PUBLIC COMMENTS

SUBMITTED AFTER THE MAY 3, 2010 ADRB MEETING

ATTACHMENT E

S. Christine Zanello
2050 Forest View Avenue
Hillsborough, CA 94010
650.340.0340

April 28, 2010

Town Of Hillsborough
Re: 3115 Ralston Avenue

Dear ADRB and City Council Members,

I am writing to introduce you to the family whose future home is the project, you are reviewing, at 3115 Ralston Avenue. I am the agent representing the Horta family on the purchase of 3115 Ralston; by which The Horta Family has opened escrow and is in contract with the seller/builder Brewer Development LLC.

I have been a Hillsborough resident for over 42 years and live just a few doors down from my parents: Arthur and Sylvia Zanello. Growing up in this community, I learned that there is no better place to raise children and develop life long friendships. This is the very reason my husband, Stephen Giordano, and I bought our family home at 2050 Forest View Avenue.

Although this project started out as a spec project, it has now become a dream home project for my clients. I feel it is important to provide the board members with a brief background of Horta Family and the process it took for them to decide that Hillsborough would be the place they would raise their family.

I first met Mafalda Horta because my daughter, Mia, (age 7) wanted me to meet her new best friend at school. She introduced me to Mafalda and explained that she was new to the school and from Portugal. Mafalda, looked me straight in the eye and graciously said hello and proceeded to talk about their day at school. I was extremely impressed by her ability to speak perfect English and we concluded our conversation together with a decision to arrange a play date.

I called her mother, Raquel and proceeded to set up a play date for the children and also arranged for us to meet for coffee. We spent 2 hours getting to know each other and found that we were like minded in so many areas. Raquel is a medical professional in Portugal, specializing in speech pathology and rehabilitation.

As our children's friendship grew, so did ours. Our family (my husband Stephen, Mia, (age 7) Cara, (age 6) Anthony (age 20) Giordano and I) invited the Hortas to come to our home for dinner. It was then, that we met the rest of the family. Mario, Goncalo, Leonor, and Raquel's mother, Opilia. We have gotten to know the family very well over the past year. We have introduced them to our friends and family and enjoyed Christmas Eve together in our home.

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It is important that I let you know that we have become very close because they are a gracious, loving, and honorable family. The children are kind and considerate and our children enjoy each other's company on a regular basis. Mafalda and my two daughters have bonded like sisters. Over this time, we convinced the Hortas that Hillsborough would be the ideal place for them to raise their family and be part of this wonderful community. It is a welcome opportunity for our families to grow and prosper together and to continue to foster their friendships made with other Hillsborough families we have introduced them to.

The Hortas, then, asked if there were any new construction homes for sale. I showed them 3115 Ralston and the proposed plans. They then became excited at the prospect of building their dream home in Hillsborough. They began to add to the home their special request for a basement other miscellaneous interior finishes. This basement is very important as it will have an art room for the children. Raquel is an artist as well, so it will also double as her art studio. They wanted to have a Media room and a game room for the entire family and their friends to enjoy. Another important element was to included a spa room as well as sufficient space for storage.

The basement was also the perfect location to install Mr. Horta's Syncwatts energy producing unit. Mario Horta is President and CEO of Syncwatts. He is a physicist and author of the patent which is the basis of the Syncwatts technology. Syncwatts has invented a new pro-generation technology based on its patent pending unidirectional, magnetic-repulsion suction momentum technology. This technology produces a continuous RPM which combined with a rotor driven generator produces electricity, literally putting power generation in a box.

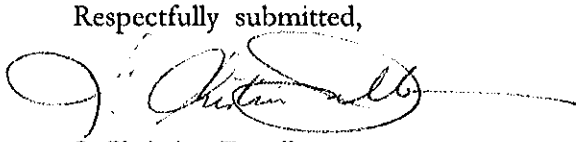
Unlike other clean energy producers, Syncwatts technology doesn't require the use of any source like solar, wind, natural gas, bio-gas or hydrogen. This system has a low cost of operation and therefore a low cost of output power and will make it self sufficient with no need to draw electricity from the PG&E power grid.

Mr. Horta's time is limited. He is actively establishing agreements to produce the unit in multiple countries. Therefore, he has placed the approval process of his home in the hands of Brewer Development LLC.

The family has recently rented a home in Hillsborough, on Bromfield, located close to their Ralston home site. Mrs. Horta's goal is to have the house constructed and completed within a years time, as the children are anxious to finally be able to settle into a permanent home once and for all.

Their children are so excited about the new home that they have already picked out their bedrooms and two of the children are tennis players. My children are tennis players as well. Our children are so happy that they will be able to have many great times together playing in each other's home just a few minutes away from one another.

Respectfully submitted,



S. Christine Zanello

May 1, 2010

From Stephen Wong
3045 Ralston Ave.
Hillsborough

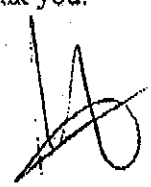
To The Planning Department and ADRB
Town of Hillsborough

RE: Proposed project for 3115 Ralston

Please file this commend for the record regarding the above proposed project.

