significance thresholds used in the Revised and



Updated Final EIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the project.

### Findings Concerning Alternatives

CEQA Guidelines Section 15126.6(a) specifies that the EIR identify alternatives to the project that “would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant environmental effects of the project.” “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, and social factors. In addition, consistent with PRC Section 21002, a project should not be approved if feasible alternatives would substantially lessen the project’s significant effects. Significant unavoidable impacts were identified for the project related to aesthetics, air quality and greenhouse gas emissions, public services and utilities, and transportation, traffic and circulation. The following findings determine that none of the alternatives would substantially lessen the significant and unavoidable impacts resulting from the proposed project, and two alternatives would not fully meet the project’s objectives to:

- Ensure orderly planning for the development of a large, undeveloped area in the City’s SOI consistent with the General Plan;
- Maintain an environmental equilibrium consistent with existing vegetation, soils, geology, topography, and drainage patterns;
- Avoid premature or inappropriate development that would result in incompatible uses or create public service demands exceeding the capacity of existing or planned facilities; and
- Encourage sensitive site planning and design.

#### *Alternative 1: No Project (No Build) Alternative*

The No Project (No Build) Alternative is described and analyzed on pages 6-8 through 6-10 of the Draft EIR. The No Project (No Build) Alternative to the proposed project is defined as the continuation of the existing conditions of the project site, which is currently occasionally grazed, mostly vacant land, with two existing residential structures.

Finding: This alternative is infeasible and rejected for the following separate and independent reasons, each of which alone justifies rejection of the alternative:

1. The City Council finds that the No Project Alternative is rejected as an alternative because it is inconsistent with the current General Plan land use map, the intent of the 2005 voter approved Measure P, and the following existing General Plan goals/policies in support of housing development on the site:
  - a. General Plan, Goal 2-G-34, “Encourage development of higher-end, low-density residential [in the Southwest Hills].”
  - b. General Plan, Policy 2-P-93, “Allow Low Density residential development west of Bailey Road, as shown on the General Plan Diagram. Ensure that such development is minimally visible from Bailey Road and mitigates any impacts to creeks and wetlands in the area.”

- c. General Plan, Policy 2-P-96, "Allow an overall maximum density of 3.0 du/ac within the Low Density Residential areas south of the San Marco project and outside the present Sphere of Influence line with a maximum number of 1500 residential units."
  - d. General Plan, Goal 3-G-2, "Realize the opportunities afforded by establishment of the Voter Approved Urban Limit Line to allow the City to grow in such a way as to diversify and expand the employment base, develop a range of housing opportunities, increase the depth of municipal fiscal resources, enhance the quality of urban life for all Pittsburg residents and prohibit urban development beyond the Voter Approved Urban Limit Line."
  - e. Housing Element, Goal 13-G-1, "Foster development of a variety of housing types, densities, and prices to balance the City's housing stock and meet Pittsburg's regional fair share housing needs for people of all income levels."
  - f. Housing Element, Policy 13-P-1.2, "Encourage the construction of both high end and moderate-income housing in the southern foothills, downtown, along the waterfront, and throughout Pittsburg to provide above moderate-income housing opportunities in the community and to increase economic activity within the city."
  - g. Housing Element, Policy 13-P-1.2.D, "Support the development of moderate and above moderate income housing within existing City limits such as high end condominiums, townhouses, and single-family units with premium views and amenities throughout the city to increase economic activity within these areas."
2. The City Council finds that the No Project Alternative is rejected as an alternative because it would not meet most of the basic objectives identified for the project (Draft EIR pages 6-8 through 6-9).

*Alternative 2: Mixed Use Alternative*

The Mixed-Use Alternative is described and analyzed on pages 6-10 through 6-15 of the Draft EIR. The Mixed Use Alternative would include approximately 50,000 square feet (sf) of commercial building floor area on approximately 15 acres, which would include one grocery store and several smaller flexible commercial spaces. The residential unit count would be up to 1,250 units. Development of the Mixed Use Alternative would generally be located in the same development areas as indicated in the Draft Master Plan.

Finding: This alternative is infeasible and rejected for the following separate and independent reasons, each of which alone justifies rejection of the alternative:

- 1. The City Council finds that the Mixed Use Alternative is rejected as an alternative because it would not meet all of the objectives identified for the project, and it would not substantially lessen any of the significant and unavoidable impacts that are anticipated to result due to the implementation of the proposed project (Draft EIR

pages 6-10 through 6-15). Furthermore, the Mixed Use Alternative would result in greater impacts associated with hazards and hazardous materials than the proposed project (Draft EIR page 6-13).

*Alternative 3: Clustered Development Alternative*

The Clustered Development Alternative is described and analyzed on pages 6-15 through 6-23 of the Draft EIR. The Clustered Development Alternative would include the construction of 750 single-family residences; however, the units would be clustered such that the area of development would reduce from what would occur under the proposed project to approximately 300 acres focused in the low-lying areas of the site.

Finding: This alternative is infeasible and rejected for the following separate and independent reasons, each of which alone justifies rejection of the alternative:

1. The City Council recognizes that the State of California is currently facing a severe housing shortage and housing affordability crisis.
2. The City Council recognizes that the City of Pittsburg 2015-2023 Housing Element, adopted by the City Council on May 4, 2015, includes specific goals to guide the City's approach to housing, including "Fostering development of a variety of housing types, densities, and prices to balance the city's housing stock and meet Pittsburg's regional fair share housing needs for people of all income levels." (Housing Element page 5-8.) The Housing Element also includes a series of policies for the City Council to support this goal including:
  - Encouraging the construction of both high end and moderate-income housing in the southern foothills and throughout Pittsburg to provide moderate-income housing opportunities in the community and to increase economic activity within the city (Housing Element page 5-10).
  - Meeting Pittsburg's fair share of housing regional needs (Housing Element page 5-13).
3. The City Council recognizes that Pittsburg specifically, in relation to the surrounding Contra Costa County, faces a unique need for single family housing to account for population growth over the next 20 years. Pittsburg's population growth is expected to be 1.3% per year from 2010 to 2040, and the city's population growth is at a faster rate than Contra Costa County in general. Pittsburg is expected to grow to approximately 91,600 residents and 27,510 households by 2040. (Housing Element page 2-2.) Pittsburg households also tend to be larger than Contra Costa County households in general, and Pittsburg families are more likely to contain more persons than Contra Costa County families overall. (Housing Element page 2-12.)
4. The City Council recognizes that it has not yet completed all housing production required pursuant to the City of Pittsburg's Regional Housing Needs Assessment (RHNA) under SB 35.

5. The City Council finds that the Clustered Development Alternative is rejected as an alternative because it would result in only slightly fewer impacts than the proposed project, and would not eliminate any of the significant and unavoidable impacts that are anticipated to result due to the implementation of the proposed project (Draft EIR pages 6-15 through 6-23). The City Council finds that although the Clustered Development Alternative would eliminate some environmental effects relating to Geology, Soils, and Seismicity, these effects are already mitigated to less than significant levels under the proposed project (Draft EIR pages 4.6 -25 and 6-19).
6. The City Council finds that the Clustered Development Alternative is rejected as an alternative because it would achieve the slight reduction in impacts by substantially lowering the maximum potential single-family residences of the proposed project to 750 units, reducing the housing capacity of the project by one-half in contravention of the goals and policies of the Housing Element, and substantially reducing the project's potential lower-income housing to improve the City's progress under SB 35.

*Alternative 4: Reduced Intensity Alternative*

The Reduced Intensity Alternative is described and analyzed on pages 6-23 through 6-30 of the Draft EIR. The Reduced Intensity Alternative would include the construction of 1,000 single-family residences in the same development areas as indicated in the Draft Master Plan.

Finding: This alternative is infeasible and rejected for the following separate and independent reasons, each of which alone justifies rejection of the alternative:

1. The City Council recognizes that the State of California is currently facing a severe housing shortage and housing affordability crisis.
2. The City Council recognizes that the City of Pittsburg 2015-2023 Housing Element, adopted by the City Council on May 4, 2015, includes specific goals to guide The City's approach to housing, including "Fostering development of a variety of housing types, densities, and prices to balance the city's housing stock and meet Pittsburg's regional fair share housing needs for people of all income levels." (Housing Element page 5-8.) The Housing Element also includes a series of policies for the City Council to support this goal including:
  - Encouraging the construction of both high end and moderate-income housing in the southern foothills and throughout Pittsburg to provide moderate-income housing opportunities in the community and to increase economic activity within the city (Housing Element page 5-10).
  - Meeting Pittsburg's fair share of housing regional needs (Housing Element page 5-13).
3. The City Council recognizes that Pittsburg specifically, in relation to the surrounding Contra Costa County, faces a unique need for single family housing to account for

population growth over the next 20 years. Pittsburg's population growth is expected to be 1.3% per year from 2010 to 2040, and the city's population growth is at a faster rate than Contra Costa County in general. Pittsburg is expected to grow to approximately 91,600 residents and 27,510 households by 2040. (Housing Element page 2-2.) Pittsburg households also tend to be larger than Contra Costa County households in general, and Pittsburg families are more likely to contain more persons than Contra Costa County families overall. (Housing Element page 2-12.)

4. The City Council recognizes that it has not yet completed all housing production required pursuant to the City of Pittsburg's Regional Housing Needs Assessment (RHNA) under SB 35.
5. The City Council finds that the Reduced Intensity Alternative is rejected as an alternative because it would result in only slightly fewer impacts than the proposed project, and would not substantially lessen the significant and unavoidable impacts that are anticipated to result due to the implementation of the proposed project (Draft EIR pages 6-23 through 6-30).
6. The City Council finds that the Reduced Intensity Alternative is rejected as an alternative because it would achieve the slight reduction in impacts by substantially lowering the maximum potential single-family residences of the proposed project to 1000 units, reducing the housing capacity of the project by one-third in contravention of the goals and policies of the Housing Element, and substantially reducing the project's potential lower-income housing to improve the City's progress under SB 35.

**Statement of Overriding Conditions for Adoption and Approval of the  
Faria/Southwest Hills Annexation Project**

The California Environmental Quality Act (CEQA) requires the decision-making agency to balance the environmental, economic, social, technological, and other benefits of a project against its significant unavoidable environmental effects when determining whether to approve the project. If the benefits of the project outweigh the significant unavoidable environmental effects, then those effects may be considered acceptable. CEQA requires the agency to make written findings supporting the specific reasons for considering a project acceptable when significant environmental effects are unavoidable. The reasons must be based on substantial evidence in the EIR or elsewhere in the administrative record. The reasons for proceeding with the proposed project (project), despite the significant unavoidable environmental effects that may result, are provided in this Statement of Overriding Considerations.

More specifically, Public Resources Code section 21002 provides that, "in the event specific economic, social and other conditions make infeasible such project alternatives or such mitigation measures, individual projects can be approved in spite of one or more significant effects thereof." In addition, Public Resources Code section 21002.1(c) provides that "[i]f economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, the project may nonetheless be approved or carried out at the discretion of a public agency. . . ." Finally, CEQA Guidelines section 15093(a) provides that "[i]f the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.'"

The Revised Updated and Final Environmental Impact Report (RUFER) for the project identifies all of the potential environmental effects of the project, as well as applicable policies and mitigation measures to reduce environmental impacts. The RUFER also identifies the environmental effects of the project that will remain significant and unavoidable, even after the imposition of all feasible mitigation measures, because there are no policies, mitigation measures, or alternatives considered available or practical to reduce these impacts to a less-than-significant level. The project will result in significant and unavoidable impacts in the area of aesthetics, air quality and greenhouse gas emissions, public services and utilities, and transportation, traffic, and circulation. In deciding to approve the proposed project, the City has considered each of the following unavoidable or unmitigable significant environmental impacts:

1. Impact 4.1-2. The proposed project could result in substantial degradation of the existing visual character or quality of the project site and/or the site's surroundings. Specifically, implementation of the proposed project would include grading activities and residential development that would have the potential to substantially degrade the existing visual character or quality of the project site and/or the site's surroundings.

2. Impact 4.3-1. Implementation of the proposed project could result in generation of short-term construction-related criteria air pollutant emissions in excess of 54 lbs/day for ROG, NO<sub>x</sub>, and PM<sub>2.5</sub> and 82 lbs/day for PM<sub>10</sub>. Specifically, NO<sub>x</sub> emissions related to build-out of the Draft Master Plan would remain in excess of the applicable threshold of significance of 54 lbs/day.
3. Impact 4.3-2. Implementation of the proposed project could result in generation of operational criteria air pollutant emissions in excess of 54 lbs/day for ROG, NO<sub>x</sub>, and PM<sub>2.5</sub> and 82 lbs/day for PM<sub>10</sub> and conflict with or obstruct implementation of the 2017 Clean Air CAP, and/or the 2001 Ozone Attainment Plan. Operational emissions of ROG and NO<sub>x</sub> from the future development could exceed the applicable thresholds of significance and conflict with regional air quality plans. Because project-level design details are unavailable at this time, the impact is assumed to remain significant and unavoidable.
4. Impact 4.3-4. Implementation of the proposed project could result in generation of cumulative criteria air pollutant emissions in excess of 10 tons/year for ROG, NO<sub>x</sub>, and PM<sub>2.5</sub> and 15 tons/yr for PM<sub>10</sub>. The proposed project has been evaluated at a program-level, and a guarantee cannot be made that emissions from future development in the project area would not exceed the thresholds of significance. Therefore, until further project-level design details are available and a project-level air quality analysis can be performed to show otherwise, the impact is assumed to remain significant and unavoidable.
5. Impact 4.3-5. Implementation of the proposed project could result in generation of a cumulatively considerable contribution to GHG emissions in excess of 1,100 MTCO<sub>2e</sub>/yr or 4.6 MTCO<sub>2e</sub>/SP/yr by 2020, 660 MTCO<sub>2e</sub>/yr or 2.76 MTCO<sub>2e</sub>/SP/yr by 2030, or an 80 percent reduction from 1990 levels by 2050. Operational emissions from future development in the year 2030 would not be anticipated to achieve the 40 percent emissions reduction from 1990 levels required by SB 32, and a reduction of GHG emissions to 80 percent below 1990 levels by 2050 consistent with Executive Order S-03-05 cannot be verified or guaranteed at this time. Therefore, the impact is assumed to remain significant and unavoidable.
6. Impact 4.11-4. Implementation of the proposed project could result in substantial adverse physical impacts associated with the provisions of new or physically altered fire protection facilities, and/or the need for new or physically altered fire protection facilities, the construction of which could cause significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection facilities. Because the project site is outside of the 1.5-mile response time radius of the nearest fire station, the project is considered to conflict with General Plan Policy 11-P-26.
7. Impact 4.11-10. Development of the proposed project, in combination with future buildout in the City of Pittsburg, would increase demand for additional public services and utilities. Specifically, the proposed project's incremental contribution to increases in demand for fire protection services would be considered significant and



unavoidable.

8. Impact 4.12-2. Implementation of the proposed project could conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the study intersections under Existing Plus Project Conditions. While implementation of mitigation measures would reduce some impacts to the affected intersections, impacts at the following intersections would remain significant and unavoidable:
  - EB SR 4 Ramps/Willow Pass Road (Intersection #2);
  - WB SR 4 Ramps/Willow Pass Road (Intersection #3);
  - W. Leland Road/San Marco Boulevard (Intersection #6);
  - WB SR-4 Ramps/San Marco Boulevard (Intersection #18); and
  - Concord Boulevard and Bailey Road (Intersection #35).
9. Impact 4.12-3. Implementation of the proposed project could conflict with an applicable congestion management program, including, but not limited to, LOS standards, and travel demand measures, or other standards established by a county congestion management agency for designated roadways. Specifically, project-generated traffic could increase the delay index on several freeway segments, and could conflict with the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 and Contra Costa County Local Agency Formation Commission Policy (g).
10. Impact 4.12-5. Implementation of the proposed project could result in a projected future over-capacity freeway condition where current long-range planning studies show an under-capacity condition at a freeway segment under Existing Plus Project Conditions. Two study segments (NB SR-242, between Clayton Road off-ramp and SR-4 (PM peak hour), and EB SR-4, between I-680 on-ramp and SR-242 off-ramp (PM peak hour)) would operate at unacceptable LOS under Existing Plus Project Conditions.
11. Impact 4.12-8. Implementation of the proposed project could conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the study roadway intersections under Long-Term (2035) Plus Project Conditions. Traffic generated by buildout of the Draft Master Plan Area could result in significant impacts under Long-Term (2035) Plus Project Conditions at the following study intersections:
  - Avila Road and Willow Pass Road;
  - WB SR-4 Ramps and Willow Pass Road;
  - W. Leland Road and San Marco Boulevard;
  - W. Leland Road and Bailey Road;
  - Concord Boulevard and Bailey Road;
  - Bailey Road and Myrtle Drive;
  - Clayton Road and Treat Boulevard;
  - Clayton Road and Bailey Road;
  - Bailey Road and Project Entrance; and
  - Concord Boulevard and Port Chicago Highway.

12. Impact 4.12-9. Implementation of the proposed project could result in impacts related to Central and East County Routes of Regional Significance under Long-Term (2035) Plus Project Conditions. Two freeway segments would not meet the MTSO criteria for Routes and Regional Significance and, thus, the project could be inconsistent with the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 and Contra Costa County Local Agency Formation Commission Policy (g). The necessary improvements would require cooperation and coordination with Caltrans and CCTA. Therefore, because the City of Pittsburg would not be able to guarantee the construction of any improvements on the freeway, the impact remains significant and unavoidable.
  
13. Impact 4.12-11. Implementation of the proposed project could result in a projected future over-capacity freeway condition where current long-range planning studies show an under-capacity condition at a freeway segment under Long-Term (2035) Plus Project Conditions. Two freeway segments in the East and Central County (NB SR-242, between Clayton Road off-ramp and SR-4 (PM peak hour), and EB SR-4, between I-680 on-ramp and SR-242 off-ramp (PM peak hour)) would operate at unacceptable LOS under Long-Term (2035) Plus Project Conditions.

The City Council has carefully balanced the benefits of the project against the significant unavoidable environmental effects identified in the RUFER that cannot be feasibly mitigated to a less than significant level. The City also recognizes that growth will continue to occur throughout the State, City, Sphere of Influence, and Planning Area.

Having (i) adopted all feasible mitigation measures; (ii) rejected as infeasible the alternatives to the project; (iii) recognized all significant, unavoidable impacts; and (iv) balanced the benefits of the project against the project's significant and unavoidable impacts, the City Council, pursuant to Public Resources Code sections 21002 and 21002.1 and CEQA Guidelines sections 15092 and 15093, hereby finds and determines that each of the project's long-term social, environmental, land use, economic, and other overriding considerations and benefits, as listed below, outweighs and overrides the significant unavoidable impacts identified in the RUFER. The City Council further finds and determines that any and each of the following considerations is sufficient to approve the proposed project despite any one or more of the unavoidable impacts identified, and that each of the overriding considerations is adopted with respect to each of the impacts individually, and that each consideration is severable from any other consideration and provides a separate and independent ground for the City's decision to approve the project despite the project's identified significant and unavoidable environmental impacts.

Specifically, the project's significant and unavoidable adverse impacts are outweighed by the following project benefits and considerations:

1. The project will provide citywide and regional economic benefits through tax revenues and contributions to established fee programs, which funding would be used for public improvements, services, and other benefits to community residents, employees, and visitors.

2. The project will create jobs for local residents through construction of the proposed project, which is anticipated to occur over the course of several years and, as committed to by the project applicant, will include skilled labor.
3. The project will help respond to the State Legislature's declaration of a statewide housing crisis (Government Code § 65589.5(a)(1) and (a)(2)), and will respond to existing and future housing needs in the City of Pittsburg by resulting in the development of up to 1,500 residential units.
4. Development of the project site will fulfill the voter initiative (Measure P) and General Plan land use designation, which anticipated the development of the site with residential uses and established the requirement for a greenbelt buffer for open space and ridgeline preservation along the western edge of the site, thereby effectuating the will of the voters.
5. Approval of the associated development agreement includes community benefits beyond the requirements of the Pittsburg Municipal Code, including (but not limited to): 1) payment of \$100,000 to expand the City's security camera network; 2) payment of a \$1,000,000 community benefit fee; 3) payment of \$50,000 to construct monument city entry signs; 4) installation of basic home security systems into each future house; and 5) fair share contributions to Community Facilities Districts (CFDs) for park maintenance, off-site stormwater facilities, police and other emergency services, and fire facilities, fire safety and emergency services.
6. The project is expected to result in a variety of housing types and sizes at different price points, thereby increasing housing choice and helping to ensure that households of different types and income levels have the opportunity to find suitable ownership or rental housing.
7. The project will include connections and increased access to existing parks and recreational opportunities, thereby leading to increased opportunities for existing and future residents to enjoy outdoor recreation.
8. The project will preserve open space by focusing all development within the natural valley area that runs through the middle of the site (north to south), allowing for a natural buffer on the east and the west, where several prominent ridgelines are located that would remain mostly untouched.
9. The project will increase the open space preservation area by approximately 127 acres more than what the current General Plan has planned, thereby supporting good zoning practices and leading to a more environmentally conscious development of the area.

In sum, the City Council finds and determines that approval of the project, despite the project's unavoidable impacts, will provide for orderly and well-supported continuing growth; establish a balance between future development and conservation of local resources; support commercial development to promote a healthy local economy; and provide housing for the City and the region.

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## MITIGATION MONITORING AND REPORTING PROGRAM

### INTRODUCTION

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Section 15097 of the California Environmental Quality Act (CEQA) requires all State and local agencies to establish monitoring or reporting programs for projects approved by a public agency whenever approval involves the adoption of either a “mitigated negative declaration” or specified environmental findings related to environmental impact reports.

The following is the Mitigation Monitoring and Reporting Program (MMRP) for the Faria/Southwest Hills Annexations Project. The intent of the MMRP is to ensure implementation of the mitigation measures identified within the Environmental Impact Report (EIR) for this project. Unless otherwise noted, the cost of implementing the mitigation measures as prescribed by this MMRP shall be funded by the applicant.

### COMPLIANCE CHECKLIST

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The MMRP contained herein is intended to satisfy the requirements of CEQA as they relate to the EIR for the Faria/Southwest Hills Annexations Project prepared by the City of Pittsburg. This MMRP is intended to be used by City staff and mitigation monitoring personnel to ensure compliance with mitigation measures during project implementation. Mitigation measures identified in this MMRP were developed in the EIR that was prepared for the proposed project.

The Faria/Southwest Hills Annexations Project EIR presents a detailed set of mitigation measures that will be implemented throughout the lifetime of the project. Mitigation is defined by CEQA Guidelines, Section 15370, as a measure that:

- Avoids the impact altogether by not taking a certain action or parts of an action;
- Minimizes impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifies the impact by repairing, rehabilitating, or restoring the impacted environment;
- Reduces or eliminates the impact over time by preservation and maintenance operations during the life of the project; or
- Compensates for the impact by replacing or providing substitute resources or environments.

The intent of the MMRP is to ensure the implementation of adopted mitigation measures. The MMRP will provide for monitoring of construction activities as necessary and in-the-field identification and resolution of environmental concerns.

Monitoring and documenting the implementation of mitigation measures will be coordinated by the City of Pittsburg. The table attached to this report identifies the mitigation measure, the monitoring action for the mitigation measure, the responsible party for the monitoring action, and timing of the monitoring action. The applicant will be responsible for fully understanding and effectively implementing the mitigation measures contained within the MMRP. The City will be responsible for monitoring compliance.

