

Planning Commission September 10, 2015

**Responses Comments Received During the Public Review Period
for the Draft Initial Study and Draft Mitigated Negative Declaration**

The City received the following written comment letters on the Initial Study/Mitigated Negative Declaration:

1. Monterey Bay Unified Air Pollution Control District
2. William Parkin, attorney for Bill and Sherilyn Jager
3. Matt, David and Kathryn Bartlett

These letters are attached as Exhibits I, J and K to the Final Initial Study (Attachment 2 of the Planning Commission staff report). Each issue stated in the letters is provided below followed with a response to the comment.

Letter from Amy Clymo, Supervising Planner, MBUAPCD, dated July 28, 2015

Comment 1: The air quality analysis discussion starting on page 10 only addresses construction impacts and does not address potential impacts from project operation. The operational emissions should be compared to the Air District's CEQA thresholds to evaluate significance.

Response 1: The text of the air quality discussion in the Initial Study has been revised to include an evaluation to determine if significance thresholds would be met for the long-term use of the proposed 20 dwellings. At the suggestion of the commentor's letter, the MBUAPCD's CEQA Guidelines were used to determine if the project would exceed the Air District's threshold level. Review of Table 5-4 in the District's CEQA Guidelines showed that the size of the project is substantially below the 1,195-unit threshold level to generate a significant impact on air quality. This approach was reviewed with the author of this comment letter on August 20, 2015 who confirmed this was the correct approach.

Comment 2: The Air District recommends installing electric vehicle charging stations in common parking areas or at a minimum, stub out for 220/240 volt connections for later installation of electric vehicle charging stations.

Response 2: This recommendation is noted. The City Planning Commission and Council will determine if this recommendation should be included in the project.

Letter from William Parkin, Attorney for Bill and Sherilyn Jager, dated August 13, 2015

Comment 1: The Initial Study simply requires the grading contractor to implement best management practices for dust control. Absent is a thorough discussion of what best management practices entail. It is unclear what practices the Initial Study envisions to mitigate dust generation to a level that would be less than significant.

Response 1: Mitigation Measure AQ-1 has been expanded to specify the types of best management practices (BMPs) that shall be included in the contractor's actions to minimize dust generation during the construction phase of the project. As such, these BMPs are the minimum performance standards the applicant/contractor must carryout to reduce airborne dust to a level of insignificance. Specifying performance standards in a mitigation measure is an acceptable method to mitigate identified impacts in CEQA documents.

Comment 2: A mitigation measure proposes to compensate for the loss of about two acres of habitat for the federally endangered Mt. Hermon June beetle by completing the Habitat Conservation Plan (HCP)/Incidental Take Permit process with the USFWS as specified by Section 10 of the endangered Species Act. However, absent is any discussion regarding what the HCP actually entails. It is impossible to discern whether the HCP will in fact mitigate the loss of habitat.

Response 2: Page 15 of the Initial Study has been revised to add text that summarizes the mitigation approach proposed in the Draft HCP prepared for this project. The Draft HCP document is also appended to the updated Initial Study. In summary, the HCP states the applicant will purchase conservation credits from the Zayante Sandhill Conservation Bank to enhance 2 acres of Mt. Hermon June beetle habitat. According to the USFWS, this is the normally acceptable form of mitigation for the habitat loss impact generated by the project.

Comment 3: The project conflicts with local policies which aim to protect biological resources, especially protected trees as defined in the Scotts Valley Municipal Code. A total of 71 trees/tree groups will be removed by the project. Of this total, 56 trees meet the criteria as trees protected by the code. The Tree Protection Code requires preservation of significant healthy trees when development of property is proposed. The main measure to compensate for the loss of trees is to plant new trees on-site or at another site. This is an inadequate mitigation for the loss of protected and mature trees.

Response 3: The commentor is correct that Section 17.44.080 of the Scotts Valley Municipal Code requires protection of trees that meet the criteria of "Protected Trees". However Subsection 17.44.080(4) allows *removal* of Protected Trees with approval of permit and Subsection 17.44.080(5) provides

for *replacement* of removed Protected Trees when a permit is approved. The project includes a request to remove Protected Trees in accordance with Section 17.44.080 of the Municipal Code. Pages 16 and 17 of the Initial Study have been revised to better explain this and to describe the areas on the site where new coast live oak propagation will occur. Two sentences have been added to Mitigation Measure BIO-5 to clarify the required success rate for new oak plantings (80% survival) and the duration of monitoring that will occur until this success criteria is met (5 years or longer if the success criteria is not met in 5 years.). Permit conditions require the applicant deposit a performance bond with the City to ensure the tree planting is completed as specified by the City Arborist report for this project.

