

**NOTICE OF DECISION ON THE PROPOSED MINOR MODIFICATION  
FOR THE HIGHLANDS ESTATES PROJECT AND  
RESPONSE TO COMMENTS RECEIVED ON THE EIR ADDENDUM**

DATE: September 8, 2022

TO: Property Owners of land within 200 feet of Highland Estates Lots 5 through 8 and Other Interested Parties (via email)

LOCATION: APNs 041-101-390, -400, -410, and -420 on Ticonderoga Drive, San Mateo Highlands Area

FROM: Camille Leung, Project Planner; [cleung@smcgov.org](mailto:cleung@smcgov.org)

SUBJECT: Response to Comments on the EIR Addendum and County Decision on the proposed Minor Modification (PLN2020-00412) to an approved Resource Management Permit and Grading Permit (PLN2006-00357) for the development of Lots 5, 6, 7, and 8 (BLD2016-00161 through BLD2016-00164), in the San Mateo Highlands Area

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*Applicant's Request for Increased Grading*

The County of San Mateo ("County") Planning and Building Department, serving as the lead agency under the California Environmental Quality Act ("CEQA"), prepared a Final EIR for the Highland Estates Subdivision Project ("Project"). The Board of Supervisors certified the Final EIR as complete and adequate on April 27, 2010 and approved the project, including adoption of necessary ordinances and rezoning and imposition of conditions of approval.

As described in Chapter 3 of the EIR Addendum, the applicant, the Chamberlain Group, currently proposes to increase the grading volumes for the purpose of slope remediation and house construction on Lots 5 through 8. The proposed changes would result in the generation of 8,110 cubic yards ("c.y.") of cut soils (an increase of approximately 7,790 c.y. above that estimated for the development of Lots 5 through 8 at the time of Project approval), which would require approximately 650 construction truck trips (1,300 one-way trips) for removal and disposal of the soil, and up to an additional 7 weeks for completion of grading activities on Lots 5 through 8, for a total of 10 weeks of grading.



*Project Compliance with the California Environmental Quality Act (CEQA)*

In January 2018, the County contracted with SWCA Environmental Consultants (SWCA) to perform mitigation monitoring services for the project. The County subsequently requested that SWCA provide assistance in evaluating the applicant's proposal to increase the grading volumes. The result of this analysis is included in the Addendum to the Highland Estates Final Environmental Impact Report ("EIR Addendum"), released on May 3, 2021 and available at <https://planning.smcgov.org/documents/highland-estates-eir-addendum>

Pursuant to Section 15164 of the CEQA Guidelines, a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions identified in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR have occurred. Therefore, an addendum to an EIR is appropriate, and no subsequent or supplemental EIR shall be required, if none of the following three conditions occur:

- 1) Substantial changes are proposed in the approved project that will require major revision of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
- 2) Substantial changes occur with respect to the circumstances under which the project is being undertaken that will require major revision to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
- 3) New information of substantial importance, which was not known and could not have been known at the time the EIR was certified as complete, shows that the project will have significant effects not previously disclosed, that the significant impacts previously disclosed will be substantially more severe, that mitigation measures or alternatives previously found infeasible would be feasible and effective in reducing one or more impacts but adoption declined by the project applicant, or that new mitigation measures or alternatives are required but adoption declined by the project applicant.*

As discussed in the EIR Addendum, none of the changes that have occurred with respect to circumstances relevant to the undertaking of the project, as modified for completion, would cause new significant environmental impacts or would cause a substantial increase in the severity of previously identified significant effects. No new information has become available that would affect the conclusions in the Final EIR. Therefore, no major revision of the EIR is required and no additional environmental review is required beyond the EIR addendum.

Section 15164(c) of the CEQA Guidelines states that “An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.” While circulation of the EIR Addendum for public review was not required, the County nevertheless made the EIR Addendum available for courtesy public review on May 3, 2021; the courtesy comment period ended on July 2, 2021. Public notice of the minor modification and EIR Addendum is not required by Zoning Regulation or other applicable County code or law. A courtesy notice was provided to owners of properties within a 200-foot radius of Lots 5-8 as well as to interested parties.

### Response to Comments Received on the Addendum

The County received a variety of comments in response to the EIR Addendum, some of which relate to environmental concerns and the appropriateness of the EIR Addendum to address potential impacts of the proposed modification. Staff has briefly summarized the primary questions and comments, and provides the information below in response.