During construction of the project, the City will assign an inspector(s) who will be responsible for field monitoring of mitigation measure compliance. The inspector(s) will report to the City Planning Department and will be thoroughly familiar with permit conditions and the MMRP.

### **MITIGATION MONITORING AND REPORTING PROGRAM**

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The following table indicates the mitigation measure number, the impact the measure is designed to address, the measure text, the monitoring agency, implementation schedule, and an area for sign-off indicating compliance.

MITIGATION MONITORING AND REPORTING PROGRAM FARIA/SOUTHWEST HILLS ANNEXATIONS PROJECT					
Impact Number	Impact	Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
<b>4.1 Aesthetics</b>					
4.1-3	Creation of new sources of substantial light or glare that would adversely affect day or nighttime views in the area.	<p>4.1-3 <i>In conjunction with the submittal of any development applications for future development on the project site, the applicant shall prepare and submit a detailed lighting plan showing that light would not trespass onto adjacent properties to the City of Pittsburg Community Development Department for review and approval as part of the development review process. The lighting plan shall include, but not necessarily be limited to, the following provisions:</i></p> <ul style="list-style-type: none"> <li>• <i>Shield or screen lighting fixtures to direct the light downward and prevent light from spilling onto adjacent properties and nearby open space areas within the City of Concord;</i></li> <li>• <i>Place and shield or screen flood and area lighting needed for construction activities and/or security so as not to disturb adjacent residential areas and passing motorists;</i></li> <li>• <i>For public lighting, prohibit the use of light fixtures that are of unusually high intensity or brightness (e.g., harsh mercury vapor, low-pressure</i></li> </ul>	City of Pittsburg Community Development Department	In conjunction with submittal of any development applications	

MITIGATION MONITORING AND REPORTING PROGRAM FARIA/SOUTHWEST HILLS ANNEXATIONS PROJECT					
Impact Number	Impact	Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
		<p>sodium, or fluorescent bulbs) or that blink or flash; and</p> <ul style="list-style-type: none"> <li>Use appropriate building materials (such as low-glare glass, low-glare building glaze or finish, neutral, earth-toned colored paint and roofing materials), shielded or screened lighting, and appropriate signage to prevent light and glare from adversely affecting motorists on nearby roadways.</li> </ul>			
4.3 Air Quality and Greenhouse Gas Emissions					
4.3-1	Generation of short-term construction-related criteria air pollutant emissions in excess of 54 lbs/day for ROG, NOX, and PM2.5 and 82 lbs/day for PM10.	<p>4.3-1 Prior to issuance of a grading permit, the project applicant shall show on the grading plans via notation that the contractor shall ensure that all off-road heavy-duty diesel-powered equipment larger than 100 horsepower (e.g., rubber tired dozers, excavators, graders, scrapers, pavers, paving equipment, and cranes) to be used for each phase of construction of the project (i.e., owned, leased, and subcontractor vehicles) shall meet USEPA emissions standards for Tier 4 engines or equivalent. The grading plans shall be submitted for review and approval by the City Engineer.</p>	City Engineer	Prior to issuance of a grading permit	
4.3-2	Generation of operational criteria air pollutant emissions in excess of 54 lbs/day for ROG, NOX, and PM2.5	<p>4.3-2 In conjunction with the submittal of each application for any development within the proposed project area, a project-level, detailed air quality analysis shall be performed. The analysis shall include, but</p>	City of Pittsburg Community Development Department	In conjunction with submittal of subsequent applications	



MITIGATION MONITORING AND REPORTING PROGRAM FARIA/SOUTHWEST HILLS ANNEXATIONS PROJECT					
Impact Number	Impact	Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
	and 82 lbs/day for PM10 and conflict with or obstruct implementation of the 2017 Clean Air CAP, and/or the 2001 Ozone Attainment Plan.	<p><i>not be limited to, quantification of operational criteria air pollutant emissions, a determination of operational air quality impacts, and identification of mitigation measures necessary to reduce any significant impacts in such a manner that ROG and NO<sub>x</sub> emissions associated with project operations would not exceed the BAAQMD 54 lbs/day thresholds of significance. Mitigation measures shall be developed in coordination with the BAAQMD and shall include those measures set forth in Mitigation Measure 4.3-5(a) and the following measures listed below:</i></p> <ul style="list-style-type: none"> <li>• <i>Use zero-VOC paints, finishes, and adhesives only;</i></li> <li>• <i>Install smart meters and programmable thermostats;</i></li> <li>• <i>Improve bike and pedestrian network (complete sidewalks, connection to adjacent areas, connection to bike network, etc.);</i></li> <li>• <i>Implement bicycle and pedestrian facilities such as bike lanes, routes, and paths, bike parking, sidewalks, and benches;</i></li> <li>• <i>Promote ridesharing, transit, bicycling, and walking for work trips;</i></li> </ul>		within the proposed project	

<b>MITIGATION MONITORING AND REPORTING PROGRAM            FARIA/SOUTHWEST HILLS ANNEXATIONS PROJECT</b>					
<b>Impact Number</b>	<b>Impact</b>	<b>Mitigation Measure</b>	<b>Monitoring Agency</b>	<b>Implementation Schedule</b>	<b>Sign-off</b>
		<ul style="list-style-type: none"> <li>• <i>Promote use of public electric vehicle charging infrastructure;</i></li> <li>• <i>Provide traffic calming features;</i></li> <li>• <i>Pre-wire homes for photovoltaic systems;</i></li> <li>• <i>Use water efficient landscapes and native/drought-tolerant vegetation; and</i></li> <li>• <i>Provide electrical outlets outside of homes to allow for use of electrically powered landscaping equipment.</i></li> </ul> <p><i>If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and are equal to the pollutant type and amount of the project impact being offset. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where</i></p>			

<b>MITIGATION MONITORING AND REPORTING PROGRAM            FARIA/SOUTHWEST HILLS ANNEXATIONS PROJECT</b>					
<b>Impact Number</b>	<b>Impact</b>	<b>Mitigation Measure</b>	<b>Monitoring Agency</b>	<b>Implementation Schedule</b>	<b>Sign-off</b>
		<p><i>BAAQMD would commit to reducing the type and amount of emissions identified in the agreement.</i></p> <p><i>The analysis and proposed mitigation measures shall be reviewed as part of the development review process.</i></p>			
4.3-4	Generation of cumulative criteria air pollutant emissions in excess of 10 tons/year for ROG, NOX, and PM2.5 and 15 tons/yr for PM10.	4.3-4 <i>Implement Mitigation Measure 4.3-2.</i>	See Mitigation Measure 4.3-2	See Mitigation Measure 4.3-2	
4.3-5	Generation of a cumulatively considerable contribution to GHG emissions in excess of 1,100 MTCO <sub>2</sub> e/yr or 4.6 MTCO <sub>2</sub> e/SP/yr by 2020, 660 MTCO <sub>2</sub> e/yr or 2.76 MTCO <sub>2</sub> e/SP/yr by 2030, or an 80 percent reduction from 1990 levels by 2050.	4.3-5(a) <i>In conjunction with the submittal of each application for any development within the proposed project area, a project-level, detailed air quality analysis shall be performed. The analysis shall include, but not be limited to, quantification of operational criteria air pollutant emissions, a determination of operational air quality impacts, and identification of mitigation measures necessary to reduce any significant impacts in such a manner that project GHG emissions would not exceed 2.76 MTCO<sub>2</sub>e/SP/yr threshold of significance. Mitigation measures shall be developed in coordination with BAAQMD and shall include, but not be limited to, BAAQMD's recommended mitigation measures as follows:</i>	City of Pittsburg Community Development Department	In conjunction with submittal of each application within the proposed project area	

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		<ul style="list-style-type: none"> <li>• <i>Use of cool roof materials;</i></li> <li>• <i>Planting of shade trees;</i></li> <li>• <i>Improvement of bike network (connection to adjacent areas, connection to bike network, etc.);</i></li> <li>• <i>Improvement of pedestrian network (complete sidewalks, connection to adjacent areas, etc.);</i></li> <li>• <i>Extension of transit service into project site;</i></li> <li>• <i>Implementation of bicycle facilities;</i></li> <li>• <i>Community-based traveling;</i></li> <li>• <i>Participation in bike sharing programs;</i></li> <li>• <i>Providing of charging stations and preferential parking spots for electric vehicles;</i></li> <li>• <i>Minimizing the use of cul-de-sacs and incomplete roadway segments;</i></li> <li>• <i>Installation of energy star appliances;</i></li> <li>• <i>Installation of solar water heating;</i></li> <li>• <i>Exceeding minimum CALGreen standards (e.g., adopt Tier 1 or Tier 2 voluntary measures);</i></li> <li>• <i>Providing community composting facilities or curb-side food waste services;</i></li> </ul>			

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		<ul style="list-style-type: none"> <li>• Elimination of natural gas infrastructure; and</li> <li>• Reduction of VMT by 15 percent per capita consistent with SB 743 targets and OPR technical guidance.</li> </ul> <p>4.3-5(b) <i>The project-level air quality analysis required by Mitigation Measure 4.3-5(a) shall include an analysis of project-level GHG emissions. Such project-level analyses shall include, but not be limited to, quantification of GHG emissions, as well as determination of operational GHG emission impacts, which shall be evaluated prior to any tentative map approval and in accordance with the BAAQMD CEQA Guidelines adopted in April 2022, which align with the State's 2030 and 2045 carbon targets. The project-level GHG emissions shall be reduced through the implementation of the mitigation measures identified in Mitigation Measure 4.3-5(a) designed to reduce operational GHG emissions. During future project-level reviews, the effectiveness of each implementation measure shall be quantified using the methodology shown in the 2022 Ramboll Report or using other methods supported by substantial evidence in light of project-level details included in the subject application. The City shall deem</i></p>			

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		<i>all measures in Mitigation Measure 4.3-5(a) feasible or presumptively feasible unless the applicant can demonstrate otherwise with substantial evidence.</i>			
4.4 Biological Resources					
4.4-1	Have a substantial adverse effect, either directly or through habitat modifications, on special-status plant species.	<p><i>4.4-1(a) Prior to the issuance of grading or construction permits for each phase of development of the project, the applicant shall pay the applicable ECCC HCP/NCCP per-acre Development Fee in effect for Zone II in compliance with Section 15.108.070 of the Pittsburg Municipal Code. The Development Fee will cover the development of habitat that primarily includes annual grassland. At the discretion of the East Contra Costa County Habitat Conservancy, the fee may also be required for the 72.9 acres of Open Space that would be temporarily disturbed by grading. Payment of the Development Fee would address the loss of potential habitat of special-status plant species associated with grasslands. The fees would be used in part to protect these affected special-status plant species by bringing existing populations of the species under protection.</i></p> <p><i>Alternately, the project applicant may, in accordance with the terms of Pittsburg Municipal Code Chapter 15.108, offer to</i></p>	<p>City of Pittsburg Community Development Department</p> <p><i>East Contra Costa County Habitat Conservancy</i></p>	Prior to issuance of grading or construction permits	

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		<p><i>dedicate land or create and restore wetlands in lieu of some or all of the mitigation fees. All applicable mitigation fees shall be paid, or an “in-lieu-of fee” agreement executed, prior to the issuance of a grading permit for the project.</i></p> <p><i>The Pittsburg Community Development Department and the Contra Costa County Conservancy shall approve the final method of compliance with the ECCC HCP/NCCP provisions.</i></p> <p>4.4-1(b) <i>Prior to the issuance of grading or construction permits for each phase of development of the project, additional rare plant surveys shall be conducted for bent-flowered fiddleneck, big tarplant, round-leaved filaree, Mt. Diablo fairy-lantern, Mt. Diablo buckwheat, fragrant fritillary, Diablo helianthella, Brewer’s western flax, showy golden madia, Mt. Diablo cottonweed, woodland woollythreads, adobe navarretia, shining navarretia, and rock sanicle. The surveys shall be appropriately timed and shall cover all potentially suitable on-site habitats. If none of the species occurs in the project development area, further mitigation is not required.</i></p>	<p>City of Pittsburg            Community Development Department</p> <p>East Contra Costa County            Habitat Conservancy</p>	<p>Prior to issuance of grading or construction permits</p>	

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		<p>4.4-1(c) <i>If any of the above species occurs in the project development area, future development plans shall be designed to avoid such species, to the maximum extent feasible. If avoidance of the identified species is unavoidable, the project applicant shall notify the East Contra Costa County Habitat Conservancy of the construction schedule so as to allow the East Contra Costa County Habitat Conservancy the option to salvage the population(s) in accordance with HCP/NCCP Conservation Measure 3.10 (Plant Salvage when Impacts are Unavoidable) described below. In addition, the project applicant shall confirm with the East Contra Costa County Habitat Conservancy that the take limits of the HCP/NCCP for the species identified in Impact 4.4-1 have not been breached (at the time of writing this EIR, the take limits have not been breached for the special-status plant species in question).</i></p> <p><u>Perennial Covered Plants</u></p> <p><i>Where removal of covered plant species cannot be avoided by approved covered activities, such as construction activities associated with development of the project site, the East Contra Costa County Habitat Conservancy has the option of salvaging</i></p>	<p>City of Pittsburg            Community Development Department</p> <p>East Contra Costa County Habitat Conservancy</p>	<p>If any of the species listed in Mitigation Measure 4.4-1(b) occur in the project development area</p>	



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		<p><i>the covered plants. Salvage methods for perennial species shall be tested for whole individuals, cuttings, and seeds. Salvage measures shall include the evaluation of techniques for transplanting as well as germinating seed in garden or greenhouse and then transplanting to suitable habitat sites in the field. Techniques shall be tested for each species, and appropriate methods shall be identified through research and adaptive management. Where plants are transplanted or seeds distributed to the field they shall be located in preserves in suitable habitat to establish new populations. Field trials shall be conducted to evaluate the efficacy of different methods and determine the best methods to establish new populations. New populations shall be located such that they constitute separate populations and do not become part of an existing population of the species, as measured by the potential for genetic exchange among individuals through pollen or propagule (e.g., seed, fruit) dispersal. Transplanting within the preserves shall only minimally disturb existing native vegetation and soils. Supplemental watering may be provided as necessary to increase the chances of successful establishment, but must be removed following initial population</i></p>			

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		<p><i>establishment. See also All Covered Plants below.</i></p> <p><u><i>Annual Covered Plants</i></u></p> <p><i>For annual covered plants, mature seeds shall be collected from all individuals for which removal cannot be avoided (or if the population is large, a representative sample of individuals). If storage is necessary, seed storage studies shall be conducted to determine the best storage techniques for each species. If needed, studies shall be conducted on seed germinated and plants grown to maturity in garden or greenhouse to propagate larger numbers of seed. Seed propagation methods shall ensure that genetic variation is not substantially affected by propagation (i.e., selection for plants best adapted to cultivated conditions). Field studies shall be conducted through the Adaptive Management Program to determine the efficacy and best approach to dispersal of seed into suitable habitat. Where seeds are distributed to the field, they shall be located in preserves in suitable habitat to establish new populations. If seed collection methods fail (e.g., due to excessive seed predation by insects), alternative propagation techniques will be necessary. See also All Covered Plants below.</i></p>			

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		<p style="text-align: center;"><u>All Covered Plants</u></p> <p><i>All salvage operations shall be conducted by the East Contra Costa County Habitat Conservancy. To ensure enough time to plan salvage operations, project proponents shall notify the East Contra Costa County Habitat Conservancy of their schedule for removing the covered plant population.</i></p> <p><i>The East Contra Costa County Habitat Conservancy may conduct investigations into the efficacy of salvaging seeds from the soil seed bank for both perennial and annual species. The soil seed bank may add to the genetic variability of the population. Covered species may be separated from the soil through garden/greenhouse germination or other appropriate means. Topsoil taken from impact sites shall not be distributed into preserves because of the risk of spreading new nonnative and invasive plants to preserves For salvage operations, the East Contra Costa County Habitat Conservancy shall transplant new populations such that they constitute separate populations and do not become part of an existing population of the species, as measured by the potential for genetic exchange among individuals</i></p>			

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		<p><i>through pollen or propagule (e.g., seed, fruit) dispersal. Transplanting or seeding “receptor” sites (i.e., habitat suitable for establishing a new population) should be carefully selected on the basis of physical, biological, and logistical considerations (Fiedler and Laven 1996); some examples of these are listed below.</i></p> <ul style="list-style-type: none"> <li>• <i>Historic range of the species;</i></li> <li>• <i>Soil type;</i></li> <li>• <i>Soil moisture;</i></li> <li>• <i>Topographic position, including slope and aspect;</i></li> <li>• <i>Site hydrology;</i></li> <li>• <i>Mycorrhizal associates (this may be important for Mount Diablo manzanita);</i></li> <li>• <i>Presence or absence of typical associated plant species; and</i></li> <li>• <i>Presence or absence of herbivores or plant competitors. Site accessibility for establishment, monitoring, and protection from trampling by cattle or trail users.</i></li> </ul>			
4.4-2	Have a substantial adverse effect, either directly or through habitat modifications, on special-status bird species, including those	<p><i>Golden Eagle</i></p> <p>4.4-2(a) <i>Implement Mitigation Measure 4.4-1(a).</i></p>	See Mitigation Measure 4.4-1(a)	See Mitigation Measure 4.4-1(a)	

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	covered under the East Contra Costa County HCP/NCCP, such as Swainson’s hawk, tricolored blackbird, burrowing owl, and golden eagle.	<p>4.4-2(b) <i>The project shall implement the following avoidance measures for potential effects on golden eagles during construction:</i></p> <ul style="list-style-type: none"> <li><i>Based on the potential for active nests, prior to implementation of construction activities, including tree removal, a qualified biologist shall conduct a pre-construction survey to establish whether an active golden eagle nest is present on the project site or within 0.5 mile of the project site to the extent the biologist can gain access. If an active nest is not present, further mitigation is not required. If an occupied nest is present, minimization requirements and construction monitoring shall be required, as detailed below.</i></li> <li><i>Construction activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the construction activity (e.g., steep topography, dense vegetation, limited activities) indicate that a</i></li> </ul>	<p>City of Pittsburg Community Development Department</p> <p>East Contra Costa County Habitat Conservancy</p>	During construction	

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		<p><i>smaller buffer could be appropriate or that a larger buffer should be implemented, the East Contra Costa County Habitat Conservancy shall coordinate with CDFW/USFWS to determine the appropriate buffer size.</i></p> <ul style="list-style-type: none"> <li><i>Construction monitoring shall ensure that no construction activities occur within the buffer zone established around an active nest. Construction monitoring shall ensure that direct effects to golden eagles are avoided.</i></li> </ul> <p><i>Swainson's Hawk</i></p> <p>4.4-2(c) <i>Implement Mitigation Measure 4.4-1(a).</i></p> <p>4.4-2(d) <i>The project applicant shall implement the following avoidance measures for potential effects on Swainson's hawk nests during construction:</i></p> <ul style="list-style-type: none"> <li><i>Prior to ground disturbing activities during the nesting season (March 15 through September 15), a qualified biologist shall conduct a pre-construction survey no more than one month prior to construction to establish whether</i></li> </ul>	<p>See Mitigation Measure 4.4-1(a)</p> <p>City of Pittsburg Community Development Department</p> <p>CDFW</p>	<p>See Mitigation Measure 4.4-1(a)</p> <p>During construction</p>	

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		<p><i>occupied Swainson's hawk nests occur on or within 1,000 feet of the area of proposed construction. If occupied nests are not found, then further mitigation is not required.</i></p> <ul style="list-style-type: none"> <li><i>If occupied nests are found, project construction activity shall not occur within a 1,000-foot buffer zone distance from the nest unless a lesser buffer zone is approved by the City in consultation with CDFW. During the nesting season, construction activities shall be avoided within the established buffer zone to prevent nest abandonment. Construction monitoring shall be required to ensure that the established buffer zone is adhered to. If young fledge prior to September 15, construction activities can proceed normally without a buffer zone. If an active nest site is present but shielded from view and noise by other development or other features, the City may waive this avoidance measure (establishment of a buffer zone) if approved by the CDFW.</i></li> </ul> <p><i>Burrowing Owl</i></p> <p><i>4.4-2(e) Implement Mitigation Measure 4.4-1(a).</i></p>	See Mitigation Measure 4.4-1(a)	See Mitigation Measure 4.4-1(a)	

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		<p>4.4-2(f) <i>The project applicant shall implement the following measures to avoid or minimize impacts to western burrowing owl:</i></p> <ul style="list-style-type: none"> <li><i>No more than 14 days prior to initiation of ground disturbing activities, the project applicant shall retain a qualified burrowing owl biologist to conduct a take avoidance survey of the proposed project site, any off-site improvement areas, and all publicly accessible potential burrowing owl habitat within 500 feet of the project construction footprint. The survey shall be performed in accordance with the applicable sections of the March 7, 2012, CDFW's Staff Report on Burrowing Owl Mitigation guidelines. If the survey does not identify any nesting burrowing owls on the proposed project site, further mitigation is not required. The take avoidance survey shall be submitted to the City of Pittsburg Community Development Department for review. The survey periods and number of surveys are identified below:</i></li> </ul>	<p>City of Pittsburg Community Development Department</p> <p>CDFW</p>	<p>No more than 14 days prior to initiation of ground disturbing activities</p>	



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		<ul style="list-style-type: none"> <li>○ <i>If construction related activities commence during the non-breeding season (1 September to 31 January), a minimum of one take avoidance survey shall be conducted of that phase and all publicly accessible potential burrowing owl habitat within 500 feet of the construction footprint of that phase.</i></li> <li>○ <i>If construction related activities commence during the early breeding season (1 February to 15 April), a minimum of one take avoidance survey shall be conducted of that phase and all publicly accessible potential burrowing owl habitat within 500 feet of the construction footprint of that phase.</i></li> <li>○ <i>If construction related activities commence during the breeding season (16 April to 30 August), a minimum of three take avoidance</i></li> </ul>			

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		<p><i>surveys shall be conducted of that phase and all publicly accessible potential burrowing owl habitat within 500 feet of the construction footprint of that phase. If construction related activities commence after 15 June, at least one of the three surveys shall be completed after 15 June.</i></p> <ul style="list-style-type: none"> <li>○ <i>Because the owls are known to occur nearby and may take up occupancy on a site under construction, the take avoidance survey shall be conducted prior to the start of any new phase, and/or if construction-related activity is delayed or suspended for more than 30 days.</i></li> <li>• <i>If active burrowing owl dens are found within the survey area in an area where disturbance would occur, the project applicant shall implement measures consistent with the applicable portions of the March 7, 2012, CDFW's Staff</i></li> </ul>			

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		<p><i>Report on Burrowing Owl Mitigation guidelines. If needed, as determined by the biologist, the formulation of avoidance and minimization approaches would be developed in coordination with the CDFW. The avoidance and minimization approaches would likely include burrow avoidance buffers during the nesting season (February to August). For burrowing owls present on-site, outside of the nesting season, passive exclusion of owls from the burrows could be utilized under a CDFW-approved burrow exclusion plan.</i></p> <p>4.4-2(g) <i>If active owl burrows are present and the project would impact active burrows, the project applicant shall provide compensatory mitigation for the permanent loss of burrowing owl habitat at a ratio of 2.5 acres of higher quality owl habitat for every one acre of suitable owl habitat disturbed. The calculation of habitat loss may exclude acres currently occupied by hardscape or structures. Such mitigation may include the permanent protection of land that is deemed to be suitable burrowing owl habitat through a conservation easement deeded to a non-</i></p>	<p>City of Pittsburg Community Development Department  CDFW</p>	<p>During construction</p>	

