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Via E-mail and FedEx

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Re: Southwest Hills/Faria Annexation and Prezoning Amendment:
Initial Study and Mitigated Negative Declaration

Dear Ms. Vahl:

On behalf of Greenbelt Alliance and Save Mount Diablo, we are writing to comment on the Initial Study and Notice of Intent to Adopt a Mitigated Negative Declaration ("IS/MND") prepared in connection with the annexation and prezoning amendments requested by Discovery Builders/Faria Land Investors LLC for a portion of the Southwest Hills Subarea. Initially, we note that Mayor Salvatore Evola is vice president of applicant Discovery Builders. See Exhibit 1. We trust that Mayor Evola will take no part in the City's consideration of this project, in which he plainly has a financial interest. See Govt. Code § 87100; Cal Code Regs, tit. 2, § 18700.

As detailed below, the City has failed to comply with the California Environmental Quality Act, Public Resources Code sections 21000, et. seq. ("CEQA") in its review of the environmental impacts of the proposed project. Until the City fully complies with CEQA, it may not approve the annexation and prezoning amendment. Moreover, the annexation request, as currently formulated and supported, is inconsistent with City's General Plan and cannot meet the standards that the Contra Costa Local Agency Formation Commission ("LAFCO") must apply.

The key problem with this application is its near-total failure to contemplate the residential development that is the sole purpose and motivation for the annexation and prezoning. Over and over again, the IS/MND denies that the project before the City

includes anything other than an annexation and rezoning. Yet CEQA requires that the project under review includes all of the development that the City's action will facilitate; therefore in this letter, we use "Project" to refer to all of the developments and actions that the present environmental review must cover. The City cannot pretend that the Project is limited solely to the annexation and rezoning. It must prepare complete environmental review before it can approve any part of the Project.

CEQA provides that a lead agency may issue a negative declaration and may avoid preparing an environmental impact report ("EIR") only if "[t]here is no substantial evidence, in light of the whole record before the lead agency, that the Project may have a significant effect on the environment." Pub. Res. Code § 21080(c). An initial study must provide the factual basis, with analysis included, for making the determination that no significant impact will result from the Project. *See* Cal. Code Regs. tit. 14 ("CEQA Guidelines"), § 15063(d)(3). In making this determination, the agency must consider the direct and indirect impacts of the Project as a whole (CEQA Guidelines § 15064(d)), as well as the Project's growth-inducing and cumulative impacts. *See City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1333.

The IS/MND completely fails to provide the required information and therefore cannot support the determination that the Project will have no significant environmental impacts. Evaluating the actual impacts of the Project is difficult in light of the thoroughly deficient information provided in this IS/MND. However, it seems likely that a thorough analysis of the entire Project would find potentially significant environmental impacts. The City will need to prepare a full environmental impact report ("EIR") before it can approve this Project.

Outside of CEQA, the IS/MND's incomplete conception of the Project also precludes the City's approval for several other reasons. The City's own General Plan requires sufficient information to plan for the provision of utilities and public services to the future development; lacking such information, the Project is inconsistent with the General Plan and cannot be approved. LAFCO's statutory mandates and its local guidelines also require the consideration of the future development on the annexation land. Without such information, LAFCO will be unable to approve the proposed annexation.

I. The IS/MND is Legally Inadequate Because it Ignores the Residential Development Aspect of the Project.

The IS/MND provides almost no actual analysis of the Project's impacts. For nearly every impact area, the document simply states that "no development is currently

proposed at this time.” *E.g.*, IS/MND at 13. In other words, the IS/MND is considering only the specific legal actions before the City—the annexation and rezoning. *See, e.g.*, IS/MND at 39 (stating that area’s need for fire protection will not change because no development will occur).

This approach to defining and describing the Project blatantly contravenes CEQA. The proposed annexation and rezoning are not ends in themselves. They form the prelude to residential development of the bulk of the annexation area. This is obvious as a matter of common sense: the only reason to annex residential-zoned land owned by a developer, at the developer’s request, is to build homes on it.

History bears out this interpretation of the proposal: the land now proposed for annexation has been the subject of several development proposals from the same builder. For example, in 2002, the Pittsburg Planning Commission granted preliminary approval for the San Marco Meadows project, which covers part of the proposed annexation area. This project would include 779 units on 231 acres, on the northwest portion of the lands presently proposed for annexation. (The approval took the form of rezoning number RZ-02-04 and a subdivision numbered variously 8279 or 8515 in different documents.) *See* Exh. 2. City Council action was required to finalize the approval, but no such action occurred. To the best of our knowledge, the application for these approvals has never been withdrawn and remains pending.

Later, in 2006, Seecon Construction Corporation and Faria Land Investors LLC (one of the present applicants), proposed an Annexation and Development Agreements for an area called Faria Ranch South (Application 06-349), which overlaps with the present Project area. *See* Exh. 3. And Exhibit 4 to this letter is a map presented at a meeting on February 5, 2009, between the Pittsburg City Manager, Save Mount Diablo’s Executive Director Ron Brown, and SMD’s Director of Land Programs Seth Adams showing the northern part of the proposed annexation area as a residential development and an extension of San Marco Boulevard crossing the proposed Project site.

In short, it is apparent that the developer has plans for the annexation area. These plans are a part of the Project, and CEQA requires that they be included in environmental review before this annexation is approved.

“[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient” environmental review. *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 199. The “project” that must be considered in an EIR is the “whole of an action, which has a potential for resulting in a . . . physical

change in the environment.” CEQA Guidelines § 15378(a) (emphasis added). The IS/MND completely fails to meet this requirement.

A. CEQA Requires That Environmental Review Include All Reasonably Foreseeable Future Development.

The IS/MND attempts to separate current actions from future approvals. Under CEQA, however, future activity is a part of a project if (1) it is “a reasonably foreseeable consequence of the initial project; and (2) the future . . . action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal. 3d 376, 396. If, per these factors, the future activity is part of the project under review, then its impacts must be considered in the same environmental document.

Here, the proposed annexation is clearly the first step toward a specific development. Residential development on the annexed land is a reasonably foreseeable consequence of the annexation—indeed, it is the entire purpose of the annexation. Such development, moreover, would have substantial potential environmental impacts. For example, it would contribute traffic to the already-congested Highway 4. That traffic, in turn, would cause significant emissions of air pollutants. The annexation area is potentially habitat for many special-status species and may be protected by a pending habitat conservation plan. There are potential impacts to health and safety as well: a substantial portion of the annexation area has slopes greater than 30% or are considered “generally unstable” and there are several fault lines running through the area. Pittsburg General Plan at 10-4, 10-7. Development on these areas creates dangerous conditions that can result in risk to homes and property, as described in the newspaper articles attached as Exhibit 5. Nonetheless, the IS/MND ignores these potential impacts to health and safety. IS/MND 20-23. These are just a few examples, but they are sufficient to establish that the future residential development meets the *Laurel Heights* factors and must be included in the project under review.

The IS/MND was thus obligated to both describe and analyze the future residential development as part of the Project. It completely fails to do so. The reader cannot discern from the document anything concrete about this development: how many residences will be built on the annexation area, where those houses will be, how its circulation system will function, or any other important feature. The lack of these features means that the City decisionmakers will not know what they are approving, and it makes accurate environmental analysis impossible. Instead, the IS/MND simply promises to provide more information in the future.

Breaking the project into parts by leaving out the future activity is illegal segmentation and leads to inadequate environmental review. *See, e.g., Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal. 3d 263, 283-84 (CEQA mandates that "environmental considerations do not become submerged by chopping a large project into many little ones"). A lead agency, moreover, may not segment a project by reviewing entitlements one at a time, waiting for each new approval to consider the specific development proposed. Instead, an agency must provide environmental review of an entire project at the time of the first approval. *See, e.g., City of Carmel-By-the-Sea v. Board of Supervisors* (1986) 183 Cal. App. 3d 229, 233-35, 244 (city must analyze full environmental consequences of rezone because it "was a necessary first step to approval of a specific development project"); *Koster v. County of San Joaquin* (1996) 47 Cal. App. 4th 29, 31, 34, 39-40 (County EIR must analyze General Plan amendment that was the "first step" toward developing new towns).

The *Bozung* case is particularly relevant to the present IS/MND. In that case, the Ventura County LAFCO approved an annexation without preparing appropriate CEQA review. The LAFCO defended its approach in part by arguing that the annexation itself had no environmental impact. *Bozung*, 13 Cal. 3d at 278-81. The Supreme Court wholeheartedly rejected that argument: because the annexation was in fact the first step toward a large residential development, that entire development was the project at hand, and the CEQA review had to account for all of its impacts. *Id.* at 282.

The City appears to be taking the same approach that the Supreme Court quashed in *Bozung*.¹ It has looked at the annexation in isolation, as if no development will follow. This method of environmental review is contrary to both the facts of the situation and the applicable law. Common sense and previous applications demonstrate that residential development is the purpose of the annexation. This is not, as the *Bozung* court noted, "the case of a rancher who feels that his cattle would chew their cuds more contentedly in

¹ At times, the IS/MND confusingly purports to be tiering from the EIR prepared for the Pittsburg General Plan. *E.g.*, IS/MND at 5-6. Under the tiering approach, however, the IS/MND would need to demonstrate that Project development has already been analyzed in the previous EIR. *See* Pub. Res Code § 21068.5; CEQA Guidelines § 15152; *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal. App. 4th 511, 528. Without an accurate description of what is planned for the annexation land, the IS/MND cannot make such a showing. Moreover, this approach is incompatible with the rest of the document, which turns a blind eye to future residential development.

an incorporated pasture.” *Id.* at 281. It is, rather, the case of a developer launching a project without providing the public with a full accounting of the plans to follow.

In light of these facts, CEQA demands that environmental review encompass all of those plans. This will require revisiting every single impact analysis on the City’s Initial Study Checklist and revising it to include the planned development. These analyses will also need to include consideration of the whole Project’s contribution to cumulative impacts, especially in light of the many recently approved and pending projects in the vicinity, including the Montreux and Sky Ranch II projects.

Unless and until the City provides analysis of the entire Project, this IS/MND will remain inadequate to support approval of the Project. And, as discussed above, the size and density of the foreseeable development on the annexation land means that proper environmental review will likely find potentially significant impacts. An EIR is very likely to be required.

B. CEQA Requires the IS/MND to Consider All Development Facilitated By the City’s Action.

Even if the City were to ignore the developer’s plans for the annexation area, the IS/MND would still need to account for residential development there. Environmental review must take into account all of “the future development permitted by the [challenged action].” *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 409 (citation omitted). It must examine a project’s *potential* to impact the environment, even if the development may not ultimately materialize. *See Bozung*, 13 Cal. 3d at 279, 282.

For example, in *City of Carmel-By-The-Sea*, Monterey County approved a rezoning of a hotel site that “would authorize expansion of the existing resort hotel use to accommodate residential cluster development.” 183 Cal. App. 3d at 245. The hotel owners argued that because they had no concrete plan to build the newly-authorized residential development, the county action could have no significant effect on the environment and no EIR was required. *Id.* at 243. The Court of Appeal held that the new potential for expanded use defined the scope of the project, even if the hotel had no current plans to fulfill that potential. *Id.* at 244; *see also Christward Ministry v. Superior Court* (1986) 184 Cal. App. 3d 180, 190, 196 (environmental review of general plan amendment must consider impacts of all new potential uses allowed).

Here, according to the IS/MND, the Project site is presently governed by county A-4 and A-2 zoning, which allow minimum parcel sizes of 20 acres and 5 acres,

respectively. IS/MND at 1. Following the annexation, the site will be governed by City zoning, which will allow substantially more density, up to 1500 homes.² IS/MND at 1, 5-6, 37. Even on the basis of the minimal information scattered throughout the IS/MND, it is apparent that this increase in density will have substantial environmental consequences and must be the subject of environmental review before the City can approve the Project.

The developer's failure to reveal the precise form of the planned residential development to the public is not an excuse for the IS/MND's incomplete Project Description and analyses, for two reasons. First, the City could insist that the developer provide sufficient information. As explained in Part IV below, the LAFCO is very unlikely to approve this annexation in the absence of thorough description and environmental review of the future development. Thus, it would be eminently reasonable for the City to demand such information from the developer before taking action on the annexation request.

Second, the IS/MND itself demonstrates that environmental analysis is possible based on the information currently available. The climate change section of the IS/MND provides an analysis of the future development's greenhouse gas emissions. IS/MND at 23-25. As discussed below, this analysis is deeply flawed, but it nevertheless manages to use the area's zoning and acreage to estimate emissions. *Id.* The IS/MND provides no explanation of why such analysis was possible for this one environmental impact but not for any other. We cannot imagine what such an explanation would be, as the buildout assumptions used in the greenhouse gas analysis would certainly suffice to analyze other air pollutant emissions, as well as traffic and demand for utilities and public services. Similar approximations could support analyses of impacts to biological resources and water quality.³ And, if nothing else, the "buildout" approach to greenhouse gas analysis demonstrates that the annexation and rezoning will induce growth in the area; the

² The IS/MND provides this 1500 homes estimate in the water supply and population and housing analyses on pages 6 and 37, not in the project description. It is unclear whether this figure is based on buildout under the site's zoning or on the developer's undisclosed plans.

³ Analysis of biological resources and water quality will be particularly important in light of the Project's location within a Habitat Conservation Plan/Natural Community Conservation Plan area (IS/MND at 16-17) and partially within the watershed of the former Concord Naval Weapons Station, which is slated to become a conservation area. It is highly likely that dense development would be inconsistent with these plans and uses.

IS/MND must revise its insupportable assertion that the Project will have no growth-inducing impacts. *See* IS/MND at 37-36.

CEQA demands complete information about the planned development, but even with the information in the IS/MND itself, further analysis was possible. This analysis, and, most likely, an EIR, is required before this Project may be validly approved.

II. The IS/MND Fails to Provide Legally Adequate Analysis or Mitigation Concerning the Project's Climate Change Impacts.

Despite its overall failure to analyze the Project's environmental impacts, the IS/MND does attempt to quantify its greenhouse gas emissions. IS/MND at 24. The analysis, however, is deeply flawed. The IS/MND simply provides a figure for the Project's annual emissions. *Id.* It does not describe any of the assumptions supporting this number. The reader does not know how many structures or daily vehicle miles traveled will be associated with the Project, let alone how the analysis translated these facts into its estimate of emissions. To provide adequate information, the City must explain its assumptions and calculations so that the public and decisionmakers can critically evaluate the analysis, as CEQA requires.