- Questions about the proposed grading and the County’s Grading Permit process:
  - How much excavation is needed, how much of the excavated spoils can be reused, and where will the soil be stored on-site?: *County’s response:* The applicant proposes 2,880 c.y. of cut associated with slope repair. Additionally, the applicant estimates that another 5,230 c.y. of cut and 320 c.y. of fill (excavated spoils which can be reused) for foundation construction on Lots 5-8. Proposed grading will generate of 7,790 cy of cut soils, requiring approximately 650 construction truck trips (1,300 one-way trips) for soil removal and disposal. For further details, see “County of San Mateo, Spreadsheet for Grading for Chamberlain Project lots 5-8 June 25, 2020” posted to the County’s Highland Estates Subdivision Records website: <https://www.smcgov.org/planning/highland-estates-subdivision-records>. The applicant proposes to locate stockpiles on Lot 8, as shown in civil plans included in the EIR Addendum.
  - What is the large cut that is proposed in the hillside, right next to the Ticonderoga Drive?: *County’s Response:* The applicant proposes to construct a retaining wall and perform additional cut of approximately 300 cubic yards to facilitate moving the Ticonderoga Drive curb and sidewalk further into the existing slope and outside the existing sewer

main trench limits. These grading amounts are included in the proposed grading volumes.

- The County Grading Regulations establish that grading permits, and grading permit amendments, need to be authorized by either the Zoning Hearing Officer or the Board of Supervisors. *County's Response:* As is typical for many types of County permits, the decision maker, in this case the Board of Supervisors, via condition of project approval (Condition 1), delegated authority to the Community Development Director ("Director") to approve minor modifications to the project. As discussed in this letter, in the scope of the entire Highlands Estates Project, the Director has determined that the current proposed modifications are minor in nature and are within the Director's authority to approve.
- Is the Community Development Director's decision on the proposed minor modification subject to appeal? *County's Response:* The Director's approval of the minor modification is not subject to appeal. The preparation of an EIR Addendum does not alter the County's conclusion that neither the County Zoning Regulations nor any other controlling authority provides for an administrative appeal of such a determination. Zoning Regulations Section 6104 allows for an administrative appeal of the decisions of the Director when the Director acts as the Zoning Administrator in the instances authorized elsewhere in the Zoning Regulations. Here, the Director is not acting as the Zoning Administrator, but rather, is exercising the authority granted to the Director by the Board of Supervisors in the conditions of project approval (Condition 1).
- Has the Grading Permit expired? *County's Response:* Section 9292 of the Grading Ordinance states that "If a substantial amount of work authorized by any permit is not commenced within eight (8) months of the date of issuance or as otherwise indicated on the face of the permit, or on the improvement agreement, or if said work is not completed within one (1) year of commencement, or as otherwise indicated on the permit or the improvement agreement, the permit shall expire and become void." For purposes of the duration of a grading permit, the "date of issuance" referenced in Section 9292 refers to the date the County issues the grading "hard card" for the project, which authorizes the commencement of grading activity. Per Condition 17, the project requires the issuance of multiple grading permit hard cards, each with their own issue date, commencement date, and expiration date (which is based on the status of the

associated building permit). Separate grading permit hard cards have been issued by the County for grading on Lots 1-4 and grading on Lots 9-11. Grading permit hard card(s) have not been issued for Lots 5-8 and, therefore, have not expired.

- Geotechnical Concerns: Cotton Shires and Associates (CSA):
  - Concerns regarding slope stability of the project site: *County's Response:* Concerns related to slope stability are part of a record of similar public concerns related to the presence of landslides and the feasibility of new development in this part of the San Mateo Highlands area. Section 4.3 of the September 2009 Recirculated Draft EIR and Section 2.0 of the Final EIR describe and analyze the feasibility of project development, including development on Lots 5-8, in the context of the area's susceptibility to landslides. The Final EIR concludes that impacts related to soils removal and slope stability would be less than significant with mitigation. As noted in the EIR Addendum, although more soils would be removed to safely construct homes on Lots 5-8, the geologic hazards remain the same as those analyzed in the EIR and the solutions to reduce those hazards, as presented in the mitigation measures, also remain the same, as stated in the Updated Geotechnical Engineering Study prepared by Earth Systems, Inc., dated April 8, 2022.
  - What if the proposed grading contributes to a future landslide? *County's Response:* The County has reviewed the geotechnical reports and proposed construction plans and determined that the proposed construction can be completed in a manner consistent with the building code and in compliance with all applicable geotechnical mitigation measures of the EIR. The County will monitor construction consistent with its standard permit inspection procedures and will monitor compliance with mitigation measures. As the permitting agency, the County's role is to evaluate a project proposal and available information, including geotechnical information, for compliance with the applicable regulations, as it has done here.
  