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		<p><i>profit conservation organization or public agency with a conservation mission, or the purchase of burrowing owl conservation bank credits from a CDFW-approved burrowing owl conservation bank. A record of the compensatory mitigation provided by the project applicant shall be submitted to the City of Pittsburg Community Development Department prior to initiation of ground disturbing activities.</i></p> <p><i>Tricolored Blackbird and Other Special-Status Avian Species</i></p> <p>4.4-2(h) <i>Implement Mitigation Measure 4.4-1(a).</i></p> <p>4.4-2(i) <i>If construction activities commence anytime during the nesting/breeding season of native bird species potentially nesting on or near the project site (typically February through August in the project region), a pre-construction survey for nesting birds shall be conducted by a qualified biologist within two weeks of the commencement of construction activities.</i></p> <p><i>If active nests are found in areas that could be directly affected or are within 500 feet of construction and would be subject to prolonged construction-related noise, a no-disturbance buffer zone shall be created</i></p>	<p>City of Pittsburg Community Development Department</p> <p>CDFW</p>	<p>Prior to construction activities</p>	

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		<p><i>around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted within them shall be a minimum of 500 feet for raptors, and a minimum of 50 feet for other species, and may be enlarged by taking into account factors such as the following:</i></p> <ul style="list-style-type: none"> <li><i>Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;</i></li> <li><i>Distance and amount of vegetation or other screening between the construction site and the nest; and</i></li> <li><i>Sensitivity of individual nesting species and behaviors of the nesting birds.</i></li> </ul>			
4.4-3	Have a substantial adverse effect, either directly or through habitat modifications, on special-status mammals, including San Joaquin kit fox, San Joaquin pocket mouse, American badger, and special-status bats.	<p><i>San Joaquin Kit Fox, San Joaquin pocket mouse, and American Badger</i></p> <p><i>4.4-3(a) Implement Mitigation Measure 4.4-1(a).</i></p> <p><i>San Joaquin Kit Fox</i></p> <p><i>4.4-3(b) The project shall implement the following avoidance measures for potential effects on San Joaquin kit fox during construction:</i></p>	<p>See Mitigation Measure 4.4-1(a)</p> <p>City of Pittsburg Community</p>	<p>See Mitigation Measure 4.4-1(a)</p> <p>During construction</p>	

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		<ul style="list-style-type: none"> <li>• <i>Prior to any ground disturbance, a USFWS/CDFW-qualified biologist shall conduct a pre-construction survey within the proposed disturbance footprint and a surrounding 250-foot radius. The survey shall establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (USFWS 1999). The pre-construction survey shall be conducted no more than 30 days prior to ground disturbance. On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. Adjacent parcels under different land ownership are not required to be surveyed. The status of all surveyed dens shall be determined and mapped. Written results of pre-construction surveys shall be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. Concurrence is</i></li> </ul>	Development Department CDFW USFWS		

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		<p><i>not required prior to ground disturbance.</i></p> <ul style="list-style-type: none"> <li>• <i>If San Joaquin kit foxes and/or suitable dens are identified in the survey area, the measures described below shall be implemented.</i> <ul style="list-style-type: none"> <li>o <i>If a San Joaquin kit fox den is discovered in the proposed development footprint, the den shall be monitored for 3 days by a USFWS/CDFW-qualified biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.</i></li> <li>o <i>Unoccupied dens shall be destroyed immediately to prevent subsequent use.</i></li> <li>o <i>If a natal or pupping den is found, USFWS and CDFW shall be notified immediately. The den shall not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFW.</i></li> </ul> </li> </ul>			

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		<ul style="list-style-type: none"> <li>o <i>If kit fox activity is observed at the den during the initial 3-day monitoring period, the den shall be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of the biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).</i></li> </ul>			



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		<ul style="list-style-type: none"> <li><i>If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances shall be demarcated. The configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). Ground disturbance activities shall not occur within the exclusion zones. Exclusion zone radii for potential dens shall be at least 50 feet and shall be demarcated with four to five flagged stakes. Exclusion zone radii for known dens shall be at least 100 feet and shall be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.</i></li> </ul> <p><i>San Joaquin Pocket Mouse</i></p> <p>4.4-3(c) <i>Grading and vegetation clearing activities shall be conducted in a uniform direction to allow mobile animals, such as San Joaquin pocket mouse, the ability to escape the disturbance area into adjacent undisturbed habitat, and to prevent creating fragmented islands of habitat that would eventually be cleared/graded. The language of this</i></p>			
			City Engineer	Prior to issuance of grading permit	

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		<p><i>mitigation shall be included, via notation, on any grading plans approved within the Draft Master Plan development area.</i></p> <p><i>American Badger</i></p> <p>4.4-3(d) <i>A pre-construction survey for potential den sites shall be conducted by a qualified biologist no more than four weeks before commencement of initial ground disturbance activities. If an occupied den is found (and if young are not present), then any badgers present shall be removed from the den either by trapping or the use of exclusionary devices. Prior to implementation, the removal method shall be approved by CDFW. If trapped, the badgers shall be moved to other suitable habitat. Once any badgers are trapped or excluded, the dens shall be excavated by hand and refilled to prevent reoccupation. Exclusion shall continue until the badgers are successfully excluded from the site, as determined by a qualified biologist. Badgers shall not be relocated if it is determined by the biologists that young are or may be present.</i></p>	<p>City of Pittsburg Community Development Department</p> <p>CDFW</p>	<p>No more than four weeks prior to commencement of initial ground disturbance activities</p>	
4.4-4	Have a substantial adverse effect, either directly or through habitat modifications,	<p>4.4-4(a) <i>Implement Mitigation Measure 4.4-1(a).</i></p> <p>4.4-4(b) <i>Prior to any ground disturbance, a USFWS/CDFW-approved biologist shall</i></p>	<p>See Mitigation Measure 4.4-1(a)</p> <p>USFWS</p>	<p>See Mitigation Measure 4.4-1(a)</p>	

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	on California tiger salamanders.	<p><i>identify potential breeding habitat for CTS. If the project fills or surrounds suitable breeding habitat, the project proponent shall notify USFWS, CDFW, and the East Contra Costa County Habitat Conservancy of the presence and condition of potential breeding habitat, as described below. Preconstruction surveys are not required.</i></p> <p><i>Written notification to USFWS, CDFW, and the East Contra Costa County Habitat Conservancy, including photos and breeding habitat assessment, is required prior to disturbance of any suitable breeding habitat. The project proponent shall also notify these parties of the approximate date of removal of the breeding habitat at least 30 days prior to this removal to allow USFWS or CDFW staff to translocate individuals, if requested. USFWS or CDFW must notify the project proponent of their intent to translocate CTS within 14 days of receiving notice from the project proponent. The applicant must allow USFWS or CDFW access to the site prior to construction if they request it. Restrictions under this Plan on the nature of the disturbance or the date of the disturbance do not exist unless CDFW or USFWS notify the project proponent of their intent to translocate individuals within the required time period.</i></p>	<p>CDFW</p> <p>East Contra Costa County Habitat Conservancy</p>	<p>Prior to any ground disturbance</p>	

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		<i>In this case, the project proponent must coordinate the timing of disturbance of the breeding habitat to allow USFWS or CDFW to translocate the individuals. USFWS and CDFW shall be allowed 45 days to translocate individuals from the date the first written notification was submitted by the project proponent (or a longer period agreed to by the project proponent, USFWS, and CDFW).</i>			
4.4-5	Have a substantial adverse effect, either directly or through habitat modifications, on California red-legged frogs.	4.4-5 <i>Implement Mitigation Measure 4.4-1(a).</i>	See Mitigation Measure 4.4-1(a)	See Mitigation Measure 4.4-1(a)	
4.4-6	Have a substantial adverse effect, either directly or through habitat modifications, on western pond turtle.	4.4-6 <i>Implement Mitigation Measure 4.4-1(a).</i>	See Mitigation Measure 4.4-1(a)	See Mitigation Measure 4.4-1(a)	
4.4-8	Have a substantial adverse effect, either directly or through habitat modifications, on western bumble bee.	4.4-8 <i>Implement Mitigation Measure 4.4-1(a).</i>	See Mitigation Measure 4.4-1(a)	See Mitigation Measure 4.4-1(a)	
4.4-12	Indirect impacts on adjacent lands.	4.4-12(a) <i>Implement Mitigation Measure 4.1-3.</i>  4.4-12(b) <i>Prior to Improvement Plan approval, the project applicant shall prepare a list of</i>	See Mitigation Measure 4.1-3  City of Pittsburg Community	See Mitigation Measure 4.1-3	

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		<p><i>recommended and prohibited landscaping plants for homes and common areas within the project site. The list shall be subject to review and approval by the City of Pittsburg Community Development Department. The list shall include a plant palette composed of non-invasive species and shall list invasive plant species that residents may not plant on the project site. The list of prohibited plants shall be compiled in cooperation with a qualified restoration specialist and distributed to future occupants of the project site as part of the Covenants, Conditions, and Restrictions (CC&amp;R) applicable to future residential development.</i></p>	Development Department	Prior to approval of Improvement Plans	
		<p>4.4-12(c) <i>In deed disclosures, the project applicant shall notify all property owners/buyers of the potential interactions that may occur between pets and native wildlife. The disclosures shall discuss the presence of native animals (e.g., coyote, bobcat, mountain lion) that could prey on pets, and state that the property owners and/or residents shall not take any actions against native animals should they prey on pets that are allowed outdoors (unless danger of attacks on humans is present). The property owners shall be informed of the importance of keeping pets inside or within fenced yards for the pet's protection, as well as to</i></p>	City of Pittsburg Community Development Department	Prior to subsequent final map approvals	

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		<i>protect nearby sensitive biological resources. The property owners shall also be informed of the importance of properly storing trash and not feeding wildlife so as not to attract non-native wildlife that could prey on native species.</i>			
4.4-14	Conflict with an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan.	4.4-14 <i>Implement Mitigation Measure 4.4-1(a).</i>	See Mitigation Measure 4.4-1(a)	See Mitigation Measure 4.4-1(a)	
4.4-15	Cumulative loss of biological resources.	4.4-15 <i>Implement Mitigation Measures 4.4-1(a) through 4.4-14.</i>	See Mitigation Measures 4.4-1(a) through 4.4-14	See Mitigation Measures 4.4-1(a) through 4.4-14	
<b>4.5 Cultural and Tribal Resources</b>					
4.5-2	Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 1564.5, directly or indirectly destroy a unique paleontological resource or unique geologic features, or disturb any human remains, including those	4.5-2(a) <i>In the event that any prehistoric subsurface archeological features or deposits, including locally darkened soil (“midden”), that could conceal cultural deposits, animal bone, obsidian and/or mortars are discovered during earth-moving activities, all work within 100 feet of the resource shall be halted, and the applicant shall consult with a qualified archeologist. Representatives of the City and the qualified archeologist shall coordinate to determine the appropriate</i>	City of Pittsburg Representative  Qualified Archeologist	In the event that any prehistoric subsurface archeological features or deposits are discovered during earth-moving activities	

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	interred outside of formal cemeteries.	<p><i>course of action. All significant cultural materials recovered shall be subject to scientific analysis and professional museum curation.</i></p> <p>4.5-2(b) <i>If a human bone or bone of unknown origin is found during earth-moving activities, all work shall stop within 100 feet of the find, and the County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission, who shall notify the person most likely believed to be a descendant. The most likely descendant shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. No additional work is to take place within the immediate vicinity of the find until the identified appropriate actions have taken place.</i></p> <p>4.5-2(c) <i>If a Native American site is discovered, the evaluation process shall include consultation with the appropriate Native American representatives.</i></p> <p><i>If a Native American archeological, ethnographic, or a spiritual resource is discovered, all identification and treatment shall be conducted by qualified archeologists, who are certified by the</i></p>	<p>City of Pittsburg Community Development Department</p> <p>Contra Costa County Coroner</p> <p>NAHC, if the remains are determined to be Native American</p> <p>Appropriate Native American Representatives</p>	<p>If human bone or bone of unknown origin is found during earth- moving activities</p> <p>If a Native American site is discovered</p>	

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		<p><i>Society of Professional Archeologists (SOPA) and/or meet the federal standards as stated in the Code of Federal Regulations (36 CFR 61), and are Native American representatives, who are approved by the local Native American community as scholars of the cultural traditions.</i></p> <p><i>In the event that no such Native American is available, persons who represent tribal governments and/or organizations in the locale in which resources could be affected shall be consulted. If historic archeological sites are involved, all identified treatment is to be carried out by qualified historical archeologists, who shall meet either Register of Professional Archeologists (RPA), or 36 CFR 61 requirements.</i></p> <p>4.5-2(d) <i>The applicant shall retain the services of a professional paleontologist/archaeologist to educate the construction crew that will be conducting grading and excavation at the project site. The education shall consist of an introduction to the geology of the project site and the kinds of fossils, archeological, and/or Native American resources that may be encountered, as well as what to do in case of a discovery.</i></p>	City of Pittsburg Community Development Department	Prior to commencement of construction activities	



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		<p><i>Should any paleontological resources be unearthed by the construction crew, such as vertebrate fossils (e.g., teeth, bones), an unusually large or dense accumulation of intact invertebrates, or well-preserved plant material (e.g., leaves), then ground-disturbing activity shall be diverted to another part of the project site and the paleontologist shall be called on-site to assess the find and, if significant, recover the find in a timely matter. Finds determined significant by the paleontologist shall then be conserved and deposited with a recognized repository, such as the University of California Museum of Paleontology. The alternative mitigation would be to leave the significant finds in place, determine the extent of significant deposit, and avoid further disturbance of the significant deposit. Proof of the construction crew awareness training shall be submitted to the City's Community Development Department in the form of a copy of training materials and the completed training attendance roster.</i></p>			
4.5-3	Directly or indirectly disturb or destroy a unique tribal cultural resource, such as a site, feature, place, cultural landscape, sacred place or object with cultural	4.5-3 <i>Implement Mitigation Measures 4.5-2(a) through 4.5-2(d).</i>	See Mitigation Measures 4.5-2(a) through 4.5-2(d)	See Mitigation Measures 4.5-2(a) through 4.5-2(d)	

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	value to a California Native American tribe.				
<b>4.6 Geology, Soils, and Seismicity</b>					
4.6-1	The project site is subject to seismic risks including fault rupture, strong ground shaking, and liquefaction that could adversely affect future development.	<p><i>4.6-1 As part of any future development application, the project applicant shall undertake a design-level geotechnical report that will include a subsurface exploration of soil borings and/or cone penetration tests within the development areas and laboratory soil testing to provide data for preparation of specific recommendations regarding grading, foundations, and drainage for the proposed construction. A California Registered Civil Engineer or Geotechnical Engineer shall produce a design-level geotechnical engineering report subject to prior review and written approval by the City Engineer. The report shall address the following:</i></p> <ol style="list-style-type: none"> <li><i>1. The magnitude of remedial grading needed for the site;</i></li> <li><i>2. Construction of high cut slopes and relatively deep fills;</i></li> <li><i>3. The existence of adverse bedrock bedding;</i></li> <li><i>4. The potential presence of artificial, undocumented fills;</i></li> <li><i>5. The potential presence of compressible alluvial soils;</i></li> </ol>	City Engineer	As part of any future development application	

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		<p>6. <i>The liquefaction potential within alluvial-filled valley areas;</i></p> <p>7. <i>The anticipated effects of local groundshaking on the proposed development; and</i></p> <p>8. <i>Identification of the extent of liquefaction and lateral spreading in the potential development area.</i></p> <p><i>Furthermore, the design-level geotechnical engineering report shall include project design measures and engineering techniques to avoid risks to people and structures from identified liquefaction and lateral spreading; address structures, structural foundations, and grading practices consistent with the CBC and any applicable City building and grading standards; and address both construction and operation of the project, as applicable. Design measures and engineering techniques may include, at a minimum, the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Recommendations for strengthened foundations to resist excessive differential settlement associate with seismically-induced liquefaction;</i></li> <li>• <i>Removal and replacement of potentially liquefiable soils; and/or</i></li> </ul>			

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		<ul style="list-style-type: none"> <li>Densify potentially liquefiable soils with an in-situ ground improvement technique.</li> </ul> <p>The Design Level Geotechnical Report shall identify the portions of the project site that cannot be graded and developed to meet CBC standards. Development shall not be allowed within those areas. The report shall be completed by a consultant selected and hired by the City of Pittsburg. The developer shall be responsible for the full cost of the report. Prior to the issuance of any Grading Permit and approval of a Tentative Map, the City Engineer shall review the Design Level Geotechnical Report and determine that the proposed grading conforms to the CBC.</p> <p>Prior to issuance of building permits, the City shall site-inspect to ensure that construction is in accordance with the approved plans and incorporates all required design measures and engineering techniques, and that such measures perform as identified in the design-level geotechnical engineering report and conforms to the standards of the CBC.</p>			
4.6-2	Implementation of the project could result in substantial erosion or loss of topsoil.	4.6-2 As part of any future development application, the project applicant shall submit an erosion control plan subject to prior review and written approval by the	City Engineer	As part of any future development application	

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		<p><i>City Engineer to limit the erosion effects during construction of the proposed project. Measures shall be identified to limit and control the amount of erosion, and the transport of soils or sediment off of the construction site. Measures could include, but are not limited to:</i></p> <ul style="list-style-type: none"> <li>• <i>Hydro-seeding exposed soils;</i></li> <li>• <i>Placement of erosion control measures within drainageways and ahead of drop inlets;</i></li> <li>• <i>The temporary lining (during construction activities) of drop inlets with “filter fabric” (a specific type of geotextile fabric);</i></li> <li>• <i>The placement of straw wattles along slope contours and back-of-curb prior to installation of landscaping;</i></li> <li>• <i>Directing subcontractors to a single designation “wash-out” location (as opposed to allowing them to wash-out in any location they desire);</i></li> <li>• <i>The use of siltation fences; and</i></li> <li>• <i>The use of sediment basins and dust palliatives.</i></li> </ul>			
4.6-3	Implementation of the project could result in risks to people and	4.6-3 <i>The design-level geotechnical engineering report required by Mitigation Measure 4.6-1 shall address the potential for</i>	City Engineer	As part of any future	

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	structures associated with compressible soil, undocumented fill, expansive soils, and/or corrosive soil.	<p><i>compressible soil, undocumented fill, corrosive soil, and expansive soil on the project site and shall identify engineering techniques to reduce any identified impacts to less than significance. The techniques shall include but not be limited to the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Undocumented fill - the over-excavation of a minimum of three feet of soil to remove existing non-engineered fill in order to place engineered fill;</i></li> <li>• <i>Corrosive soil – If on-site soil is found to be corrosive to concrete, preventative measures such as protective treatment of concrete surfaces or the use of corrosion resistant materials shall be included in site design; and</i></li> <li>• <i>Expansive soil – The use of post-tensioned concrete mat foundations or similarly stiffened foundations systems which are designed to resist the deflections associated with soil expansion.</i></li> </ul> <p><i>The Design Level Geotechnical Report shall identify the portions of the project site that cannot be graded and developed to meet CBC standards. Development shall</i></p>		development application	

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		<p><i>not be allowed within those areas. The report shall be completed by a consultant selected and hired by the City of Pittsburg. The developer shall be responsible for the full cost of the report. Prior to the issuance of any Grading Permit and approval of a Tentative Map, the City Engineer shall review the Design Level Geotechnical Report and determine that the proposed grading conforms to the CBC.</i></p> <p><i>Prior to issuance of building permits, the City shall site-inspect to ensure that construction is in accordance with the approved plans and incorporates all required design measures and engineering techniques, and that such measures perform as identified in the design-level geotechnical engineering report to address compressible soil, undocumented fill, corrosive soil, and expansive soil impacts and conforms to the CBC.</i></p>			
4.6-4	Implementation of the project could result in risks to people and structures associated with landslides.	<p>4.6-4(a) <i>The design-level geotechnical engineering report required by Mitigation Measure 4.6-1 shall address the existing landslides and the potential for landslides to occur throughout the project site. In addition, the design-level geotechnical engineering report shall include and address the following:</i></p>	City Engineer	As part of any future development application	

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		<ol style="list-style-type: none"> <li>1. Characterization and remediation of existing large-scale landslides;</li> <li>2. Description of the proximity of the project site and development areas to existing graded parcels;</li> <li>3. Settlement and deflection of deep fills; and</li> <li>4. Potential erosion of high cut slopes and fill slopes.</li> </ol> <p>Furthermore, the design-level geotechnical engineering report shall include design measures to reduce the risks from landslides, which may include, but are not limited to, the following techniques:</p> <ul style="list-style-type: none"> <li>• Graded cut and fill slopes over 15 feet in vertical height should be no steeper than 3H:1V (Horizontal:Vertical). Cut and fill slopes up to 15 feet in vertical height may be constructed at slope gradients no steeper than 2H:1V;</li> <li>• Graded cut and fill slopes exceeding 30 feet in height may be provided with intermediate benches on the slope surface spaced no greater than 30 feet vertically. Benches should be at least at 8 feet wide with a concrete-lined J or V-ditch to intercept surface runoff;</li> </ul>			



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		<ul style="list-style-type: none"> <li>• <i>Mass grading should begin with construction of toe keys and subdrains. All fills should be adequately keyed into firm natural materials unaffected by shrinkage cracks. Recommended keyway sizes and locations will be determined by the Geotechnical Engineer and will be approximately shown in the final remedial grading plans. Additionally, where fills are placed along slopes, subexcavated benches should be planned above toe keys as filling progresses. The Geotechnical Engineer will determine the actual size of the keyways during plan review and supplemental recommendations provided during grading. Toe keyways should also be used along where debris benches are recommended in design-level geotechnical studies; and</i></li> <li>• <i>A Geotechnical Engineer shall prepare all grading and slope stability plans.</i></li> </ul> <p><i>The Design Level Geotechnical Report shall identify the portions of the project site that cannot be graded and developed to meet CBC standards. Development shall</i></p>			

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		<p><i>not be allowed within those areas. The report shall be completed by a consultant selected and hired by the City of Pittsburg. The developer shall be responsible for the full cost of the report. Prior to the issuance of any Grading Permit and approval of a Tentative Map, the City Engineer shall review the Design Level Geotechnical Report and determine that the proposed grading conforms to the CBC.</i></p> <p><i>Prior to issuance of building permits, the City shall site-inspect to ensure that construction is in accordance with the approved plans and incorporates all required design measures and engineering techniques, and that such measures perform as identified in the design-level geotechnical engineering report to address landsliding and slope stability impacts and compliance with the CBC.</i></p>			
		<p>4.6-4(b) <i>The project applicant shall establish a GHAD encompassing the area within a 1,000-foot radius of the area affected by the 2007 landslide south of Vista Del Mar. Establishment of the GHAD shall ensure that potential future development or grading activity conducted within the vicinity includes proper mitigation techniques to ensure long-term stability of the area and reduce potential impacts</i></p>	City Engineer	As part of any future development application within 1,000 feet of Vista Del Mar	

