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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA – UNLIMITED CIVIL JURISDICTION

SONJA TRAUSS, and SAN FRANCISCO
BAY AREA RENTERS FEDERATION,

Petitioners,

vs.

CITY OF LAFAYETTE, a municipal
corporation, and DOES 1-25,

Respondents.

O'BRIEN LAND COMPANY, LLC, and
ANNA MARIA DETTMER, AS TRUSTEE
OF THE AMD FAMILY TRUST,

Real Parties in Interest.

Case No.: MSN15-2077

**SECOND AMENDED PETITION FOR
WRIT OF ADMINISTRATIVE
MANDAMUS**
(C.C.P. §1094.5; C.C.P. §§1085 & 1060;
C.C.P. §1021.5, Gov't. Code § 65008,
§§65589.5, 65589.6)

Date:
Time:
Dept.: 9
Judge: Hon. Judith S. Craddick

23
24 Petitioners Sonja Trauss and San Francisco Bay Area Renters Federation
25 (“Petitioners”) allege as follows:

26 1. The California Housing Accountability Act, Government Code Section
27 65589.5 *et seq.* (“HAA”), requires the following:
28

When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(Cal. Gov't Code § 65589.5(j).)

2. On March 21, 2011 Anna Maria Dettmer, as Trustee of the AMD Family Trust, and O'Brien Land Company, LLC (collectively, "Real Parties" or "developer") submitted an application to the City of Lafayette ("City") for the Terraces of Lafayette Apartment Project ("Project"). O'Brien Land Company, LLC proposed to build 14 apartment buildings consisting of 315 apartments on a 22-acre parcel owned by the AMD Family Trust, located at 3312 & 3233 Deer Hill Road (APNS 232-150-027 & 232-140-016, the "Project Site"), at the southwest corner of Deer Hill Road and Pleasant Hill Road. This proposed housing development Project complied with all applicable, objective general plan and zoning standards that existed on the date the application was deemed complete.

1 3. As proposed, the Project is both a moderate-income housing project and a
2 market-rate housing project. (Indeed, moderate-income citizens should be able to afford
3 market-rate apartment housing.) More specifically, it is a “housing development” and a
4 “housing development project” subject to the HAA.

5 4. The Project was met with hostility on the part of the City of Lafayette. The
6 record is replete with indications that the City was hostile toward approving the Real
7 Parties’ proposal. In particular, obstructionism is demonstrated in the record by the
8 amount of time (over a year) it took the City to release the Final Environmental Impact
9 Report (“EIR”) and also by the Real Parties’ response to the findings in the EIR. To wit,
10 the Real Parties appealed the Planning Commission’s certification of the Final EIR to the
11 City Council. Lafayette City Council affirmed the Planning Commission’s certification.
12 The Real Parties, still unsatisfied and clearly of the opinion that they have viable claims,
13 entered into a tolling agreement with the City on September 11, 2013, preserving the Real
14 Parties’ claims arising from Certification of the Final EIR and allowing the Project to
15 move to the next phase of the application process. However, the Real Parties had no more
16 success in the next phase of the application process.

17 5. At the first Design Review Commission hearing, held on September 30,
18 2013, after Real Parties gave their presentation describing the Project, twenty-two
19 speakers spoke at the hearing, overwhelmingly against the project, citing its “very
20 imposing” size that was “out of scale” with the community’s “semi-rural character.”
21 There were complaints about “over-crowding at our schools” and traffic jams. On
22 November 25, 2013, the Design Review Commission formally rejected the Project,
23 recommending that the Planning Commission deny all of the permits the Real Parties
24 need to complete the Project.

25 6. On December 9, 2013—2 ¾ years after the initial application and no
26 closer to approval than when the Project was submitted—Steven Falk, Lafayette City
27 Manager, made a presentation to the Lafayette City Council proposing a significant
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1 reduction to the Project's density: 44 single family homes, an 85% reduction in density
2 from the original version of the Project ("Project Alternative"). He stated:

3 Mayor Anderson and members of the city council, the
4 matter before you now concerns an alternative to the
5 Terraces of Lafayette Project Application for 315
6 apartment units, located along Deer Hill Road and Pleasant
7 Hill Road in Lafayette. Given the public's dissatisfaction
8 with the application . . . given that the Circulation
9 Commission and Design Review Commission have both
10 indicated that they cannot support the project, and have
11 requested a significantly scaled down alternative, given that
12 the developer has indicated that if the project is denied, it
13 will file a lawsuit against the city, and . . . **given the risks**
14 **to the city presented by that potential lawsuit, and**
15 **particularly those associated with California's Housing**
16 **Accountability Act, which limits the ability of cities to**
17 **deny an affordable housing development proposal,**
18 unless that proposal is inconsistent with both the general
19 plan land use designation and zoning ordinance that existed
20 at the time the application was deemed complete . . . about
21 four weeks ago, the city council directed staff to participate
22 in conversations with the developer to determine if there
23 was an alternative plan that would be acceptable to all
24 parties, the developer, community members, and the city.
(Emphasis added.)

25 7. At this point, the Real Parties were faced with the following options: (i)
26 Proceed with the Project knowing it would be turned down, and then pursue time-
27 consuming and costly litigation in order to secure the approvals to which the Real Parties
28 are entitled under state law; (ii) abandon the Project altogether, withdrawing the Project
application; or (iii) accept the City's lower density Project Alternative, avoiding time-
consuming and costly litigation, and cooperate with the City to receive approvals for the
lower density Project Alternative. The Real Parties chose the third option and entered into
a Process Agreement (attached hereto as **Exh. A** and discussed *infra*).

29 8. In March 2014, Real Parties submitted an application for the Project
30 Alternative described by the City Manager. On January 29, 2015, a Draft Supplemental
31 EIR for the Project Alternative was published. On May 18, 2015, the City Planning
32 Commission recommended that the City Council certify the Supplemental EIR and

1 approve the requested permits. On September 14, 2015, the City adopted Resolution 641,
2 finally approving a version of the Project with 85% reduced density.

3 9. The City's approval of Resolution 641 was an abuse of discretion under
4 C.C.P. § 1094.5(b), *inter alia*, because the City did not comply with the protections of
5 Government Code § 65589.5(j). Petitioners bring this action pursuant to the HAA,
6 requiring the City to either approve the Real Parties' Project as originally proposed,
7 approve the Project with conditions unrelated to density, make specific findings regarding
8 the Project as originally proposed, or revoke the Project Alternative's entitlements. The
9 City of Lafayette did not at any time adopt findings explaining how the zoning-compliant
10 and general-plan-consistent 315-unit Project would have a "significant, quantifiable,
11 direct and unavoidable impact based on objective, identified written public health or
12 safety standards, policies or conditions." Without having made such findings, the City
13 had a duty to either approve the Project as originally proposed or approve it with
14 conditions unrelated to density. Instead, the City approved the Project Alternative, which
15 was unlawful.

16 10. If it had been the California Legislature's intention to allow cities to
17 modify proposed projects in such a way that would result in a lower density project
18 (without making findings), the Legislature would not have included the phrase "approve
19 the project upon the condition that the project be developed at a lower density." The
20 Legislature states, "It is the policy of the state that a local government not reject or make
21 infeasible housing developments . . . that contribute to meeting the need determined
22 pursuant to this article without a thorough analysis of the economic, social, and
23 environmental effects of the action . . ." (Cal. Gov't Code § 65589.5(b).) The Project as
24 originally proposed contributes to meeting California's need for housing much more
25 substantially than does the Project Alternative.

26 11. The City neither approved the proposed zoning-compliant 315-apartment
27 Project, nor approved it with other conditions unrelated to density. Instead, on September
28 14, 2015, the City entitled a significantly less dense version of the Project without

1 making the necessary findings. The Real Parties did not receive unconditional approvals
2 of their zoning-compliant Project. They received approvals for a lower density Project.
3 As discussed *infra*, the City's approval of the Project with reduced density constitutes a
4 *de facto* unlawful approval of the Project with density-related conditions.

5 12. In adopting the HAA, the California Legislature found that "California
6 housing has become the most expensive in the nation. The excessive cost of the states'
7 housing supply is partially caused by activities and policies of many local governments
8 that limit the approval of housing, increase the cost of land for housing, and require that
9 high fees and exactions be paid by producers of housing." (Cal. Gov't Code §
10 65589.5(a).)