- Air Quality and Related Concerns:

- Concerns regarding increased noise, vibration, dust, and air quality impacts associated with the proposed modification. *County's Response:* Subsections 4.4.2.2 and 4.4.2.3 of the September 2009 Recirculated Draft EIR and Section 2.0 of the Final EIR describe and analyze the construction-related air quality and noise impacts of the approved project, including impacts from truck travel. The Final EIR identifies construction-related air quality and noise impacts as less than significant with implementation of Mitigation Measure AQ-1 and Mitigation Measure NOI-1, respectively. The analysis of project changes in the EIR Addendum that could contribute to construction-related air quality and noise impacts (pp. 4-5 to 4-9 and pp. 4-10 to 4-11, respectively) explains that these two mitigation measures would remain applicable to development of Lots 5-8. As a result, although sensitive receptors would be exposed to construction-related air quality and noise and vibration impacts for a longer period of time, the impacts would remain at less-than-significant levels with implementation of mitigation measures, as updated in the EIR Addendum.
- Who will monitor the dump trucks for compliance with Air Quality mitigation measures? *County's Response:* SWCA, the County's mitigation monitor, will monitor grading and construction activities for compliance with conditions of approval, including all mitigation measures. Residents may also contact the Project Planner.
- For the Air Quality analysis, does the CalEEMod analysis consider:
  - ...Past grading for overall project build out, as the actual grading amounts performed for Lots 1-4 and Lots 9-11 may have differed from the approved amounts? *County's Response:* Given that the proposed changes to the project entirely center around Lots 5-8, the current proposal for Lots 5-8 was compared with the proposal for Lots 5-8 as presented in the Final EIR in order to analyze potential impacts of the modification. Given that construction on the other lots is already complete and the impacts were determined to be less than significant with mitigation for the project as a whole, it is unnecessary to re-analyze the built aspects of the project.
  - ...Lot acreage, including grading for parking and landscaping areas so that the entirety of the grading is

accounted for? *County's Response:* A complete CalEEMod analysis was performed with inputs for grading volume, grading duration, and haul trips. For residential land uses, the CalEEMod analysis factors in building footprint information and areas used for parking, including the driveway or garage, and landscaping.

- ...The number of trees proposed for removal? *County's Response:* Yes, the CalEEMod analysis included trees proposed for removal and planting based on information from Improvement Measure AES-1b. However, there is no change in the number of trees removed or planted as a result of the proposed earthwork changes on Lots 5-8.
- ...Backup generators used during construction? *County's response:* Backup generators were not included in the CalEEMod analysis because they were not included in the Project equipment list. However, as shown in Table 3 of the EIR Addendum, the air quality impacts from the project as currently proposed would be well below applicable significance thresholds. Potential backup generator engine operations would be temporary and intermittent and would not substantially contribute to air quality impacts or result in air emissions exceeding any significance criteria. Also, it is anticipated that the electricity required to construct the homes on Lots 5-8 will be provided by a temporary power pole, minimizing any use of generators. Therefore, the project would not result in significant air or noise impacts requiring mitigation.

- Traffic Concerns:

- Who do we contact if there are traffic issues? *County's Response:* Please contact SWCA staff listed in the "Contacts" section below. Residents can also contact the Project Planner.
- The construction of homes on Bunker Hill Drive resulted in construction traffic impacts on neighborhood school traffic. Ticonderoga Drive is a major thoroughfare. How will the County minimize impacts to school traffic? *County's Response:* For Lots 9-11, the County Department of Public Works approved a construction management plan which limits construction traffic on

Ticonderoga Road to the hours of 9:00 a.m. to 2:00 p.m. during school days (excludes non-school, summer months). This restriction will apply to construction traffic for Lots 5-8.