The IS/MND does recognize that the Project would emit greenhouse gases well in excess of at least one of the thresholds set by the Bay Area Air Quality Management District. *Id.* This is, as the IS/MND admits, a potentially significant impact. Thus, unless the IS/MND includes adequate, feasible mitigation for this impact, the City must prepare an EIR prior to approving the Project. *Id.* The mitigation proposed for this significant impact, however, does not come close to meeting CEQA's requirements.

Mitigation Measure 7-1, meant to mitigate the Project's greenhouse gas emissions, instead defers the identification of such mitigation. This violates one of CEQA's clearest and longest-standing principles: "[f]ormulation of mitigation measures should not be deferred until some future time." Guidelines § 15126.4(a)(1)(B). CEQA documents, including IS/MNDs, may not rely on management plans that have not yet been formulated, and that have not been subject to analysis and review. *San Joaquin Raptor*, 149 Cal. App. 4th at 670; *see also, e.g., Gentry v. Murrieta* (1995) 36 Cal. App. 4th 1359, 1396; *Defend the Bay v. City of Irvine* (2004) 119 Cal. App. 4th 1261, 1275; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777, 794; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1605 n.4.

To fulfill CEQA's mitigation requirements, the IS/MND must actually describe feasible mitigation measures at the time of project approval, or provide "specific and mandatory performance standards to ensure that the measures, as implemented, will be effective." *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal. App. 4th 70, 94; (citing *Sacramento Old City Assn. v. City of Sacramento* (1991) 229 Cal. App. 3d 1011, 1028-29).

Mitigation 7-1 does nothing to meet these requirements. First, it requires that future CEQA review of development on the Project site include analysis and mitigation of greenhouse gas emissions. IS/MND at 25. Second, it requires that development on the Project site comply with the City's pending Climate Action Plan, to be adopted at some unknown future date. *Id.* In other words, the mitigation measure simply mandates that future development on the Project site follow the law. It identifies no specific measures, nor does it set a performance standard that future measures must meet. It is flatly illegal. The IS/MND may not rely on this measure to mitigate its admittedly significant contribution to greenhouse gas emissions. In the absence of effective mitigation for a significant impact, the City must prepare an EIR.

III. The IS/MND Completely Fails to Meet CEQA's Requirements for Analysis of Water Supply Impacts.

In its analysis of the Project's impacts related to water supply, the IS/MND again violates clear CEQA principles. It makes unsupported assumptions about the availability of water for the Project, ignores the environmental impacts of providing that water, and fails to identify a back-up supply.

CEQA requires thorough analysis of a project's planned water source. Adequate environmental review determines whether the proposed source is adequate to meet the project's needs, whether that source is reliable, and whether tapping it will cause adverse environmental impacts. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 432. If a project's proposed water supply is uncertain or unreliable, the CEQA document must identify an alternative water source and consider the environmental impacts of using that source. *Id.*

The IS/MND completely fails to follow this mandate. It merely reflects a general hope that the Project would be served by the Contra Costa Water District ("Water District"). See IS/MND at 45-47. It includes no analysis of whether the Water District has sufficient supplies to meet Project demand, no analysis of the potential environmental impacts of drawing on those supplies, and no consideration of alternative sources should the Water District prove unable to meet Project demand. In short, the IS/MND provides

none of what CEQA requires. Notably, the Water District itself also points out that a thorough demand assessment is a prerequisite to Project approval. *See* Comment Letters from Water District, dated September 17, 2010 and October 6, 2010 (attached to IS/MND).

The IS/MND does acknowledge that serving the Project would require new entitlements (IS/MND at 47-48), which is a potentially significant impact by the IS/MND's own standards, but it offers no real mitigation for that impact. The only identified mitigation simply requires the Project to seek the needed entitlements and perform a water supply assessment. *Id.* This does nothing to meet CEQA's requirements.

By requiring the water supply assessment *after* Project approval, the IS/MND defers both analysis and mitigation. This precise approach has been rejected time and again, most notably in *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296. In that case, an initial study failed to consider the hydrological impacts of a proposed irrigation system. *Id.* at 306. Instead, it required the applicant to prepare studies after the project was approved and to implement mitigation measures for any impacts revealed by those studies. *Id.* The Court of Appeal held that this procedure "r[a]n counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process." *Id.* at 307. The negative declaration was thus inadequate.

The measures invalidated in *Sundstrom* were actually more effective than the water supply measures here. Like the *Sundstrom* measures, Mitigation Measure 17-1a inappropriately defers analysis into the future. However, Measure 17-1a does not even provide for the mitigation of any environmental impacts or supply shortfalls that the deferred water supply assessment might uncover.⁴ The assessment must be performed now, as part of the environmental review of the Project. No Project approval can validly go forward until the City provides a thorough analysis of water demand, the means of meeting that demand, and the environmental consequences of doing so.

⁴ The IS/MND repeats this exact error in Mitigation Measure 1-1, concerning the Project's potentially significant visual impacts. IS/MND at 11. This measure defers studying such impacts into the future, thus violating CEQA, and then fails to provide any actual mitigation for them. The IS/MND thus identifies a potentially significant impact but fails to propose any means of reducing or avoiding that impact. In the absence of mitigation, an EIR is required. Pub. Res. Code § 21080(c).

IV. The Project Is Inconsistent with the Pittsburg General Plan.

The Project is inconsistent with the Growth Management policies of the Pittsburg General Plan. Policy 3-P-1 of the General Plan is to “[a]llow 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.” (Emphasis added.) The policy further requires that the project proponent contact public service agencies prior to project approval and gain their assurances that “areas of urban expansion will have all necessary infrastructure.” The IS/MND fails to provide any discussion of public facilities in the Project area. The City cannot approve the Project where there is no evidence that public facilities and infrastructure will be available or can be provided. It must fulfill its mandate to approve only those entitlements that can fulfill these requirements.

Further, the Project also fails to discuss the ability of the transportation system to handle the impact of new development from the Project. Policy 3-P-2 requires that “[p]rior to project approval, [the City must] ensure that the existing and planned transportation system will have adequate capacity to accommodate new urban development.” Again, the IS/MND completely fails to address the impacts on the transportation system of the new development associated with the Project, relying instead on its repeated refrain of “No development is proposed at this time.” IS/MND at 42. This lack of analysis fails to fulfill the General Plan mandate that the City must “ensure” that the transportation system can accommodate the stresses of additional development.

The Project is also inconsistent with General Plan policy 2-P-3, which requires the City to “[a]llow market forces, the status of agricultural preserve (Williamson Act) contracts, and the availability of urban services to determine the timing of annexation or development expansion into the hillsides.” The Project and IS/MND provide no information as to whether any of the factors weigh in favor of annexation. The City is required to allow these considerations “to determine the timing of annexation.” Without any information, the City will be completely unable to ensure that its decision is consistent with this General Plan directive. These omissions are fatal to the Project; the City cannot approve a project that is inconsistent with the General Plan. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 570 (“The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.”).

Moreover, the IS/MND fails to consider these General Plan inconsistencies under its CEQA land use discussion. A conflict between a plan or ordinance and the Project is a significant impact that must be disclosed and analyzed in the EIR. *See Pocket*

Protectors v. City of Sacramento (2005) 124 Cal. App. 4th 903, 929-36. Yet the IS/MND again turns a blind eye to the impacts that will inevitably follow approval of this Project. When examining whether the Project would conflict with any applicable land use plan, including the General Plan, the IS/MND determined that the impact would be less than significant. IS/MND at 33. However, there is no discussion to support this conclusion. Instead, the IS/MND merely states that because no development is proposed at this time, the impact will be less than significant. *Id.* This is not sufficient.

The discussion must address these aspects of the Project that appear, from the IS/MND's skimpy analysis, to be inconsistent with the General Plan. Because it has not, the IS/MND does not comply with CEQA and cannot support approval of the Project. These impacts, if thoroughly examined, will prove to be significant, and will very likely require the preparation of an EIR.

V. The Contra Costa LAFCO Is Unlikely to Approve Annexation of the Project Area.

The Project application and IS/MND are woefully inadequate. Pursuant to the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, California Government Code § 56000 *et seq.* ("CKH Act"), the Project's request for annexation to the City of Pittsburg must be approved by the Contra Costa Local Agency Formation Commission. LAFCO, however, has indicated that it is unlikely to approve this request. Specifically, LAFCO wrote in its September 16, 2010, comment letter, attached to the IS/MND, that "[a]bsent an approved development proposal, tentative map, or specific plan, annexation is premature at this time." The IS/MND description and analysis of the Project fails to give LAFCO, or the City for that matter, adequate information to determine whether annexation is proper or advisable at this time. As such, the City should not approve the Project until it can present LAFCO with a meaningful application that at least has a chance of being approved.

A. The Project Description Does Not Provide Enough Information for LAFCO to Evaluate Annexation Under the CKH Act.

The Project fails to identify any development project or specific plan that will govern the Project area. Thus, LAFCO is unable even to attempt to apply many of the factors it is required to examine in deciding whether to approve annexation. *See* Gov't Code § 56668. For example, LAFCO must consider the population density and likelihood of significant growth in the area during the next 10 years; the probable future needs for organized community services; the effect of the proposed action on adjacent areas; a regional transportation plan; the ability of the City to provide services for the

Project area; the availability of water supplies adequate for projected needs; and the extent to which the Project will affect the City and the County in meeting their fair share of regional housing needs. *Id.* These analyses are impossible without more information regarding future plans and uses for the land in the Project area.

Additionally, when submitting a request for annexation to LAFCO, section 56653 of the CKH Act requires the City to also submit a plan for providing services within the affected territory. This plan must: (1) enumerate and describe the services to be extended to the affected territory; (2) indicate the level and range of those services; (3) indicate when those services can feasibly be extended; (4) indicate necessary infrastructure improvements such as roads, sewers, and water facilities; and (5) indicate how those services will be financed. Gov't Code § 56653.

The City will be unable to present a plan that adequately addresses any of these required issues without more definite information about the use of the land to be annexed. Specifically, it cannot accurately describe the extent of necessary municipal services, analyze the feasibility of extension of those services, or determine the required funding without knowing the extent of development within the annexed area. Thus, with the details provided for the Project, the City will be unable to comply with this requirement of the CKH Act. The City should not approve a Project that fails to provide the City with the tools to submit a complete, approvable application to LAFCO.

B. Approval of Annexation of the Project Area Is Inconsistent With LAFCO Policies.

It is a waste of resources for the City to approve a Project that will be rejected when it is submitted to LAFCO. Nonetheless, the Project includes none of the information LAFCO considers important and relevant in making its annexation decisions. LAFCO cannot evaluate the prudence of the Project when the information is not available to analyze. Specifically, the Project provides little or no information relevant to the determinations of whether (1) there is adequate vacant buildable land within the City's existing boundaries; (2) the annexation area is within the City's Urban Services Area and is served by urban facilities, utilities, and services, or is proposed to be served by urban facilities, utilities, and services within five years; and (3) the annexation area would be needed within the next five years to meet the City's demand for housing. LAFCO Comment Letter at 3.

These considerations are essential for LAFCO to determine whether approval of an annexation meets LAFCO's goals of promotion of orderly growth and development by determining logical local agency boundaries, preservation of open space by encouraging

development of vacant land within cities before annexation of vacant land adjacent to cities, and preservation of prime agricultural land by guiding development away from presently undeveloped prime agricultural lands. LAFCO Commissioner Handbook ("LAFCO Handbook"), § 2.1(D). Without the information necessary to make these determinations, LAFCO is unable to make the policy decision as to whether annexation of the Project area is proper.

In its brief analysis of whether the Project is consistent with LAFCO requirements, the IS/MND often refers to the fact that the Project area is within the City's Sphere of Influence ("SOI"). However, LAFCO policies specifically note that while inclusion in a City's SOI makes land eligible for annexation, an annexation request "will not be approved solely because an area falls within the SOI of any agency." LAFCO Handbook § 2.1(D). In fact, the Project is inconsistent with the goals of LAFCO and fails to provide the information and detail required by LAFCO. For example, LAFCO states that annexations should conform to lines of assessment and avoid splitting parcels. LAFCO Handbook § 2.1(D). However, the Project includes only portions of Assessor's Parcel Number 097-190-002, but includes no information as to why only part of that parcel would be included in the annexed area. *See* IS/MND at 1. This is just one example of the many inconsistencies between the Project and LAFCO policies. As such, LAFCO is unlikely to approve the annexation request. The City should deny the incomplete Project and IS/MND and wait until it can provide a comprehensive application to LAFCO.

1. Public Services

The Project and the IS/MND are especially lacking in their discussions of public services. The necessity of public services and annexation are tightly intertwined in LAFCO's policies. *See* LAFCO Comment Letter at 2-3. Annexation applications should be submitted to LAFCO only when enough information is available for LAFCO to fully evaluate the current use of public services as well as anticipated future needs. *See id.* Indeed, LAFCO discourages annexation of vacant land until it can be demonstrated that services are needed in that area in the near future. *Id.* at 3. Furthermore, LAFCO also discourages extension of public services such as water and sewer for urban development in the absence of existing urban development or plans for imminent urban development. *Id.* Without approval of development plans for the Project area, LAFCO will be unable to make these service-related determinations and will very likely reject the City's annexation application.

More specifically, LAFCO requires that "[p]roponents of an annexation must demonstrate that the proposed development within the annexation area will meet the annexing jurisdiction's adopted performance standards for facilities, services and traffic."

LAFCO Handbook, § 2.1(D). Further, the territory proposed to be annexed should be within the Urban Service Area of the City, as defined in section 56080 of the CKH Act; annexations for territory beyond the 5-year SOI-Urban Service Area will typically be denied, unless the City can show overriding reasons supporting the need for annexation at the present time. *Id.* LAFCO further requires that infrastructure improvements that will be necessary to provide services to the annexed territory be included in the City's 5-year Capital Improvement Program. *Id.*

The IS/MND makes no indication of whether the Project area is within the Urban Service Area of the City or whether the annexed area would meet the City's adopted performance standards. Nor does it mention funding sources for extension of public services at all. It can't, because it totally fails to describe any details about the Project. Rather than actually addressing the public services that will be needed in the newly-annexed area, the IS/MND summarily states that the needs for public services will not change because there is no development proposed at this time. IS/MND at 38-41. This does not meet LAFCO's requirements.