11 13. This Petition seeks issuance of a writ of mandate and declaratory and
12 injunctive relief against the City, until it complies with the laws of the State of California.
13 Petitioner seeks a declaratory judgment, and preliminary and permanent injunctive relief
14 enjoining the City to repeal its approval of the 44 unit version of the Project, and approve
15 the 315-unit housing development Project as originally proposed.

PARTIES

16 14. Petitioner Sonja Trauss is a natural person and a citizen and resident of the
17 State of California. She was, is, will be, and "would be eligible to apply for residency in
18 the development" Project. (Cal. Gov't Code § 65589.5(k).) As a potential resident of the
19 Project, Sonja Trauss is affected by the City's actions challenged herein. She has a
20 substantial interest in ensuring that the City's decisions are in conformity with the
21 requirements of law, and in having those requirements properly executed and the public
22 duties of the City enforced.

23 15. Petitioner San Francisco Bay Area Renters Federation is an
24 unincorporated association of renters whose mission includes advocating for the
25 production of housing to meet the needs of California citizens and workers, including in
26 Lafayette. Its members are citizens and residents of the State of California. Its
27 membership cuts across socioeconomic lines, including members with very low, low,
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1 moderate, and high incomes. San Francisco Bay Area Renters Federation has a direct and
2 substantial interest in ensuring that the City comply with state laws requiring that the City
3 do its fair share to address the housing needs of California citizens and workers. San
4 Francisco Bay Area Renters Federation actively supports housing development projects
5 and opposes efforts to disapprove or reduce the density of housing development projects.
6 San Francisco Bay Area Renters Federation acts on behalf of its members, though its
7 actions benefit all similarly situated renters and intended renters. Members of the San
8 Francisco Bay Area Renters Federation were, are, will be, and would be eligible to apply
9 for residency in the Project. As potential residents of the Project, members of the San
10 Francisco Bay Area Renters Federation are affected by the City's actions challenged
11 herein. The San Francisco Bay Area Renters Federation has a substantial interest in
12 ensuring that the City's decisions are in conformity with the requirements of law, and in
13 having those requirements properly executed and the public duties of the City enforced.
14 Its members, as well as the general public, will be adversely affected by impacts resulting
15 from the acts described herein and are aggrieved by the acts, decisions, and omissions of
16 the City as alleged in this Petition. The San Francisco Bay Area Renters Federation is
17 suing on its behalf, on behalf of its members, and on behalf of others who will be affected
18 by the City's acts, as well as all citizens and potential applicants and residents of the
19 Project.

20 16. Respondent City of Lafayette is a California municipal corporation
21 (“Lafayette” or “City”).

22 17. Real Parties are Anna Maria Dettmer, as Trustee of the AMD Family
23 Trust, as amended and restated on September 23, 2005 (“Dettmer”), and O’Brien Land
24 Company, a California limited liability company (“O’Brien”).

25 18. Petitioner is ignorant of the true names and capacities of Respondents sued
26 herein as Does 1 through 25, and therefore sues said parties by such fictitious names
27 pursuant to C.C.P. § 474. Petitioners will amend this Petition to allege the true names and
28 capacities when the same are ascertained. Whenever in this Petition any allegation is

1 made against Respondent City of Lafayette, it shall be deemed alleged against Does 1
2 through 25, as well.

3 **STANDING**

4 19. Petitioners have standing to raise the claims asserted herein because, as
5 citizens, Petitioners have a public interest in the City of Lafayette's full and complete
6 compliance with state laws and regulations including, without limitation, Government
7 Code § 65589.5 *et seq.* and Government Code § 65008.

8 20. Petitioners seek to enforce an important right affecting the public interest.

9 21. If this Petition is granted, a significant benefit will be conferred on the
10 general public or a large class of persons. Petitioners will incur attorneys' fees in the
11 prosecution of this action. The necessity and financial burden of prosecuting this action
12 entitles Petitioners to an award of attorneys' fees, including under Code Civ. Proc.
13 §1021.5

14 22. Petitioners seek a remedy in the interest of justice.

15 23. Petitioners have no plain, speedy, or adequate remedy in the ordinary
16 course of law.

17 **JURISDICTION AND VENUE**

18 24. The Court has jurisdiction over the City and each of the claims asserted
19 herein, and venue is proper in Contra Costa County.

21 **RESPONDENTS' APPROVALS AT ISSUE**

22 25. On September 14, 2015, Lafayette City Council adopted Ordinance 641:
23 approving a zoning amendment, a planned unit development, development agreement, a
24 land use permit, hillside development permit, design review, grading permit, subdivision,
25 and tree permit for the Homes at Deer Hill Project ("Project Alternative") located at the
26 Project Site. Petitioners challenge the adoption of Ordinance 641 and the issuance of
27 entitlements for the Project Alternative.

26. Petitioners or their representatives objected to the adoption of Ordinance 641 prior to the City's decision to adopt Ordinance 641.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

27. Petitioners and their representatives testified in writing and in person at the Lafayette City Council on August 8, and August 10, and September 14, 2015 that the City's approval of Ordinance 641 would constitute a violation of California state law.

FACTUAL BACKGROUND

28. On March 21, 2011, Real Parties submitted an application to the City for the Terraces of Lafayette Apartment Project (“Project”). Real Parties proposed to build 14 apartment buildings consisting of 315 apartments on a 22-acre parcel owned by the AMD Family Trust, at the southwest corner of Deer Hill Road and Pleasant Hill Road on Contra Costa Assessor’s Parcel Number 232-150-027. Seven of the buildings would be three stories, and seven would be two stories. There would also be a two-story clubhouse (13,300 sq. ft.), a one-story leasing office (950 sq. ft.) and 569 parking spaces. The residential building area would be 332,395 sq. ft. and the Project building area would be 410,547 sq. ft. The Project application included requests for a Land Use Permit (L03-11), Hillside Development Permit and Class I Ridgeline Exception (HDP06-11), Design Review (DR03-11), Grading Permit (GR04-11), and Tree Permit (TP07-11). The Project application was deemed complete by City letter dated July 5, 2011. The EIR for the Project was initiated in the fall of 2011, and the Draft EIR was released for public review May 8, 2012. The Final EIR was released on November 19, 2012, more than a year after the Project application was deemed complete. CEQA and CEQA Guidelines require that the City must complete and certify a final EIR within one year from the date the application is deemed “complete.” In a letter dated July 29, 2013 (**Exh. B**), Allan Moore, attorney for the Real Parties, wrote:

[W]e must again go on the record to confirm as follows:

1 1. The City Council's requests for information go far
2 beyond that necessary to certify the EIR and to comply
3 with the CEQA findings at CEQA Guideline §15090.
4 Further in this regard, much of the information requested
5 has already been submitted -- or is more appropriate to the
6 project hearings than for the CEQA certification.

7 29. The Planning Commission held public hearings on the Final EIR on
8 January 7, and February 4, 2013. The Final EIR made findings to the effect that there are
9 13 significant and unavoidable impacts caused by the Project, findings the Real Parties
10 dispute. The Planning Commission certified the Final EIR for the project on March 4,
11 2013. On March 18, the Real Parties appealed the decision of the Planning Commission
12 certifying the Final EIR. On April 29, June 24, and August 2, 2013, the City Council held
13 public hearings to consider Real Parties' appeal.

14 30. On August 12, 2013, the City Council found that the EIR had been
15 prepared in accordance with the provisions of CEQA and certified the EIR. Per the
16 August 12 hearing's minutes, Real Parties' counsel attended and spoke on the record. He
17 noted that many comments had been made by members of the public regarding the
18 Project, and that he "hopes people will keep an open mind." He further stated that "one
19 concern he heard were references to apartments having potential crime or drugs or will
20 cause property values to go down. There were written comments worse than this . . . and
21 [Real Parties' counsel] hopes everybody will have a right to live in Lafayette, as not
22 everyone can afford a single family home." Real Parties' counsel further stated that "[h]e
23 thinks people who visit apartments or know[] somebody who lives in one will know they
24 are no different than anybody else and there is not a crime, drug or other issue with
25 apartment dwellers."