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		<i>related to slope instability. Specific grading techniques to ensure slope stability may include, but are not limited to the techniques outlined in Mitigation Measure 4.6-4(a) of this EIR</i>			
4.6-5	Cumulative increase in the potential for geological related impacts and hazards.	4.6-5 <i>Implement Mitigation Measures 4.6-1(a), 4.6-3, 4.6-4(a), and 4.6-4(b).</i>	See Mitigation Measures 4.6-1(a), 4.6-3, 4.6-4(a), and 4.6-4(b)	See Mitigation Measures 4.6-1(a), 4.6-3, 4.6-4(a), and 4.6-4(b)	
<b>4.7 Hazards and Hazardous Materials</b>					
4.7-1	Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.	<i>Asbestos-Containing Materials</i>  4.7-1(a) <i>Prior to issuance of a demolition permit for any on-site structures, the project applicant shall provide a detailed assessment to the City Planning Department pertaining to the potential presence of asbestos-containing materials in existing on-site structures to be demolished. If asbestos-containing materials are not detected, further mitigation is not required. If asbestos-containing materials are detected, the applicant shall prepare and implement an asbestos abatement plan consistent with federal, State, and local standards, subject to review and approval by the Bay Area Air Quality Management District and the City Planning Department.</i>	City of Pittsburg Planning Department  BAAQMD	Prior to issuance of a demolition permit	

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		<p><i>Lead-Based Paint</i></p> <p>4.7-1(b) <i>Prior to issuance of a demolition permit for any on-site structures, the project applicant shall provide a detailed assessment to the City Planning Department pertaining to the potential presence of lead-based paint in existing-on-site structures to be demolished. If lead-based paint is not detected, further mitigation is not required. If lead-based paint is found, all loose and peeling paint shall be removed and disposed of by a licensed and certified lead paint removal contractor, in accordance with federal, State, and local regulations. The demolition contractor shall be informed that all paint on the buildings shall be considered as containing lead. The contractor shall take appropriate precautions to protect his/her workers, the surrounding community, and to dispose of construction waste containing lead paint in accordance with federal, State, and local regulations subject to review and approval by the Bay Area Air Quality Management District and the City Planning Department.</i></p>	City of Pittsburg Planning Department	Prior to issuance of a demolition permit	
		<p><i>Above-Ground Storage Tanks</i></p> <p>4.7-1(c) <i>Prior to issuance of any grading permits, the applicant shall hire a qualified geotechnical engineer to remove and</i></p>	City Engineer	Prior to issuance of a grading permit	

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		<p><i>abandon the two on-site ASTs in accordance with federal, State, and local guidelines, pursuant to review and approval by the City Engineer and the Contra Costa Health Services Department. In addition, an evaluation of the area surrounding the storage tanks for unusual odors, visible discoloration, or other indications of soil contamination shall be conducted. If soils suspected of being contaminated are encountered, they shall be stockpiled on plastic sheeting. Stockpiled soils shall be sampled in accordance with the San Francisco Bay Regional Water Quality Control Board guidelines, and the findings forwarded to the San Francisco Bay Regional Water Quality Control Board for review. Further remediation, if necessary, and disposal of the soils shall be conducted in accordance with State and federal guidelines.</i></p> <p><i>On-Site Water Supply Wells</i></p> <p>4.7-1(d) <i>Prior to initiation of any ground disturbing activities within 50 feet of a well on the project site, the applicant shall hire a licensed well contractor to obtain a well abandonment permit from the Contra Costa Health Services Department, and properly abandon the on-site wells in accordance with regional and local</i></p>	<p>Contra Costa Health Services Department RWQCB</p> <p>City Engineer Contra Costa Health Services Department</p>	<p>Prior to initiation of any ground disturbing activities within 50 feet of a well</p>	

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		<p><i>standards, pursuant to review and approval by the City Engineer and the Contra Costa Health Services Department.</i></p> <p><i>On-Site Septic Systems</i></p> <p>4.7-1(e) <i>Prior to initiation of any ground disturbing activities within 50 feet of a septic tank on the project site, the applicant shall hire a qualified geotechnical engineer to obtain a septic system abandonment permit from the Contra Costa Health Services Department, and properly abandon the on-site septic systems, pursuant to review and approval by the City Engineer and the Contra Costa Health Services Department.</i></p>	<p>City Engineer</p> <p>Contra Costa Health Services Department</p>	<p>Prior to initiation of any ground disturbing activities within 50 feet of a septic tank</p>	
4.7-2	Emit hazardous emissions or handle hazardous materials within one-quarter mile of a school.	4.7-2 <i>Implement Mitigation Measures 4.7-1(a-e).</i>	See Mitigation Measures 4.7-1(a-e)	See Mitigation Measures 4.7-1(a-e)	
4.7-4	Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.	4.7-4(a) <i>Development of the proposed project shall include the installation of fire suppression systems (e.g., fire hydrants, fire sprinklers, smoke detectors) and be designed in accordance with the latest requirements of the California Fire Code. All project development plans shall be subject to review by the Contra Costa County Fire Protection District as part of the future discretionary development applications and Building Permit review processes to</i>	Contra Costa County Fire Protection District	Prior to approval of development plans	

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		<p><i>ensure the provisions of the California Fire Code are included in the plans. Fire-resistant roof construction, fire-resistant attachments, vegetative buffer zones, and other fire-safe measures may be required as part of their review.</i></p> <p>4.7-4(b) <i>The Master Plan shall include the following language under Section 2(A)(4):</i></p> <p><i>e) Defensible space in accordance with the guidelines of the California Fire Protection Standards shall be maintained in all portions of the Master Plan Area adjacent to open space areas. If the required defensible space distances cannot be attained, structures within the defensible space shall be constructed with fire-resistant materials and practices.</i></p>	City of Pittsburg Planning Department	Prior to Master Plan approval	
4.8 Hydrology and Water Quality					
4.8-1	Substantially alter the existing drainage pattern of the site or area, or create or contribute runoff water which would exceed the capacity of existing or planned stormwater	4.8-1 <i>As part of any development application, the applicant shall submit a site-specific drainage study which shall identify site design measures, source controls, and stormwater treatment and flow control measures showing that the project runoff will not exceed the capacity of existing and planned stormwater drainage systems and</i>	City Engineer	In conjunction with submittal of any development application	

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	drainage systems, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site.	<p><i>will not result in flooding on- or off-site. The study shall include, but not be limited to, the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Calculations of pre-development runoff conditions and post-development runoff conditions, using appropriate engineering methods;</i></li> <li>• <i>An assessment of downstream drainage and City storm-water facilities impacted by potential project runoff in accordance with General Plan Policy 9-P-21, which requires the following:</i> <ul style="list-style-type: none"> <li>○ <i>Calculate potential sedimentation and runoff based on the maximum storm event and determine necessary capacity of the downstream drainage system. If the project presents potential downstream sedimentation, runoff, or flooding issues, the drainage study shall require additional mitigation including, but not limited to, limitations on grading, construction only in dry seasons, and funding for downstream improvements, maintenance, and repairs;</i></li> </ul> </li> </ul>			



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		<ul style="list-style-type: none"> <li>Assessment of existing drainage facilities within the project area and an inventory of necessary upgrades, replacements, redesigns, and/or rehabilitation in order to accommodate the proposed project;</li> <li>Recommendation of appropriate design measures required to meet C.3 requirements, and relevant requirements from Chapter 13.28 of the City's Municipal Code; and</li> <li>A proposed maintenance program for the on-site drainage system.</li> </ul>			
4.8-2	Violate any water quality standards or waste discharge requirements, provide substantial additional sources of polluted runoff, or otherwise substantially degrade water quality through erosion during construction.	4.8-2 Prior to issuance of grading permits, the contractor shall prepare a Storm Water Pollution Prevention Plan (SWPPP). The developer shall file the Notice of Intent (NOI) and associated fee to the SWRCB. The SWPPP shall serve as the framework for identification, assignment, and implementation of Best Management Practices (BMPs). Construction BMPs included in the SWPPP may include, but are not limited to, the following measures: <ul style="list-style-type: none"> <li>Silt fencing;</li> <li>Fiber Rolls;</li> <li>Vehicle washout areas and trackout control;</li> <li>Desilting Basins;</li> <li>Gravel Bag Berms; or</li> </ul>	Director of Public Works/City Engineer	Prior to issuance of grading permits	

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		<ul style="list-style-type: none"> <li>Storm Drain inlet protection.</li> </ul> <p>The contractor shall implement BMPs to reduce pollutants in stormwater discharges to the maximum extent practicable. Property boundaries between the project site and the Concord Hills Regional Park shall be identified, mapped, fenced, and signed for no entry. The SWPPP shall be submitted to the Director of Public Works/City Engineer for review and approval and shall remain on the project site during all phases of construction. Following implementation of the SWPPP, the contractor shall subsequently demonstrate the SWPPP's effectiveness and provide for necessary and appropriate revisions, modifications, and improvements to reduce pollutants in stormwater discharges to the maximum extent practicable.</p>			
4.8-3	Violate any water quality standards or waste discharge requirements, provide substantial additional sources of polluted runoff, or otherwise substantially degrade water quality during operations.	4.8-3 Implement Mitigation Measure 4.8-1.	See Mitigation Measure 4.8-1	See Mitigation Measure 4.8-1	

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<b>4.9 Land Use and Planning</b>					
4.9-1	Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating a significant environmental effect.	<i>4.9-1 Prior to approval of the first tentative map for the project site, the Land Use Map for the proposed project shall be revised to remove development from all areas with elevations in excess of 900 feet. All areas within the project site with elevations in excess of 900 feet shall be designated as Open Space, and, with the exception of areas designated for development of a future water tank, future development shall not be allowed to occur in any areas of the project site with elevations exceeding 900 feet. The revised Land Use Map shall be subject to review and approval by the City of Pittsburg Community Development Department.</i>	City of Pittsburg Community Development Department	Prior to approval of the first Tentative Map	
<b>4.10 Noise</b>					
4.10-2	Expose persons to or generate noise levels in excess of standards established in the General Plan.	<i>4.10-2 As part of any development application, the applicant shall submit a site-specific noise study with an analysis of traffic and any other significant noise generators and recommended measures to reduce the exterior and interior noise levels at all future residences or other sensitive receptors to below 65 dB Ldn and 45 dB Ldn, respectively. Potential measures could include, but would not be limited to, inclusion of noise buffers in site design,</i>	City Engineer	In conjunction with submittal of any development application	

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		<i>restriction of two-story homes, or incorporation of noise-insulating building materials such as windows with a sound transmission class rating of 35-38 and resilient channels for walls.</i>			
4.10-3	Construction of the project could cause a substantial temporary increase in ambient noise levels.	<p>4.10-3(a) <i>In compliance with Section 18.82.040 of the City’s Municipal Code, construction hours shall be restricted to 8:00 AM to 5:00 PM. In addition, construction shall not occur on City-observed holidays. Such restrictions shall be noted on grading plans and other construction plans for the review and approval of the City of Pittsburg Community Development Department.</i></p> <p>4.10-3(b) <i>Prior to issuance of any grading permit, the project contractor shall ensure that all equipment to be used in the construction of the project (i.e., owned, leased, and subcontractor vehicles) shall be fitted with factory equipped mufflers and in good working order, subject to review and approval by the City Engineer. The aforementioned requirements shall be noted on the grading plans.</i></p> <p>4.10-3(c) <i>If the project is constructed in phases, construction staging areas and construction activities shall be located as far from prior phases as feasible, as determined by the City Engineer. Such restrictions shall be noted on grading plans</i></p>	<p>City of Pittsburg Community Development Department</p> <p>City Engineer</p> <p>City Engineer City of Pittsburg Community Development Department</p>	<p>Prior to approval of construction plans</p> <p>Prior to issuance of grading permit</p> <p>Prior to approval of construction plans</p>	

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		<i>and other construction plans for the review and approval of the City of Pittsburg Community Development Department.</i>			
<b>4.11 Public Services and Utilities</b>					
4.11-1	Result in insufficient water supply available to serve the project from existing entitlements and resources, or require the construction of new water delivery, collection, or treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.	<p><i>4.11-1(a) The developer shall provide all necessary documentation required by the CCWD for its application for inclusion of the project site in the CVP. No grading or building permits shall be issued until the project site has been annexed into the CCWD service area and the developer provides the City with a “Will Serve” letter from the CCWD verifying that the project site has been included in the CVP.</i></p> <p><i>4.11-1(b) Prior to final subdivision map approval, per SB 221 (Government Code Section 66473.7), the water supplier (the City of Pittsburg) shall provide a written verification that the water supply for the proposed project is sufficient, to the satisfaction of the CCWD.</i></p>	<p>City of Pittsburg Community Development Department  CCWD</p> <p>City of Pittsburg Community Development Department  CCWD</p>	<p>Prior to issuance of grading or building permits</p> <p>Prior to final subdivision map approval</p>	
4.11-2	Exceed wastewater treatment requirements of the applicable RWQCB, require the construction of new wastewater delivery, collection, or treatment facilities or expansion	<p><i>4.11-2(a) The developer shall provide all necessary documentation required by the DDS D for its application for inclusion of the project site in the DDS D’s service area. No grading or building permits shall be issued until the project site has been annexed into the DDS D service area and the developer</i></p>	<p>City of Pittsburg Community Development Department  DDS D</p>	<p>Prior to issuance of grading or building permits</p>	

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	of existing facilities, the construction of which could cause significant environmental effects, or require sewer service that may not be available by the area's wastewater treatment provider.	4.11-2(b) <i>In conjunction with the first development application within the Draft Master Plan area, the developer shall provide to the City confirmation from the DDS D that adequate trunk sewer system capacity exists to serve the proposed project.</i>	City of Pittsburg Community Development Department  DDS D	In conjunction with the first development application	
4.11-4	Result in substantial adverse physical impacts associated with the provisions of new or physically altered fire protection facilities, and/or the need for new or physically altered fire protection facilities, the construction of which could cause significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection facilities.	4.11-4 <i>Prior to recordation of a Final Map for any portion of the proposed project site, the project applicant shall provide proof, to the City of Pittsburg Community Development Department, that the proposed project site has been annexed into CFD 2017-1.</i>			
<b>4.12 Recirculated Transportation, Traffic, and Circulation</b>					
4.12-2	Conflict with an applicable plan,	4.12-2(a) <i>As part of future development applications, the project applicant shall pay the fair-</i>	City of Pittsburg Community	In conjunction with the first	

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	ordinance or policy establishing measures of effectiveness for the performance of the study intersections under Existing Plus Project Conditions.	<p><i>share fee for the improvements planned in the Capital Improvement Program for the 2015 Update to the Contra Costa CMP (Project 1028). Such improvements would include, but would not necessarily be limited to, the following:</i></p> <ol style="list-style-type: none"> <li><i>1. The EB SR-4 Ramps/Willow Pass Road intersection shall be signalized, a southbound left turn lane shall be added, the shared southbound through-left lane shall be restriped to be a through lane, and the eastbound approach shall be restriped to be an eastbound left turn lane and a shared eastbound through-right lane; and</i></li> <li><i>2. The WB SR-4 Ramps/Willow Pass Road shall be signalized, a northbound left turn lane shall be added, the northbound shared through-left turn lane shall be restriped to be a through lane, and the westbound approach shall be restriped to be two westbound left turn lanes and a shared westbound through-right lane.</i></li> </ol> <p><i>Proof of payment shall be submitted to the City of Pittsburg Community Development Department.</i></p>	Development Department	development application	

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		<p>4.12-2(b) <i>As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Concord CIP (Project 2049). Such improvements would include, but would not necessarily be limited to, the following:</i></p> <ul style="list-style-type: none"> <li>• <i>The southbound approach at the Concord Boulevard and Bailey Road intersection shall be widened and restriped to include a southbound left turn lane, a southbound through lane, and a southbound right turn lane. The northbound approach shall be widened to be a northbound left turn lane and a shared through-right turn lane;</i></li> <li>• <i>The northbound and southbound approach shall be modified from split phasing to protected phasing; and</i></li> <li>• <i>The Bailey Road and Myrtle Drive intersection shall be signalized, a southbound left turn lane shall be added, and the shared southbound through-left lane shall be restriped to be a through lane.</i></li> </ul>	City of Pittsburg Community Development Department	In conjunction with the first development application	



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4.12-3	Conflict with an applicable congestion management program, including, but not limited to, LOS standards, and travel demand measures, or other standards established by a county congestion management agency for designated roadways.	4.12-3 <i>Prior to issuance of building permits, the project applicant shall pay the necessary East Contra Costa Regional Fee. Proof of payment shall be submitted to the Community Development Department.</i>	City of Pittsburg Community Development Department	Prior to issuance of building permits	
4.12-4	Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.	4.12-4(a) <i>As part of any future development applications, the project applicant shall demonstrate that the project would include bus turnouts, including shelters and bicycle racks, where appropriate. The turnouts, shelters, and bicycle racks shall be constructed with the roadway improvements consistent with General Plan Policy 7-P-29. The final location and design of the turnouts, shelters, and bicycle racks shall be submitted to the City Engineer for review and approval prior to approval of a future tentative subdivision map.</i>	City Engineer	In conjunction with the first development application	
		4.12-4(b) <i>As part of any future development applications, the project applicant shall demonstrate that the project would provide linkages to nearby pedestrian and bicycle facilities consistent with the Design Review</i>	City Engineer	In conjunction with the first development application	

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		<i>Guidelines provided in the Draft Master Plan. The final location and design of the linkage shall be submitted to the City Engineer for review and approval prior to approval of a future tentative subdivision map.</i>			
4.12-5	Result in a projected future over-capacity freeway condition where current long-range planning studies show an under-capacity condition at a freeway segment under Existing Plus Project Conditions.	4.12-5. <i>Implement Mitigation Measure 4.12-3.</i>	See Mitigation Measure 4.12-3	See Mitigation Measure 4.12-3	
4.12-7	Result in an internal circulation system design that does not meet City standards, substantially increase hazards due to design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment), or result in inadequate emergency access.	4.12-7 <i>As part of any future development applications, the project applicant shall submit a circulation plan to the City identifying how many units would be constructed before implementation of the proposed secondary access point at Bailey Road. The circulation plan shall comply with all applicable Contra Costa County Fire District standards related to emergency access.</i>	City of Pittsburg Community Development Department	In conjunction with the first development application	
4.12-8	Conflict with an applicable plan, ordinance or policy establishing measures of	4.12-8(a) <i>Prior to occupancy of the proposed buildings, the project applicant shall complete the following improvements at intersections within the City of Concord,</i>	City Engineer	Prior to occupancy	

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	effectiveness for the performance of the study roadway intersections under Long-Term (2035) Plus Project Conditions.	<p><i>subject to coordination with and approval by the City of Concord Traffic Engineering and Transportation Planning Division.</i></p> <ul style="list-style-type: none"> <li>• <i>The northbound approach at the Avila Road and Willow Pass Road intersection shall be restriped to include one through lane and one right turn lane;</i></li> <li>• <i>The southbound approach at the Clayton Road and Bailey Road intersection shall be restriped to be a southbound left-turn lane, a shared southbound through/right-turn lane, and a southbound right-turn lane; and</i></li> <li>• <i>The intersection timing splits at the following intersections shall be optimized: Clayton Road/Treat Boulevard (Intersection #39) and Concord Boulevard/Port Chicago Highway (Intersection #48).</i></li> </ul> <p>4.12-8(b) <i>As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Capital Improvement Program for the 2015 Update to the Contra Costa CMP (Project 1832). Such improvements would include, but would not necessarily be limited to, the following:</i></p>	City of Pittsburg Community Development Department	In conjunction with the first development application	

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		<ul style="list-style-type: none"> <li>The southbound right turn lane at the WB SR-4 Ramps and Willow Pass Road intersection shall be converted to a free right turn lane.</li> </ul> <p>Or</p> <p>If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.</p> <p>4.12-8(c) As part of future development applications, the project improvement plans shall show that an eastbound left turn lane would be added to the Rio Verde Circle and San Marco Boulevard intersection. Implementation of the required improvements shall be accomplished by way of one of the following methods:</p> <p>If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the proposed residences. If the improvements</p>	City of Pittsburg Community Development Department	In conjunction with the first development application	

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		<p><i>are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.</i></p> <p><i>Or</i></p> <p><i>If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.</i></p> <p><b>4.12-8(d)</b> <i>As part of future development applications, the project improvement plans shall show that the eastbound approach of the EB SR 4 ramps and San Marco Boulevard intersection would be restriped to be an eastbound left turn lane, a shared left-through-right lane, and an eastbound right turn lane. Implementation of the required improvements shall be accomplished by way of one of the following methods:</i></p> <p><i>If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the first proposed residence. If the improvements</i></p>	City of Pittsburg Community Development Department	In conjunction with the first development application	

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		<p><i>are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.</i></p> <p><i>Or</i></p> <p><i>If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.</i></p> <p><i>4.12-8(e) As part of future development applications, the project improvement plans shall show that a northbound right turn lane at the W. Leland Road and Bailey Road intersection would be striped and the shared northbound through-right lane would be restriped to be through lane. In addition, the project improvement plans shall show that a southbound right turn overlap phase and a westbound right turn overlap phase would be implemented. Implementation of the required improvements shall be accomplished by way of one of the following methods:</i></p> <p><i>If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project</i></p>	City of Pittsburg Community Development Department	In conjunction with the first development application	

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		<p><i>shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the first proposed residence. If the improvements are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.</i></p> <p><i>Or</i></p> <p><i>If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.</i></p> <p>4.12-8(f) <i>As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP (Project S-16) to the City of Pittsburg Community Development Department. Such improvements would include optimization of timing splits at the following intersection:</i></p> <p style="padding-left: 40px;"><i>1. W. Leland Road and Burton Avenue.</i></p>	City of Pittsburg Community Development Department	In conjunction with the first development application	

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		<p><i>Proof of payment shall be submitted to the City of Pittsburg Community Development Department.</i></p> <p>4.12-8(g) <i>As part of future development applications, the project improvement plans shall show that the eastbound left turn phase and westbound left turn phase at the W. Leland and Crestview Drive intersection would be changed from protected to permitting phasing. Implementation of the required improvements shall be accomplished by way of one of the following methods:</i></p> <p><i>If the required improvements are not included in the Pittsburg CIP prior to issuance of building permits, the project shall be responsible for the construction of the improvements. The improvements shall be completed prior to occupancy of the first proposed residence. If the improvements are subsequently included in an update to the Pittsburg CIP, the project applicant may be subject to fee credits.</i></p> <p><i>Or</i></p> <p><i>If, prior to issuance of building permits, the City's then-current CIP includes the needed improvements, the project</i></p>	City of Pittsburg Community Development Department	In conjunction with the first development application	



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		<p><i>applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP to the City of Pittsburg Community Development Department.</i></p> <p>4.12-8(h) <i>Implement Mitigation Measure 4.12-2(b).</i></p> <p>4.12-8(i) <i>As part of future development applications, the project applicant shall pay the fair-share fee for the improvements planned in the Pittsburg CIP (Project ST-27) to the City of Pittsburg Community Development Department. Such improvements would include widening of Bailey Road from two lanes two four lanes. Proof of payment shall be submitted to the City of Pittsburg Community Development Department.</i></p>	<p>See Mitigation Measure 4.12-2(b)</p> <p>City of Pittsburg Community Development Department</p>	<p>See Mitigation Measure 4.12-2(b)</p> <p>In conjunction with the first development application</p>	
4.12-9	Impacts related to Central and East County Routes of Regional Significance under Long-Term (2035) Plus Project Conditions.	4.12-9. <i>Implement Mitigation Measure 4.12-3.</i>	See Mitigation Measure 4.12-3	See Mitigation Measure 4.12-3	
4.12-10	Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities	4.12-10 <i>Implement Mitigation Measures 4.12-6(a) and 4.12-6(b).</i>	See Mitigation Measures 4.12-6(a) and 4.12-6(b)	See Mitigation Measures 4.12-6(a) and 4.12-6(b)	