Further, as part of the request for annexation to LAFCO, the City should also include an "intent to serve" statement from each public services agency expected to serve any portion of the affected territory. LAFCO Handbook, § 2.1(D). Whenever feasible, requests for annexation to each of these public services agencies should be submitted at the same time as the City's annexation request. *Id.* Without details as to the future needs of the Project area, it will be impossible for the public services agencies to evaluate their capacity to serve the area. In fact, the Contra Costa Water District has already expressed concern about the lack of detail in the Project. Contra Costa Water District Comment Letter, dated September 17, 2010, at 1 (attached to IS/MND). In addition to raising a variety of other concerns, the Water District notes that it "needs to fully understand the details of the proposed project before it can provide [a "will serve"] letter. This includes details on the number of new homes and businesses that would be constructed." *Id.* The City will be unable to provide the Water District with these details because the Project contains no such information; as such, the City will be unable to obtain the requisite "intent to serve" statements from the necessary agencies. Once again, this reveals the inadequacy of the Project and IS/MND documents and shows why approval of the Project at this stage is premature.

Despite LAFCO's detailed requirements related to evaluating the necessity, provision, and financing of public services, the IS/MND provides no information about the effect the Project will have on public services. This is obviously explained by the prematurity of the Project application, and it means the City will be unable to comply

with LAFCO requirements. Without specific information relating to the future needs of public services in the Project area, approval of the Project is not proper at this time.

2. Preservation of Open Space

As the IS/MND acknowledged, one of LAFCO's goals is "preservation of open space by encouraging development of vacant land within cities before annexation of vacant land adjacent to cities." (IS/MND at 8; LAFCO Handbook, §2.1(D).) However, the IS/MND fails to describe the development that would follow an annexation or analyze the development needs of the City at all. To ensure consistency with its goal, LAFCO needs details regarding current availability of development land within the City limits and demand for future development, but the Project and IS/MND provide none of this information. Without this, it will be impossible for LAFCO to decide whether development in the newly-annexed area is needed, and therefore whether annexation of the Project area is in line with this goal.

Moreover, the IS/MND acknowledges that annexation of the Project area would change the area's zoning to permit up to 1,500 single family residential units. IS/MND at 6, 37. Nonetheless, the IS/MND fails to actually analyze the need for these units as compared to the current and near-term demand for housing in the City. *See* LAFCO Comment Letter at 3. There is no way to determine whether there are sufficient opportunities for development of vacant land within the City, rather than annexing vacant land, without this information. Again, LAFCO's hands are tied; it will not be able to determine whether annexation would be consistent with its goal. The City will be sent back to the drawing board by LAFCO if it submits this deficient annexation application to LAFCO. The City should save itself time and money by waiting until it has a complete annexation request to present to LAFCO.

3. Preservation of Prime Agricultural Land

Another of LAFCO's goals is "preservation of prime agricultural land by guiding development away from presently undeveloped prime agricultural lands." LAFCO Handbook, § 2.1(D). Again, the IS/MND dismisses this quickly by stating that the site is currently used for grazing land and is not identified as prime farmland. IS/MND at 9. However, if the Project were approved, the zoning of the area would be changed from agricultural to designations permitting significantly greater residential development. IS/MND at 1, 5. Further, as LAFCO pointed out, the IS/MND fails to even mention the definitions of agricultural land and prime agricultural land in the CKH Act. *See* Gov't Code §§ 56016, 56064 (prime agricultural land includes land that supports livestock); *see also* LAFCO Comment Letter at 3-4. The IS/MND provides no discussion or analysis of

the effects of annexation on agricultural lands. Thus, LAFCO cannot determine how approval of this annexation will affect agricultural lands, and there is no way LAFCO can ensure annexation of the Project area will be consistent with its goals. Therefore, LAFCO will not approve the request and neither should the City.

CONCLUSION

For the foregoing reasons, we urge the City to do the following: (1) revise the initial study to account for the planned residential development on the annexation land; (2) if, as seems exceedingly likely, the initial study demonstrates potentially significant environmental impacts, prepare an EIR carefully analyzing the impacts of that development; and (3) take no action on the proposed annexation and rezoning until (1) and (2) are completed. The City should also strive to maintain transparency regarding future development of this area and should consider the opinions of interested stakeholders in any future deliberations. The City's current approach, pretending that existing plans for this area are irrelevant, is unacceptable. For these reasons, we also urge the city to meet with interested parties prior to making any further decisions on this Project or similar projects.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Gabriel M.B. Ross



Mary J. Reichert

cc: Dana Hoggatt, City of Pittsburg
Discovery Builders
Contra Costa Water District
California Department of Fish and Game

East Contra Costa County Habitat Conservation Plan/Natural Community
Conservation Plan Conservancy
East Bay Regional Park District
Contra Costa Local Agency Formation Commission
City of Concord
Contra Costa County
City of Clayton
City of Antioch
Delta Diablo Sanitary District
Contra Costa Transportation Authority
Bay Area Air Quality Management District
San Francisco Bay Regional Water Quality Control Board
California Native Plants Society
Sierra Club
Audubon California
Contra Costa Times
San Francisco Chronicle

EXHIBIT LIST

1. **Exhibit 1:** Paul Burgarino, *Mayor melds experience and youth*, CONTRA COSTA TIMES, Feb. 7, 2010, at A13.
2. **Exhibit 2:** Letter to Save Mount Diablo dated July 19, 2002, enclosing City of Pittsburg Notice of Public Review and Intent to Adopt a Mitigated Negative Declaration for the San Marco Meadows Residential Subdivision, dated July 12, 2002.
3. **Exhibit 3:** City of Pittsburg Planning Commission Staff Report, dated June 27, 2006, for consideration of the Faria South Annexation and Development Agreement, Application No. 06-349.
4. **Exhibit 4:** Map of Southwest Hills Subarea of City of Pittsburg, presented at February 5, 2009, meeting between Save Mount Diablo's Executive Director Ron Brown, Save Mount Diablo's Director of Land Programs Seth Adams, and the Pittsburg City Manager.
5. **Exhibit 5:** Newspaper articles from the Contra Costa Press and Brentwood Press, from July 2006 – April 2007.

EXHIBIT 1

Mayor melds experience and youth

■ Pittsburg leader part of Seeno homebuilding family, but concerns about connection have been quelled

By Paul Burgarino

pburgarino@bayareanewsgroup.com

Salvatore Evola recently became one of the youngest mayors in Pittsburg's history, but the 33-year-old is seasoned when it comes to working with local government bodies.



Evola

Evola is senior vice president of homebuilder Discovery Builders, a job that routinely brings him before public agencies around the region on development projects. The company also does significant business in Pittsburg, though he doesn't handle those projects.

Evola's candidacy and election to the City Council in 2006 raised some concerns as his employer is first cousin Albert Seeno III, who owns Discovery Builders. The

See PITTSBURG, Page 13

BAY AREA NEWS GROUP A17

Pittsburg

From Page 13

Seenos are arguably the most powerful family in Pittsburg.

There was speculation about whether Evola — a Pittsburg native who's the fourth person in his family to hold office in the city — would be beholden to the Seeno family and able to avoid conflicts of interest.

However, Evola's handling of the situation has put most of the scrutiny to rest.

"He's walking a tightrope, and he's done a good job in avoiding any risk," said Joe Cancianilla, a former state Assembly member and Pittsburg mayor.

Like many, Cancianilla had concerns when Evola ran for office, but they have been "alleviated."

"Sal knew people were going to be watching, and he'd have to be careful. He's followed through in a very professional way, and I feel he wants what's best for the city," he said.

But Seth Adams of regional environmental group Save Mount Diablo, which has opposed Evola's company on hillside development issues, remains concerned about his ties.

Evola's position "clearly has a lot of sway on city staff as far as influencing" what items or policies are considered behind the scenes. Further, Adams is concerned about Evola being a Pittsburg

ther, Adams is concerned about Evola being a Pittsburg representative on a joint task force with Concord concerning the hills between the two cities.

Evola said he has recused himself on every issue related to Seeno companies, totaling about 18 percent of city business brought before the council since he was elected.

"I think I'm still able to be very effective in city business if I'm involved 98 percent of the time," he said, noting he voted for other developments that made sense for Pittsburg like Paramount Homes' Alves Ranch subdivision. That developer had an adversarial relationship with the Seenos earlier in the decade.

Councilwoman Nancy Parent, who preceded Evola as mayor, said he is "mindful of when he should recuse himself and does a good job of looking at policy from a city standpoint."

In December, the Pittsburg native was elected by his peers as mayor for 2010, but he's quick to downplay the position as ceremonial.

"There's a huge misconception; the mayor doesn't run the city. I'm just one of five," Evola said, adding that city government is a team sport rather than a boxing match.

Evola says his day job affords him a unique perspective to see how "childish bickering" doesn't help anything get accomplished, while reaffirming lessons taught by his grandfather and other past Pittsburg leaders regarding the importance of treating colleagues and the public with respect.

the importance of treating colleagues and the public with respect.

"We may disagree, but it's important that everyone work together. Every one of my colleagues and the public deserves their chance to give their opinion and my undivided attention," he said.

Evola is optimistic about the upcoming year. Despite being hampered by losses in property and sales tax, a projected \$2 million operating budget deficit and stalled efforts to redevelop its downtown, Pittsburg has not had to resort to large layoffs or institute furloughs like other cities, Evola said.

Further, Pittsburg has continued to fully staff its Police Department, which has led to a downward trend in violent crime, he said.

Evola hopes to keep public safety a top priority in the coming year, along with creating a financial sustainability plan where Pittsburg uses "the peaks to pay for the valleys." He also said downtown redevelopment is important, but "a balance must be kept in providing services to all four corners of the city."

Evola plans to seek reelection in November.

"I plan on getting married here and raising a family here, so the decisions we make are important and ones I'm going to live with," he said.

Contact Paul Burgarino at 925-779-7164. Follow him at Twitter.com/pittsburgarino.

cc: TIMCS
2/7/2010 Pg A13

EXHIBIT 2



City of Pittsburg

65 Civic Avenue

Pittsburg, California 94565-3814

July 19, 2002

Save Mt. Diablo
Attn: Seth Adams
1196 Boulevard Way # 10
Walnut Creek, CA 94595

RE: San Marco Meadows Subdivision 8515 – Initial Study/Mitigated Negative Declaration

Dear Mr. Adams:

Please find the enclosed Notice of Intent to Adopt a Mitigated Negative Declaration and copy of the Initial Study and Mitigated Negative Declaration for the San Marco Meadows Residential Subdivision for your review and comments. Comments on this document will be accepted no later than 5:00 p.m. Friday, August 12, 2002.

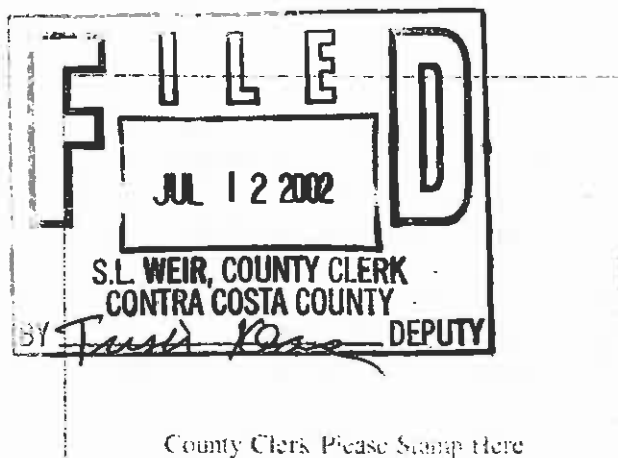
If you have any questions or would just like to discuss the issues further, please call me at (925) 252-4920, or email at kstrelo@ci.pittsburg.ca.us.

Sincerely,

Kenneth W. Strelo, Associate Planner

cc: Randy Jerome, Planning and Building Director





CITY OF PITTSBURG NOTICE OF PUBLIC REVIEW AND INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION

San Marco Meadows Residential Subdivision
South of State Highway 4, west of Bailey Road
RZ-02-04, Subd. 8515
July 12, 2002

Pursuant to the State of California Public Resources Code and the "Guidelines for Implementation of the California Environmental Quality Act of 1970" as amended to date, this is to advise you that the City of Pittsburg Planning and Building Department has prepared an initial study on the following project:

San Marco Meadows: The proposed project (Subdivision 8515) includes 779 single-family residential lots ranging in size from 6,000 square feet to 1.29 acres, along with a water tank and related improvements on approximately 231 acres. No common areas are proposed in the project. Minor adjustments to the approved grading, local street pattern and lot layout along the interface of adjoining Subdivision 7362, located north of San March Meadows, will occur in order to accommodate subtle design changes. Gross project density is 3.4 units per acre. This project also involves substantial grading operations, with maximum cut depths of approximately 120 vertical feet, and maximum fill depths of approximately 95 vertical feet in certain locations. Final grading quantities have not yet been determined, and the need for import and/or export of material to address issues raised in the preliminary geotechnical analysis has not yet been finalized.

The San Marco Meadows project is consistent with the recently adopted City of Pittsburg 2020 General Plan. Implementation of the San Marco Meadows project will require approval of multiple City entitlements, including a Mitigated Negative Declaration, a vesting tentative subdivision map, design review approval, a contractual development agreement, annexation and concurrent adjustment to the City Sphere of Influence, rezoning to the RS-O (Single-Family Residential with a Limited Overlay) zoning district, and related City approvals, including multiple final maps, encroachment permits, and construction permits. In addition, a number of related actions will be required by responsible local, State and Federal agencies, in order to carry out this project, including Contra Costa Water District, Delta Diablo Sanitary District, Contra Costa County Flood Control and Water Conservation District and Contra Costa County Local Agency Formation Commission (LAFCO). Additional approvals may be required from the California Department of Fish & Game, the California Regional Water Quality Control Board, the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and the U.S. Fish & Wildlife Service.