- What if project construction traffic results in damage to neighborhood streets? *County's Response:* Pursuant to project conditions, any damage to public roads from project construction traffic must be repaired by the applicant.
- Concerns related to Biological Impacts:
  - Will building three new homes destroy the natural habitat of the White-Tailed Kite? *County's Response:* White-tailed kite forage in undisturbed, open grasslands, meadows, farmlands, and emergent wetlands. Lots 5-8 do not provide suitable foraging habitat for this species. White-tailed kite typically nest in large bushes or trees, often in isolated stands, surrounded by open foraging habitat. Lots 5-8 provide low quality nesting habitat for this species due to the lack of isolated stands and lack of proximity to suitable foraging habitat. White-tailed kite have the potential to temporarily occur within or adjacent to the project area while traveling to or from breeding/foraging sites; however, this species is not anticipated to nest or forage within Lots 5-8. Mitigation Measure BIO-2b ensures impacts to nesting white-tailed kite and other raptor species would not occur as a result of the project.
- Concerns regarding Adequacy of CEQA compliance:
  - Environmental Review should cover all categories in the EIR which should be updated in light of the proposed modification, including the aesthetics, wildfire, and, and housing impacts. *County's Response:* The EIR Addendum (pp. 3-1 to 3-4) identifies the proposed modifications to the Highlands Estates project as limited to the earthwork changes for development of Lots 5-8, including additional site grading, excavation and soils removal. As stated on p. 3-4 of the EIR Addendum, "with regard to Lots 5 through 8, none of the other attributes of the approved project, including project footprint, locations of the home sites, and staging, have changed." Thus, because changes are limited to the construction aspects of project implementation and not the development program or building design, the EIR Addendum properly focuses the analysis on the construction-related changes and whether

such changes would alter the impacts findings under each environmental resource topic.

- Is a supplemental EIR required? *County's Response:* CEQA Guidelines Section 15163 state that a supplemental EIR can only be required "if the conditions described in Section 15162 would require the preparation of a subsequent EIR." For the reasons set forth in the EIR addendum and on Page 2 of this letter, the conditions in Section 15162 requiring the preparation of a subsequent EIR are not present, as the modification would not result in new or more severe environmental impacts. After an EIR has been prepared for a project, CEQA prohibits a lead agency from requiring a subsequent or supplemental EIR unless the criteria of CEQA Guidelines Section 15162 are met. *Moss v. County of Humboldt*, 162 Cal. App. 4th 1041 (2008).
- Concerns regarding the design and view impacts of the home on Lot 11: *County's Response:* Lot 11 is not included in the scope of the minor modification. Staff has found that the building plans conform to the conditions and the approved project as a whole, including the EIR. The photo provided of Lot 11 does not match the photo simulation of Lot 11 in the EIR, as the photo in the EIR is taken from a location further away (on the far side of New Brunswick Drive facing Cowpens Way, per the vantage point map in the EIR). The applicant has complied with the height verification process by providing height elevation survey letters for Lots 9-11 (posted to the County's Highland Estates Subdivision Records website) demonstrating that the constructed ridge elevations meet or are lower than the approved ridge elevations.
- Information requests: Documents responsive to the information requests have been posted to County's Highland Estates Subdivision Records website.

#### *County's Decision on the Requested Modification*

As discussed in the EIR Addendum and further discussed in this letter, the proposed grading modification, as proposed, conditioned, and mitigated, would not result in any new significant environmental impacts or a substantial increase in the severity of significant effects previously identified in the certified EIR. As addressed in this letter, the concerns raised by commenters do not provide a substantive basis for the Community Development Director to reverse his initial determination that the proposed modifications are minor in nature. The Director therefore approves the proposed modification, as described in Chapter 3 of the EIR Addendum, as a minor

modification to the approved Resource Management Permit and Grading Permit, in accordance with the discretion given to the Community Development Director to approve such changes by Condition 1 of the project approval.

*Construction Schedule and Contacts Information*

As of the date of this letter, the applicant has not provided the County with a construction schedule for the commencement of grading and construction on Lots 5-8. As required by the conditions of approval of the Highlands Estates Major Subdivision (PLN2006-00357), a notice will be provided to inform residential property owners within 200 feet of planned construction areas, as well as other interested parties, of the planned start date for the grading and construction of new homes on the subject lots. The grading and construction would commence no sooner than ten days after the date of the notice.

County-Contracted  
Mitigation Monitor:

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