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	under Long-Term (2035) Plus Project Conditions.				
4.12-11	Result in a projected future over-capacity freeway condition where current long-range planning studies show an under-capacity condition at a freeway segment under Long-Term (2035) Plus Project Conditions.	<i>4.12-11 Implement Mitigation Measure 4.12-3.</i>	See Mitigation Measure 4.12-3	See Mitigation Measure 4.12-3	
<b>Initial Study</b>					
V. a-d	<p>a. Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?</p> <p>b. Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5?</p> <p>c. Directly or indirectly destroy a unique</p>	<p><i>V.1 Prior to submittal of a tentative map application within the Faria/Southwest Hills Annexation area, a Cultural and Historical Resources Survey shall be conducted for the project site by a qualified archaeologist and submitted for the City's review and approval. The required analysis and mitigation measures shall be implemented by the project applicant(s) to minimize or avoid impacts to any identified cultural resources to the greatest extent feasible.</i></p> <p><i>V.2 In the event that any prehistoric subsurface archeological features or deposits, including locally darkened soil</i></p>	<p>City of Pittsburg Community Development Department</p> <p>City of Pittsburg Community</p>	<p>Prior to submittal of a tentative map application</p> <p>During construction</p>	

MITIGATION MONITORING AND REPORTING PROGRAM FARIA/SOUTHWEST HILLS ANNEXATIONS PROJECT					
Impact Number	Impact	Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
	<p>paleontological resource on site or unique geologic features?</p> <p>d. Disturb any human remains, including those interred outside of formal cemeteries.</p>	<p><i>("midden"), that could conceal cultural deposits, animal bone, obsidian and/or mortars are discovered during earth-moving activities, all work within 100 feet of the resource shall be halted, and the applicant shall consult with a qualified archeologist. Representatives of the City and the qualified archeologist shall coordinate to determine the appropriate course of action. All significant cultural materials recovered shall be subject to scientific analysis and professional museum curation.</i></p> <p>V.3</p> <p><i>If a Native American site is discovered, the evaluation process shall include consultation with the appropriate Native American representatives.</i></p> <p><i>If a Native American archeological, ethnographic, or a spiritual resource is discovered, all identification and treatment shall be conducted by qualified archeologists, who are certified by the Society of Professional Archeologists (SOPA) and/or meet the federal standards as stated in the Code of Federal Regulations (36 CFR 61), and are Native American representatives, who are approved by the local Native American community as scholars of the cultural traditions.</i></p>	<p>Development Department</p> <p>City of Pittsburg Community Development Department</p> <p>NAHC, if the remains are determined to be Native American</p>	<p>During construction</p>	

MITIGATION MONITORING AND REPORTING PROGRAM FARIA/SOUTHWEST HILLS ANNEXATIONS PROJECT					
Impact Number	Impact	Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>In the event that no such Native American is available, persons who represent tribal governments and/or organizations in the locale in which resources could be affected shall be consulted. If historic archeological sites are involved, all identified treatment is to be carried out by qualified historical archeologists, who shall meet either Register of Professional Archeologists (RPA), or 36 CFR 61 requirements.</i></p> <p>V.4</p> <p><i>If a human bone or bone of unknown origin is found during earth-moving activities, all work shall stop within 100 feet of the find, and the County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission, who shall notify the person most likely believed to be a descendant. The most likely descendant shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. No additional work is to take place within the immediate vicinity of the find until the identified appropriate actions have taken place.</i></p>	<p>City of Pittsburg Community Development Department</p> <p>Contra Costa County Coroner</p> <p>NAHC, if the remains are determined to be Native American</p>	<p>During construction</p>	

**Attachment 6**  
**Applicable General Plan Goals and Policies**  
 Faria/Southwest Hills annexation Project, AP-10-717 (GP, RZ, DA)

General Plan Goal or Policy	Analysis
<b>Land Use Element – Citywide</b>	
<b>2-G-5:</b> Promote a diversity of housing types, including opportunities for hillside estate development, as well as smaller lot, infill, and high-density housing.	Consistent. Implemented with the proposed Master Plan.
<b>2-G-8:</b> Ensure 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.	Consistent. Implemented with the proposed Master Plan.
<b>2-G-9:</b> Exercise leadership in securing development and preserving open space consistent with the General Plan in portions of the Planning Area that will ultimately be inside the city boundaries.	Consistent. The proposed project would result in more open space land than what currently exists in the General Plan.
<b>2-P-4:</b> Consider amendments to the current Sphere of Influence for properties along the eastern and western edges of the City, to take advantage of providing City services for the development of adjacent vacant lands.	Consistent. Project area is within the Sphere of Influence.
<b>2-P-6:</b> Ensure provision of community amenities within planned development projects, including parks and recreation facilities, streetscaping and pedestrian paths, transit facilities, parking areas, and public safety facilities. Ensure construction of amenities at a time that is in balance with the needs of the development.	Consistent. Implemented with the proposed Master Plan.
<b>2-P-15:</b> Ensure minimum residential densities, in accordance with the ranges stipulated in this Plan.	Consistent.
<b>2-P-22:</b> Ensure that all General Plan policies apply to hillside land irrespective of zoning – whether Planned Development or any other base district.	Consistent. Proposed General Plan amendments (as described in the project description) would ensure consistency with this policy.
<b>2-P-23:</b> Restrict development on minor and major ridgelines (as identified in Figure 4-2). Encourage residential construction on flatter natural slopes or non-sensitive graded areas that reduce environmental and visual impacts. Minimize cut-and-fill of natural hillsides.	Consistent. There are no designated minor or major ridgelines on the site.

General Plan Goal or Policy	Analysis
<p><b>2-P-24:</b> Prohibit new development on designated ridgelines. Ensure that residential developers cluster housing units to reduce both environmental and visual impact of hillside development.</p>	<p>Consistent. There are no designated minor or major ridgelines on the site. Proposed development area would be focused to the valley-like area in the center of the site, minimizing the potential for visual impacts</p>
<p><b>2-P-26:</b> Ensure that new hillside development utilizes fire-resistant building materials, per the Uniform Building Code. Require that all residential units adjacent to open slopes maintain a 30-ft setback with fire-resistant landscaping.</p>	<p>Consistent. The Master Plan requires maintenance of a 100-ft setback with fire resistant landscaping,</p>
<p><b>*2-P-27:</b> Minimize single-access residential neighborhoods in the hills; maximize access for fire and emergency response personnel.</p>	<p>Consistent. Implemented with the proposed Master Plan.</p>
<p><b>Land Use Element – Southwest Hills</b></p>	
<p><b>2-G-33:</b> Maintain the general character of the hill forms.</p>	<p>Proposed for Deletion.</p>
<p><b>2-G-34:</b> Encourage development of higher-end, low-density residential</p>	<p>Consistent. Proposed project densities would not exceed 5 units per acre.</p>
<p><b>2-P-85:</b> Ensure extension of West Leland Road and San Marco Boulevard through the area, as shown on the General Plan Diagram, as a condition of any new approval in the area.</p>	<p>Consistent. Proposed Master Plan would require San Marco Blvd. to extend south through the site.</p>
<p><b>2-P-90:</b> Ensure that all new development in Southwest Hills provides trailheads and linkages into the multi-use trail system planned to extend from West Leland Road to Oak Hills Park.</p>	<p>Consistent. Implemented with the proposed Master Plan.</p>
<p><b>2-P-91:</b> Ensure as part of the development review process that any future subdivision in the southwest hills that is adjacent to the 2005 Pittsburg voter approved urban limit line, establishes a greenbelt buffer within the City's urban limit line between the proposed development and the urban limit line. The greenbelt buffer shall include all land between the City of Concord border and the first set of ridges, including the tops of these same ridges which generally run parallel to the common border. The City will consider, in conjunction with subdivision applications on these properties and related environmental analysis, general plan and/or the transfer of lost development rights as a result of these greenbelts to other portions of these properties, while not increasing the overall number of units permitted on these properties.</p>	<p>Consistent. While no subdivision or site specific development plan has been proposed at this time, the land use and rezoning amendments proposed, together with the Master Plan, would implement this policy by establishing the required greenbelt buffer along the western edge of the site through new Open Space designations.</p>

General Plan Goal or Policy	Analysis
<p><b>2-P-93:</b> Allow Low Density residential development west of Bailey Road, as shown on the General Plan Diagram. Ensure that such development is minimally visible from Bailey Road and mitigates any impacts to creeks and wetlands in the area.</p>	<p>Consistent. Implemented with the proposed Master Plan.</p>
<p><b>2-P-96:</b> Allow an overall maximum density of 3.0 du/ac within the Low Density Residential areas south of the San Marco project and outside the present Sphere of Influence line with a maximum number of 1500 residential units.</p>	<p>Consistent. As proposed, the developable areas for residential use would be reduced; however, the project would still allow for buildout of up to 1,500 units, consistent with this policy.</p>
<b>Growth Management Element</b>	
<p><b>3-G-2:</b> Realize the opportunities afforded by establishment of the Voter Approved Urban Limit Line to allow the City to grow in such a way as to diversify and expand the employment base, develop a range of housing opportunities, increase the depth of municipal fiscal resources, enhance the quality of urban life for all Pittsburg residents and prohibit urban development beyond the Voter Approved Urban Limit Line.</p>	<p>Consistent. The project would allow development of new higher-end single family homes in the southwest hills, within the Voter Approved Urban Limit Line.</p>
<p><b>3-G-5:</b> Ensure that new residential, commercial and industrial growth within the Voter-Approved Urban Limit Line pays its share of the costs for the construction of facilities needed to serve that growth.</p>	<p>Consistent. Implemented primarily through the terms of the proposed Development Agreement.</p>
<p><b>3-G-10:</b> Foster development of a variety of housing types, densities and prices to balance the City's housing stock and meet the City's regional fair share housing needs for people of all income levels. (Housing Element Goal 13-G-1)</p>	<p>Consistent. According to the current Regional Housing Needs Allocation (RHNA), there is a need for more above-moderate income housing within the City.</p>
<p><b>3-P-1:</b> Allow urban and suburban development only in areas where public facilities and infrastructure (police, fire, parks, water, sewer, storm drainage, and community facilities) are available or can be provided.</p>	<p>Consistent.</p>
<b>Urban Design Element</b>	
<p><b>4-G-1:</b> Retain views of major and minor ridgelines within the southern hills, as designated in Figure 4-2.</p>	<p>Consistent. There are no designated minor or major ridgelines on the site; however, the existing ridgelines on the east and west side of the site would be preserved as open space.</p>

General Plan Goal or Policy	Analysis
<p><b>4-G-2:</b> Preserve minor ridgelines south of State Route 4 as open space to provide screening for hillside development.</p>	<p>Consistent. There are no designated minor or major ridgelines on the site; however, the existing ridgelines on the east and west side of the site would be preserved as open space.</p>
<p><b>4-G-3:</b> Ensure that new residential development in the southern hills provides adequate transition between urban and open space uses on the City's edge.</p>	<p>Consistent. Project includes establishment of a greenbelt buffer along the western edge of the site.</p>
<p><b>4-G-4:</b> Encourage development that preserves unique natural features, such as topography, rock outcroppings, mature trees, creeks, and ridgelines, in the design of hillside neighborhoods.</p>	<p><b>Modification Proposed:</b> Encourage development that preserves unique natural features, such as topography, rock outcroppings, mature trees, creeks, and <u>designated major and minor ridgelines</u>, in the design of hillside neighborhoods.</p>
<p><b>4-G-5:</b> Encourage a sense of rural character in the design and construction of hillside development, including extensive landscaping, rooftop terraces, sloping rooflines, and use of natural materials.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>*4-P-1:</b> Require ridge setbacks for all new hillside development. Building pads should be located at least 150 feet away from the crest of a major ridgeline (measured horizontally from the centerline), as designated in Figure 4-3.</p>	<p>Consistent. There are no designated minor or major ridgelines on the site; however, the project would meet the 150-foot setback requirement along its western edge.</p>
<p><b>*4-P-2:</b> As part of the development review process, require design review of proposed hillside development. Ensure that:</p> <ul style="list-style-type: none"> <li>• Hillside development is clustered in small valleys and behind minor ridgelines, to preserve more prominent views of the southern hills.</li> <li>• Hillside streets are designed to allow open views by limiting the building of structures or planting of tall trees along the southern edge or terminus of streets.</li> </ul>	<p><b>Modification Proposed:</b> As part of the development review process, require design review of proposed hillside development. <u>Encourage</u> <del>Ensure that:</del></p> <ul style="list-style-type: none"> <li>• Hillside development <u>that</u> is clustered in small valleys and behind minor ridgelines, to preserve more prominent views of the southern hills.</li> <li>• Hillside streets <u>that</u> are designed to allow open views by limiting the building of structures or planting of tall trees along the southern edge or terminus of streets.</li> </ul>
<p><b>4-P-3:</b> As part of the development review process, limit building heights and massing where views of the hills from adjacent properties and public spaces could be preserved.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>



General Plan Goal or Policy	Analysis
<p><b>4-P-5:</b> Design and install entry features at the entrances to the City, implemented through the City’s Capital Improvement Program. Use landscaping, signs, lighting, and other visual features to announce the gateway along regional roadways.</p>	<p>Consistent. Implemented by the proposed Development Agreement.</p>
<p><b>4-P-6:</b> Ensure that developers of new residential projects in the southern hills plant trees and other vegetation along collector and arterial roadways, in order to maintain the sense of “rural” open space at the City’s southern boundary.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>4-P-7:</b> Ensure that design treatment of new development at the City’s southern boundary retains a rural feel by:</p> <ul style="list-style-type: none"> <li>• Discouraging the use of solid walls along these edges (fences must be visually permeable; however, discourage use of chain link in front and side yards);</li> <li>• Using materials and design to promote a rural feeling (for example, wooden or other rustic materials); and</li> <li>• Encouraging development at the outer edge of the City to face outwards toward the rural landscape (preventing a solid wall of residential back yard fences).</li> </ul>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>4-P-10:</b> Minimize grading of the hillsides. Amend the City’s Zoning Ordinance to allow density bonuses of 10 percent (maximum) for new hillside development that preserves 40 percent of natural hill contours.</p>	<p>Proposed for Deletion</p>
<p><b>*4-P-11:</b> Limit grading of hillside areas over 30 percent slope (see Figure 10-1) to elevations less than 900 feet, foothills, knolls, and ridges not classified as major or minor ridgelines (see Figure 4-2). During review of development plans, ensure that necessary grading respects significant natural features and visually blends with adjacent properties.</p>	<p><b><i>Modification Proposed:</i></b>  Limit grading of hillside areas over 30 percent slope (see Figure 10-1 [of the General Plan]) to elevations less than 900 feet, foothills, knolls, and ridges not classified as major or minor ridgelines (see Figure 4-2 [of the General Plan]), <u>unless deemed necessary for slope stability remedial grading, or installation of City infrastructure.</u> <del>During review of development plans, ensure that necessary grading respects significant natural features and visually blends with adjacent properties.</del></p>
<p><b>4-P-12:</b> Encourage terracing in new hillside development to be designed in small incremental steps. Extensive flat pad areas should be limited.</p>	<p>Proposed for Deletion</p>

General Plan Goal or Policy	Analysis
<b>*4-P-14:</b> Preserve natural creeks and drainage courses as close as possible to their natural location and appearance.	Proposed for Deletion
<b>*4-P-15:</b> Minimize the visual prominence of hillside development by taking advantage of existing site features for screening, such as tree clusters, depressions in topography, setback hillside plateau areas, and other natural features.	Consistent. There are no designated minor or major ridgelines on the site; however, the existing ridgelines on the east and west side of the site would be preserved as open space.
<b>4-P-16:</b> Allow flag lots with common driveways within hillside neighborhoods, in order to encourage terracing of buildings while minimizing roadway cut-and-fill (see Figure 4-4).	Consistent. Implemented by the proposed Master Plan.
<b>*4-P-17:</b> Encourage clustering of Hillside Low-Density units in the Southern Hills, with resulting pockets of open space adjacent to major ridgelines and hillside slopes. Allow density bonuses of 10 percent (maximum) for preservation of 60 percent or more of a project's site area as open space.	Consistent. Implemented by the proposed project land use lay out with residential areas in the center valley and open space on the outer edges of the site.
<b>4-P-19:</b> Encourage lot configuration such that perimeter walls and fences along arterial corridors within the southern hills are not needed.	Consistent. Implemented by the proposed Master Plan.
<b>4-P-20:</b> Discourage lot orientation that fronts onto the cross-slope of street segments on steep grades.	Proposed for Deletion
<b>4-P-21:</b> Encourage single-loaded streets parallel to steep slopes, with placement of lots on the uphill side of the street, such that homes front down-slope and allow open vistas from the public street.	Consistent. Implemented by the proposed Master Plan.
<b>4-P-22:</b> Discourage placement of lots that allow the rear of homes to be exposed to lower elevation views.	Proposed for Deletion
<b>*4-P-24:</b> Building forms should be "stepped" to conform to site topography. Encourage use of rooftop terraces and decks atop lower stories.	Consistent. Building type allowed by the proposed Master Plan.
<b>*4-P-25:</b> During development review, encourage residential rooflines that are oriented in the same direction as the natural hillside slope.	Proposed for Deletion

General Plan Goal or Policy	Analysis
<p><b>4-P-26:</b> Reflect the predominant colors and textures within the surrounding landscape in selection of building materials for hillside development. Roof colors should tend toward darker earth tones, so that they are less visible from adjacent or upslope properties.</p>	<p>Proposed for Deletion</p>
<p><b>4-P-27:</b> Maximize water conservation, fire resistance, and erosion control in landscape design through use of sturdy, native species. Use irregular planting on graded slopes to achieve a natural appearance.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>*4-P-28:</b> Encourage developers to align and construct streets along natural grades. Minimize visibility of streets from other areas within the City (see Figure 4-7).</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>4-P-29:</b> Encourage the construction of split roadways on steep hillsides, where appropriate.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>*4-P-30:</b> Ensure that all residential developers provide multi-use trails or trailheads connecting to local schools and parks, commercial centers, and regional open spaces.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>4-P-31:</b> Provide on-street parking along hillside roads in parking bays where topography allows.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>Transportation Element</b></p>	
<p><b>7-P-13:</b> Upgrade or extend the hillside access routes from Bailey Road, Buchanan Road, Kirker Pass Road, and proposed San Marco Boulevard, as development potential warrants.</p>	<p>Consistent. Extension of San Marco Blvd would be required by the proposed Master Plan.</p>
<p><b>*7-P-14:</b> Increase access to alternative north-south routes providing connection to State Route 4, other than Railroad Avenue.</p>	<p>Consistent. Extension of San Marco Blvd would be required by the proposed Master Plan.</p>
<p><b>*7-P-41:</b> Ensure the provision of multi-use trails or trailheads within new hillside developments, preferably connecting to the regional trail network.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>Open Space, Youth and Recreation Element</b></p>	
<p><b>8-G-3:</b> Promote a local trail and linear park system to provide access to regional open space areas, as well as connections between neighborhoods.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>

General Plan Goal or Policy	Analysis
<p><b>*8-P-2:</b> Pursue the development of park and recreation facilities within reasonable walking distance of all homes.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>8-P-9:</b> Design the layout of new park facilities in accordance with the natural features of the land. Where possible, preserve such natural features as creeks and drainage ponds, rock outcroppings, and significant topographic features.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>8-P-21:</b> Encourage new residential development in hillside areas to develop public trails and/or trailheads providing connections to other regional and local open spaces.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>Resource Conservation Element</b></p>	
<p><b>*9-P-1:</b> Ensure that development does not substantially affect special status species, as required by State and federal agencies and listed in Table 9-1. Conduct assessments of biological resources as required by CEQA prior to approval of development within habitat areas of identified special status species, as depicted in Figure 9-1.</p>	<p>Consistent.</p>
<p><b>9-P-6:</b> In order to preserve viewsheds of the southern hills, preserve major ridgelines (shown in Figure 9-1) throughout the Planning Area. Revise the Municipal Code per Policy 4-P-1: building pads and structural elements shall be located at least 150 feet away from (horizontally) the crest of a major ridgeline.</p>	<p>Consistent. There are no designated minor or major ridgelines on the site; however, the project would meet the 150-foot setback requirement along its western edge.</p>
<p><b>*9-P-7:</b> During the design of hillside residential projects, encourage clustering of housing to preserve large, unbroken blocks of open space, particularly within sensitive habitat areas. Encourage the provision of wildlife corridors to ensure the integrity of habitat linkages.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>*9-P-9:</b> Establish creek setbacks along riparian corridors, extending a minimum of 50 to 150 feet laterally on each side of the creek bed. Setback buffers for habitat areas of identified special status species and wetlands may be expanded as needed to preserve ecological resources.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>Health and Safety Element</b></p>	

General Plan Goal or Policy	Analysis
<p><b>*10-P-3:</b> Regulate the grading and development of hillside areas for new urban land uses. Ensure that such new uses are constructed to reduce erosion and land sliding hazards:</p> <ul style="list-style-type: none"> <li>• Limit cut slopes to 3:1, except where an engineering geologist can establish that a steeper slope would perform satisfactorily over the long term.</li> <li>• Encourage use of retaining walls or rock-filled crib walls as an alternative to high cut slopes.</li> <li>• Ensure revegetation of cut-and-fill slopes to control erosion.</li> </ul> <p>Ensure blending of cut-and-fill slopes within existing contours, and provision of horizontal variation, in order to mitigate the artificial appearance of engineered slopes.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>*10-P-8:</b> During development review, ensure that new development on unstable slopes (as designated in Figure 10-1) is designed to avoid potential soil creep and debris flow hazards. Avoid concentrating runoff within swales and gullies, particularly where cut-and-fill has occurred.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>*10-P-11:</b> Form geological hazard abatement districts (GHADs) prior to development approval in unstable hillside areas (as designated in Figure 10-1) to ensure that geotechnical mitigation measures are maintained over the long-term, and that financial risks are equitably shared among owners and not borne by the City.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>Housing Element</b></p>	
<p><b>13-G-1:</b> Foster development of a variety of housing types, densities, and prices to balance the City’s housing stock and meet Pittsburg’s regional fair share housing needs for people of all income levels.</p>	<p>Consistent.</p>
<p><b>13-P-1.2:</b> Encourage the construction of both high end and moderate-income housing in the southern foothills, downtown, along the waterfront, and throughout Pittsburg to provide above moderate-income housing opportunities in the community and to increase economic activity within the city.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>

General Plan Goal or Policy	Analysis
<p><b>13-P-1.2.A:</b> Establish minimum lot sizes when pre-zoning the foothills to accommodate large homes. Provide flexible lot sizes on up to 50% of the lots, when requested, in conjunction with a density bonus and long-term affordable housing agreement.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>13-P-1.2.B:</b> Ensure subdivisions in the foothills include an adequate supply of estate-sized lots for estate size homes.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>
<p><b>13-P-1.2.D:</b> Support the development of moderate and above moderate income housing within existing City limits such as high end condominiums, townhouses, and single-family units with premium views and amenities throughout the city to increase economic activity within these areas.</p>	<p>Consistent. Implemented by the proposed Master Plan.</p>

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Tom Quinlavin	<a href="mailto:conquin@pacbell.net">conquin@pacbell.net</a>	Concord 94520	4/2/2024
Valentina Gregory	<a href="mailto:cubagreg@comcast.net">cubagreg@comcast.net</a>	Concord 94519	4/2/2024
Valerie Hoag	<a href="mailto:boysbearldy@yahoo.com">boysbearldy@yahoo.com</a>	Pittsburg 94565	5/22/2024
Vanessa Quintero	<a href="mailto:nessaangel15@aol.com">nessaangel15@aol.com</a>	Concord 94521	3/26/2024
Victor Esetevez	<a href="mailto:veestevez1635@gmail.com">veestevez1635@gmail.com</a>	Pittsburg 94565	4/22/2024
Viki Maxwell	<a href="mailto:eclectic@sbcglobal.net">eclectic@sbcglobal.net</a>	Oakland 94609	6/5/2024
Vince Augusta	<a href="mailto:rottwhyl@comcast.net">rottwhyl@comcast.net</a>	Antioch 94509	4/29/24, 3/27/2024
Vincent Muscat	<a href="mailto:linesbyvincent@astound.net">linesbyvincent@astound.net</a>	Concord 94521	4/1/2024
Ward Hinds	<a href="mailto:wardhinds@gmail.com">wardhinds@gmail.com</a>	Concord 94521	4/2/2024
Warren Dreher	<a href="mailto:dreher.art@gmail.com">dreher.art@gmail.com</a>	Concord 94521	4/1/2024
Wayne Kaminski	<a href="mailto:waka_ca1@yahoo.com">waka_ca1@yahoo.com</a>	Bay Point 94565	4/2/2024
William Suh	<a href="mailto:william_suh@hotmail.com">william_suh@hotmail.com</a>	Pittsburg 94565	3/26/2024

## SAVE THE RIDGE TEMPLATE PETITION LETTER

**From:** XXXXXXXXXXXXXXXXXXXXXXXXXX  
**Sent:** Monday, May 6, 2024 10:30 PM  
**To:** Lou Ann Texeira <[LouAnn.Teixeira@lafco.cccounty.us](mailto:LouAnn.Teixeira@lafco.cccounty.us)>  
**Subject:** Save the Ridge Now!