Project Location: The City of Pittsburg is situated in eastern Contra Costa County, along the State Highway 4 corridor between Concord and Antioch. San Marco Meadows is situated within the City's defined Planning Area boundary, along the planned extension of San Marco Boulevard, west of Bailey Road, and within the Contra Costa County Urban Limit Line 2000.

The proposed project will not result in any significant impacts. A copy of the Mitigated Negative Declaration and all documents referenced in the Mitigated Negative Declaration may be reviewed in the offices of the Planning and Building Department, City of Pittsburg, at the address listed below during normal business hours.

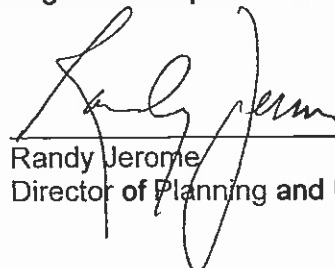
Public Comment Period: The period for accepting comments on the adequacy of the environmental documents begins on July 12, 2002 and ends on August 12, 2002. Any comments should be in writing and submitted to the following address:

Randy Jerome, Director of Planning and Building
City of Pittsburg Planning and Building Department
65 Civic Avenue
Pittsburg, CA 94565

Any questions regarding the project itself should be directed to:

Ken Strelo, Associate Planner
City of Pittsburg Planning Division
65 Civic Avenue
Pittsburg, CA 94565
(925) 252-4920

Public Hearing: Notice is hereby given that the Pittsburg Planning Commission will consider this proposed Mitigated Negative Declaration and adoption of its findings on August 13, 2002, at 7:30 p.m. in the Council Chambers located at 65 Civic Avenue in Pittsburg. This proposed Mitigated Negative Declaration does not signify approval or disapproval of this project by the City decision-making bodies. The final decision-making body will consider the proposed Mitigated Negative Declaration together with any comments received during the public review process to determine whether the project will have a significant impact on the environment.



Randy Jerome
Director of Planning and Building

EXHIBIT 3

**CITY OF PITTSBURG
PLANNING COMMISSION
STAFF REPORT
June 27, 2006**

ITEM: 2 FARIA SOUTH ANNEXATION AND DEVELOPMENT AGREEMENT AP-06-349

ORIGINATED BY: Faria Land Investors, LLC

SUBJECT: This is a public hearing on Application No. 06-349 filed by Faria Land Investors, LLC requesting approval of an annexation and development agreement to preserve the Pittsburg voter approved urban limit line and the Pittsburg general plan land use map and policies as they currently apply to an approximately 607-acre site commonly known as the Faria South property located west of Bailey Road and east of the Concord Naval Weapons Station; APNS 097-180-006, 097-200-002, 097-200-003, 097-230-006, 097-240-002, 097-190-002

RECOMMENDATION:

Staff recommends the Planning Commission adopt the attached resolution recommending Council approval of the proposed annexation and development agreement.

BACKGROUND:

In November 2005, the voters of the City of Pittsburg approved an initiative measure entitled the "City of Pittsburg Voter Approved Urban Limit Line and Rezoning Act" ("Measure P"). Measure P established a formal urban limit line around the City of Pittsburg, bringing into Pittsburg's urban limit line several properties, including the land commonly known as the Faria South (Faria) property, which were outside the County Board of Supervisor's adopted urban limit line. In addition, Measure P rezoned portions of the Faria property to Open Space (OS) District and Hillside Planned (HPD) District as a necessary first step toward annexation of said property into the City. The voter approved urban limit line and the rezoning were expressly found in the approval of Measure P to be consistent with the Pittsburg general plan and zoning ordinance.

The City and applicant entered into a Memorandum of Understanding (MOU) dated May 3, 2006 that obligates the applicant to certain actions with respect to the subject property and other properties in the vicinity. Among the provisions related specifically to the project site, the applicant agreed to pay a special open space fee to the East Bay Regional Park District of \$2,000 per dwelling unit (to be) built on the property, agreed to establish a green wall at the south and west sides of the property (through future entitlement actions) beyond which no urban services may penetrate.

The property owner of the Faria property has subsequently filed an application requesting to enter into an annexation and development agreement with the City that

would be applicable to that property. The proposed annexation and development agreement does not amend or supercede the MOU noted above. Pursuant to State law and City policy, the Planning Commission is being requested to make a recommendation to the City Council on whether it should approve the proposed annexation and development agreement.

PROJECT DESCRIPTION:

Existing Conditions: The site is approximately 607 acres and is located on the west side of Bailey (west of Bailey Estates) and east of the Concord Naval Weapons Station. The site contains undeveloped rolling hills covered in natural grasses. The City's General Plan designates portions of the site as Open Space and portions as Low Density Residential. The General Plan envisions up to 3 dwelling units per acre within that portion designated Low Density Residential. The General Plan envisions the annexation of this area into the City limits during the life of the General Plan. The property is located inside the City's urban limit line, but outside the incorporated City limits and outside the City's sphere of influence line established by LAFCO, prior to the adoption of Measure P.

Proposed Agreement: The proposed agreement would fix the Pittsburg voter approved urban limit line and current general plan land use maps and policies as they are applicable to the Faria property for a period of 20 years and require the City to initiate annexation and sphere of influence proceedings to facilitate bringing the Faria property within the City limits. In exchange, the applicant would commit the time and resources necessary to develop and process a comprehensive development plan for the project site through the City during the life of the development agreement in conformance with the current General Plan. Under the terms of the agreement, the developer would be responsible for the timely payment of all applicable filing and processing fees in effect at the time the applications are filed.

GENERAL PLAN/CODE COMPLIANCE:

State Law: California Government Code sections 65864, et seq. (the development agreement statutes), authorize the City to enter into an agreement for the development of real property with any person/s having a legal or equitable interest in such property in order to establish certain development rights in such property. In addition to the development agreement statutes, California law allows municipalities and property owners or developers to enter into binding and enforceable annexation agreements. A property does not have to be inside the City limits for the City to enter into a development agreement governing future development of the site.

General Plan: The property is located outside of the City's boundaries and its sphere of influence but within the City's Planning Area as depicted on Figure 2-3 of the City of Pittsburg General Plan. Figure 2-4 of the General Plan shows the applicable planning

sub-areas within the City and the property is located within the Southwest Planning Sub-area. The General Plan contemplates residential development within the property, an expansion of the City's sphere of influence boundaries around the property and ultimate annexation of the property into the City limits. The proposed development agreement is consistent with the City's General Plan vision for that area.

Zoning: The voter approved rezoning is consistent with the General Plan and the proposed development agreement is consistent with the voter approved rezoning.

Required Findings: Pursuant to Council Resolution No. 8371 establishing procedures and requirements for the consideration, adoption and review of development agreements, the Planning Commission shall hold a public hearing on a proposed development agreement and make a recommendation to the Council concerning the application. Upon receiving the Planning Commission's recommendation, the Council shall also hold a public hearing on the proposed development agreement and may approve the agreement if it finds that the proposed agreement is consistent with the City's General Plan and that the agreement will promote the public health, safety and general welfare.

Environmental Determination: The proposed agreement does not constitute a "project", as that term is defined by CEQA and, for that and other reasons set forth in the proposed annexation and development agreement, no CEQA analysis is required at this time.

Public Notice: In compliance with Government Code Sections 65090 and 65091, notice of the June 27, 2006 public hearing on this project was published in the East Contra Costa Times, mailed to all owners of property within 300 feet of the project site and others who requested such notice in writing. The notice was also posted at city hall, the library and at the project site on June 16, 2006.

ANALYSIS:

The proposed annexation and development agreement is consistent with the City's General Plan. The proposed agreement freezes the existing City land use designation and general plan regulations applicable to the property and will facilitate annexation of the project site into the City as envisioned by the General Plan. Approval of the proposed agreement will also facilitate implementation of General Plan goal 2-G-9 (*Exercise leadership in securing development and preserving open space consistent with the General Plan in portion of the Planning Area that will ultimately be inside the City boundaries*) and General Plan Housing Element Program 13-P-1.1.E (*Support annexation of vacant land that is appropriate for residential use and/or mixed use developments, when adjacent to City limits*). Additionally, ultimate annexation of the Faria property will facilitate new housing development in the area within the next 20

years that will help the City meet its regional fair share housing production in subsequent housing cycles.

Approval of the proposed agreement will promote the public health, safety and general welfare. By entering into this agreement, the City would be creating a safe space in time whereby the applicant can invest the time and money to investigate, analyze, and assess the property's constraints and opportunities; prepare comprehensive, thoughtful site plans, grading plans, infrastructure plans, open space plans and architectural plans for the project site; and participate in a thorough public review of such plans, without the risk of changing general plan rules and urban limit line regulations in the middle of such a lengthy process that would make the plans and related studies obsolete. Facilitating a thoughtful planning process on a yet to be prepared specific development proposal will ensure that the public health, safety and general welfare will be protected.

The developer's vested right to proceed with the project would be subject to any subsequent discretionary approvals required in order to implement the project. Any future project specific development proposal, including a tentative subdivision map, would be subject to subsequent CEQA analysis.

ACTION REQUIRED:

Move to adopt proposed Resolution No. 9647 recommending Council approval of the proposed annexation and development agreement for the Faria property.

ATTACHMENTS:

1. Proposed Resolution No. 9647
2. Proposed Development Agreement
3. Public Hearing Notice
4. Vicinity Map

Prepared by: Melissa Ayres

MS

**PROPOSED
BEFORE THE PLANNING COMMISSION OF THE CITY OF PITTSBURG**

In the Matter of:

Resolution Recommending City Council)	
Approval of an Annexation and)	Resolution No. 9647
Development Agreement Related to)	
Future Development of the Faria South)	
Property; AP-06-349)	
)	

The Planning Commission DOES resolve as follows:

Section 1. Background

- A. Faria Land Investors, LLC filed Application No. 06-349 requesting approval of an annexation and development agreement to preserve the Pittsburgh voter approved urban limit line and the Pittsburgh general plan land use map and policies as they currently apply to an approximately 607-acre site commonly known as the Faria South property located west of Bailey Road and east of the Concord Naval Weapons Station; APNS 097-180-006, 097-200-002, 097-200-003, 097-230-006, 097-240-002, 097-190-002
- B. The purpose of the request is to provide a moderate level of certainty about the land use regulations which will apply to the property, before the property owner invests substantial sums of money developing and submitting future land plans for the property, with the intent that the property be annexed into the City of Pittsburgh during the life of the General Plan.
- C. The proposed development agreement conforms with the applicable General Plan land use designation on the property and the Memorandum of Understanding entered into between the City of Pittsburgh and applicant May 3, 2006 related to future development of the subject property.
- D. The proposed development agreement does not freeze or guarantee for the property owner the application of current zoning rules, subdivision ordinance regulations, current development impact fees or any other city of Pittsburgh regulations, which may be applicable to the property.
- E. The proposed agreement does not constitute a "project", as that term is defined by CEQA and, for that and other reasons set forth in the proposed annexation and development agreement, no CEQA analysis is required at this time.

- F. Consistent with Government Resources Code Sections 65090 and 65091, notice of the June 27, 2006 Planning Commission public hearing on this project was published in the East Contra Costa Times; mailed to all owners of property within 300 feet of the project site and others who requested such notice in writing; and was also posted at City Hall, the library and at the project site.
- G. Development Agreements are regulated by Pittsburg Municipal Code (PMC) Chapter 18.44. and by Council Resolution No. 8371.
- H. On June 27, 2006, the Planning Commission held a public hearing on Annexation and Development Agreement Application No. 06-349, at which time oral and/or written testimony was considered.

Section 2. Findings

- A. Based on the Planning Commission Staff Report entitled "Faria South Annexation and Development Agreement" and based on all the information contained in the Planning Department files on the project, incorporated here by reference and available for review in the Planning Department located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the meeting, the Planning Commission finds that:
 - 1. All recitals above are true and correct and are incorporated herein by reference.
 - 2. The proposed annexation and development agreement is consistent with the City's General Plan. The proposed agreement freezes the existing City land use designation and general plan regulations applicable to the property and will facilitate annexation of the project site into the City as envisioned by the General Plan. Approval of the proposed agreement will also facilitate implementation of General Plan goal 2-G-9 (*Exercise leadership in securing development and preserving open space consistent with the General Plan in portion of the Planning Area that will ultimately be inside the City boundaries*) and General Plan Housing Element Program 13-P-1.1.E (*Support annexation of vacant land that is appropriate for residential use and/or mixed use developments, when adjacent to City limits*). Additionally, ultimate annexation of the Faria South property will facilitate new housing development in the area within the next 20 years that will help the City meet its regional fair share housing production in subsequent housing cycles.
 - 3. Approval of the proposed agreement will promote the public health, safety and general welfare. By entering into this agreement, the City would be creating a safe space in time whereby the applicant can invest the time and money to investigate, analyze, and assess the property's constraints and opportunities; prepare comprehensive, thoughtful site plans, grading plans, infrastructure plans, open space plans and architectural plans for the project site; and participate in a thorough public review of such plans, without the risk of changing general plan

rules and urban limit line regulations in the middle of such a lengthy process that would make the plans and related studies obsolete. Facilitating a thoughtful planning process on a yet to be prepared specific development proposal will ensure that the public health, safety and general welfare will be protected.

4. The developer's vested right to proceed with the project would be subject to any subsequent discretionary approvals required in order to implement the project. Any future project specific development proposal, including a tentative subdivision map, would be subject to subsequent CEQA analysis.

Section 3. Decision

- A. Based on the findings set forth above, the Commission hereby recommends City Council approval of the proposed Faria South Annexation and Development Agreement presented to the Commission on June 27, 2006 and incorporated herein by reference.

Section 4. Effective Date

This resolution shall take effect immediately upon its adoption.

On motion by Commissioner____, seconded by Commissioner____, the foregoing resolution was passed and adopted the __day of ____, by the Planning Commission of the City of Pittsburg, California by the following vote:

AYES:

NAYES:

ABSTAIN:

ABSENT:

I hereby certify that the above Resolution No. 9647 was adopted by the Planning Commission of the City of Pittsburg on _____.