26 31. Facing significant opposition from the City, Real Parties and the City
27 executed a "tolling agreement" on September 11, 2013 to preserve Real Parties' claims
28 arising from the City's certification of the Project's EIR. On November 25, 2013, the
29 City's Design Review Commission recommended the Planning Commission deny the
30 applications for a Land Use Permit (L03-11), Hillside Development Permit and Class I

1 Ridgeline Exception (HDP06-11), Design Review (DR03-11), Grading Permit (GR04-
2 11), and Tree Permit (TP07-11).

3 32. The writing was on the wall. On December 9, 2013, Lafayette City
4 Manager Steven Falk presented an “alternative” to the Terraces of Lafayette Project.
5 Instead of 315 apartment units, the City Manager proposed making a significant
6 reduction to the Project’s density. The City Manager testified as follows:

7 Given the public’s dissatisfaction with the application . . .
8 given that the Circulation Commission and Design Review
9 Commission have both indicated that they cannot support
10 the project, and have requested a significantly scaled down
11 alternative, given that **the developer has indicated that if**
12 **the project is denied, it will file a lawsuit against the**
13 **city, and . . . given the risks to the city presented by that**
14 **potential lawsuit, and particularly those associated with**
15 **California’s Housing Accountability Act, which limits**
16 **the ability of cities to deny an affordable housing**
17 **development proposal**, unless that proposal is inconsistent
18 with both the general plan land use designation and zoning
19 ordinance that existed at the time the application was
20 deemed complete . . . about four weeks ago, the city
21 council directed staff to participate in conversations with
22 the developer to determine if there was an alternative plan
23 that would be acceptable to all parties, the developer,
24 community members, and the city. (Emphasis added.)

25 33. The City Manager went on to describe the reduced-density proposal
26 (hereinafter, the “Project Alternative” or “alternative plan”):

27 [T]he alternative plan would have two major components.
28 On the central part of the 22 and a quarter acre parcel
would be a subdivision of 44 to 45 single family detached
homes with lot sizes of about 4500 square feet each. On the
eastern side would be a community park. To the west and
to the south would be open space. . . . **[O]ur goals, the**
city's goals, were to as follows[:] first, significantly
reduce the number of units on the property . . . This
plan, as noted earlier, would reduce the unit count from 315
to 45 units or less. This is an 85 percent reduction
compared to the current application. . . . **[W]e have**
insisted on a development of a single – of single family
homes with an overall density of not more than two
units per acre. (Emphasis added.)

1 The Project Alternative also contains significant exactions (land and public recreation
2 facilities) that are not reasonably related to the use of the Project Site. For example, Real
3 Parties were to “sell” a portion of the Project Site to the City, with the purchase money to
4 be used by Real Parties for the construction of public facilities.

5 34. On January 22, 2014 the Real Parties and the City executed a so-called
6 Terraces Project Alternative Process Agreement (**Exh. A**) (hereinafter, the “Process
7 Agreement”). Per the Process Agreement, the Real Parties and the City agreed that (i) the
8 “City will suspend the processing of the Apartment Project pending City’s processing of
9 the Project[] Alternative, which shall include a supplemental EIR,” (ii) the Real Parties
10 will prepare a “project alternative to the Apartment Project that consists of 44-45 single-
11 family detached homes and public parkland and parking amenities,” and (iii)

12 [*i*]n the event of any termination or expiration of [the
13 Process Agreement] without approval of the Entitlements . . .
14 . . . City’s processing of the Apartment Project Application
15 shall immediately resume, with Applicant and City situated
16 as they were prior to the suspension of processing of the
17 Apartment Project Application . . . **with all of their**
18 **respective rights, obligations, causes of action, and**
19 **defenses related to the Apartment Project Application**
20 **intact, including, but not limited to, all provisions of the**
21 **Housing Accountability Act** (Gov. Code section 65589.5,
22 et seq.). (Emphasis added.)

23 35. The Project Alternative is not “acceptable to all parties.” In particular, the
24 Project Alternative is not acceptable to the California Legislature, or the citizens whose
25 interests the Legislature sought to protect by prohibiting municipalities from conditioning
26 zoning-compliant housing projects on density reductions without making specific
27 findings. The HAA finds, “among the consequences of those actions [activities and
28 policies of many local governments that limit the approval of housing] are discrimination
against low-income and minority households, lack of housing to support employment
growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive
commuting, and air quality deterioration. Many local governments do not give adequate

1 attention to the economic, environmental, and social costs of decisions that result in
2 disapproval of housing projects, reduction in density of housing projects, and excessive
3 standards for housing projects.” (Cal. Gov’t Code § 65589.5(a)(3) and (4).)

4 36. On June 12, 2014, the City submitted notice of preparation of a
5 Supplemental EIR for the Terraces of Lafayette Project Alternative. Almost a full year
6 later, on June 1, 2015, the City Planning Commission recommended to the City Council
7 certification of the Supplemental EIR. The City’s action in certifying a *supplemental* EIR
8 rather than a *new* EIR is legally significant: a supplemental EIR can only be certified for
9 the Project Alternative if the Project Alternative is *a revision to the original Project*
10 rather than a new project. As stated by Public Resources Code § 21166,

11 When an environmental impact report has been prepared
12 for a project pursuant to this division, no subsequent or
13 supplemental environmental impact report shall be required
14 by the lead agency or by any responsible agency, unless
15 one or more of the following events occurs:

16 (a) Substantial changes are proposed in **the project** which
17 will require major revisions of the environmental impact
18 report.

19 (b) Substantial changes occur with respect to the
20 circumstances under which **the project** is being undertaken
21 which will require major revisions in the environmental
22 impact report.

23 (Cal. Pub. Res. Code § 21166. Emphasis added.)

24 37. The Project and the Project Alternative are *one and the same* project. The
25 Project Alternative is a lower density version of the Project.

26 38. The Project Alternative application contained an application for a General
27 Plan amendment and a rezoning of the Project Site to be consistent with the Project
28 Alternative’s single-family home density. The City enacted the General Plan amendment
on August 10, 2015, and it became effective 30 days later.

29 39. On September 14, 2015 Lafayette City Council adopted Ordinance 641:
30 Approving a zoning amendment, planned unit development, development agreement,

1 land use permit, hillside development permit, design review, grading permit, subdivision,
2 and tree permit for the Project Alternative located at the Project Site.

3

4 FIRST CAUSE OF ACTION

5 Violation of Government Code § 65589.5 *et seq.* (Housing Accountability Act)

6 (Against City of Lafayette)

7 40. Petitioners hereby reallege and incorporate by reference paragraphs 1
8 through 39 as if fully set forth herein.

9 41. The City of Lafayette sought to avoid approval of the Project's
10 entitlements. The City knew that it had no lawful grounds to deny or condition the
11 Project's entitlements. It also knew that if Real Parties filed suit, the City would lose.
12 Therefore, the City's only alternative was to strong-arm Real Parties into a reduced-
13 density compromise (and hope that no one filed suit). It did so by: 1) offering Real
14 Parties a choice between a Project Alternative that that is 85% less dense than the Project,
15 or an expensive and time-consuming lawsuit. The Real Parties accepted the half-loaf that
16 was offered to them, and they entered into the Process Agreement with the City. In
17 entering into a Process Agreement which purported to reduce the Project's density from
18 315 apartment units to 44 single-family houses, the City purported "to approve [the
19 Project] upon the condition that the project be developed at a lower density." (Cal. Gov't
20 Code § 65589.5(j).)

21 42. The City violated the HAA by approving the Project upon the condition
22 that it be developed at a lower density without basing its decision upon appropriate
23 written findings. This action constitutes a violation of Government Code § 65589.5(j)(1-
24 2).

25 43. The City further violated the HAA by approving the Project upon a
26 condition—the density reduction—which "renders the project infeasible for development
27 for the use of very low, low-, or moderate-income households." (Cal. Gov't Code §
28 65589.5.)

44. Not having made the specified findings, the City also violated the HAA by failing to promptly approve the Project, which complied with all applicable, objective general plan and zoning standards and criteria in effect at the time the Project's application was deemed complete. This failure constitutes a violation of Government Code § 65589.5(h)(5)(B).

45. Wherefore, Petitioners pray for relief as set forth below.

SECOND CAUSE OF ACTION

Violation of Government Code § 65008

(Against City of Lafayette)

46. Petitioners hereby reallege and incorporate by reference paragraphs 1 through 44 as if fully set forth herein.

47. The City's General Plan Amendment and rezoning were actions taken under the auspices of California Government Code, Title 7.