LAFCO Executive Officer Lou Ann Texiera,

Please protect the beautiful Los Medanos Hills, the ridge between Pittsburg and Concord, and the neighboring new Thurgood Marshall Regional Park. Open space, habitat for wildlife, and the community's scenic views are incredibly important, and Pittsburg's residents deserve access to nature. We urge the Concord City Council to intervene with Pittsburg to negotiate a bigger buffer for the regional park, to Save the Ridge!

We urge the Pittsburg City Council to demand a bigger buffer for the regional park, to Save the Ridge!

We urge LAFCO to require a bigger buffer for the regional park, to Save the Ridge!

Seeno/Discovery Builders and the City of Pittsburg are trying to jam the bad Faria project through without people knowing.

Even though changes to Faria's environmental review were legally required, the City of Pittsburg and Seeno rushed through a new document that didn't give the public time to review it. Hundreds of previous comments from Pittsburg residents and agencies such as LAFCO opposing the project have been ignored.

There's still no site plan, just a blob showing where the project would be without any detail. The project's footprint remains largely unchanged—it's still threatening Thurgood Marshall Regional Park next door and destroying Pittsburg's ridge. They claim a large amount of open space but don't mention that most of it would be graded and scarred.

Faria in its current form breaks Pittsburg's own General Plan. Requirements that development in the hills be sensitive to natural terrain are gutted. It also ignores voter-approved Measure P, which limited development to a much smaller project.

Nearly 13,000 daily car trips would be generated by this project. Why does Pittsburg want housing so far away from the city center so that anything and everything requires a car to do?

The Pittsburg City Council needs to do what other communities in the Bay Area have already done: treat their hills as a public good to be protected rather than something to be flattened and paved over.

We urge the Concord City Council to intervene with Pittsburg to negotiate a bigger buffer for the regional park, to Save the Ridge!

We urge the Pittsburg City Council to demand a bigger buffer for the regional park, to Save the Ridge!

We urge LAFCO to require a bigger buffer for the regional park, to Save the Ridge! Please change the project so that the ridge is saved. It's not too late to do the right thing for this project!

Contra Costa County residents deserve to have their hills protected, like so many other Bay Area communities already do. Both Concord and Pittsburg should have the same access to Thurgood Marshall Regional Park that their neighbors will have.

Sincerely,

XXXXXXXXXXXXXXXXXX

[XXXXXXXXXXXXXXXXXX@yahoo.com](mailto:XXXXXXXXXXXXXXXXXX@yahoo.com)

Pittsburg, California 94565



SHUTE MIHALY  
& WEINBERGER LLP

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WINTER KING  
Attorney  
King@smwlaw.com

May 29, 2024

**Via Electronic Mail**

Lou Ann Texeira  
Executive Officer  
Contra Costa Local Agency Formation  
Commission  
40 Muir Rd., 1st Fl.  
Martinez, CA 94553

Re: Faria/Southwest Hills Annexation Project

Dear Ms. Texeira:

This firm represents Save Mount Diablo in matters related to the Faria/Southwest Hills Annexation Project (“Project”). We submit these comments to the Contra Costa County Local Agency Formation Commission (“LAFCO”) on its behalf with regard to the application of the City of Pittsburg (“City”) and developer Seeno and Discovery Builders (“Seeno”) to annex the Project site to the City, the Contra Costa Water District (“CCWD”) and the Delta Diablo Sanitation District (“DDSD”).

We believe the current record is insufficient for LAFCO’s review. The City and Seeno have not provided the information necessary to ensure compliance with the California Environmental Quality Act (“CEQA”) or with LAFCO polices, including this agency’s Agricultural and Open Space Preservation Policy (“AOSPP”). Moreover, any LAFCO approval must include conditions that ensure compliance with CEQA and LAFCO policies, such as expanded ridgeline buffers and agricultural conservation easements. These issues are also addressed in separate comments submitted to LAFCO by Save Mount Diablo.

After LAFCO continued the hearing on this matter to June 12, Save Mount Diablo attempted to work with Seeno to address these concerns. In particular, Save Mount Diablo asked Seeno to incorporate expanded ridgeline buffers into the project, a request Save Mount Diablo has made in the past. Unfortunately, to date Seeno has not agreed to incorporate these buffers. We therefore urge LAFCO to continue any consideration of the

proposed annexation until the City and Seeno have submitted all information necessary for LAFCO review and LAFCO has developed appropriate conditions.

**I. LAFCO cannot approve the Project until it has adequate information to ensure the Project fully complies with LAFCO policies and CEQA.**

The proposed Project is a poorly planned and environmentally destructive subdivision in unincorporated Contra Costa County, south of Pittsburg. The 600-acre Site is almost entirely steep hillsides, with peaks over 1,000 feet, as well as hazards like liquefaction zones and large-scale landslides. Draft Environmental Impact Report, Faria/Southwest Hills Annexation, City of Pittsburg, October 2018 (“DEIR”), 2-1, 4.9-3.<sup>1</sup> The Project Site is designated “Agricultural Lands” (“AL”) in the Contra Costa County General Plan and the “Agricultural Preserve” zoning requires 20-acre minimum parcels. *Id.* 4.9-4.

The City’s 2023 approvals included a Master Plan and Development Agreement, as well as rezoning that removed the Site from the protective hillside protection zone and allowed intensive residential development. The City also adopted General Plan Amendments changing the land use designation and deleting or weakening a dozen long-standing policies designed to protect hillsides, scenic views, and natural creeks and drainages. DEIR 3-11-13.

This Project requires annexation of the Project site into the City of Pittsburg city limits and into the CCWD and DDS. As a result, the Project cannot move forward without LAFCO approval. *See* DEIR, 4.2-9.

As you know, under the Cortese-Knox-Hertzberg Local Government Reorganization Act, Gov. Code, § 56000 et seq. (“CKH Act”), LAFCOs serve as the Legislature’s “watchdog” over city or special district boundary changes or “changes of organization.” *See Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com.* (1989) 208 Cal.App.3d 753, 759; Gov. Code § 56375. In reviewing boundary change requests from cities and counties, LAFCOs are to encourage and provide “planned, well-ordered, efficient urban development patterns with appropriate consideration of

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<sup>1</sup> The DEIR

(<https://www.pittsburgca.gov/home/showpublisheddocument/10497/63747914262463000>) was supplemented and amended by the Partially Recirculated Draft EIR (PRDEIR) (October 2019) and the Revised and Updated Final EIR (RUFER) (March 2023) (<https://www.pittsburgca.gov/home/showpublisheddocument/14798/63813368778987000>).

preserving open-space and agricultural lands within those patterns.” Gov. Code § 56300(a). The CKH Act enumerates factors a LAFCO must consider when evaluating a city’s boundary change request. *See e.g., id.* § 56377 (discouraging premature development of agricultural land); § 56668 (proposal’s effect “on maintaining the physical and economic integrity of agricultural lands”); § 56668(b)(1)(l) (availability of water supplies). In addition, each LAFCO must adopt written policies and procedures to evaluate boundary change proposals, including standards and criteria to guide the LAFCO’s review. *Id.* §§ 56300(a), 56375(g).

LAFCO may “approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization.” Gov. Code § 56375(a)(1). Thus, a LAFCO may “disapprove an annexation if it finds that it violates the detailed criteria which a LAFCO must consider.” *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 284.<sup>2</sup> LAFCO also has broad authority to amend applications or condition approval on applicants’ compliance with LAFCO policies. *Fallbrook Sanitary Dist.*, 208 Cal.App.3d at 760 (holding that “a ‘watchdog’ has few teeth if it must obtain approval from proponents of matters . . . which the agency believes are in the interest of accountable and efficient government”); Gov. Code §§ 56885.5, 56886; *Voices for Rural Living v. El Dorado Irrigation Dist.* (2012) 209 Cal.App.4th 1096, 1116 (LAFCO has power to impose enforceable conditions on approval of an annexation).

LAFCO decisions are also subject to CEQA. *Bozung*, 13 Cal.3d 279; *City of Santa Clara v. Local Agency Formation Com.* (1983) 139 Cal.App.3d 923, 930-31. As a responsible agency, LAFCO is responsible for: determining whether a subsequent or supplemental EIR is required for its approval (Pub. Resources Code § 21166; CEQA Guidelines §§ 15050(c)(2), 15162<sup>3</sup>); mitigating Project impacts within its jurisdiction (CEQA Guidelines § 15096(g)); and adopting CEQA findings (*id.* §§ 15096(h), 15093).

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<sup>2</sup> While LAFCO’s discretion to disapprove an annexation is limited in certain circumstances (Gov. Code § 56375(a)(4)), those circumstances do not apply here. The Site is *not* an island or substantially surrounded by the City, substantially developed or developing, or located within an urban service area adopted by LAFCO; moreover, the Site *may* constitute prime agricultural land. *See id.*

<sup>3</sup> The CEQA Guidelines, Cal. Code Regs., tit. 14, section 15000 et seq., are referred to herein as “CEQA Guidelines.”

As set forth below, LAFCO can go forward with its review only after further CEQA review, submission of additional information, and establishment of appropriate conditions and mitigation. The applications as currently submitted should be denied.

## **II. LAFCO should require supplemental CEQA review for the Project.**

The City certified the programmatic RUF EIR for the Project in April 2023, after the Contra Costa Superior Court held that the 2021 Final EIR violated CEQA in litigation filed by Save Mount Diablo. As LAFCO has repeatedly observed, while the EIR is a “program level” EIR—based on a master plan that is essentially a development footprint—a “project-level” EIR is necessary for LAFCO review. *See* July 10, 2023 LAFCO letter to City at 1-2. For example, in 2021, LAFCO stated:

[W]hat is submitted as a “Master Plan” does not meet the test for a development project and the EIR is expressly identified and described as a “Program” level EIR, prepared in accordance with §15168 of the CEQA Guidelines. Therefore, the program level EIR is not acceptable for LAFCO’s purposes....

If, and when, an annexation application is submitted to LAFCO, LAFCO expects additional environmental and other information on a “project” level to enable LAFCO to make an informed decision on the project’s annexation application.

February 19, 2021 LAFCO comments to City Council (“2021 LAFCO Comments”) at 2. LAFCO’s comments on the EIR for the Project also stated that the EIR “is not adequate for LAFCO purposes” due to the lack of “graphic displays showing the location and extent of proposed land uses including residential neighborhoods of varying densities, parks, open spaces and recreation facilities, land to be set aside for permanent open space, alignment of roadways, topographic contours that would reflect how the project site would appear once proposed grading is completed,” and lack of information “regarding mass grading, quantitative levels of demand for public utilities and services including water, wastewater, storm water, police and fire.” November 30, 2018 LAFCO comments on DEIR (“LAFCO DEIR Comments”) at 2.

As a responsible agency, LAFCO is required to prepare a subsequent or supplemental EIR (“SEIR”) for a project where substantial changes occur with respect to the circumstances under which the project is being undertaken, or new information on environmental impacts becomes available. Pub. Resources Code § 21166; CEQA Guidelines § 15162. LAFCO has independent authority under CEQA to determine whether these conditions have been met. *See* CEQA Guidelines §§ 15050(c)(2) (lead agency determination not conclusive where conditions for SEIR are met), 15096(e)(3).

Here, LAFCO has requested extensive additional information on a range of issues: financing, water services, storm drains, parks and recreation services, fire and emergency services, streets, schools, accessory dwelling units; an updated “Plan for Services” for water and parks and recreation services; information on whether a Streambed Alteration Agreement from California Department of Fish and Wildlife is needed; and an actual grading plan. November 16, 2023 LAFCO letter to City at 1-2. As detailed below, additional information, such as an Agricultural and Open Space Impact Assessment, is also required to assess the Project’s compliance with LAFCO’s open space and agriculture policies. Until this information is provided, any LAFCO decision on annexation is premature.

Moreover, any new, project-specific information that is submitted must be carefully assessed to determine whether it triggers the need for supplemental CEQA review. If, for example, the new information shows that Project’s environmental impacts will be more severe or that there are additional mitigation measures or alternatives that would reduce impacts, additional CEQA review is required. CEQA Guidelines § 15162(a)(3); *California Coastkeeper Alliance v. State Lands Commission* (2021) 64 Cal.App.5th 36, 43, 61 (upholding State Lands Commission’s decision to prepare a supplemental EIR based on City of Huntington Beach EIR). While future project-level review may tier from, or incorporate by reference, analysis in the earlier program-level (CEQA Guidelines §§ 15152, 15168), LAFCO cannot simply rely on the old EIR where it is inadequate for its review.

Before it can approve the Project, LAFCO also has an independent duty to consider all the environmental impacts of the Project, ensure appropriate mitigation for impacts within its jurisdiction, and identify overriding considerations for any impacts that are not mitigated. *See* CEQA Guidelines § 15096(g)(1) (responsible agency must mitigate or avoid “the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve”); *see also id.* § 15096(g)(2) (responsible agency “shall not approve a project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment”).

LAFCO must also adopt findings pursuant to Guidelines section 15091 for *each significant environmental impact* identified in the lead agency’s EIR. *Id.* § 15096(h). In addition, LAFCO must adopt a statement of overriding considerations for any significant and unavoidable impacts and a mitigation monitoring plan setting forth mitigation that is “fully enforceable through permit conditions, agreements, or other measures.” *Id.* §§ 15093, 15091(d). In making these findings, LAFCO is not bound by the findings of the

lead agency, but rather “must...issue its *own* findings.” *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1201.

The City’s EIR identified a **wide range of significant impacts** from the Project. These include impacts related to: degradation of the Site’s visual character; light and glare; air pollution; direct and cumulative habitat modification for special status plants, birds, and mammals, and other wildlife; conflicts with adopted habitat conservation plans; archeological impacts; seismic risks; erosion and loss of topsoil; landslides and other geological risks; hazardous materials; wildfire; drainage; water quality; land use conflicts; noise; water supply, wastewater and public services and utilities; and traffic, public transit, and circulation. DEIR 2-1-78; RUF EIR, 3-2-16.

Many of these significant impacts are within LAFCO jurisdiction. LAFCO must therefore develop specific conditions, based on current and complete information, to mitigate reduce those impacts. CEQA Guidelines §§ 15096(g), 15096(h). For example, the Project currently includes *no* mitigation for the loss of agricultural land and open space, while CEQA and LAFCO policy (AOSPP, Guideline 3) require such mitigation. Additional CEQA review should consider requiring a development buffer between the property line and any development to preserve grazing connectivity to adjacent parcels, as well as acquisition of agricultural conservation easements to minimize this loss. *See V Lions Farming, LLC v. County of Kern* (2024) 100 Cal.App.5th 412 (agricultural conservation easements may provide compensatory mitigation for conversion of agricultural land under CEQA).

Additional CEQA review is also required for impacts on open space. Any analysis should include visual simulations identifying how Site ridgelines would be visible in central County. *See Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 694-95 (CEQA required visual simulations in order to allow the public and decision-makers to understand visual impacts of project). LAFCO must also consider an expanded ridgeline buffer to insulate the Project from the neighboring Thurgood Marshall Regional Park. *See* AOSPP, Guideline 3((b)(4) (LAFCO must consider “[e]stablishment of buffers sufficient to protect adjacent . . . open space lands from the effects of development”).

Because LAFCO does not have current and complete information to make the required CEQA findings on the present record, it should continue consideration until adequate CEQA review is complete.

### **III. The Project cannot be approved without appropriate conditions to ensure compliance with LAFCO Policies.**

LAFCO must also ensure that Seeno and the City have submitted adequate information to enable LAFCO to evaluate the Project against its policies and guidelines and develop appropriate conditions. LAFCO's authority to deny, amend, or condition annexation applications is based on its independent authority, separate and apart from CEQA.<sup>4</sup>

Under the CKH Act, LAFCO's principal goals include "preserving open space and prime agricultural land" and "discouraging urban sprawl." Gov. Code § 56301; *see also id.* § 56001 (noting LAFCO role in preserving open space lands). This agency's AOSPP similarly provides that "boundary changes for urban development should be proposed, evaluated, and approved in a manner that is consistent with the continuing growth and vitality of agriculture within the county" and recognizes that open space lands "provide the regional with invaluable public benefits." AOSPP at 4. The AOSPP contains six Goals and ten Policies that establish LAFCO's intended outcome for projects impacting agricultural land or open space. AOSPP at 5-6. For example, AOSPP goals direct applicants to "[m]inimize the conversion of . . . open space land to other land uses" (Goal 1) and to "[i]ncorporate . . . open space land preservation into long range planning" (Goal 3). In reviewing the proposed annexation, LAFCO must consider whether the Project is consistent with these State goals and policies.

The 606-acre Site under review is currently used as, and designated for, open space and agriculture. At a minimum, it meets the LAFCO definition of "open space" and "agricultural land." The land is "substantially unimproved and devoted to an open-space use" and is designated by the County for agricultural use in the County's General Plan. Gov. Code §§ 56059 (defining open space), 65560 (open space includes land designated for the "managed production of resources" including "rangeland" and "agricultural lands"); DEIR, 4.9-4. The land's current and historic use is cattle grazing. *See* DEIR, 4.5-

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<sup>4</sup> Pub. Resources Code § 21174 (providing that CEQA is not "a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer"); *Santa Clara Valley Water District v. San Francisco Bay Regional Water Quality Control Board* (2020) 59 Cal.App.5th 199, 213 (finding that the "Board's duties under CEQA did not deprive the Board of its independent authority under other laws to impose the mitigation requirements in its order" and the "the EIR's finality cannot prevent the Board from exercising its independent Porter-Cologne Act authority to protect water quality").

5, 4.7-2; Gov. Code § 56016 (defining agricultural lands as “land currently used for the purpose of producing an agricultural commodity”). The Site also likely qualifies as “prime agricultural land.” *See, infra*, section III.A.

The Project would convert most of the Site to urban uses. Thus, LAFCO’s approval of the annexation must ensure that it is consistent with policies for the preservation and protection of open space and agricultural land in both the CKH Act and the AOSPP.

**A. The record is inadequate to make any determination as to existing agricultural values and proposed open space uses.**

While the land is currently used for agricultural and open space uses, the record, as far as we are aware, fails to provide adequate information to determine whether the Site also qualifies as “prime agricultural land.” In past letters, LAFCO specifically requested information to determine whether the Site qualified as prime grazing land given its “long history of cattle grazing,” noting that conversion of such land was a significant impact that must be mitigated. LAFCO DEIR Comments at 3-5. LAFCO reiterated these requests in February 2021, noting that “the EIR lacks needed evidence, analysis, and conclusions of the impacts to agricultural land and open space, specifically those based on criteria LAFCO would use when considering the annexation proposal.” 2021 LAFCO Comments at 3.

Seeno failed to provide this information during the CEQA process. The EIR recognized, however, that the Site has a long history of cattle grazing. DEIR, 4.5-5, 4.7-2. The EIR’s background reports estimated that the 267-acre open space area (the most rugged portion of the Site) had a carrying capacity of 150-200 cattle. October 31, 2018 East Contra Costa County Habitat Conservancy Baseline Documentation Report, Nomad Ecology, at 11. More recent surveys also showed that much of the Site is “heavily grazed.” RUFER, Appendix D (August 2, 2022 letter from Salix Consulting), pdf 596; *id.* (May 19, 2022 survey), pdf 574 (“Nearly all the surface of the Faria Property is annual grassland and nearly all the annual grassland is grazed, primarily by cattle.”). This data suggests that the Site as a whole has sufficient capacity to qualify as prime agricultural land (one animal per acre). *See* LAFCO DEIR Comments at 3; Gov. Code § 56064 (defining “prime agricultural land”). LAFCO review cannot proceed until this determination is made.

The EIR also fails to make clear how designated open space would serve the purposes of the CKH Act and the AOSPP. *See* LAFCO DEIR Comments at 4. Most of the Site will be bulldozed—the 339 acres slated for development and much of the “open



space,” including land in the “greenbelt ridgeline buffer.” DEIR, 3-10-11, 4.1-19. The most recent grading maps we are aware of, from June 23, 2020, showed that **119.55** acres—45%—of the open space would be graded, with a total grading footprint of **460.6** acres, or three-quarters of the entire Site. See Attachment A.

This agency “embraces its objectives of encouraging orderly growth and development while discouraging urban sprawl” by providing that “[v]acant land within urban areas should be developed before . . . open space land is annexed for non-agricultural and non-open space purposes.” AOSPP at 2, 5. As far as we are aware, the City has provided no information about whether there is vacant urban land available for the development proposed by the Project. Without that information, LAFCO simply cannot determine whether the Project is consistent with this policy.

In short, the public is currently in the dark as to critical questions that must be answered for adequate LAFCO review. These questions include:

Has an Agricultural and Open Space Impact Assessment been submitted pursuant to Guideline 1 of the AOSPP?

Does the Site qualify as “agricultural land” (Gov. Code § 56016) or prime agricultural land (*id.* § 56064) due to its carrying capacity for cattle grazing?