MELISSA AYRES, SECRETARY
PITTSBURG PLANNING COMMISSION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Clerk

REVISED DRAFT
(6/21/06)

**ANNEXATION AND
DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PITTSBURG AND
FARIA LAND INVESTORS, LLC
RE
FARIA SOUTH PROPERTY**

This Annexation and Development Agreement (hereinafter referred to as "Agreement") is made and entered into on this _____ day of _____, 2006, by and between the CITY OF PITTSBURG, a municipal corporation (hereinafter referred to as "City") and FARIA LAND INVESTORS, LLC, a California limited liability company ("Developer").

RECITALS

A. California Government Code sections 65864 et seq. (the "Development Agreement Statutes") authorize the City to enter into an Agreement for the development of real property with any person/s having a legal or equitable interest in such property in order to establish certain development rights in such property. Developer desires to develop and holds legal interest in certain real property consisting of approximately 607 acres of land, located in the County of Contra Costa, State of California, which real property is more particularly described in Exhibit A (the "Property").

B. In addition to the Development Agreement Statutes, California law allows municipalities and property owners or developers to enter into binding and enforceable annexation agreements similar to the agreement reviewed and upheld by the court in *Morrison Homes Corporation v. City of Pleasanton* (1976) 58 Cal.App.3d 724. This Agreement is entered into both as a development agreement, pursuant to the Development Agreement Statutes, and as an annexation agreement as upheld and validated by California case law. The authority and justification for this Agreement

exists separately and independently as both a statutory development agreement and as an annexation agreement.

C. The Property is located outside of the City's boundaries and its sphere of influence, but within the City's Planning Area as depicted on Figure 2-3 of the City of Pittsburg General Plan ("General Plan"). Specifically, Figure 2-4 of the General Plan shows the applicable planning sub-areas within the City; the Property is located within the Southwest Hills Planning Sub-area. The General Plan contemplates residential development within the Property, an expansion of the City's sphere of influence, and ultimate annexation of the Property into the City limits.

D. In November 2005, the voters of the City of Pittsburg approved an initiative measure entitled the "City of Pittsburg Voter Approved Urban Limit Line and Rezoning Act" ("Measure P") to prezone certain properties, including the Property, (the "Rezoning") into zoning classifications of Hillside Planned District (HPD) and Open Space District (OS) as a necessary first step towards annexing the property and, creating a Voter Approved Urban Limit Line (the "Voter Approved Urban Limit Line") The Voter Approved Urban Limit Line and the Rezoning were expressly found in the approval of Measure P to be consistent with the Pittsburg General Plan and Zoning Ordinance.

E. Developer has requested the City to initiate the sphere of influence change and annexation proceedings necessary to ultimately annex the Property into the City limits of the City. The City intends to file an application with the Contra Costa Local Agency Formation Commission ("LAFCO") to initiate the sphere of influence change and the ultimate annexation of the Property to the City.

F. To encourage a commitment to comprehensive planning, to strengthen the public planning process, to foster maximum efficient utilization of resources at the least economic cost to the public and for a multitude of other valid concerns and reasons, all evidenced by the legislature of the State of California in adopting the Development Agreement Statutes, the City and Developer wish to enter into this Agreement to (1) provide a commitment from the City to Developer to initiate and process the applications, analyses and investigations necessary to allow the ultimate annexation of the Property into the City of Pittsburg; and (2) to vest and establish Developer's right to proceed with the comprehensive planning and entitlement process for the ultimate development of the Property in a means and to a density and mix of uses that will be most beneficial to the City, its citizens and the surrounding area. The City and Developer, by this Agreement, wish to fix the General Plan policies and location of the Voter Approved Urban Limit Line, as applicable to the Property and thus to facilitate the creation of a physical environment that will conform to and complement the goals, policies and objectives of the City as set forth in the General Plan. The parties also wish to provide efficient traffic circulation and the timely provision of necessary infrastructure; to protect adjacent land uses and natural resources from adverse impacts; to provide increased housing and job opportunities and tax revenue for the City and Contra Costa County, and to reduce the economic risk of development to both Developer and the City. This Agreement provides assurance that the General

Plan and Urban Limit Line in force on the date this Agreement is executed shall govern and apply, allowing Developer certainty in its planning and processing of its land use applications and in its development and construction of an ultimate development project (the "Project") to be formulated and established through an extensive public planning process, including the solicitation of significant amounts of input and participation from the public. Nothing contained herein shall be deemed to or shall constitute approval by the City of the Project to be ultimately planned, submitted, processed and proposed by Developer. The Project shall require review by the City in accordance with all applicable zoning, land use and entitlement rules, regulations, ordinance and procedures and shall specifically require full and complete environmental analysis to satisfy the requirements of CEQA. The Project is, at this time, far too unformed, speculative and imprecisely conceived as to allow any meaningful CEQA analysis. The purpose and goal of this Agreement is to simply identify and fix in place the General Plan and Urban Limit Line that will apply to the planning and entitlement of the ultimate Project and its development and construction. This vesting of the General Plan and Urban Limit Line is necessary to allow Developer to go forward with an extensive, time consuming and expensive planning process to shape and establish, with maximum public participation, the objectives, goals and outlines of the Project.

G. Planning for development of the Project on the Property and the City's commitment to begin annexation procedures to annex the Property into the City, all in accordance with the terms of this Agreement, will facilitate major investment by Developer and the construction of public facilities, substantial front end investment and onsite and offsite improvements and a substantial commitment of resources to achieve the public purposes and benefits envisioned by the citizens of the City in approving the Initiative. By entering into this Agreement, the City will make possible the planning of the Project and, ultimately, allow it to receive the benefit of the construction and installation of various public facilities and improvements and various tax benefits. In addition, this Agreement provides the City with assurance of implementation of the General Plan and, specifically, the Voter Approved Urban Limit Line. By entering into this Agreement and relying thereupon, Developer is obtaining a vested right to proceed with the planning and entitlement processing for the Project and its development and construction in accordance with the existing General Plan and Urban Limit Line consistent with this Agreement. Developer's vested right to proceed with the Project shall be subject to any subsequent discretionary approvals required in order to implement the Project, once the Project is planned, specifically, and conceptually defined and submitted to the City for appropriate land use processing.

H. The City, by electing to enter into this Agreement, acknowledges that the obligations of the City shall survive beyond the term(s) of the present City Council and that such action will serve to bind the City and future councils of the City to the obligations thereby undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring City actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both the City and its Council and have been found to be fair, just and reasonable, and the City

has concluded that the planning, conceptualization and processing of the Project will serve the best interests of the City, residents, and the public health, safety and welfare.

I. The City and Developer have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statutes and the City's enabling resolution.

J. On _____, 2006, the Planning Commission of the City (the "Planning Commission") considered and recommended approval of this Agreement after a duly noticed public hearing.

K. On _____, 2006, the City Council considered and approved this Agreement by introducing Ordinance No. _____ (the "Approving Ordinance") after a duly noticed public hearing. Ordinance No. _____ was adopted on _____, 2006. Pursuant to the Enabling resolution, and in accordance with Government Code Sections 65864, et seq., the adoption of the Approving Ordinance and approval of this Agreement which is incorporated in said ordinance.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other considerations, the value and adequacy of which is hereby acknowledged, the City and Developer hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The parties agree the foregoing recitals are true and correct and hereby incorporate the recitals and all exhibits hereto into the body of this Agreement as though set out in full.

2. Property Subject to this Agreement. All of the Property, as more particularly described in Exhibit A shall be subject to this Agreement.

3. Interest of Developer. Developer has a legal or equitable interest in the Property in that the Developer owns the property in fee simple.

4. Term.

4.1 Term. The Term of this Agreement shall commence upon the Effective Date of the Agreement as an Annexation Agreement and shall extend for a period of twenty (20) years thereafter unless terminated, modified or extended by circumstances set forth in this agreement or by mutual consent of the Parties thereto, subject to the amendment provisions of Section 18.2 hereof. The Term has been established by the Parties as a reasonable estimate of the time required to carry out the development of the Property.

4.2 Extension of Term Upon Legal Challenge. If any litigation affecting the Property is filed challenging this Agreement or the Vested Components set out herein (including but not limited to any environmental determinations relating to any of the foregoing), or otherwise raising issues of the validity of the Vested Components or the validity and binding nature of this Agreement, the Term of this Agreement shall be

extended for the period of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or final entry of judgment, if such dismissal or final entry of judgment is in favor of Developer and City. If so, Developer and City shall execute an amendment to this Agreement setting forth the period of any such extension and may record a notice to such effect.

5. Effective Date of Agreement. The Effective Date of the Agreement as an Annexation Agreement shall be the date upon which the ordinance approving the Agreement becomes effective. Pursuant to the provisions of Government Code section 65864, the Agreement shall be effective as a Development Agreement upon the Effective Date of the Ordinance authorizing and approving the Agreement but shall not become operative unless the annexation proceedings annexing the Property into the City are completed within the Term of this Agreement as set out in Section 2 above.

6. Vested Rights to Plan and Develop the Property. "Vested Components". Developer, its successors and assigns, shall have vested right to plan, configure, process, entitle and develop the Property in accordance with the Voter Approved Urban Limit Line and General Plan of the City (the "Vested Components"), in effect as of the date this Agreement is fully executed by both parties (the "Execution Date"); provided, however, that other applicable rules and regulations, including, but not limited to, zoning, construction and building standards, impact and other fees, dedications and exactions applicable to the Property shall be those in force and effect at the time such rules and regulations for the development and construction of the Project on the Property would normally be applicable if this Agreement were not executed and, as such, would apply to other development projects. Nothing contained herein shall be interpreted to vest standards, other than the General Plan and Urban Limit Line effective upon the Effective Date.

7. Annexation. Subsequent to Developer's payment of applicable filing and processing fees, and the filing of a complete application, the City agrees to immediately, after the Effective Date, begin the process to adopt such resolutions or actions as may be required to file with LAFCO an application for sphere of influence modification and ultimate annexation of the Property. The City and Developer shall cooperate together in undertaking the planning process to determine the ultimate configuration, density, scope and arrangement of the Project on the Property, utilizing the Vested Components defined above toward consideration of such entitlement process.

8. CEQA Review: As herein approved, the Agreement does not in any way involve or imply approval of the ultimate Project which Developer shall conceive, plan and process for the Property and review with the City through the ultimate development entitlement process. The ultimate Project cannot be defined with specificity and, as such, the full and complete CEQA analysis for the Project will be considered at the time that processing an application for the Project is considered by the City and the site specific impacts of the Project can be adequately and accurately assessed. No discretionary approvals shall be granted implementing the planning and development of the Project by the City or any other governmental agencies unless and

until full, complete and accurate CEQA analysis has been performed, processed and certified, identifying all of the significant impacts of implementation of the Project and providing appropriate environmental mitigation measures. This Agreement does not constitute a "project", as that term is defined by CEQA and, for that and other reasons set forth herein, no CEQA analysis is required at this time.

9. Permitted Uses; Density or Intensity of Use; Maximum Height of and Size of Structures; and Provisions for Dedication of Land for Public Use. In developing and conceiving its plan for development of the Property and processing its application for requisite land use entitlements and in developing the Project upon the Property, Developer shall be limited by and comply with the Vested Components as established by this Agreement. The building heights and sizes and the uses and density of uses of the Property shall comply with future entitlements and be consistent with the General Plan.

10. Future Discretionary Approvals. Subsequent to the Effective Date, development of the Property shall require City approval of one or more "Future Discretionary Approvals", which may include but not be limited to, subdivision or parcel maps, conditional use permits, planned development permits, design review approval and similar land use entitlements. Developer agrees to pay all applicable application fees in the amounts and at the rates established or to be established by the City at the time when the applications are filed.

11. Phasing of Development. Developer shall have the right to develop the Property in sequences in such order and at such times as Developer deems appropriate within the exercise of its good faith business judgment, as long as the Property is developed in accordance with this Agreement and the Vested Components. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 3 Cal.3d 465 that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing and controlling the parties' agreement, it is the intent of the City and Developer to avoid such a result by hereby acknowledging and providing for the right of Developer to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment except as specifically stated otherwise in this Agreement. Notwithstanding the above, City shall have the right to condition development and phasing of the Project on reasonable terms and conditions including, but not limited to, the City determining when Developer must complete on-site and off-site public improvements, infrastructure, and similar facilities.

12. Covenants Run With The Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entity acquiring the Property, any lot, parcel, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of

the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder: (i) is for the benefit of such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

13. Obligations of the Parties.

13.1 Developer.

(a) As Developer proceeds with planning and development of the Property, it shall do so in accordance with the Vested Components as defined herein or modified pursuant hereto, subject to the terms and conditions of this Agreement.

(b) As a condition to being able to proceed with development of the Property, Developer shall faithfully and timely provide the on- and off-site improvements as required by this Agreement and City and the Future Discretionary Approvals, including the payment of any fees on terms and conditions as may be set by City for similarly situated developments.

13.2 City.

(a) Pursuant to the provisions of Section 7 hereof, the City shall commence the process of seeking annexation of the Property.

(b) The City shall exercise reasonable diligence to expedite the processing of Developer's permit applications for the development of the Property.

14. Default, Remedies, Termination.

14.1 Default

Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party ("the Complaining Party") (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party's notice ("**Default Notice**") shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured by the other party ("the Defaulting Party"). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a

Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party's receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30 day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.

15. Default Remedies.

15.1 Developer Default; City Remedies. In the event Developer is in default under the terms of this Agreement, City shall have the right to exercise any of the following remedies:

(a) To waive in its sole and absolute discretion such default as not material;

(b) To refuse processing of an application for, or the granting of any permit, approval, or other land use entitlement for, development or construction of the Property or portion thereof owned or controlled by Developer, including, but not limited to, the withholding of grading, excavation, building and occupancy permits;

(c) To terminate this Agreement; or

(d) To delay or suspend City performance under the Agreement.

Nothing in this section herein shall be deemed to supersede or preclude City's rights and remedies under the terms of any permit, approval, or land use entitlement granted for the development and use of the Property.

15.2 Default by the City; Developer Remedies. In the event City is in default under the terms of this Agreement, Developer shall have the right to exercise any of the following remedies:

(a) To waive in its sole and absolute discretion such default as not material;

(b) To terminate this Agreement;; and

(c) To delay or suspend performance under the Agreement which is delayed or precluded by the default of the City.