48. The City's General Plan amendment and rezoning were tools by which Lafayette was able to strong-arm Real Parties into agreeing to build the smaller and less dense single-family Project Alternative rather than the higher-density Project, which would be available to moderate-income renters.

49. The City's General Plan amendment and rezoning were done to deny individuals and groups of individuals the enjoyment of residency and tenancy in the City of Lafayette because of their race, color, national origin, source of income, and/or because the original Project was intended for occupancy by moderate-income persons. The density-reduction condition imposed on the Project will disproportionately affect racial minorities. (See Keith v. Volpe, 618 F. Supp. 1132 (C.D. Cal. 1985).) If the City did its fair share to provide low- and moderate-income housing (as required by state law), it would experience a significant increase in racial and economic diversity.

50. The City's proposal and execution of the "Process Agreement" also violates Government Code § 65008 in that it was a subterfuge by which the City sought to avoid both the Project and the Real Parties' threatened lawsuit in order to prevent

1 development of a dense rental housing Project whose tenants would be of moderate
2 income and more ethnically diverse than the existing population of the City of Lafayette.
3 The Process Agreement was used to strong-arm the Real Parties into agreeing to a revised
4 single-family housing Project Alternative that would not be affordable to moderate-
5 income persons; the target demographic of the Project Alternative is much less diverse
6 than the target demographic of the Project.

7 51. The Process Agreement, along with the General Plan amendment and
8 rezoning to implement it, were done to evade Government Code § 65008 and
9 Government Code § 65589.5 *et seq.* and to prevent the construction of a Project that
10 would house people whom the City does not want in its jurisdiction. The City's actions as
11 alleged herein were arbitrary or capricious.

12 52. If the City's actions are not set aside/voided/annulled, or the City is not
13 estopped from applying them, then Lafayette will have created a blueprint for avoiding
14 mandatory state housing laws.

THIRD CAUSE OF ACTION

C.C.P. § 1060

(Against City of Lafayette)

19 53. There is now a controversy between, on the one hand, Petitioners, and on
20 the other hand, City and Real Parties, as to whether the City and Real Parties could avoid
21 mandatory state housing laws by taking the actions described herein, *e.g.*, by entering
22 into a so-called Process Agreement that conflicts with the procedural requirements of the
23 HAA, and by engaging in conduct that otherwise violates the legislative intent of the
24 HAA and Government Code § 65008.

25 54. In addition to the Parties' need for a declaration of rights and obligations,
26 Petitioner San Francisco Bay Area Renters Federation seeks to encourage the
27 development of rental housing in Lafayette and throughout the San Francisco Bay Area.
28 It further seeks to give housing developers confidence that code-compliant housing

1 projects will be approved in accordance with state laws and the reasonable expectations
2 derived therefrom.

3 55. A declaration resolving this controversy will either establish the efficacy
4 of the HAA and Government Code § 65008—that “The city may not do indirectly what it
5 cannot do directly” (Cty. of Santa Barbara v. City of Santa Barbara (1976) 59 Cal. App.
6 3d 364, 376)—or that the City *can* evade these state laws.

PRAYER

WHEREFORE, Petitioners pray for a writ and order:

- a. Creating the conditions necessary for the Project as originally proposed to be built, *inter alia*, setting aside/voiding/annulling the General Plan amendment, rezoning, Process Agreement, planned unit development, development agreement, land use permit, hillside development permit, design review, grading permit, subdivision, tree permit, and all other Project Alternative entitlements; and requiring the City to comply with the HAA and Government Code § 65008 in processing the Project application; and ordering the City to issue all necessary entitlements for the Project to be built as originally proposed;
 - b. Or, in the alternative, setting aside/voiding/annulling the Process Agreement and the Project Alternative’s planned unit development, development agreement, land use permit, hillside development permit, design review, grading permit, subdivision, tree permit, and all other Project Alternative entitlements; and estopping Lafayette from applying the General Plan amendment and zoning change to the Project should Real Parties still desire to construct the Project as originally proposed;
 - c. Or, in the alternative, setting aside/voiding/annulling the Project Alternative’s planned unit development, development agreement, land use permit, hillside development permit, design review, grading permit, subdivision, tree permit, and all other Project Alternative entitlements; and

- 1 d. Awarding Petitioners their costs and reasonable attorneys' fees as permitted
2 by law against City and Real Parties, including without limitation Code of
3 Civil Procedure § 1021.5, Government Code § 65589.5, and Government
4 Code § 800; and
5 e. A declaration of the Parties' rights and obligations, and of whether the City's
6 actions regarding the Project comported with applicable law; and
7 f. Granting such other and further relief as the Court may deem just and proper.

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9

10 Dated: March 15, 2016

11 ZACKS & FREEDMAN, P.C.

12 By: 

13 Ryan J. Patterson

14 Attorneys for Petitioners Sonja
15 Trauss and San Francisco Bay Area
16 Renters Federation

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VERIFICATION

2

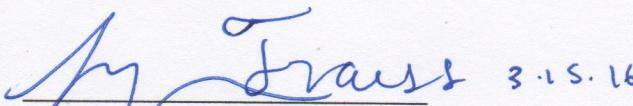
I, Sonja Trauss, declare:

3

- 4 a. I am a natural person and a citizen of the State of California. I am the
5 Founder of the San Francisco Bay Area Renters Federation. I make this
6 verification on behalf of myself and on behalf of the San Francisco Bay
7 Area Renters Federation.
- 8 b. I have read the foregoing Second Amended Petition for Writ of
9 Administrative Mandamus and know its contents. The matters stated in the
10 Second Amended Petition for Writ of Administrative Mandamus are true
11 based on my own knowledge, except as to those matters stated on
12 information and belief, and as to those matters I believe them to be true.
- 13 c. I declare under penalty of perjury under the laws of the State of California
14 that the foregoing is true and correct.
- 15 d. Executed this 15th day of March, 2016, in San Francisco, California.

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A handwritten signature in blue ink, appearing to read "Sonja Trauss". To the right of the signature, the date "3.15.16" is written in blue ink.

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Sonja Trauss

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Exh. A

TERRACES PROJECT ALTERNATIVE PROCESS AGREEMENT

This Terraces Project Alternative Process Agreement ("Agreement") is entered into January 22, 2014 ("Effective Date"), by and between the City of Lafayette, a California municipal corporation ("Lafayette" or "City"), on the one hand, and Anna Maria Dettmer, as Trustee of the AMD Family Trust, as amended and restated on September 23, 2005 ("Dettmer"), and O'Brien Land Company, a California limited liability company ("O'Brien"), (Dettmer and O'Brien together "Applicant"), on the other hand. Applicant and City are individually referred to as "Party" and collectively referred to as the "Parties".

RECITALS

A. On March 21, 2011, Applicant submitted an application to the City for the Terraces of Lafayette Apartment Project ("Apartment Project"), consisting of a 315 unit multi-family moderate income development at the southwest corner of Pleasant Hill Road and Deer Hill Road on Contra Costa County Assessor's Parcel Number 232-150-027 (the "Property").

B. On August 12, 2013, the City Council certified an Environmental Impact Report ("EIR") for the Apartment Project and on September 9, 2013, and September 23, 2013, the Parties entered into a Tolling Agreement and a First Amendment to Tolling Agreement which tolled any claims or potential claims by Applicant against City and City against the Applicant arising from City's certification of the EIR and any defenses to such claims which either Party may assert or potentially assert.

C. The Parties desire to consider a project alternative to the Apartment Project that consists of 44-45 single-family detached homes and public parkland and parking amenities as described in greater detail below in Section 3.1 ("Project Alternative").

D. On January 13, 2014, and January 22, 2014, the City Council conducted two public meetings to discuss this Agreement and the Project Alternative and to set forth the development process that the Parties would follow to review the Project Alternative in lieu of continuing the review of the Apartment Project.