How much land currently qualifies as open space under the CKH Act (Gov. Code, § 56059)?

How much land will qualify as open space under the proposed Project and what uses will it support?

Pursuant to Policy 2 of the AOSPP, how much vacant land in the City is currently available for development or entitled for development but unbuilt? Has the “land use inventory” required by Guideline 3(a) been submitted?

Pursuant to Policy 5 of the AOSPP, what other “feasible alternatives” are available for orderly and efficient growth?

How will the Project impact the neighboring Thurgood Marshall Regional Park? What measures are being proposed to “minimize adverse impacts to open space uses” (Policy 8 of the AOSPP)? This should include visual simulations to analyze these impacts.

**B. Any annexation would have to comply with the AOSPP’s “mitigation hierarchy.”**

The AOSPP also “provides for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development.” AOSPP at 5.

As LAFCO has already acknowledged, it could “require the applicant to establish that mitigation measures required under the AOSPP are incorporated into the project,” and these measures “may exceed the City’s proposed CEQA mitigation measures.” 2021 LAFCO Comments at 3. Before LAFCO can even consider mitigation, however, it must have adequate information to determine how the project will “minimize adverse impacts to” neighboring open space uses (Policy 8) and what “feasible mitigation” is available for the loss of agricultural and open space lands (Policy 9).

This would require additional information required by Guideline 3 of the AOSPP, including “a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use” and “an evaluation of the effectiveness of measures proposed by the applicant to mitigate the loss of prime agricultural, agricultural and/or open space lands, and to preserve adjoining lands for prime agricultural, agricultural and/or open space use to prevent their premature conversion to other uses.” None of this information has been made publicly available. And the EIR itself proposed *no* mitigation for the loss of agricultural land and open space. *See* DEIR 2-6-7.

Pursuant to Guideline 3, LAFCO must consider additional measures to reduce the Project’s impacts, including:

- acquisition of agricultural conservation easements or similar mechanisms for agricultural land conservation (Guidelines 3(b)(1)(3)&(6); *V Lions Farming*, 100 Cal.App.5th 412 (agricultural conservation easements may provide compensatory mitigation for conversion of agricultural land));
- Participation in transfers of development rights (Guideline 3(b)(2));
- Establishment of buffers, including an expanded buffer between the Project boundary and open space along the ridgeline and adjacent to East Bay Regional Park District lands (Guideline 3(b)(4) (applicant should evaluate measures such as the “[e]stablishment of buffers sufficient to protect adjacent . . . open space lands from the effects of development”).

Because LAFCO is authorized to consider “natural boundaries” in considering annexation proposals (Gov. Code § 56668(a)), it could also consider modifying the proposed annexation boundary to exclude the area within the ridgeline buffer from the annexation. *See Fallbrook Sanitary Dist.*, 208 Cal.App.3d at 760 (LAFCO has authority to amend applications to meet its goals).

Given the lack of detail about the proposed development and absence of mitigation in the program-level EIR, LAFCO lacks the information necessary to find that the loss of land and open space are adequately mitigated. To ensure compliance with the goals and policies of the CKH Act and the AOSPP, LAFCO must require further analysis and mitigation, including consideration of agricultural easements and measures to protect the open space values of the adjacent Thurgood Marshall Regional Park.

#### **IV. The public has been denied adequate review of this Project.**

Public participation is at the heart of California’s environmental protection laws. LAFCO is required to provide public hearings on annexation proposals. Gov. Code § 56661. Likewise, the Supreme Court has explained that “the ‘privileged position’ that members of the public hold in the CEQA process . . . is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making.” *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936 (citation and internal quotations omitted). Indeed, the entire CEQA review process is premised on an “interactive process of assessment of environmental impacts and responsive project modification which must be genuine.” *Id.* (citations omitted); *see also Ocean View Estates Homeowners Ass’n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 400 (“Environmental review derives its vitality from public participation.”).

To date, however, the City and Seeno have only prepared programmatic environmental review of the Project, with key project details (extent of grading, subdivision plans) omitted. While LAFCO has requested more detailed information, there has been no public review of the annexation submittal materials. The responsibility to ensure adequate public participation now falls on LAFCO. It should refrain from taking further action until all of the critical documents have been made available for public review and appropriate CEQA review has been undertaken.

Now is the time to ensure that this Project is properly designed and its many impacts on public services, open space and agriculture are fully mitigated under CEQA and comply with LAFCO policy. It simply makes no sense for LAFCO to consider approving the requested annexations before the final site design and project footprint are

Lou Ann Texeira  
May 29, 2024  
Page 12

finalized. Once the project is approved and moves forward, it will be difficult or impossible to implement any necessary changes.

Thank you for the opportunity to submit these comments.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to read 'L. King', is written over the typed name 'Winter King'.

Winter King

1765432.8

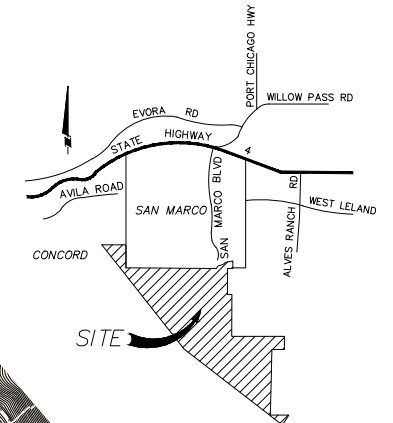
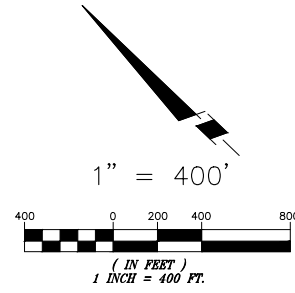
# **ATTACHMENT A**

# FARIA SW HILLS MASTER PLAN

JUNE 23, 2020

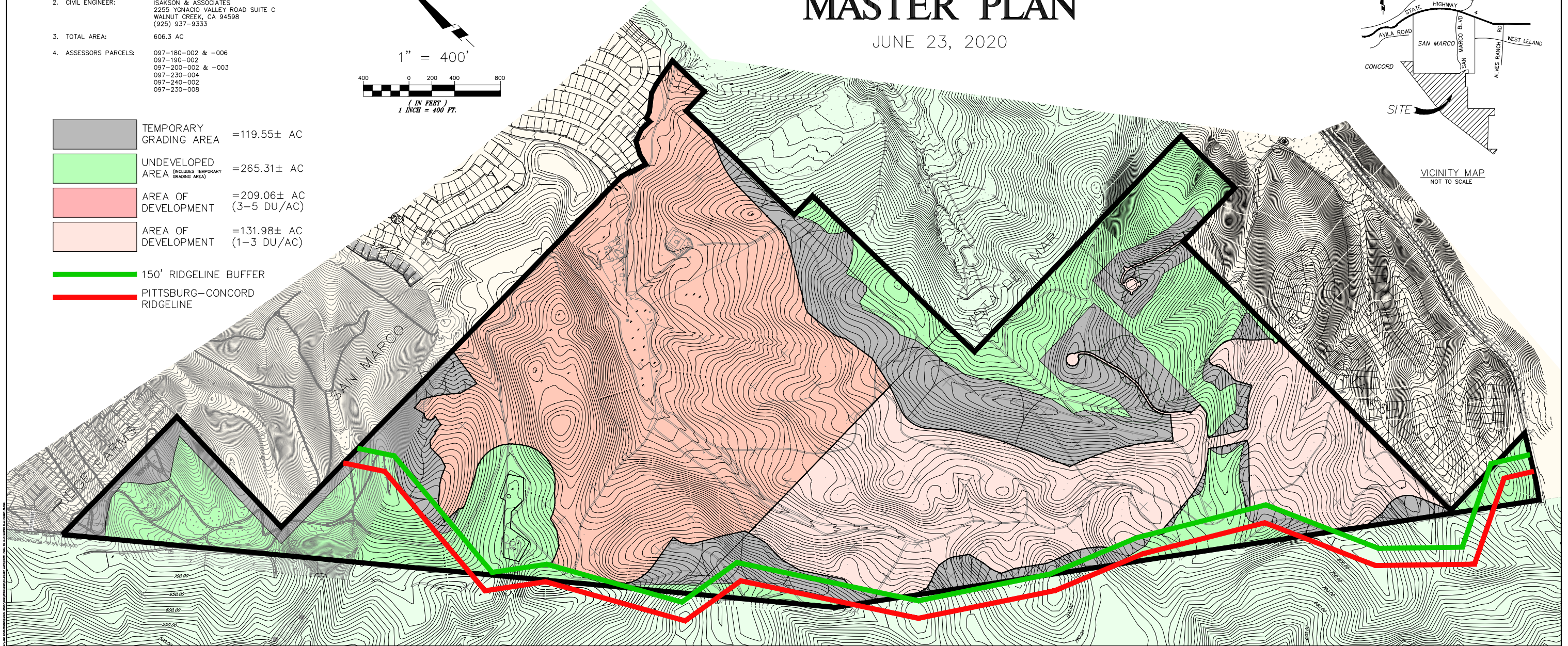
**GENERAL NOTES:**

1. OWNERS: FARIA LAND INVESTORS INC.  
4061 PORT CHICAGO HIGHWAY, SUITE H  
CONCORD, CA. 94524-4113  
(925) 682-6419
2. CIVIL ENGINEER: ISAKSON & ASSOCIATES  
2255 YGNACIO VALLEY ROAD SUITE C  
WALNUT CREEK, CA 94598  
(925) 937-9333
3. TOTAL AREA: 606.3 AC
4. ASSESSORS PARCELS: 097-180-002 & -006  
097-190-002  
097-200-002 & -003  
097-230-004  
097-240-002  
097-230-008



VICINITY MAP  
NOT TO SCALE

- TEMPORARY GRADING AREA =119.55± AC
- UNDEVELOPED AREA (INCLUDES TEMPORARY GRADING AREA) =265.31± AC
- AREA OF DEVELOPMENT (3-5 DU/AC) =209.06± AC
- AREA OF DEVELOPMENT (1-3 DU/AC) =131.98± AC
- 150' RIDGELINE BUFFER
- PITTSBURG-CONCORD RIDGELINE



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June 3, 2024

VIA E-MAIL AND U.S. MAIL

Contra Costa Local Agency Formation  
Commission Members  
c/o Lou Ann Texeira, Executive Officer  
40 Muir Rd., 1st Fl.  
Martinez, CA 94553  
[LouAnn.Teixeira@lafco.cccounty.us](mailto:LouAnn.Teixeira@lafco.cccounty.us)

Re: Response to Save Mount Diablo Comments on Faria/Southwest Hills Annexation Project

Dear Honorable Members of the Commission:

As you know, Hanson Bridgett LLP is assisting Discovery Builders, Inc. with respect to the City of Pittsburg's proposal to annex the Faria/Southwest Hills Project site into the City's territory. By this letter, we wish to respond to correspondence that Save Mount Diablo ("SMD") submitted to the Commission on April 3, 2024. **If there is a document, other than the staff report of course, that Commission members should read, we believe it is this response letter.**

SMD's correspondence is replete with misstatements of law and fact. The group is leading the Commission into dangerous territory by asking it to:

- **Undo judicial decisions** that the Contra Costa County Superior Court made in favor of the City of Pittsburg and Discovery Builders, which is not only improper but illegal;
- **Undo the decision by City of Pittsburg voters** to house the City's anticipated population growth on the Faria Project site, which consists of 1,500 units and is a fundamental pillar of the City's Housing Element;
- **Violate the Cortese-Knox-Hertzberg Local Government Reorganization Act** by asking the Commission to rezone the Project site, where the right to rezone exclusively belongs to the City, and by missing State deadlines for action; and
- **Violate the federal and California constitutions** by imposing mitigation measures where no nexus exists between a proposed measure and a Project impact.

The Faria Project is the culmination of 20 years of agency approvals and support from the City of Pittsburg voters, the City of Pittsburg elected officials, the East Bay Regional Park District, and the Commission itself. SMD's rhetoric, while vociferous and sensational, has no legal merit, and indulging in the group's requests would only put the Commission at odds with the law.

Below, we have:

- **Corrected the record;**
- **Identified SMD requests that already were decided by a court of law;** and
- **Identified what is essentially "nonsense"** — i.e., those statements SMD has made that sound sensational, but which in fact are irrelevant, aside from being false.

We ask that the Commission focus on the facts, and tune out the noise, in considering the City's request to annex the Project site into its jurisdiction. Here are the 13 misstatements that SMD would like the Commission to believe and act upon:

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**False SMD Claim No. 1:** **SMD prevailed in litigation** against the City of Pittsburg and Discovery Builders, the litigation is still pending, and the Commission should wait until the lawsuit is over.

**Details of claim:** SMD claims it won two legal challenges to the Project, and that Discovery Builders unsuccessfully appealed a court's decision rejecting the Project approvals. We understand SMD may also have indicated to Commissioners that this lawsuit is still pending, implying the Commission should wait to make a decision until the lawsuit is resolved.

**The truth:** SMD prevailed on three of about forty-seven claims in court on the City of Pittsburg's CEQA document.<sup>1</sup> The three errors SMD identified were fixed by the City and their consultants, and all disputes about the lawfulness of the Project are fully resolved and final.

Regarding the three items that required minor revisions as a result of the SMD lawsuit (about 5 percent of its claims), such concerned the Project's environmental review. The City thereafter fixed the three small errors, and no challenge was made to those fixes. SMD even acknowledges in its letter to the Commission that these issues were "minor."<sup>2</sup> Accordingly, the matter is over and final, and cannot be relitigated by SMD or any other party. This means SMD can no longer file a lawsuit on these claims — not against the City, and not against the Commission.<sup>3</sup>

If SMD has claimed the lawsuit is still pending, the statement is disingenuous, manipulative, and designed to mislead the Commissioners. There is a remnant dispute *about how much money SMD's attorneys should get, if any, for prevailing on only 5 percent of their claims.*

The group's pending motion for attorney's fees does not affect the validity of the Project or its environmental review. Were the Commission to delay action on the City's annexation proposal,

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<sup>1</sup> The merits of the SMD's lawsuit, entitled *Save Mount Diablo v. City of Pittsburg* (Case No. MSN210-0462), were decided in a Statement of Decision on February 9, 2022.

<sup>2</sup> On page 3 of its April 3, 2024 letter, SMD concedes: "The second court win resulting from the Applicant's unsuccessful appeal of the court's decision to order that previous approvals be rescinded and environmental review be fixed. *The City then fixed some minor aspects of the environmental review* and the Pittsburg City Council approved Faria for a second time in February 2023."

<sup>3</sup> *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782.



the delay would serve no legitimate purpose, and in fact put the Commission in violation of State law, which requires action be taken by June 19, 2024.<sup>4</sup>

SMD had its day in court, and it ultimately lost. We ask the Commission to respect the court's decisions.

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**False SMD Claim No. 2: A 400- to 500-foot buffer is needed** along the Project's western boundary to reduce aesthetic, biological, fire hazard, agricultural, and air pollution impacts.

***Details of claim:*** SMD asks the Commission to change the open space buffer along the Project's boundary with the City of Concord, suggesting the Commission legally can, and should, widen the buffer.

***The truth:*** The Contra Costa County Superior Court, in a judicial decision dated February 9, 2022, held the Faria project and its open space plan (including the buffer) fully complied with all applicable law, including City's General Plan. The Court's ruling specifically mentioned the buffer was consistent with the City's hillside, ridgeline, and grading regulations.<sup>5</sup>

The current size of the Project's open space buffer was carefully designed and approved by key stakeholders, including the City of Pittsburg and with input from the East Bay Regional Park District.<sup>6</sup> Ignoring the decisions of these agencies, SMD then sought to expand this buffer through a lawsuit, and it lost on those claims. Essentially, then, SMD is asking the Commission to reconsider issues previously analyzed and approved by the City, the East Bay Regional Park District, and a judge of the Contra Costa County Superior Court, which the Commission cannot do as a matter of law.

***The law:*** The Commission should not attempt to change the size of the Project's open space buffer because, respectfully, it cannot do so as a matter of law.

Deciding the dimensions of a buffer is not within the authority of the Commission. Such is a zoning action within the purview of the City. To this end, State law provides that a "commission shall not impose any conditions that would directly regulate land use density or intensity,

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<sup>4</sup> Gov. Code sections 56106, 56658(c)&(h), and 56666(a). On February 9, 2024, Discovery Builders and the City submitted an updated Application provided information requested by the Contra Costa LAFCO. Upon receiving this February 9, 2024 submittal, LAFCO staff was required to determine within 30 days whether the Project application was complete and acceptable for filing or was incomplete. (Government Code section 56658(c)). Since no formal application completeness determination was communicated to Discovery Builders or the City within 30 days, the Application was deemed accepted as of March 10, 2024. (Government Code section 56658(e)). Pursuant to Government Code sections 56658(h) and 56106, the Commission must hold a hearing, and take action, on the Project application within 90 days of the date on which the application was deemed accepted. There is one exception to this rule. The Commission has a one-time right to continue the hearing, so long as the rescheduled hearing date will take place not more than 70 days after the original hearing date. (Government Code section 56666(a).)

<sup>5</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, pp. 35-36.

<sup>6</sup> SMD fails to mention that, on October 1, 2021, Discovery Builders and the East Bay Regional Park District signed an agreement whereby project development would be rendered less visible from public vantage points, benefiting the Thurgood Marshall Regional Park.

property development, or subdivision requirements."<sup>7</sup> Further, a "commission shall not specify how, or in what manner, the territory [to be annexed] shall be rezoned."<sup>8</sup>

To the extent the Commission might be concerned about a legal threat from SMD, such concerns are unwarranted. As a matter of law, SMD is legally estopped from bringing claims about the buffer again in any judicial forum.<sup>9</sup>

**Detail on each of the environmental claims.** SMD improperly argues the Commission should expand the buffer to address certain specified environmental issues. As discussed above, the Commission lacks the authority to do so. Below, we have meticulously demonstrated that each of SMD's environmental claims are meritless, and in fact were already litigated and resolved by the County court system.

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**False SMD Claim No. 3: The Commission needs project-level details to make a decision.**

**Details of claim:** SMD repeatedly and vociferously claims the Project is not detailed enough for the Commission to make a decision. SMD points out that the Project consists only of programmatic pre-zoning and similar entitlements, and the group asserts that detailed utility, street, phasing, grading plans, EV charging stations, trails and bicycle alignments, and other Project elements are necessary. The group further claims that because of this vagueness, the Project's environmental review is inadequate.

**The truth:** SMD's claims have been declared false by a court of law. Programmatic approvals are perfectly acceptable,<sup>10</sup> and the Contra Costa County Superior Court *repeatedly* found the Project's environmental review satisfied all pertinent CEQA requirements.<sup>11</sup>

In fact, California law contemplates such a situation where a LAFCO, such as the Commission here, does not have project-level detail. In such situations, State law not only authorizes, but mandates, how a LAFCO should make decisions in these circumstances. As explained in the next paragraph, the only information a LAFCO is required to review are general plans and policies adopted by a city. In fact, this information is the only information a LAFCO can consider under the law. It is not necessary that a city identify the development purposes behind an annexation.

**The law:** State law provides that a "commission with regard to a proposal to annex territory to a city *shall* be based upon the general plan and rezoning of the city. *When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the*

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<sup>7</sup> Government Code section 56375(a)(6).

<sup>8</sup> Government Code section 56375(a)(7).

<sup>9</sup> *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782.

<sup>10</sup> Even SMD admits that the Project is programmatic, requiring only programmatic environmental review. The Contra Costa Superior Court memorialized this fact in its decision. (*Save Mt. Diablo v. City of Pittsburg, Case No. MSN21-0462, Statement of Decision*, p. 6 [SMD "does not dispute whether [program-level EIR] was appropriate".])

<sup>11</sup> The Contra Costa Superior Court considered SMD arguments on this very issue. It then repeatedly held the project EIR was a sufficient, program-level study, and more detail was not required or necessary. (*Save Mt. Diablo v. City of Pittsburg, Case No. MSN21-0462, Statement of Decision*, pp. 5, 6, 20, 25, 29.)

*basis of the adopted plans and policies of the annexing city or county.*"<sup>12</sup> In other words, all an applicant and annexing city need provide a LAFCO are general policies and, arguably, rezoning and a general plan designation. It is not even necessary for a city to identify what "development purposes" are proposed although.

Here, of course, the Commission has more than general policies to consider. It has a master plan that identifies the Project's development purposes, which is well beyond the minimum amount of information required by the State. Upon the receipt of such information, a LAFCO "shall" review the proposal on the basis of that information..<sup>13</sup>

With respect to the Project's environmental review, as noted above, the Contra Costa County Superior Court *repeatedly* found the Project's environmental review satisfied all pertinent CEQA requirements.<sup>14</sup> There is no occasion for further environmental review. In fact, California law prohibits it.<sup>15</sup>

**Further considerations:** What SMD disingenuously fails to acknowledge, and what the County Superior Court recognized,<sup>16</sup> is that the Project's Master Plan is not the last chapter in the Project's development. To build homes on the site, Discovery Builders will need to apply for subdivision map approvals from the City of Pittsburg, which triggers a review process that will require public notice and participation. A decision to annex the Project site does not mean development will occur without further public review. SMD knows this, given the County court wrote as much in its decision rejecting SMD's claims.<sup>17</sup>

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#### **False SMD Claim No. 4: Project-level review is required because a 2009 CEQA document says so.**

**Details of claim:** SMD erroneously asserts that project-specific information is necessary at this time because the Commission's 2009 Initial Study/Negative Declaration, relating to proposed SOI expansions, provides that "all future development within the subject areas would be subject to a project level environmental review in conjunction with any future annexation."

**The truth:** First, an initial study is not a legal document. It is an environmental review document, and its purpose is to identify and disclose environmental impacts.<sup>18</sup> Statements of

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<sup>12</sup> Government Code section 56375(a)(7) (emphasis added).

<sup>13</sup> See Government Code section 56375(a)(7)

<sup>14</sup> The Contra Costa Superior Court considered SMD arguments on this very issue. It then repeatedly held the project EIR was a sufficient, program-level study, and more detail was not required or necessary. (*Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, *Statement of Decision*, pp. 5, 6, 20, 25, 29.)

<sup>15</sup> See, e.g. *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal. App. 4th 788, 805 ("[a]fter a project has been subjected to environmental review, the statutory presumption flips in favor of the developer and against further review"); see also *Am. Canyon Cmty. United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal. App. 4th 1062, 1072.

<sup>16</sup> See *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, *Statement of Decision*, pp. 25, 29.)

<sup>17</sup> The Contra Costa Superior Court repeatedly held the project EIR was a sufficient, program-level study, and more detail was not required or necessary at this time, and that project-level applications would warrant further public review. (*Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, *Statement of Decision*, pp. 5, 6, 20, 25, 29.)

<sup>18</sup> CEQA's basic purpose is to "[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities." (CEQA Guidelines section 15002(a)(1).)

law in such a document, which are prepared by environmental consultants (not legislators or lawyers)<sup>19</sup> do not constitute binding law, and the reference in the foregoing 15-year-old document is, respectfully, not a true statement of the law. As discussed in the previous response, no project-specific information is necessary or appropriate at this time. As also noted above, when the applicant seeks to build homes, it will have to submit proposals for subdivision maps which will be subject to a public review process before the City of Pittsburg.

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**False SMD Claim No. 5: There is other "key missing information" the Commission needs.**

***Details of claim:*** SMD claims that the Commission does not have sufficient information about the Project's financial feasibility.