15.3 Annual Review. The Enabling Resolution provides for annual review of Developer's good faith compliance with the terms of this Agreement. City shall initiate each such periodic review by written notice to Developer. Upon receipt of such written notice, Developer shall comply with such requirements of the Enabling Resolution and shall furnish City in connection with each annual review a comprehensive report demonstrating good faith compliance by Developer with the terms of this Agreement and payment of an amount, as determined by the City, to cover the City's cost of conducting the annual review. Developer's payment of the cost shall be a material element of Developer's compliance with the annual review.

Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement, nor shall Developer have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.

15.4 Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.

15.5 Legal Actions. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

15.6 Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of City's legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

15.7 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found

to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect. However, if such invalidity or unenforceability would have a material adverse impact on the Project, Developer may terminate this Agreement by providing written notice thereof to the City; notwithstanding, Developer agrees Sections 17 and 19.1 shall survive such termination. If litigation results in a judicial determination that the City's execution of this Agreement is invalid, or a similar determination then notwithstanding any other provision of this Agreement, the Agreement shall be void and of no effect, excluding Sections 17 and 19.1 which shall survive any other invalidation of this Agreement.

15.8 Effect of Termination on Developer Obligations. Termination of this Agreement as to Developer or the Property or any portion thereof shall not affect any requirements to comply with the terms and conditions of the applicable zoning, any development plan approvals, approval and acceptance of infrastructure improvements, any applicable permit(s), or any subdivision map or other land use entitlements approved with respect to the Subject Property, nor shall it affect any other covenants of Developer specified in this Agreement to continue after the termination of this Agreement.

16. Assignments and Transfer of Ownership.

16.1 Right to Assign. Developer shall have the right to assign (by sale, transfer or otherwise) its rights, duties and obligations under this Agreement as to any portion of the Property, upon prior written approval of the City which shall not be unreasonably withheld.

17. Hold Harmless and Indemnification; Insurance.

17.1 Hold Harmless and Indemnification.

(a) Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement, or otherwise arising out of or stemming from this Agreement, its approval and/or the process relating thereto. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.

(b) Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.

(c) The parties agree that this Section 17.1 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 17.1, which shall survive such invalidation, nullification or setting aside.

18. General Provisions.

18.1 Exhibits. The following documents are referred to in this Agreement, attached hereto and made a part hereof by this reference:

<u>Exhibit</u>	<u>Description</u>
A	Description of Property
B	Annexation Map of Property

References herein to "this Agreement" shall include all of the foregoing exhibits.

18.2 Amendment to Project Approvals. Subsequent Approvals. To the extent permitted by State and Federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

A. Administrative Amendments. Upon the written request of Developer for an amendment or modification to this Agreement, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Agreement as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and applicable federal, state, and local law, rules and regulations. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Agreement and is consistent with this Agreement and applicable law, rules and regulations, and will not result in any significant environmental impacts not addressed and mitigated in any applicable environmental document, the amendment shall be determined to be an "**Administrative Amendment**" and the City Manager or

his/her designee may, except to the extent otherwise required by law, approve the Administrative Amendment without notice and public hearing.

B. Non-Administrative Amendments. Any request of Developer for an amendment or modification to this Agreement, which is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the applicable law, rules and regulations and this Agreement, including public notice and hearing.

19. Miscellaneous.

19.1 Developer Payment of City Costs. Developer shall pay for City's costs in processing this Agreement and discretionary approvals, LAFCo related matters, and all further actions relating hereto. Such processing costs shall include, but not be limited to the time and related expenses of City staff and consultants, and the City Attorney. The Developer has made an initial deposit with the City for these costs and shall, upon request of City, replenish the funds. Developer's failure to deposit such monies and/or replenish the funds within ten (10) business days of City's written request to do so shall give the City the right, at City's sole discretion, to stop any and all processing or other actions by the City pursuant to this Agreement or relating to this Project.

19.2 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and the City on the other, is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owners of such private property.

19.3 Construction. This Agreement shall be subject to and construed in accordance and harmony with the laws of the State of California.

19.4 Other Agreements. The Parties recognize that the City and Altec Homes, Inc., Albert D. Seeno III and Albert D. Seeno, Jr. executed Memoranda of Understanding, dated March 15, 2006 and May 3, 2006, regarding certain obligations. This Agreement is not intended to supersede or modify in any way the Memoranda which shall be binding and remain in effect regardless of this Agreement.

19.5 Notices. Any notice or communication required hereunder between the City and Developer must be in writing and may be given either personally, by overnight courier or by registered or certified mail, return receipt requested. If given by overnight courier or registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated below as the party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party

hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

<u>If to the City:</u>	City of Pittsburg 65 Civic Avenue Pittsburg, CA 94565 Attn: City Clerk Telephone: (925) 252-4850 Facsimile: (925) 252-4851
<u>With a copy to:</u>	Meyers, Nave, Riback, Silver & Wilson Attn: Ruthann G. Ziegler 455 Capitol Mall, Suite 235 Sacramento, CA 95814 Telephone: (916) 556-1531 Facsimile: (916) 556-1516
<u>If to Developer:</u>	Faria Land Investors, LLC 4061 Port Chicago Highway Concord, CA 9450 Attn: Albert D. Seeno, III Telephone: (925) 682-6419 Facsimile: (925) 689-7741
<u>With a copy to:</u>	Miller, Starr & Regalia Attn: Wilson F. Wendt 1331 N. California Boulevard Walnut Creek, CA 94596 Telephone: (925) 935-9400 Facsimile: (925) 933-4126

Any party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

19.6 Recordation. No later than ten (10) days after the Effective Date of this Agreement, the Clerk of the City shall record a copy of this Agreement in the Official Records of the Recorder's Office of Contra Costa County.

19.7 Jurisdiction and Venue. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Contra Costa.

19.8 No Obligation to Develop. It is understood that Developer's development of the Property depends upon a number of factors including, but not

limited to, the housing, commercial and industrial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement.

19.9 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

19.10 Entire Agreement. This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of _____ pages and Exhibit A, which constitute the entire understanding and agreement of the Parties.

19.11 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the date first set forth above.

CITY OF PITTSBURG:

Mayor Date: _____

Attest: _____ Date: _____
City Clerk

Approved as to form:

City Attorney Date: _____

DEVELOPER:

FARIA LAND INVESTORS, LLC, a
California limited liability company

By: _____ Date: _____

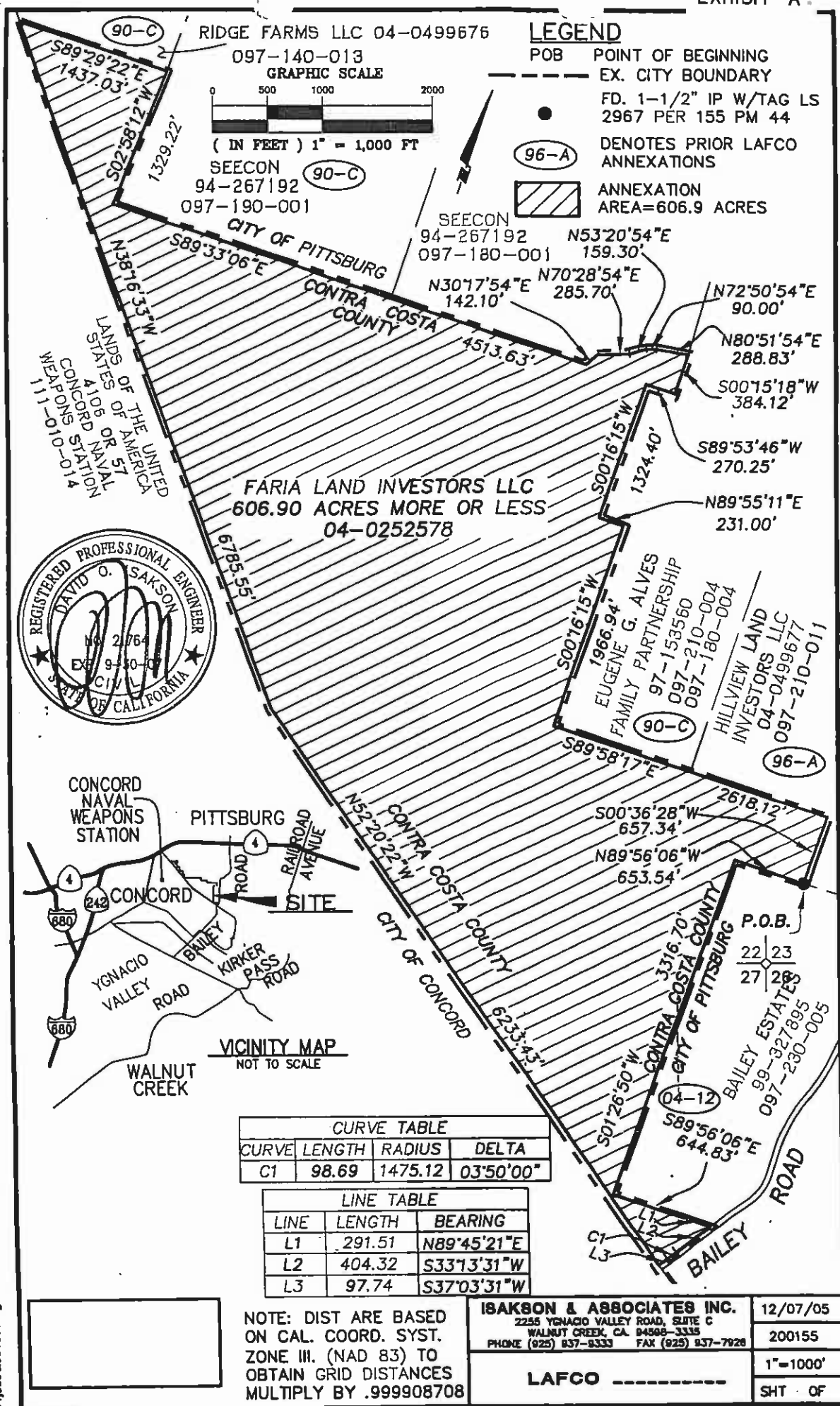
Its: _____

Approved as to form:

Date: _____

Attorney for Developer

(ACKNOWLEDGMENTS ATTACHED)



NOTICE OF PUBLIC HEARING

The City of Pittsburg Planning Commission will hold a public hearing on:

Date: June 27, 2006

Time: 7:00 P.M.

Place: City Council Chambers at City Hall
65 Civic Ave, Pittsburg, California

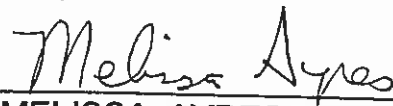
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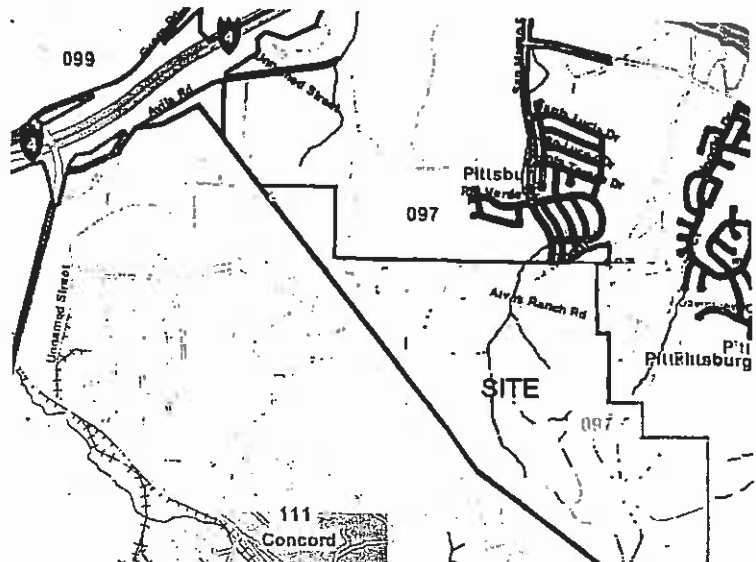
**PROPOSED ANNEXATION AND DEVELOPMENT AGREEMENT GOVERNING
FARIA PROPERTY**