E. By this Agreement, the intent of the Parties is to: (i) set forth a process for consideration of the Project Alternative; (ii) "suspend" the Apartment Project pending the consideration of the Project Alternative; and (iii) preserve all of the rights and defenses of Applicant and City with regard to the Apartment Project, until the City Council makes a determination on the Project Alternative.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Intentionally Deleted.**
2. **Term.**

The term of this Agreement shall commence upon the Effective Date and shall remain in effect until November 14, 2014, unless (a) terminated by Applicant, at any time during the term

of this Agreement, in Applicant's sole and absolute discretion, by delivery of notice to City withdrawing Applicant's Project Alternative Application, which termination shall be effective upon delivery, (b) modified or extended by mutual consent of the Parties as set forth below, or (c) as extended by appeal, challenge or referendum as set forth in Section 3.5.1 below. In the event of any termination or expiration of this Agreement without approval of the Entitlements as set forth below, City's processing of the Apartment Project Application shall immediately resume, with Applicant and City situated as they were prior to the suspension of processing of the Apartment Project Application pursuant to Section 3.5 below, with all of their respective rights, obligations, causes of action, and defenses related to the Apartment Project Application intact, including, but not limited to, all provisions of the Housing Accountability Act (Gov. Code section 65589.5, et seq.).

3. Process to Consider Project Alternative.

3.1 Project Alternative. From and after the execution of this Agreement, Applicant shall prepare the development application required for consideration of the Project Alternative as described in Section 3.2 ("Project Alternative Application"). The Project Alternative Application shall be generally as shown on the Concept Site Plan, dated December 3, 2013, attached as Exhibit "A" and incorporated by reference ("Concept Site Plan"). The Concept Site Plan generally provides 44-45 single-family residential units on Parcel A, which will be retained by Applicant, and recreation and parking areas on Parcel B, which will be conveyed to City. The Project Alternative Application shall include the following:

3.1.1 A single-family detached home subdivision of no fewer than 44 units and no more than 45 units, with lot sizes of 4,500 square feet as generally shown on the Concept Site Plan, with no portion of a building exceeding 30 feet above finished grade.

3.1.2 A private road leading to a controlled intersection at the western Deer Hill Road entrance.

3.1.3 Berming, grading and landscaping to ensure that all structures are substantially concealed from Deer Hill Road.

3.1.4 All structures, when complete, will be substantially concealed from Mt. Diablo Boulevard, Pleasant Hill Road, and the portions of Highway 24 that are within Lafayette's city limits and generally consistent with the hillside subdivision regulations as modified by the P-1 rezoning referenced in Section 3.2.

3.1.5 A pedestrian/bike bypass around the southern perimeter.

3.1.6 Development of Parcel B as defined below pursuant to Section 3.3.3.

3.2 Project Alternative Application. Applicant shall submit the Project Alternative Application, consisting of the following: (a) a general plan amendment to allow for single family housing in the APO land use designation, (b) a rezone of the property to Planned Unit District (P-1) that includes a preliminary and final development plan, (c) a subdivision map,

and (d) grading permit, hillside permit, and tree removal permit (collectively, the "Entitlements"). The Project Alternative Application shall go through the complete City review process as provided by the Lafayette Municipal Code (Circulation Commission, Design Review Commission, Parks, Trails, and Recreation Commission, Planning Commission, and City Council (collectively, the "Review Process") which shall be expedited so long as Applicant timely submits all City requested materials.

3.3 Development Agreement. The Parties will also prepare a development agreement ("Development Agreement") that shall be considered simultaneously with the Project Alternative Application. The Development Agreement shall provide for:

3.3.1 The installation of the pedestrian/bike bypass around the southern perimeter.

3.3.2 The sale of Parcel B as generally identified in the Site Concept Plan of approximately 13.6 acres to City for \$1,816,504 to be paid at the time of recordation of the final map and transfer of Parcel B to the City.

3.3.3 In lieu of payment of parkland development/acquisition fees, Applicant is responsible for:

3.3.3.1 All engineering, architectural, and landscape architectural fees; all grading, including retaining walls; installation of all utilities below-ground (such as drainage, sewer, water); and installing all landscaping on both Parcel A and Parcel B.

3.3.3.2 Building and installing the following public improvements on Parcel B (the "Public Improvements"):

Item	Estimated Max. Cost
All-Weather Artificial Turf Soccer/Lacrosse Field (180' by 300')	\$1,000,000
Fencing for Soccer/ Lacrosse Field	\$50,000
Parking Lot with lighting and landscaping	\$600,000
Tot Lot	\$120,000
Restrooms	\$200,000
Dog Park turf, fencing, furniture	\$100,000
ADA Accessible Walkway	\$80,000
Total:	\$2,150,000

3.3.3.3 The estimated maximum costs listed above in Section 3.3.3.2 are only estimates. Applicant is responsible for the first \$1,816,504 of the actual costs for the facilities listed in Section 3.3.3.2. Costs between \$1,816,504 and \$2,150,000 are equally shared by the City and Applicant. Costs above \$2,150,000 are the City's responsibility. The City Manager or his designee shall approve the contractor, such approval shall not be untimely or unreasonably withheld, the final drawings, and the costs for the final drawings for the facilities prior to execution by Applicant of a contract to construct the facilities. City shall also approve any change orders regarding the improvements that deviate from the City-approved drawings and/or that affect the cost of the work.

3.3.4 Applicant shall not receive the certificate of occupancy for the last three (3) homes until the City accepts as complete all of the work referenced in Sections 3.3.3.1 and 3.3.3.2.

3.3.5 Prior to the recordation of the final map or certificate of occupancy for any property, the Applicant shall provide proof that Applicant has mitigated the impacts of the Project Alternative on the Public Improvements on Parcel B. To mitigate such impacts, the Applicant shall either: (a) agree to approve an annual Mello-Roos Community Facilities District special tax for the City to fund a portion of the maintenance, operation, repairs and replacements of the Public Improvements serving the Project Alternative in the amount of \$495 per unit, with an annual inflation of 2 %, with any costs for the approval and creation of such annual special tax to be paid by the Applicant; or (b) provide other funds sufficient to mitigate the impacts of the Project Alternative on the Public Improvements in the same amount with inflation as the annual special tax. If the Applicant fails to approve the annual special tax or provide other sufficient funds sufficient to mitigate the impacts of the Project Alternative on the Public Improvements in the same amount with inflation as the annual special tax, no building permits for the Property shall be issued.

3.3.6 In constructing the Public Improvements, Applicant shall agree to all security, guarantee, warranty, and indemnification provisions as set forth in City's subdivision improvement agreement.

3.3.7 Upon review of the Supplemental EIR as described in Section 3.4, the Parties will determine whether to include additional indemnification language regarding Parcel B and Parcel A.

3.3.8 Applicant shall be responsible for all standard fees and nexus-based conditions of approval established by the City during the public review process, excluding parkland development/acquisition fees as referenced above in Section 3.3.3.

3.4 CEQA. The Project Alternative was not considered in the EIR for the Apartment Project, and therefore, the City shall comply with the California Environmental Quality Act ("CEQA") in its consideration of the Project Alternative, which shall include a Supplemental EIR. The Supplemental EIR may raise new potential significant impacts, which will be reviewed by the City in compliance with CEQA. In moving forward with further environmental review in regard to the Project Alternative, neither Party waives any claims or potential claims arising from City's earlier certification of the EIR for the Apartment Project and any defenses to such claims which either Party may assert or potentially assert.

3.5 Suspension of Apartment Project. The Parties agree that City will suspend the processing of the Apartment Project pending City's processing of the Projective Alternative as set forth herein.

3.5.1 The Parties agree to toll the processing of the Apartment Project as of December 9, 2013, until the City Council makes a determination on the Project Alternative, but no later than November 14, 2014, or as extended by appeal, challenge or referendum as set forth in Section 3.5.3 below.

3.5.2 The Parties desire to timely pursue consideration of the Project Alternative, and therefore, neither Dettmer, O'Brien, nor their respective representatives shall: (a) file an action to compel the City to provide public notice or hold a hearing pursuant to Government Code section 65956(a); and/or (b) provide public notice pursuant to Government Code section 65956(b). Furthermore, the Parties acknowledge that because the Parties have mutually agreed to toll the processing of the Apartment Project, City has not failed to act to approve or disapprove the Apartment Project under the Permit Streamlining Act, and the Apartment Project shall not be deemed approved under the Permit Streamlining Act.

3.5.3 For the purposes of this Agreement, the City Council's determination of the Project Alternative will be deemed to have occurred when the City Council approves, approves with conditions or modifications, or denies the Project Alternative and all of the Entitlements and the Development Agreement and all applicable periods for any appeal, challenge or referendum relating to the approval of the Entitlements have expired, with no appeal, challenge or referendum having been filed, or if an appeal, challenge or referendum has been filed, such appeal, challenge or referendum has been resolved in a manner acceptable to Applicant in its sole and absolute discretion. In the event that an appeal, challenge or referendum has not been resolved in a manner acceptable to Applicant, in Applicant's sole and absolute discretion, Applicant shall have the right to terminate this Agreement in accordance with Section 2 above.