Comment 4: The Initial Study identifies that the project requires grading over most of the 2.6-acre site. This will generate a high likelihood for accelerated erosion. The proposed mitigation measure is to have a qualified professional prepare an erosion control plan for review and approval prior to the approval of the Final Subdivision Map. This violate CEQA. The significance of environmental impacts may not be deferred to a later date.

Response 4: The “Geology and Soils” Section of the Initial Study has identified project grading may generate a significant erosion related impact and has recommended implementation of Mitigation Measure GEO-2 to mitigate the identified impact. GEO-2 requires preparation of an erosion control plan that must be reviewed and approved by the City before any land disturbance can occur or even before the Final Subdivision Map can be approved for recordation. The original text of GEO-2 has been expanded to specify additional performance standards the plan must adhere to in order to be acceptable to the City. These additional performance standards clarify those additional items that need to be included in the plan to effectively mitigate any potential erosion impacts on the site. The use of performance standards in mitigation measures is a long standing and accepted practice for the preparation of plans that are typically finalized prior to the construction phase of a project. The performance standards specified in both the original GEO-2 and the revised GEO-2 meet the requirements of CEQA.

Comment 5: The mitigation proposed to compensate for the loss of groundwater recharge area would only be successful with proper maintenance and funding of drainage facilities designed to promote infiltration of surface drainage. It is uncertain if the City would have any authority to enforce the provisions of the homeowners’ agreement requiring drainage maintenance and monitoring.

Response 5: Mitigation Measure HYD-3 requires a homeowners’ association (HOA) agreement that requires the HOA to adequately maintain all common-owned drainage facilities, annually monitor these facilities to ensure their effectiveness and sufficient funding to carry out these activities. The

agreement must be submitted to the City for review and approval prior to recording the Final Subdivision Map. Non-compliance with HYD-3 in the future would be non-compliance with the approval for this project which also includes a Planned Development Permit. The language of HOA maintenance agreements typically address non-compliance issues to avoid problems like those stated in the comment.

Comment 6: Given that an estimated 139 trips will be added daily to Scotts Valley Drive, how the traffic report concluded that only 23 additional peak hour trips would be added eludes us.

Response 6: The traffic report was prepared by W-Trans, Inc. a respected traffic engineering firm with offices in Santa Rosa and Oakland, California and peer reviewed by Hatch Mott McDonald another respected traffic engineering firm. The peer review did not criticize or otherwise comment on the trip generation identified by W-Trans. The traffic analysis was actually based on a 24-unit townhouse project which was an earlier version of the applicant's project. Therefore, the traffic generation rates in the report are slightly higher than expected for the proposed 20 units; but have been used in the Initial Study at the applicant's request. As such, the traffic rates in the report represent a "worst case" (or slighter higher than "worst case") analysis.

Trip rates are calculated using the Institute of Transportation Engineers *Trip Generation Manual*, 9th Edition (2012). Based on 24 units, the trip rates for the "residential condominium/townhouse" land use category are as follows:

- a) Average daily trips = 5.81 trips/unit;
- b) Morning peak period = 0.44 trips/unit; and
- c) Afternoon peak period = 0.52 trips/unit.

The number of expected trips is calculated by multiplying each of these rates by 24 units. As stated above, these rates could have been multiplied by 20 units to obtain more accurate figures; which also would be slightly lower trip numbers than stated in the Initial Study. However, CEQA does not preclude using rates that provide a slightly higher than "worst case" analysis in this manner, if supported by reasonable methodology or logical reasoning. In this case, the applicant requested the analysis based on 24 units continue to be used. If the 20 units were instead used in the analysis the number of peak period trips would be 19 rather than 23 trips.

Comment 7: The Initial Study concludes that "it is anticipated the project will generate an average of 139 vehicle trips/day which is the normal trip generation for a residential project of this size. As such, the impacts will not be significant". This statement mischaracterizes the standard against which an environmental impact should be

measured. Given this erroneous framework, it is difficult to discern whether the project's traffic analysis does have a significant effect on existing traffic patterns.