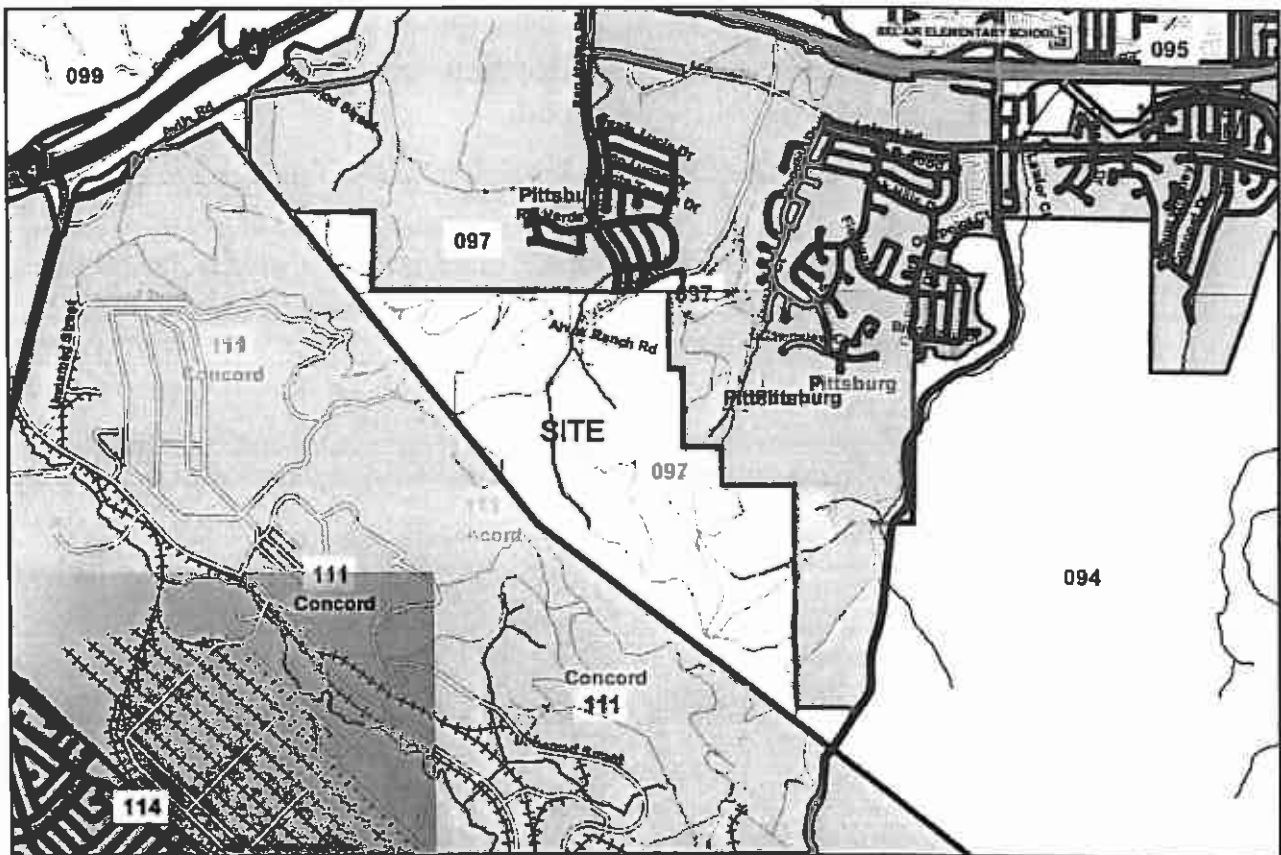
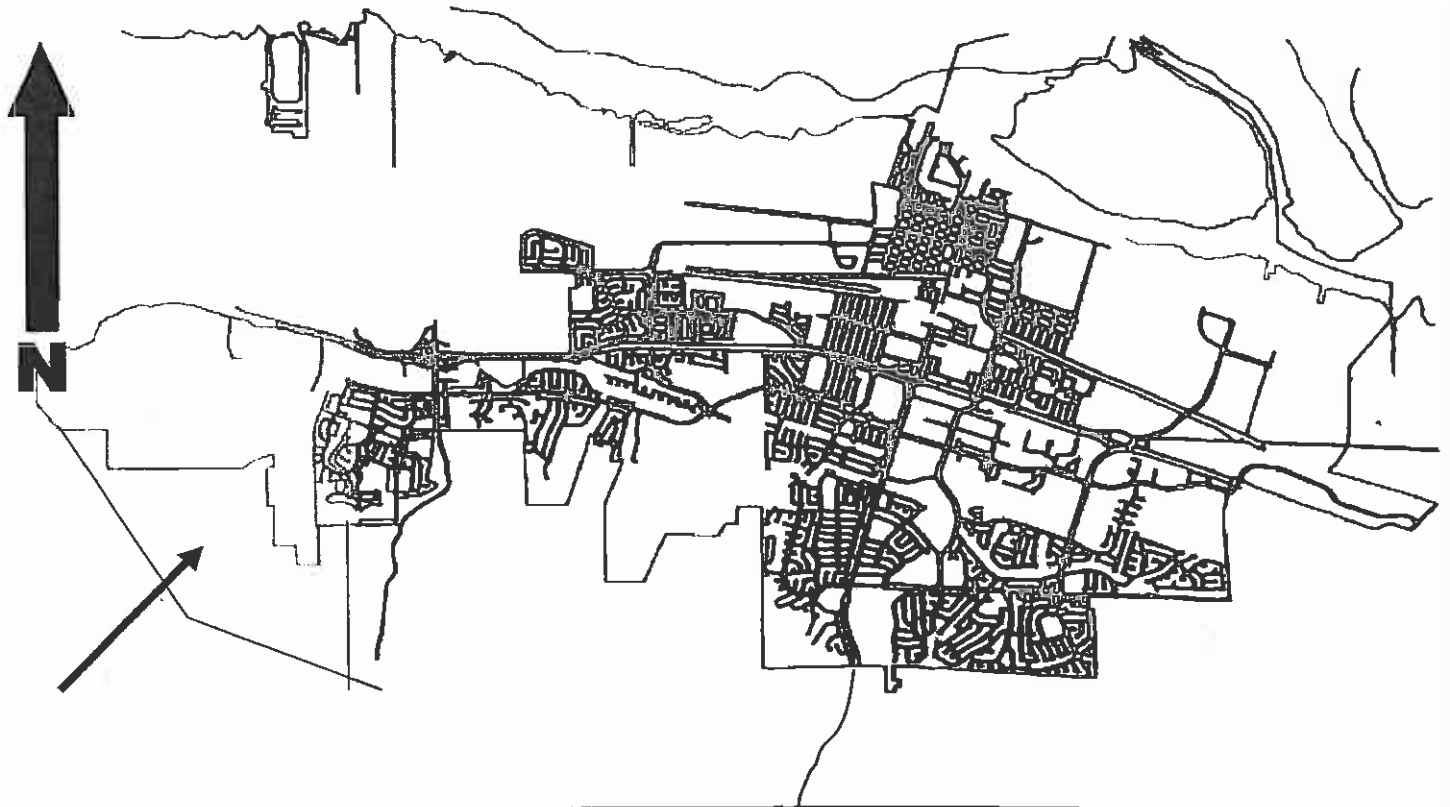
This is a request by Faria Land Investors, LLC, a California limited liability company for approval of an annexation and development agreement to preserve the Pittsburg voter approved urban limit line and the Pittsburg general plan regulations as they currently apply to a site commonly known as the Faria Property located east of the Concord Naval Weapons Station and west of Bailey Road.

You are invited to submit comments regarding any aspect of this matter in writing or verbally at the public hearing. If you challenge the above matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

For further details on this matter, contact, **MELISSA AYRES**, 65 Civic Avenue, Pittsburg, by telephone at (925) 252-4920, through e-mail at mayres@ci.pittsburg.ca.us or by fax at (925) 252-4814.


MELISSA AYRES, SECRETARY
PITTSBURG PLANNING COMMISSION





Faria South Annexation and Development Agreement – Located west of Bailey Road and east of the Concord Naval Weapons Station

EXHIBIT 4

FUTURE
DEVELOPMENT

CITY OF PITTSBURG
CONTRA COSTA COUNTY

SCHOOL

VISTA
DEL
MAR

OAK HILLS

MONTECITO

WM. LYON

HCP/
CONSERVATION
EASEMENT

SMITH

SCHREINER

FARIA

O.S.

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BAILEY
ESTATES

FUTURE
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FUTURE SAN MARCO BLVD.

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BAILEY ROAD

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MOU

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MOU/HCP

MOU/HCP

STATION

NAVAL WEAPONS

NAVAL WEAPONS

CONCORD

CONCORD

CONCORD

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Confidential
Attorney-Client
Privileged Communication

Confidential
Attorney-Client
Privileged Communication

EXHIBIT 5

Landslide victims unsure of future housing situation

■ PITTSBURG: Families staying in hotel paid for by construction company that was grading the land for houses

By Laurie Phillips
TIMES STAFF WRITER

A contractor working with William Lyon Homes Inc. continued Friday to drive long steel beams into a hillside in southwest Pittsburg and fill them with concrete, stabilizing the site of a half-acre slide early Thursday that led six families to evacuate their homes.

"We're OK, but we still haven't heard any word as far as what will happen to us," said Robert Boyd, whose home in the 1000 block of Sanka Lucia Drive is the

closest to the slide. His home and the house next door were yellow-tagged by the city, meaning access is restricted but not prohibited.

Until they can return, Boyd said, he, his wife, his daughter and her two daughters will continue to stay in a hotel room in Pleasant Hill paid for by William Lyon Homes. The company notified Boyd and six neighboring households Friday that it would pay for two weeks' worth of hotel bills. Six families accepted the company's offer.

The slide happened on land William Lyon Homes has been grading since late last year in preparation for the Vista del Mar subdivision, which eventually will include 540 homes. The homes affected by the slide sit on a plateau above the site and are

part of the San Marco subdivision, built by Discovery Builders. Representatives of both companies declined to comment Friday.

City Engineer Joe Sbranti said while stabilizing the hill remains the first priority, the city also is investigating why the hillside fell away. He said he expects to have complete answers within two weeks.

The city issued grading permits to William Lyon Homes after the planning documents the company submitted had been thoroughly reviewed by city staff and independent consultants, Sbranti said. The independent review generated "a thorough set of comments" that had to be addressed and were, he said.

Sbranti emphasized that the city felt comfortable issuing the

company its permits to grade.

"We have, we think, done everything we can to prevent what happened," he said. "We don't issue permits if we don't think things are in order."

In addition to the work done on paper, Sbranti said, at least two people representing the city and two representing the developer were on the site when grading was under way to observe the work, take measurements and test the soil to ensure the work was proceeding the way it should.

Sbranti said the company's grading work was not overly aggressive and complied with all recommendations made during the review process.

Crews will work 12-hour days

See SLIDE, Page 4

Slide

FROM PAGE 3

this weekend to secure the hillside, which also includes laying dirt at the bottom of the hill as a precautionary measure to prevent it from slipping further.

Sbranti said work repairing

water lines in the San Marco subdivision also may start as early as today. Those repairs were previously planned and are not a result of the slide, he said.

Laurie Phillips covers Pittsburg and Bay Point. Reach her at 925-779-7164 or lphillips@cc-times.com.

other Bay Area bridges moved at
See BRIDGE, Page 30

A MOTORCYCLIST enjoys the empty freeway as he approaches the closed eastbound part of the Bay Bridge on Saturday.

their three-day goal of demolishing 1,000 feet of freeway from Beal Street east to the Bank of America Tower.

After landslide, city reviews hillside homes

■ PITTSBURG: Staff members consider limits on development on hills above 500 feet of elevation sloping hills.

The couple is one of six families displaced from their Pittsburgh homes in mid-July, when the ground behind their back yards began to move while grading was under way for William Lyon Homes' Vista del Mar neighborhood. In the meantime, the residents are starting their eighth week in hotel rooms paid for by the developer while crews work to permanently shore up the hill. The cause of the landslide has not yet been determined.

With the possibility of slides like this one, is it worth it to allow building on the hills? If so, with what restrictions? Do the benefits outweigh the risks? These are questions that have made for challenging and thoughtful discussions in municipalities across Contra Costa County, including Pittsburg.

"If it were easy to develop, it would have already been developed," said Joe Sbranti, Pittsburg's planning director.

See HOMES, Page 30

The Eye on the East Bay

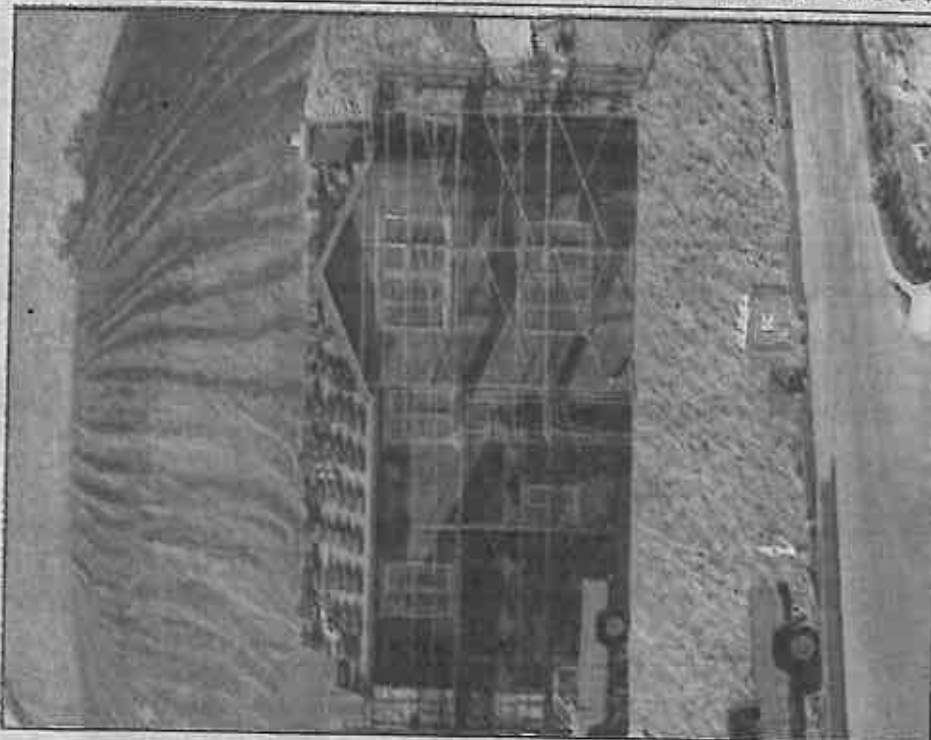
■ THIS WEEK'S SIGHTINGS: The Queen's top official keeps

The Queen of the Road

■ PARROT AT THE WHEEL: The Queen investigates pet

Cancer survivors' message of hope

■ DAYLONG CELEBRATION: More than 300 breast cancer survivors gathered on the field of McAfee Coliseum on Saturday.



KRISTOPHER SKINNER/TIMES

A HOUSE takes shape in the William Lyon Homes hillside development in Pittsburg on Friday.

Neighbors oppose bigger Sikh temple

■ EL SOBRANTE: Some Quail Hill residents say it would be 'monstrosity'

By Tom Lochner
TIMES STAFF WRITER

Public review of an ambitious Sikh temple expansion plan has yet to kick off, but some neighbors already have made up their minds.

Queen Graham, president of the Quail Hill Homeowners Association, said it would "plop ... a monstrosity" into the neighborhood.

The 60-home Quail Hill subdivision is downslope and east of Gurdwara Sahib, the Sikh Center of the San Francisco Bay Area.

Sikh leaders late last month filed a revised application with Contra Costa County to more than quadruple the size of the temple, starting with a 37,000-square-foot community center

See TEMPLE, Page 30



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Bay, Singh said. Traffic gener-

Homes

FROM PAGE 27

burg's city engineer. "Now they are taking on the more challenging development areas," including places that are steep or require extensive environmental cleanup.

The city staff is studying what restrictions ought to be placed on development on hills above 500 feet of elevation. Those guidelines would apply to homes built in the southern hills, the city's last remaining area open for development.

While some of the houses there now approach 500 feet — including part of the San Marco development, where the Reinhardt live — none now exceeds that mark. That area now holds a small fraction of the approximately 8,000 homes that could eventually be built there, regardless of elevation.