3.5.4 If the City Council approves or approves with conditions or modifications the Project Alternative, and Applicant elects to move forward with the Project Alternative, Applicant shall within ten (10) days of the City Council's determination of the Project Alternative as defined in Section 3.5.3 withdraw its Apartment Project Alternative application, and the Parties shall execute a settlement agreement that includes a mutual and full release of all known and unknown claims between them regarding the Apartment Project.

3.5.5 If the City Council does not approve the Project Alternative, or in the event that an appeal, challenge or referendum has not been resolved in a manner acceptable to Applicant in Applicant's sole and absolute discretion, Applicant shall have the right to terminate this Agreement in accordance with Section 2 above, and City's processing of the Apartment Project Application shall immediately resume with Applicant and City situated as they were (with all of their respective rights, causes of action, and defenses related to the Apartment Project Application intact, in accordance with Section 2 above) prior to the suspension of processing of the Apartment Project Application pursuant to Section 3.5 above.

4. Warranties and Representations.

The Parties warrant and represent that they have authority to enter into this Agreement, and that neither has assigned to any third party any rights hereunder save and except as set forth in the Recitals hereto.

5. Indemnification.

Applicant agrees to defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from all claims, demands, lawsuits, writs of mandamus, and other

actions or proceedings (collectively "Actions") brought against the City or its departments, commissions, agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul this Agreement. In the event the City becomes aware of any such Actions, the City shall promptly notify the undersigned and shall cooperate fully in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the undersigned shall reimburse City for any attorney's fees, costs and expenses, including any plaintiff's or other third party's attorneys' fees, costs and expenses, directly and necessarily incurred by the City in the course of the defense.

6. Covenant of Further Assurances.

Each Party agrees to execute such other documents and perform such other acts as may be necessary or reasonably desirable in order to carry out the purposes of this Agreement.

7. Agreement Entered Into With Independent Judgment.

Each Party acknowledges that he, she or it has had the opportunity to seek advice of independent legal counsel in connection with this Agreement and that he, she or it understands the meaning of every term of this Agreement and the consequences of signing this Agreement. Each Party further declares and represents that he, she or it has reviewed this Agreement in its entirety and that, in entering into this Agreement, he, she or it relied wholly on his, her or its own respective judgment, belief, knowledge, investigation, independent legal advice and research and that he, she or it has not been influenced to any extent whatsoever in making this Agreement by any representations or statements regarding the same by any other party or by any person or persons representing or acting for any other party.

8. No Admission of Liability.

Neither the negotiation nor the execution nor the performance of this Agreement by any Party shall constitute an admission or concession of liability or wrongdoing by any Party and any such liability or wrongdoing is expressly denied.

9. Attorneys' Fees and Costs.

The Parties agree to each bear their own attorneys' fees and costs in connection with this Agreement.

10. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, understandings, and proposals concerning the subject matter of this Agreement. This Agreement may be modified only by a written instrument executed by both Parties.

11. Counterparts.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

12. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of California. Venue shall be in Contra Costa County.

IN WITNESS WHEREOF, the Parties each have executed this Agreement as of the Effective Date.

[The remainder of this page is intentionally left blank]