***The truth:*** SMD simply is unacquainted with the Project application and the Project's extensive administrative record. The Project application included an 84-page "Plan to Provide Public Services" for the Project, which explained in detail how the Project would be financially self-sustaining. This Plan was prepared by and supported with documentation from experts, including the City of Pittsburg; NHS Municipal Advisors (on behalf of the City); various engineers; and will-serve letter from all service providers, including the Contra Costa Water District, the Contra Costa County Fire Protection District, the Delta Diablo Sanitation District.

The information was deemed sufficient, and the application deemed complete, as of March 10, 2024.<sup>20</sup> Substantial evidence demonstrates the Project is self-funding over the long term.

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**False SMD Claim No. 6: The Project requires further mitigations.**

***Details of claim:*** SMD argues the Commission must adopt additional mitigations related to greenhouse gas emissions, water supply, and other alleged impacts.

***The truth:*** Mitigations are required where a project has a significant impact. The Faria Project has undergone significant CEQA review before the City of Pittsburg, where this environmental review and its supporting documents exceed two thousand pages. The pertinent document, an Environmental Impact Report ("EIR") for the Project, is part of the Commission's record of proceedings.

The Project EIR thoroughly evaluated the Project and disclosed all environmental impacts. This included all impacts with respect to aesthetics, biological resources, fire hazards, agricultural resources, air quality (including greenhouse gas emissions), and water supply. For each of these impacts, the Project EIR has identified all feasible mitigation. In certifying the Project EIR and approving the Project on April 17, 2023, the City of Pittsburg also adopted a Mitigation Monitoring and Reporting Program, which made all mitigations in the EIR legally binding on Discovery Builders. The MMRP is also part of the Commission's administrative record for the Project.

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<sup>19</sup> The July 2009 Initial Study was prepared by planners employed by the environmental consulting firm PMC. (Initial Study, p. 103.)

<sup>20</sup> Government Code sections 56668(c)&(f).

As discussed above, SMD filed a lawsuit challenging about 50 different aspects of the Project and its EIR. The Contra Costa County Superior Court upheld the Project EIR on all points except three minor ones, which the City then remedied. SMD did not challenge the amendments the City made and adopted, and thus forfeited its right to do so in the future. The scope of the Project's impacts and the effectiveness of all mitigation is settled and final.

The issues raised by SMD in its recent letter to the Commission, and the associated mitigations it demands, merely rehash claims SMD already made in court, and which SMD lost. Each of SMD's environmental claims are identified and addressed below.

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**False SMD Claim No. 7: The Project would have unstudied aesthetic impacts.**

***Details of claim:*** SMD asserts that the Commission needs, and does not have, an "analysis to identify prominent hills from which development would be visible in central County and avoid construction on those hills." SMD further asserts that Project development would occur adjacent to the Thurgood Marshall Regional Park (managed by the East Bay Regional Park District), creating an unaddressed significant, negative aesthetic impact.

***The truth:*** SMD already tried to argue, in court, that Project grading would result in unstudied aesthetic impacts.<sup>21</sup> The Project EIR in fact does contain substantial analysis of the Project's aesthetic impacts, consisting of 36 pages and nine visual simulations.<sup>22</sup> The Contra Costa County Superior Court determined, in writing, that SMD's claims had no legal merit, that the Project EIR was legally sufficient and that, insofar further Project detail surfaced through later tentative maps or other project-level entitlements, a lawful process existed for ensuring aesthetic impacts would be addressed.<sup>23</sup>

***Further considerations:*** On October 1, 2021, Discovery Builders and the East Bay Regional Park District signed an agreement whereby Project development would be rendered less visible from public vantage points, benefiting the Thurgood Marshall Regional Park. The East Bay Regional Park District does not object to the Project.

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**False SMD Claim No. 8: The Project would have unstudied impacts to biological resources.**

***Details of claim:*** SMD alleges that Project homes would be located in close proximity to "sensitive species breeding locations, including a known gold eagle nest site and a California tiger salamander breeding pond." The suggestion is that such information is new and has never been addressed before. SMD also asserts a wider buffer at the Project's westerly boundary would mitigate impacts to biological species.

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<sup>21</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Save Mt. Diablo's Opening Brief, pp. 29-30 (alleging the Project "'EIR fails to identify impacts on scenic vistas' and that 'views from public trails and viewpoints' at Thurgood Marshall and Briones Regional Parks and Mt. Diablo 'will be significant impacted by the Project.'")

<sup>22</sup> Project Draft EIR, Chapter 4.1; visual simulations on pp. 4.1-22 to 4.1-30.

<sup>23</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, p. 25.

**The truth:** SMD already tried to argue, in court, that the Project EIR did not adequately assess the Project's impacts on the golden eagle, California tiger salamander, and other species.<sup>24</sup> The Project EIR in fact does contain substantial analysis of the Project's impacts on each of these species (and others), and determined impacts could be mitigated to less than significance with adherence to certain construction protocols.<sup>25</sup> The Contra Costa County Superior Court then determined, in writing, that SMD's claims had no legal merit, and that the Project EIR "sufficiently describe the baseline" for both species, and that the analysis was adequate.<sup>26</sup>

Regarding SMD's claims that a wider buffer would mitigate impacts, the Project EIR already found that significant impacts of the Project, with the buffer selected by the City of Pittsburg, would all be mitigated to levels of insignificance. This analysis included study of the Project's impacts on wildlife corridors, which were found to be less than significance given the Project site "is surrounded by large expanses of open space," including open space maintained by the East Bay Regional Park District.<sup>27</sup> Both the City of Pittsburg and the Contra Costa County Superior Court, as indicated above, decided the Project EIR's evaluation of impacts on biological resources was legally sufficient.<sup>28</sup> Accordingly, no further mitigation is needed, and indeed it cannot be required as a matter of constitutional law.<sup>29</sup>

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**False SMD Claim No. 9: The Project would have unstudied impacts to agricultural resources.**

**Details of claim:** SMD claims the Faria property is agricultural land because "cows graze the property and are raised for beef production and that has been its historical use." Therefore, SMD concludes, the Project would result in the conversion of agricultural land to another use, triggering mitigation requirements that should be analyzed at a project level.

**The truth:** SMD's entire argument stems from a false statement of the facts. To the extent there are cows on the property, they exist for purposes of grazing in order to minimize wildfire risks. They are not "raised for beef" or "slaughtered for their meat," as SMD alleges, and there is not a shred of evidence to support this claim. Various livestock is brought in periodically to graze the site for property management purposes. The site is not irrigated and the grass is quickly grazed each spring/summer. The group's members, having lost in court, appear to be

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<sup>24</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Save Mt. Diablo's Opening Brief, p. 45; Reply Brief, p. 18 (attacking Project EIR analysis of golden eagle and California tiger salamander.)

<sup>25</sup> Project Draft EIR, pp. 4.4-46, 4.4-40, 4.4-50; Project Revised and Updated Final EIR, pp. 3-22, 3-23 (golden eagle analysis and mitigation); pp. 4.4-57, 4.4-58 (California tiger salamander analysis and mitigation).

<sup>26</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, pp. 18-19.

<sup>27</sup> Project EIR, pp. 4.4-62, 4.4-63.

<sup>28</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, pp. 18-19.

<sup>29</sup> A mitigation measure may go too far and cause a regulatory takings when there is no "essential nexus" between the condition and a legitimate state interest. (*Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 837.) That condition must also be "roughly proportional" to any harm or burden that the proposed project would cause. (*Dolan v. City of Tigard* (1994) 512 U.S. 374, 391.) Similarly, the Mitigation Fee Act, which in large part codifies the requirements established by the U.S. Supreme Court in *Nollan* and *Dolan*, requires a local government to establish a "reasonable relationship" between an exaction and a project's impact. (Gov. Code, § 66001(a)-(b); *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290 [Mitigation Fee Act limits imposition of fees to those that have a reasonable relationship to the burden posed by the development].)

resorting now to misinformation tactics and dishonesty. Stated more plainly, they are making things up.

The Project's impacts on agricultural resources was thoroughly analyzed in the Project EIR. This environmental study concluded that (1) the Project's soils were poor;<sup>30</sup> (2) such soils were categorized as grazing land, such that the Project would not in any manner threaten agricultural lands; and (3) and no significant impacts would result from its redevelopment and thus no mitigation was necessary.<sup>31</sup> In defining agricultural land, the Project EIR relied upon definitions set forth in Government Code sections 56016 and 56064.<sup>32</sup> A court considered the adequacy of the Project EIR's analysis and determined that, with respect to impacts on agricultural lands, the analysis was "not defective."<sup>33</sup>

Moreover, the applicant, in answering a Commission questionnaire, has further demonstrated that the Project site does not meet the definition of agricultural land under Government Code sections 56016 and 56064.<sup>34</sup>

**Further considerations:** SMD also asks that a "formal analysis" be prepared "of consistency with LAFCO policies protecting agricultural lands and discouraging sprawl."

First, such an analysis already exists in the Project EIR. This analysis, prepared by environmental experts and peer-reviewed by the City of Pittsburg, concludes the Project site "does not meet the Contra Costa LAFCo's definition of 'agricultural lands' or 'prime agricultural land.'"<sup>35</sup>

Second, the Commission's Agricultural and Open Space Preservation Policy incorporates the definitions of "agricultural land" set forth in the Government Code (i.e., the same definition reviewed in the Project EIR and the County Court), and the Commission's goals and policies all seek to minimize the conversion of such land, with more focus on prime agricultural land.<sup>36</sup> Given the Project site does not contain agricultural land (as defined in the Government Code), its redevelopment will not violate any Commission policies. In fact, annexation of the Project site would be encouraged under the Commission's policies, which encourage the Commission to annex properties with poor soils before annexing quality agricultural lands.<sup>37</sup>

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<sup>30</sup> For instance, the State Farmland Mapping and Monitoring Program indicates the Project site does not qualify as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. Accordingly, nor does the Project contain soils capable of irrigation that are rated as class I or class II as defined by the USDA, or soils with a Storie Index Rating of 80 or more (on-site soil ratings range from 2 to 51).

<sup>31</sup> Project Draft EIR, pp. 4.2-8 to 4.2-10, 4.2-15 to 4.2-17.

<sup>32</sup> Project Draft EIR, pp. 4.2-9, 4.2-10.

<sup>33</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, p. 20.

<sup>34</sup> Response to Contra Costa LAFCO "Questionnaire for Annexations, Detachments and Reorganizations," pp. 16-20.

<sup>35</sup> Project Draft EIR, pp. 4.2-10.

<sup>36</sup> Agricultural and Open Space Preservation Policy, Goals 1, 2, 3, 4, and 6; Policies, 1, 2, 5, and 9; Guidelines 1, 2, and 3

<sup>37</sup> <sup>37</sup> Agricultural and Open Space Preservation Policy, Policy 4, which provides that non-prime agricultural land should be annexed before prime agricultural land. Given the Project sit does not even qualify as agricultural land under the Government Code and the Commission's Policy, it presumably would be first in line for annexation.

To the extent SMD demands mitigation, there is in fact no impact to mitigate. To impose mitigation in this circumstance would be illegal and qualify as an unconstitutional exaction.<sup>38</sup>

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**False SMD Claim No. 10: The Project would have unstudied fire hazard impacts.**

**Details of claim:** SMD asserts the Project site is in an area that is sensitive to climate change and, in particular, an area that "faces extreme danger from wildfire that will only grow worse without action." SMD bases its assertions on maps that, it alleges, visualize climate impacts that are "dramatically better" than previous maps. The group alleges that a greater buffer would minimize the Project's development footprint, reducing fire danger.

**The truth:** The issue of fire safety was litigated by SMD, and it lost on these claims.

No new information is presented. The Project EIR disclosed that the Project site was located in a moderate to high fire hazard severity zone, as identified by the State, but determined impacts were less-than-significant with mitigation.<sup>39</sup> SMD challenged this conclusion, arguing the mitigation measures were insufficient and a project-level analysis was needed.<sup>40</sup> This challenge included filing a 50-page letter with the City, making extensive comments on fire safety and other matters.<sup>41</sup> The Contra Costa Superior Court held the Project EIR, which relied on findings that included evidence that a new fire station within 1.5 miles of the Project site will be operational, fully satisfied the law, and that "[f]urther detail is not necessary to provide substantial evidence to support these findings for the First-Tier EIR."<sup>42</sup>

SMD does not produce an iota of new information in its latest letter. Nor does SMD make any claims it has not made previously — claims which were rejected by a court at law. There being no new significant information that was not known, or could not have been known, during the processing of the Project EIR, there is no occasion for more analysis.<sup>43</sup> In fact, it is prohibited under CEQA.

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<sup>38</sup> A mitigation measure may go too far and cause a regulatory takings when there is no "essential nexus" between the condition and a legitimate state interest. (*Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 837.) That condition must also be "roughly proportional" to any harm or burden that the proposed project would cause. (*Dolan v. City of Tigard* (1994) 512 U.S. 374, 391.) Similarly, the Mitigation Fee Act, which in large part codifies the requirements established by the U.S. Supreme Court in *Nollan* and *Dolan*, requires a local government to establish a "reasonable relationship" between an exaction and a project's impact. (Gov. Code, § 66001(a)-(b); *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290 [Mitigation Fee Act limits imposition of fees to those that have a reasonable relationship to the burden posed by the development].)

<sup>39</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, p. 28; Project Draft EIR, p. 4.7-11

<sup>40</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, pp. 28-29.

<sup>41</sup> Project Finale EIR, pp. 2-60 to 2-91.

<sup>42</sup> *Save Mt. Diablo v. City of Pittsburg*, Case No. MSN21-0462, Statement of Decision, p. 29.

<sup>43</sup> See, e.g. *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal. App. 4th 788, 805 ("[a]fter a project has been subjected to environmental review, the statutory presumption flips in favor of the developer and against further review"); see also *Am. Canyon Cmty. United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal. App. 4th 1062, 1072.



Separately and independently, further claims by SMD about fire safety are legally prohibited given a court has already ruled on these matters.<sup>44</sup>

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**False SMD Claim No. 11: The LAFCO can and should consider adopting a more compact development footprint because it will result in less-than-significant impacts.**

**Details of claim:** SMD alleges that compact development would result in fewer climate change impacts, like car pollution.

**The truth:** First, this assertion is directly contradicted by the Project EIR. Chapter 6 of the Draft EIR, which contains an analysis of Project alternatives, specifically evaluated a more compact development alternative and determined it would also result in significant and unavoidable impacts. To this end, the Draft EIR concluded that a compact development footprint, known as the Clustered Development Alternative, would be anticipated to result in significant and unavoidable impacts related to Aesthetics, Air Quality, and GHG Emissions, and Transportation, Traffic, and Circulation.<sup>45</sup> In fact, the Project EIR undertook a quantitative analysis of greenhouse gas emissions and determined that, on a per capita basis when evaluating future Project residents, the compact development alternative *would have more emissions*.<sup>46</sup>

Second, the City found the compact development alternative was infeasible for multiple reasons, including that: (1) the alternative would impact the Project's ability to provide single family units, which was a unique need in the City, given household sizes in the City were on average larger than households in Contra Costa County; (2) this alternative would, from a practical standpoint, result in fewer residential units, including fewer low-income units, which was a poor policy decision given the housing crisis; and (3) the alternative did not significantly reduce the impacts of the proposed project.<sup>47</sup>

Third, deciding where residential development will be situated on the Property is a zoning decision and is not, respectfully, within the authority of the Commission. Such a zoning action sits solely within the purview of the City. To this end, and as explained above, State law provides that a "commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements."<sup>48</sup> Further, a "commission shall not specify how, or in what manner, the territory [to be annexed] shall be rezoned."<sup>49</sup>

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<sup>44</sup> *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782.

<sup>45</sup> Draft EIR, pp. would 6-15 through 6-23; Revised Final EIR, p. 2-6.

<sup>46</sup> Draft EIR, p. 6-17.

<sup>47</sup> *City of Pittsburg Certification of the Revised and Updated Final EIR, and Adoption of CEQA Findings, a Statement of Overriding Considerations, and a Mitigation and Monitoring Reporting Program for the "Faria/Southwest Hills Annexation Project, AP-10-717"*, Exhibit B, pp. 49-50, incorporated herein by this reference.

<sup>48</sup> Government Code section 56375(a)(6).

<sup>49</sup> Government Code section 56375(a)(7).

**False SMD Claim No. 12: The Project must include further air quality mitigations.**

**Details of claim:** SMD alleges the Commission should impose numerous mitigation measures on the Project to further reduce the Project's air emissions, including its greenhouse gas emissions. The suggested mitigation measures include improvements to transit, the provision of EV chargers, and use of low-carbon construction materials and techniques.<sup>50</sup>

**The truth:** The Project EIR identified the Project's air emissions as a significant impact. Specifically, this environmental study quantified the amount of air pollutants the Project would emit and determined that emissions of reactive organic gases (ROG), nitrogen oxides (NO<sub>x</sub>), and greenhouse gases would exceed quantitative government thresholds.<sup>51</sup> The Project EIR then identified a robust mitigation plan consisting of 26 separate measures, which included many of the same mitigations that SMD has identified.<sup>52</sup> This list is non-exclusive, meaning more measures can be added at the appropriate time.

To this end, the Project EIR's mitigation plan in fact serves as a menu of measures the City of Pittsburg can later apply once Discovery Builder's returns to it with applications for tentative maps containing more Project-related detail (e.g., the location of homes and roads). At that

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<sup>50</sup> The full list of measures requested by SMD include the following:

- Use of low carbon concrete as it becomes available on market as project progresses
- Specifics on how Faria will increase ride sharing, transit, cycling, walking and how these actions will reduce carbon pollution
- Require all buildings to use:
  - zero-COV paints and finishes,
  - cool roof materials,
  - be wired for electric vehicle charging capacity (we note that the California Solar Mandate went into effect on January 1, 2020, and that it requires all new residential construction projects have solar photovoltaic (PV) systems installed. This includes single-family homes, condominiums, and apartment buildings less than three stories high.).
  - Use of low carbon concrete as it becomes available on market as project progresses.
- Hire local construction workers to reduce carbon pollution and other air pollutants due to commute trip lengths
- Provide subsidies for:
  - purchase of purchase of zero fossil fuel vehicles and school buses
  - shuttles to BART and transit
- Create and implement Vehicle Miles Travelled reduction and Travel Demand Management plans
- Establish a carbon sequestration project on-site..
- To reduce and avoid emissions due to land use change, minimize grading footprint, reduce constriction on steep slopes, retain hilltops and ridgelines (as has been discussed previously in this and other letters).
- Commitment to zero net carbon pollution for project.

<sup>51</sup> Project Draft EIR, pp. 4.3-35, 4.3-44.

<sup>52</sup> Project Draft EIR, pp. 4.3-35 to 4.3-37, 4.3-45; Project Revised and Updated Final EIR, pp. 3-20, 3-21, 3-22. These mitigations included improvement of bicycle networks and pedestrian networks; the promotion of EV charging infrastructure; the promotion of ridesharing and other travel demand management measures; the use of zero-COV paints and finishes and cool roof materials; the extension of transit service; and other measures.

time, the City will conduct further air quality analyses and pinpoint what mitigation measures will be necessary.<sup>53</sup> It is anticipated that the ultimate mitigation plan, chosen from the menu of mitigations in the Project EIR, will reduce all air impacts to a level of insignificance. However, because the Project is programmatic at this time, the Project EIR conservatively found it could not "guarantee ... that emissions from future development in the project area would not exceed the thresholds of significance."<sup>54</sup> While the Contra Costa Superior Court identified some minor issues with the enforceability of these mitigation plans, the City of Pittsburg thereafter subsequently cured those deficiencies, and SMD did not object.<sup>55</sup> SMD has legally forfeited its right to do so before the Commission and the courts.<sup>56</sup>

What SMD is really arguing is that the Project must contain more detail, which has been addressed above under False SMD Claim No. 3.

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**False SMD Claim No. 13: The Project must include further water mitigations.**

**Details of claim:** SMD asserts that the Commission must impose several mitigation measures that would offset Project impacts related to water supply, including requiring the use of recycled or gray water on the Project for landscaping and home use; that all landscaping be done with drought-tolerant California native plants; that all irrigation use non-potable or gray water; and that all Faria buildings use low water use fixtures.

**The truth:** The Project EIR thoroughly assessed the Project's water supply impacts, including its impacts on groundwater (found to be less than significant) and water supply (found to be less than significant with mitigation).<sup>57</sup> Accordingly, no further mitigation is needed, and indeed it cannot be required under the federal and state constitutions.<sup>58</sup>

SMD also fails to acknowledge that Project landscaping, per Section 2.A.4, will comply with City municipal code requirements that are based on the model ordinance promulgated under the

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<sup>53</sup> Project Revised and Updated Final EIR, pp. 3-20 (Mitigation Measures 4.3-2, requiring further air quality analysis to best determine mitigations to apply); pp. 3-21 and 3-22 (Mitigation Measures 4.3-5(a) and 4.3-5(b), requiring further air quality analysis to best determine mitigations to apply), 3-22.

<sup>54</sup> Project Draft EIR, p. 4.3-35, 4.2-45 (necessary greenhouse gas reductions "cannot be guaranteed at this time").

<sup>55</sup> Project Draft EIR, pp. 4.3-35 to 4.3-37, 4.3-45; Project Revised and Updated Final EIR, pp. 3-20, 3-21, 3-22; SMD letter dated April 4, 2024, p. 3 (After the court decision, the "City then fixed some minor aspects of the environmental review ....")

<sup>56</sup> *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782.

<sup>57</sup> Project Draft EIR, pp. 4.8-21, 4.11-26, 4.11-27, and 4.11-28; Project Revised and Updated Final EIR, pp. 1-5, 1-6, 3-1, Appendix E.

<sup>58</sup> A mitigation measure may go too far and cause a regulatory takings when there is no "essential nexus" between the condition and a legitimate state interest. (*Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 837.) That condition must also be "roughly proportional" to any harm or burden that the proposed project would cause. (*Dolan v. City of Tigard* (1994) 512 U.S. 374, 391.) Similarly, the Mitigation Fee Act, which in large part codifies the requirements established by the U.S. Supreme Court in *Nollan* and *Dolan*, requires a local government to establish a "reasonable relationship" between an exaction and a project's impact. (Gov. Code, § 66001(a)-(b); *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290 [Mitigation Fee Act limits imposition of fees to those that have a reasonable relationship to the burden posed by the development].)

Water Conservation in Landscaping Act. It has legally forfeited its right to do so before the Commission and the courts.<sup>59</sup>

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SMD is asking, in large part, that the Commission reconsider and reopen disputes that it already argued in court, and which it lost. It is improper, and more importantly illegal, for the Commission to adjudicate issues decided by the Contra Costa County Superior Court.

SMD is asking the Commission to violate the U.S. Constitution, the California Constitution, and the Cortese-Knox-Hertzberg Local Government Reorganization Act by asking the Commission to impose new mitigation and usurping the City of Pittsburg's zoning power.

It is important for the Commission to ignore SMD's frivolous and misleading claims, and approve the City of Pittsburg's and our request to annex the Faria Project site into the City's territory.

Please let us know if you have any questions.

Very truly yours,



Sean Marciniak  
Partner

cc: Louis Parsons, President, Discovery Builders, Inc.  
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<sup>59</sup> *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 781-782.