Pittsburg planning director Melissa Ayers did not return calls last week to discuss the development standards the city already has in place.

Other cities, including hilly places such as Orinda, Moraga and Lafayette, already have guidelines that address development on hillsides and ridgelines. As is happening in Pittsburg, those restrictions largely address concerns over aesthetics, but also incorporate safe building practices, limiting grading on a slope, for example, preserves views and also guards against erosion of a hill.

"We take a lot of care in what gets built on our hillsides," said Niroop Srivatsa, Lafayette's building and planning services manager. Slopes created by grading, for example, cannot exceed 25 percent.

And as decisions are made to

trays the Sikh temple as a good



KRISTOPHER SKINNER/TIMES

LARGE CONSTRUCTION MACHINES relandscape the earth in a hilly area in Pittsburg on Friday. After a July landslide, the city staff is looking to address concerns over safe building practices.

build in certain parts of Orinda, "safety's always got to be at the top of the list of priorities," said Emmanuel Ursu, the city's planning director. Regardless of the standards a place chooses for its development, he said, the work should be thoroughly evaluated on paper and in the field to ensure it proceeds the way it should.

Building in this region carries risk regardless of where on a hill it happens, said Ray Wilson, geologist emeritus with the U.S. Geological Survey. While Contra Costa County's hills are not generally as steep as others in the Bay Area, they contain a lot of old, naturally occurring landslide deposits, areas with rock the consistency of weak adobe

bricks. Developers looking to dig into those hills should learn how strong that material is and craft a plan to deal with it appropriately, Wilson said. Regardless of how a jurisdiction chooses to address development, he added, it should apply the rules consistently among all those looking to build.

"We don't really know what the best method is — it's kind of like medicine, on a case-by-case basis," Wilson said. A retaining wall, for instance, "might be a great idea in one place and a horrible idea in another."

County Supervisor Gayle Uilkema has begun crafting a measure her colleagues could approve this fall that addresses the

cumulative effect home improvement projects have on hillside stability in unincorporated areas. Building officials now evaluate how plans would affect drainage on the immediate property but not on surrounding ones.

"No one is proposing that we never develop on hillsides," Uilkema said. "Hills are the nature of what our county is in the vast majority of our areas, but we should be seeking ways constantly to be making sure that development will be what people expect it to be."

Laurie Phillips covers Pittsburg and Bay Point. Reach her at 925-719-7164 or lphillips@cctimes.com.

Reach Tom Lochner at 510-262-2760 or tlochner@cctimes.com.

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LANDSLIDES

Families get OK to return to homes

■ Six of seven households in Pittsburg affected by landslides in July can go back now, but one still will be out through spring

By Laurie Phillips
TIMES STAFF WRITER

PITTSBURG — Almost three months after being displaced from their homes by a landslide and subsequent repairs, six of the seven affected Pittsburg households were told they could safely return home Wednesday, but some said they are afraid to.

"We're ripped in half," said Denise Reinhardt, who, like her neighbors, has been living in a hotel room in Pleasant Hill since the July 13 slide. "You want to go home — you want to be home — but you want to be in a safe home."

Geotechnical consultants working for the city and developer William Lyon Homes have agreed that all but one of the seven affected households on Santa Lucia Drive can move back in because repairs made over the past month have stabilized the slope.

The Boyd family — the one closest to the half-acre slide — has been told by the developer that they could be living in the Pleasant Hill hotel rooms where they have been staying through the spring, until additional repairs are completed behind the home.

Robert Boyd said he believes repairs are being done as quickly

A WARM WEL



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CO. 2 TIMES
28 SEPT 2006

said. "We're constantly working to enhance quality and make

Return

FROM PAGE 1

as possible, but he still wishes he was back home.

Since the slide, William Lyon Homes has picked up the cost of lodging for all seven families. At the city's request, the developer will continue paying for most of the families' hotel rooms through Oct. 8, a week more than originally planned, to give those six households time to move home.

A representative of William Lyon Homes did not return phone calls Wednesday.

Although repairs have been made to the slope, city engineer Joe Sbranti said, a small amount of settling could still occur. He noted that a geotechnical consultant the residents hired thought that settling would not exceed an inch or two.

"In the grand scheme of things" that's not much, said Alan Kropp, the residents' consultant. "That's how soils expand."

The landslide happened while a contractor for William Lyon

Another area of concern identified by state officials was the

tions, screening for breast cancer and advice on quitting smoking.



ALTHOUGH WORK on six homes damaged by a landslide in Pittsburg is complete, officials say it is possible the slope behind them could settle.

HERMAN BUSTAMANTE JR./TIMES

Homes was grading land in preparation for the 540-home Vista del Mar subdivision. The homes affected by the slide sit on a plateau above the site and are part of the San Marco subdivision, built by Discovery Builders.

A draft report detailing the cause of the slide has been prepared by the geotechnical firm hired by the city and given to the city attorney. Sbranti said he expects that report to be revised further before it is released, and

whole," Chris Hothem told the council Monday. Since July, he said, he and his wife have been living out of a suitcase, they cannot refinance their home and they do not know whether they should bother painting the nursery for the son that is due this winter.

Gary Rutland, one of Hothem's neighbors, said the developer has not been speaking with the homeowners, so they do not know what kind of repair or remediation might be proposed for each family. He and others said they are frustrated that the developer is allowed to continue building homes before dealing with each of them to their satisfaction.

Sbranti said the city will continue to monitor the homes for movement. Repairs to the back yards could begin as soon as next week, he added, in preparation of the upcoming rainy season. The city has asked the developer's geotechnical firm to put together a repair strategy for further back yard repairs.

Reach Laurie Phillips at 925-779-7164 or lphillips@cctimes.com.

HOW THEY VOTED

Here is how local representatives voted on a bill giving the president authority to detain, interro-

Torture

FROM PAGE 1

strength — national security. However, another bill they wanted to pass — authorizing Bush's once-secret warrantless surveillance

received the blessing of Sen. John McCain, R-Ariz., a former POW who was tortured in Vietnam.

Previewing GOP plans to use the measure in the campaign, House Majority Leader John Boehner, R-Ohio, challenged De-

guage of the bill would ban sleep deprivation and exposing detainees to extreme temperatures.

"I don't think that the CIA will be comfortable going back to those techniques if McCain, the

Families still jarred after slide

By Laurie Phillips
TIMES STAFF WRITER

ON Santa Lucia Drive in Pittsburg, the only visible clue that a half-acre landslide forced seven families from their homes last summer is the temporary orange fencing at the end of the block. Looking up toward their backyards from the east, where William Lyon Homes' Vista del

Mar subdivision is under construction, it's hard to tell anything ever happened here.

But though the scars to the earth have been repaired, the situation still has not been resolved for the households affected. Seven months after they reported finding cracks and fissures in their yards — and almost half a year after the slide happened July 13 — the residents still don't know what caused the slide, who

ultimately is responsible for it or how they'll be compensated for damages to their homes and the inconvenience of living in a Pleasant Hill hotel for at least three months. The last family allowed to move home was in the hotel almost five months.

"We paid our mortgages, we paid our bills, and we weren't even there," resident Gary Rutland said of his home, which he and his wife, Linda, purchased for

their retirement. He said he told the city and the developer that "all I ever wanted was for you to fix what you broke. Just fix it."

A consultant hired by the city is preparing a final report examining the cause of the slide that could be released soon, according to City Engineer Joe Sbranti. The city also has asked a firm not connected to the project to

See SLIDE, Page 15

review documents pertaining to the work to help determine cause. It's not clear when that report will be finished.

Representatives for William Lyon Homes did not return calls for comment.

"They have to do something," Pilarcita Castro said of the developer, "because we have stress about all these things."

Most days, Rutland said, he and his wife manage to forget about the slide behind their home, which happened while a contractor for William Lyon Homes was grading the earth for a new 540-home neighborhood.

He's only reminded of it when he looks out at his back yard and sees dead plants in place of what should be there: a Jacuzzi tub and lush vegetation. He and his neighbors have been asked to hold off on landscaping their yards while a consultant they hired and the developer work out the best method of fixing them.

Although Rutland commends the city and developer for their responsiveness immediately after the slide, he's frustrated that the situation has not yet been resolved. His wife had spent just a week of her retirement in their new home before they were forced out, and living in a hotel room led to higher cell phone bills, more wear on their vehicles and psychological stress. Although appreciated, Rutland said, the meal and lodging costs the developer paid didn't cover everything.

"Any kind of cash outlay like that has to impact you," he said. "It impacted me. We didn't anticipate it."

Before the slide, the Rutlands also couldn't have guessed that they might consider moving out of a house that they had searched the East Bay to find. Now they say they'll stay only as long as it makes sense. The young couple living next door, who could not be reached, and their newborn child already have moved.

Three families said they felt that the slide put their lives — and major decisions — on hold. Chris and Veronica Hothem, for example, wondered before their son was born last week whether they should bother painting the nursery.

Denise Reinhardt, who lives next door to the Hothems with her husband, Laz, said, "I cannot plan anything. I literally cannot plan a vacation."

Two families have wondered



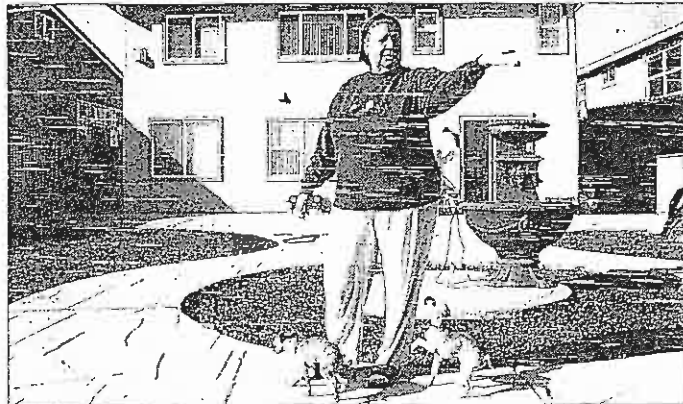
TUE NAM TON/TIMES

OWNERS of these houses along Santa Lucia Drive in Pittsburg say their lives were deeply affected by a landslide seven months ago.

about whether their homes would be worth less than before the slide if they eventually opt to sell them. The owner of the house closest to the slide, Gus Kramer, said a real estate agent told him his property is "damaged goods" because of the slide.

The fact that the property was involved in a landslide — plus all the work done to repair the hill behind the home — should be disclosed by the seller to the buyer, but won't necessarily lower the property's value, said John Bedford of the Delta Association of Realtors. Who's to say, he noted, whether the hill behind the homes is more stable now than before the slide?

Bedford added that the market's sluggishness has led sellers to lower their expectations. But though the situation is complicated, Bedford said, "given the full market, those homes will sell."



EDDIE LEDESMA/TIMES

PILARSITA CASTRO tells how a landslide damaged the walls of her home, one of seven affected by the July 13 disaster.

20 APRIL 2007

[Print this article](#)

Slide victims seek city's help

John VanLandingham

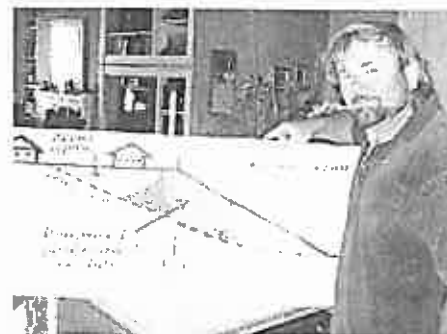
Published 04/20/2007 11:12 a.m.

Anxious homeowners from the slide-struck San Marco subdivision recently confronted the Pittsburg City Council, asking that their property be repaired or the city buy their homes.

Tensions among the homeowners were running high at the April 2 council meeting as homeowner Gus Kramer and City Manager Marc Grisham angrily disputed each other's statements. Another homeowner was in tears during her appearance before the council.

Two slides struck the rear of seven yards along Santa Lucia Drive last June in the neighborhood built by Discovery Homes, a Seeno Company subsidiary. The slides occurred during grading by William Lyons Homes, which is preparing to build a subdivision behind San Marco.

The residents were forced to evacuate their homes while repairs were made to a high-pressure waterline. Rupture of the line would have threatened more homes, in addition to the subdivision's roads. The yards were subsequently stabilized, but fissures and the potential for future sliding remain, according to a city report in January.



Laz Reinhardt displays the sign he brought to a recent Pittsburg City Council meeting depicting his plight.



Photo by John VanLandingham

Gus Kramer shows a crack in his back patio on Santa Lucia Drive that he claims was caused by a landslide that remains unrepaired. Kramer has asked the city of Pittsburg to buy his and six other neighboring homes similarly affected.

A consultant told city officials that the slides might have resulted from a combination of flawed assumptions, delayed repairs and design errors. Cracks from those slides still radiate into the neighboring San Marco development where back yards fell away.

Although the slope is stabilized, residents of the affected lots will need to resolve that issue with Discovery Homes and William Lyon Homes, City Engineer Joe Sbranti said in January. The council at the April 2 meeting took no action on the home-owners' pleas.

A group of residents living in four of the affected homes showed the council homemade diagrams and charts illustrating how they occupy a "no-man's land" between repairs by Seeno and Lyons.

Residents Laz and Denise Reinhardt said that the city had no trouble getting an emergency court order to let contractors fix the water line and repair portions of the slides. "But the slide still exists and we are sitting on top of it," said Denise.

"How would anyone let half a landslide (continue) to exist?" her husband asked.

Kramer, who happens to be the Contra Costa County assessor and owns a rental house that was the most severely damaged, asked the city to use its redevelopment powers and buy the houses, as he said the county did in a similar circumstance 10 years ago.

He got into it briefly with Grisham when he complained that Grisham never returned his phone calls, several of which were not related to the slide. "Let's be a little more professional about this," said Kramer.

Grisham denied Kramer's allegations, saying, "That's untrue. I've always responded. You left no messages. That's nice grandstanding but it's untrue."

Resident Linda Rutland said the uncertainty about her property, which she bought as a retirement home, "has taken away all joy we had as homeowners."

Pilarsita Castro spoke through tears and in halting English, pleading with the council to help the homeowners, as her neighbor, Rutland, comforted her.

To comment on this story, visit www.pittsburgpress.com.

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