CITY OF LAFAYETTE, A CALIFORNIA
MUNICIPAL CORPORATION

By: Don Tatzin
Don Tatzin, Mayor

O'BRIEN LAND COMPANY, A CALIFORNIA
LIMITED LIABILITY COMPANY

By: Jeanette H. O'Brien
HsBy: Vice President

ANNA MARIA DETTMER, AS TRUSTEE OF
THE AMD FAMILY TRUST, AS AMENDED
AND RESTATED ON SEPTEMBER 23, 2005

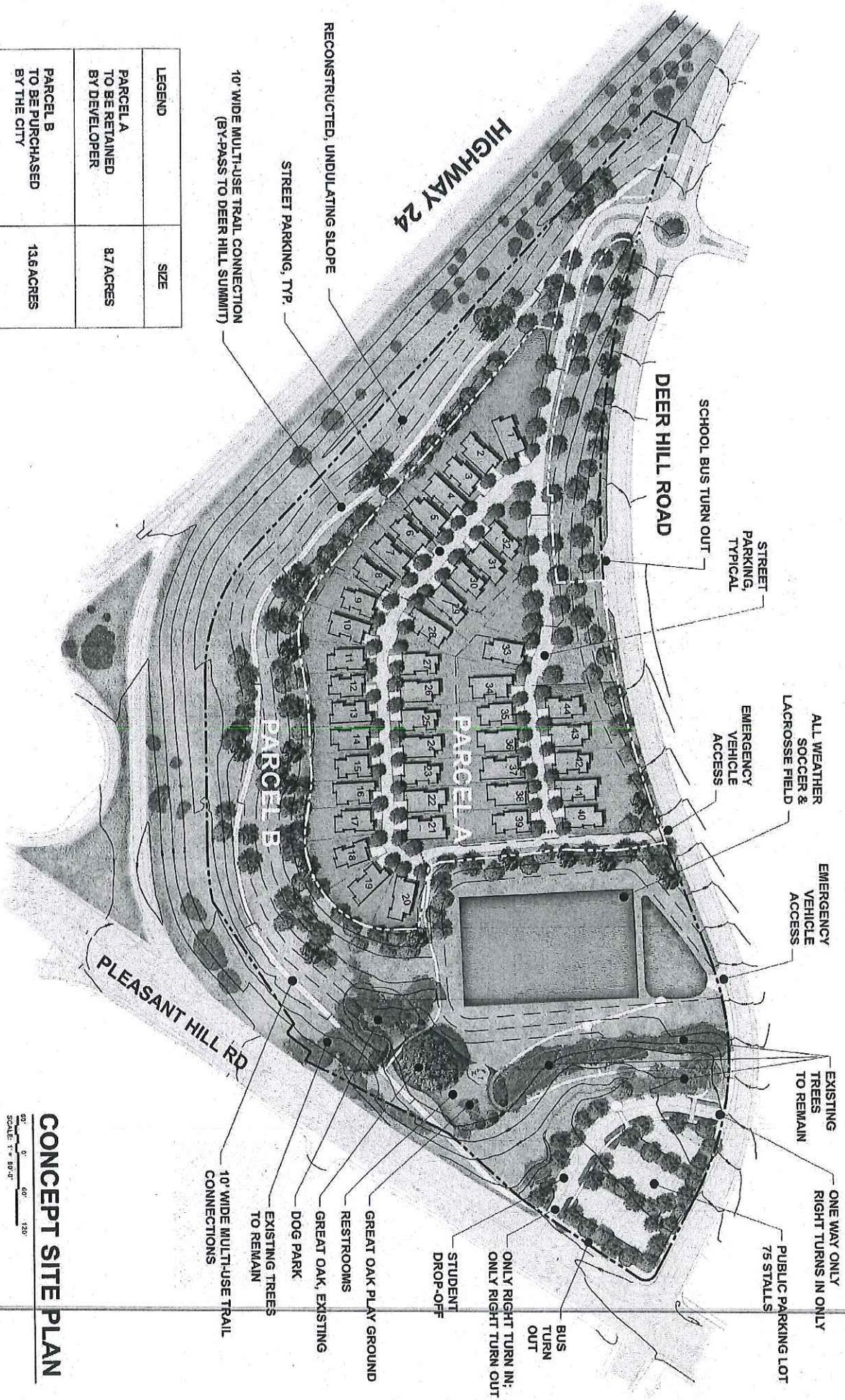
By: Anna Maria Dettmer

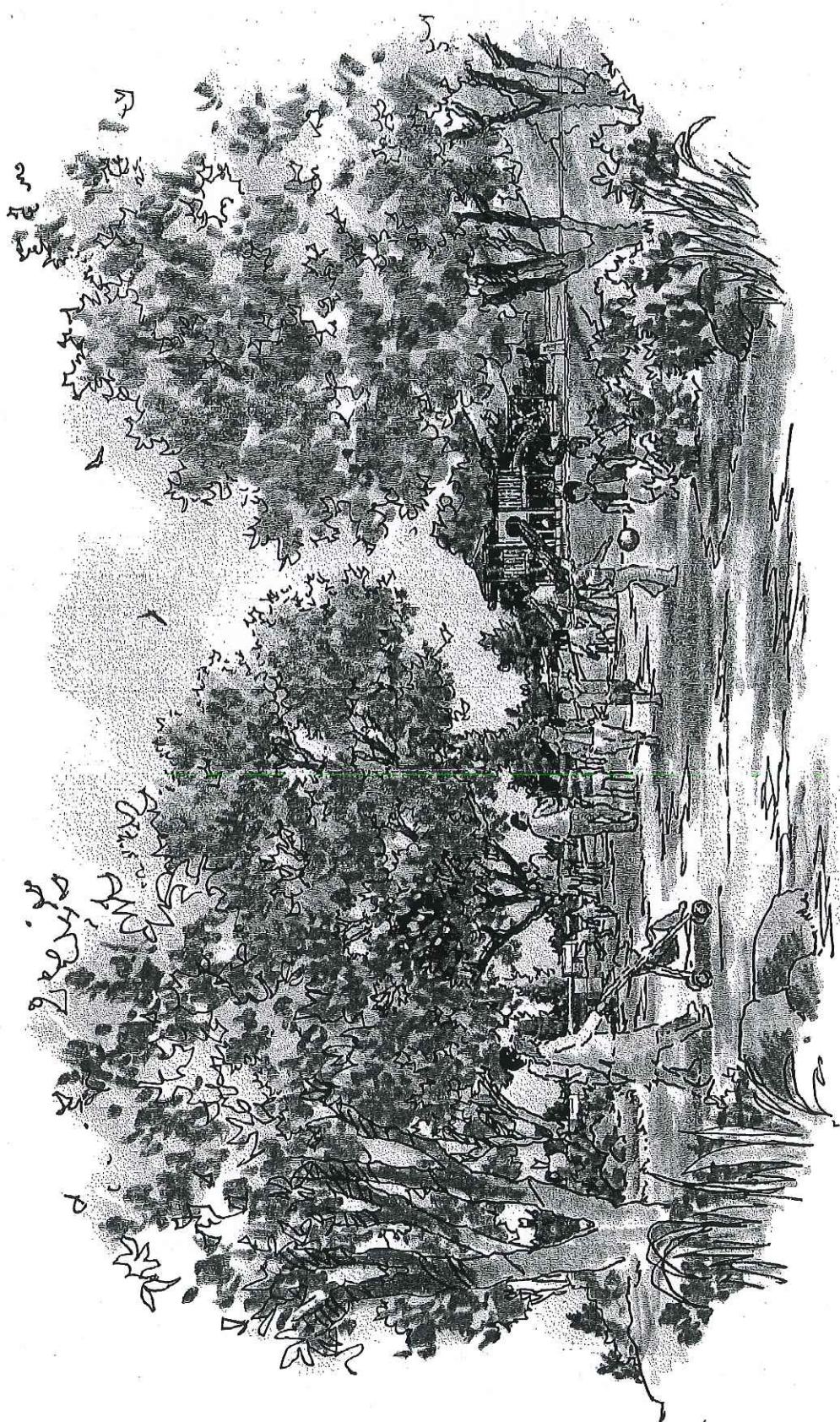
EXHIBIT "A"

Concept Site Plan Dated December 3, 2013

[To Be Attached]