Response 7: The quote used in this comment is taken from the "Air Quality" section of the Initial Study and not the "Traffic and Transportation" section. Therefore, use of this quote to evaluate the adequacy of the "Traffic and Transportation" section is inappropriate. The quote is used in the "Air Quality" section of the Initial Study to note that air emissions from project generated traffic will not be greater than anticipated for this type of residential use.

Comment 8: There is a "fair argument" that the project has several potential significant environmental impacts. The mitigation measures identified for these potential impacts are not adequate for the aforementioned reasons. The City of Scotts Valley should not approve the Mitigated Negative Declaration and instead prepare a full EIR as required by CEQA.

Response 8: Pursuant to CEQA Guidelines Section 15064 a lead agency, in this case the City of Scotts Valley, determines if the environmental effects of a project are substantial enough to require preparation of an Environmental Impact Report (EIR) rather than a Negative Declaration or Mitigated Negative Declaration. A decision to prepare an EIR must be based on "substantial evidence" in the record that the project may have a significant effect on the environment. According to CEQA Guidelines Subsection 15064(f) (5) and Section 15384 "substantial evidence shall include facts, reasonable assumptions predicated upon facts and expert opinion supported by facts". The existence of public controversy over the effects of a project do not require the preparation of an EIR if there is no substantial evidence to support that opinion.

The issues presented in the commentor's letter do not provide opinion of technical experts in relevant areas of expertise; nor do the comments provide facts that successfully refute the conclusions of the Initial Study. All of the issues raised by the commentor have been considered, and evaluated and then responded to in Responses 1—7 above. These responses show that the comments were either incorrect statements or were statements that encouraged more clarity in the Initial Study text. In some cases, the Initial Study text and three of its mitigation measures were revised to provide more clarity. However, new information added to a Negative Declaration which merely clarifies, amplifies or makes insignificant modifications to a Negative Declaration does not require recirculation of the CEQA document nor requires the preparation of an EIR (CEQA Guidelines Section 15073.5).

Letter from Matt, David and Kathryn Bartell, dated August 17, 2015

Comment 1: The property is inhabited by the Palled bat, birds of prey, the Dusky-footed wood rat and the endangered Mt. Hermon June beetle. Permanently removing the habitat for these species would be a great detriment to their existence. It's not OK to cut down 56 of our city's protected trees. If approved, the trees proposed to be cut should be transplanted instead in other parts of the City.

Response 1: A biological report was prepared regarding the bird and mammal species cited in the comment. An entomological assessment and Draft Habitat Conservation Plan were prepared for the insect species. A tree evaluation report was prepared by the City Arborist. These four technical reports were all prepared by qualified professionals and have been incorporated in the Initial Study. The biological report provided mitigations for impacts to special status species that *may* inhabit the site. Based on this information the Initial Study has concluded potential impacts to these species can be mitigated to levels of less than significance with the adoption of Mitigation Measures BIO-1, BIO-2 and BIO-3. The loss of Mt. Hermon June beetle habitat can be mitigated by Measure BIO-4 as described in Response 2 to the letter from William Parkin above. Implementation of Mitigation measure BIO-5 will mitigate for the loss of City Protected Trees as described in Response 3 to the Parkin letter. Transplanting mature trees is not effective mitigation as attempts to transplant mature trees typically results in death of the trees due to their size and age. Replacing removed trees with newly planted trees, as specified in BIO-5, is accepted as a much more successful method to mitigate for tree loss.

Comment 2: I do not agree that the amount of traffic generated by the project will not substantially effect intersection operations.

Response 2: Please refer to Response 6 to the letter from William Parkin above.

Comment 3: I believe that many intersections operation will be negatively affected by the construction activities associated with construction. How are you going to manage traffic during a major development across the street from a busy middle school which will be involved in its own construction activities?

Response 3: Recommended permit condition #50 requires the applicant to obtain an Encroachment Permit from the City Public Works Department for any work in or construction vehicle use of public right-of-ways. The application for this permit must include a traffic control plan that shows how traffic will be safely controlled and motorists will be alerted during times when construction vehicles are entering and exiting the project site. This type of condition is typically required for other projects throughout the City, including the new hotel project, currently under construction, on Scotts Valley Drive north of the project site.