CONCEPT SITE PLAN

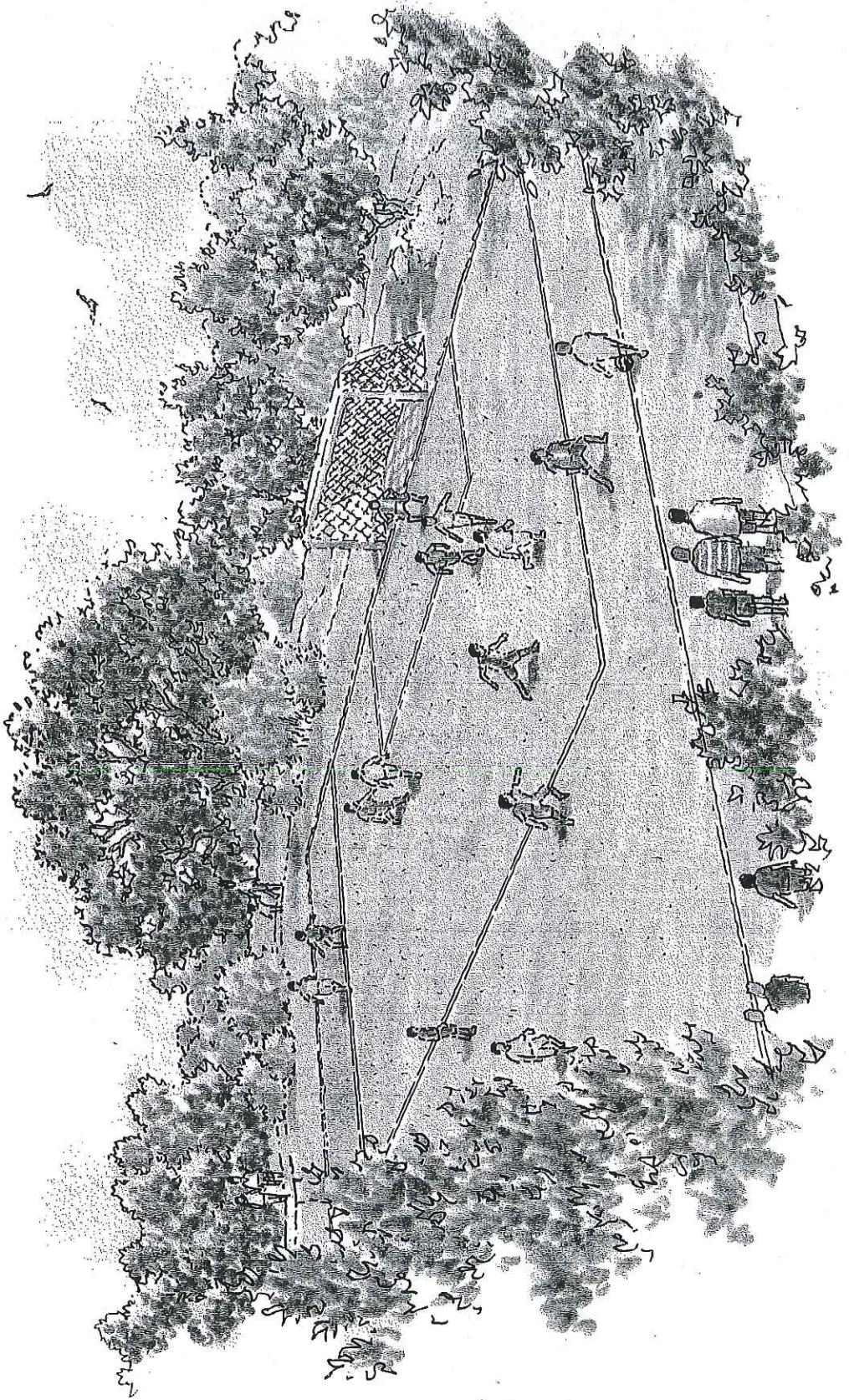




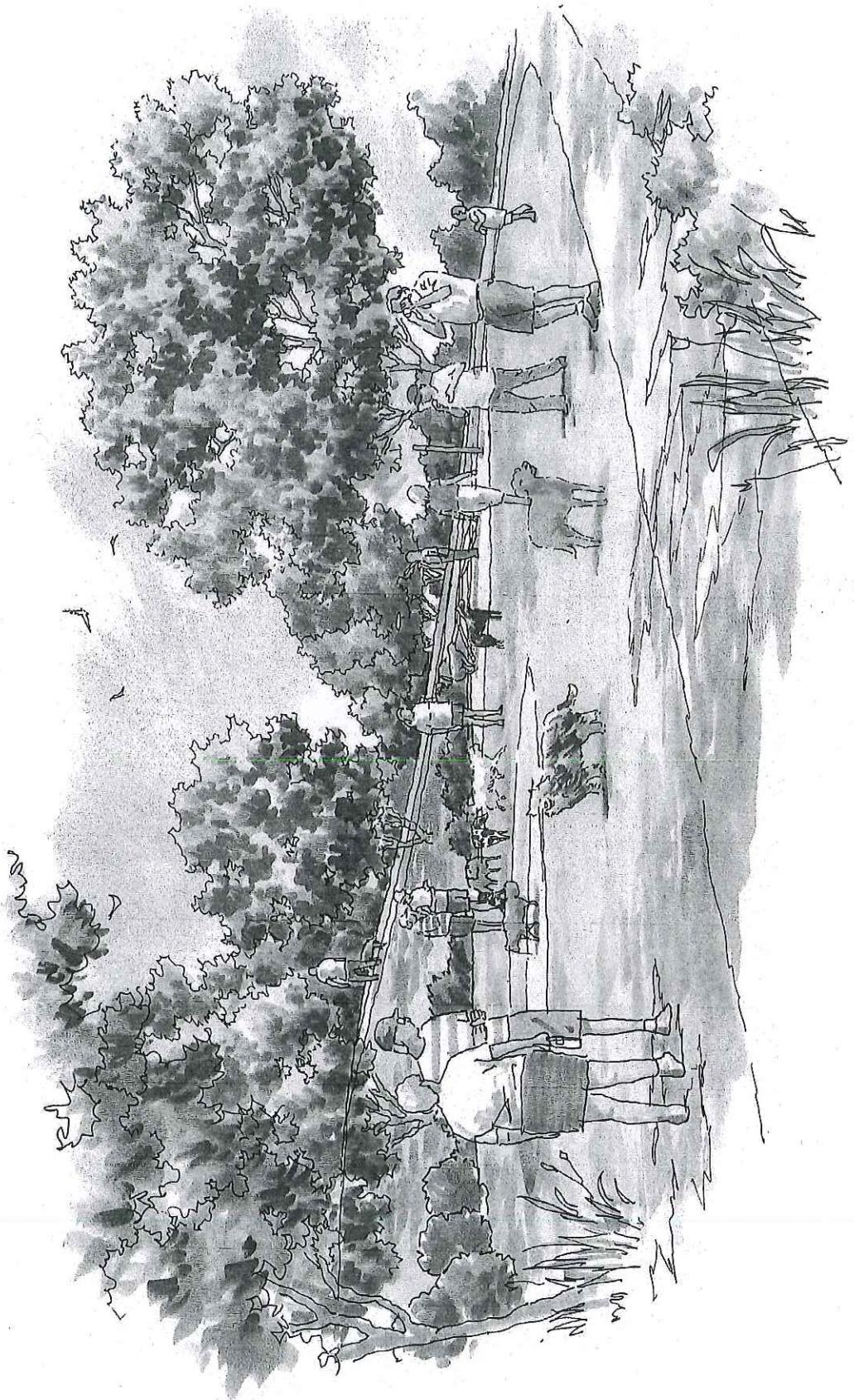
SKETCH - 1

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SKETCH - 3
#13061 - 11/22/12



SKETCH - 4

12/5/13

#1004

Exh. B



GagenMcCoy

The Law Offices of
Gagen, McCoy, McMahon, Koss
Markowitz & Raines
A Professional Corporation

William E. Gagen, Jr.
Gregory L. McCoy
Patrick J. McMahon
Charles A. Koss
Michael J. Markowitz
Richard C. Raines
Barbara Duval Jewell
Robert M. Faucci
Allan C. Moore
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Telephone: (707) 963-0909
Fax: (707) 963-5527

Please Reply To:
Danville

July 29, 2013

Greg Wolff
City of Lafayette
3675 Mount Diablo Boulevard Suite 201
Lafayette, California 94549

Re: Terraces of Lafayette/City Council Appeal Re: Certification of EIR
Further Information Requested by City Council

Dear Gregg:

As you know, the City Council held a hearing on the Appeal regarding certification of the EIR on April 29, 2013. At that hearing, the Council requested extensive further information from Dettmer/O'Brien (project applicants). In our view, the new information requested was not required for completion/certification of the EIR under CEQA or the CEQA Guidelines at § 15090 -- nevertheless, however, we timely submitted the new information by May 15, 2013. In response, however, the City continued the hearing to June 24, 2013. (Please reference our letter of protest in this regard dated May 28, 2013.)

At its hearing on June 24, 2013, the City Council did not review the extensive information submitted. Instead, the City Council requested further extensive information from Dettmer/O'Brien.

The further information requested by the Council on June 24 is listed in your July 19, 2013 email to Norm Dyer (project architect). We are setting forth below a response to each new City Council requested item as listed in your email. However, we must again go on the record to confirm as follows:

1. The City Council's requests for information go far beyond that necessary to certify the EIR and to comply with the CEQA findings at CEQA

July 29, 2013

Page 2

Guideline §15090. Further in this regard, much of the information requested has already been submitted -- or is more appropriate to the project hearings rather than for the CEQA certification.

2. The City Council should process the Project applications *concurrently* with the City's CEQA review. We continue to disagree with the City's position that the City will not consider the Project applications unless/until a final EIR is completed and certified.

3. CEQA and CEQA Guidelines require that the City must complete and certify a final EIR within one year from the date the application was/is deemed "complete." The Terraces of Lafayette application was deemed complete by City letter dated July 5, 2011, and the City's deadline under CEQA was July 5, 2012. *The City is now over a year past that deadline.*

4. The City's delay in completing and certifying the EIR, and in reviewing our project applications, go far beyond normal processing delays, and violate the constitutional, due process and related rights of Dettmer/O'Brien.

Please find set forth below (and in attachments hereto) our response to the further City Council items as set forth in your July 19 2013 email.

1. Information regarding the O'Brien Land Company from applicant.

Response: O'Brien Homes has been building residences throughout the San Francisco Bay Area since 1976. O'Brien Homes is committed to building outstanding communities that are sensitive to the environment, and complementary to the existing surroundings.

We would invite you and the Council to review the O'Brien Homes website, at <http://obrienhomes.net/>.

3. Item 6 [of earlier City Council Request] -- request that applicant provide the requested information in a form requested by Staff.

Response: Please see the attached "The Terraces of Lafayette/Existing Plan, Proposed Plan, & ARAP Plan/Topography Comparison," dated July 25, 2013, prepared by LCA Architects (project architects).

4. Item 7 [of earlier City Council Request] -- provide the definition of "Corrective grading quality."

July 29, 2013

Page 3

Response: Please reference the following definition as provided by Engeo (project geotechnical engineer):

The corrective grading quantity is the earthwork volume (typically presented in cubic yards) that will be generated due to excavations required to create a stable foundation for the project as recommended in the geotechnical report. The corrective grading volume includes excavation for keyways below slopes, removals of landslides, undocumented fills or other possibly unstable soils, reconstruction of cut slopes if required and reconstruction of building pad areas with engineered fills. The corrective grading volume is calculated and budgeted as an earthwork quantity that is in addition to the "Civil" grading volume. The "Civil" grading volume is the earthwork (cut-to-fill) quantity required to create the grades depicted on the project grading plan.

6. Item 27 [of earlier City Council Request] -- Please show schematic grading to accommodate moving the western entrance approximately 100' to the west. Are there any impacts to this move?

Response: Please see the attached map entitled "WEST DRIVEWAY/Terraces of Lafayette, dated 7/26/13; prepared by BKF (project civil engineers).

8. Items 10 and 11 [of the earlier City Council request] -- Response from applicant regarding Mr. Martin's report.

Response: Marylee Guinon (project biologist) has been coordinating further with Mr. Martin --her response is being completed and will be submitted under separate cover.

10. Traffic -- Applicants to provide proposed signal timing at PHR/DH and EIR and staff response to the effect on traffic and other issues of using that timing scheme.

Response: See Abrams Associates letter dated July 26, 2013, attached hereto.

13. Traffic -- Follow-up with applicant, staff, and LSBP director regarding stop of PM drop-off location for project plan in addition to alternative plan, etc.

Response: See Abrams Associates letter dated July 26, 2013, attached hereto.

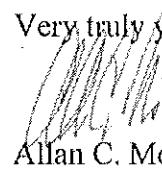
14. Traffic -- Complete 2nd sentence of first full paragraph of page 6 of Abrams letter.

Response: See Abrams Associates letter dated July 26, 2013, attached hereto.

July 29, 2013

Page 4

Very truly yours,


Allan C. Moore

Enclosures (as referenced)

cc: Mala Subramanian, City Attorney w/enc.
David Bowie w/enc.
Clients w/enc.