After reviewing the submitted plan for the site, I found that the proposed structure is very large in proportion to the lot size as compared to the neighborhood. I do not object to landowners who are trying to maximize the square footage for their homes because they paid quite a bit for the land but I do think they should conform to the neighborhood norm as to maintain the neighborhood's integrity.

Thank you.



10:15 AM
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meyers | nave riback silver & wilson
professional law corporation

Steven Mattas
Attorney at Law
415.421.3711

Received at ADRB meeting 5/3/10

May 3, 2010

Elizabeth Cullinan, Director of Building and Planning
Town of Hillsborough
1600 Floribunda Avenue
Hillsborough, CA 94010

Re: 3115 Ralston Avenue Residential Project

Dear Ms. Cullinan:

This letter is in rebuttal to the letter to you from Barton G. Hechtman, dated April 30, 2010, which criticizes my and my clients' April 26 letter concerning the Town's Mitigated Negative Declaration (MND) for the proposed residential development at 3115 Ralston Avenue ("Project").

Mr. Hechtman's letter consists, in large part, of repeated attempts to distract the Town's attention from the serious issues raised in the MND, the comments in our letter, and the expert opinion letters from Bexton Associates, Dowling Associates, and Berlogar Geotechnical Consultants which were attached to and support our letter. Mr. Hechtman's observations concerning CEQA's categorical exemption for single-family residences are misplaced and irrelevant, since a categorical exemption does not apply in situations where there is a reasonable possibility of a significant effect on the environment due to unusual circumstances. (CEQA Guidelines section 15300.2(c).) The Town's Municipal Code recognizes that the Town's environmental qualities and the high quality of its aesthetic values make the Town "unique." (Municipal Code § 2.12.060(A).) The Town has determined, in its initial study, that the Project has the potential to inflict numerous significant impacts, due to its immense size relative to the existing homes which surround it. Therefore, the Town appropriately determined to prepare the MND, a decision with which Mr. Hechtman and his client admit they "do not quarrel." The question of whether the Project is categorically exempt is therefore moot, and irrelevant to the comments in our letter.

Mr. Hechtman's attempts to compare the Project to other houses, proposed for construction in another city (Los Altos Hills), are further distractions from the concerns about *this* Project which are raised in the MND and our comment letter. Those other projects are not before the Town, and Mr. Hechtman fails to establish that those projects, in the environmental context for which they were proposed, raised any of the potential for significant adverse environmental impacts which the Town has documented in its initial study and MND. What is at issue here is not other projects, in other towns, but rather the potentially significant adverse impacts which the Town has identified in connection with the proposed Project, and the adequacy of the MND's conclusion that those impacts will be avoided or reduced to a less-than-significant level by mitigations discussed in the MND.

It is important to note that Mr. Hechtman is a lawyer, and his criticisms are not backed by expert opinion or any claim that he has the necessary technical expertise to opine whether Project activities will result in environmental impacts. This contrasts to our comment letter, which was founded in the attached expert

opinions of a licensed architect, traffic engineer, and soils engineer, all of whom based their opinions of the Project based on facts in the record.

The opinions of our experts constitute "substantial evidence" under CEQA. CEQA defines "substantial evidence" as including facts, reasonable assumptions based on facts, and expert opinions supported by facts. "Substantial evidence" does not include argument, speculation, or unsubstantiated opinion or narrative. (Guidelines sections 15064(f)(5) and 15384.) The legal adequacy of the Town's MND is judged under the "fair argument" standard, under which an MND is inadequate if *any substantial evidence* in the MND or elsewhere in the administrative record supports a "fair argument" that the project would have a significant impact – *regardless* of the existence of substantial evidence to the contrary. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 n. 16.) The fair argument standard prevents a lead agency from weighing competing expert opinions, backed by substantial evidence, to determine who has the better argument concerning the likelihood of a potential impact. (See, e.g., *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988.) Obviously, therefore, CEQA does not permit the Town to weigh the expert opinions and substantial evidence which support our comments against arguments and opinions which are not fact-based observations by persons qualified to speak to the potential for significant impacts.

Aesthetic Impacts

Mr. Hechtman's letter inaccurately claims that our comments on the aesthetic impacts of the Project are based solely on the Project's square footage (including its basement). Mr. Hechtman ignores the observations in our comment letter, and the expert opinion supporting those observations, about the substantial differences in height, mass and visibility of the proposed new residence, compared to the modest structure it would replace. As pointed out in the expert letter from Mr. Bexton, our architect, not only would the Project be one of the largest houses in this portion of Hillsborough, it would place a two-story structure on a prominent site formerly developed with a single-story structure. As discussed in our comment letter, CEQA requires the MND to accurately describe the proposed Project, and to determine whether it, being so much larger and more massive than the existing residence, and so comparatively out of step with the surrounding neighbors' houses, creates a significant aesthetic or visual impact. As further discussed in our comment letter, potentially significant impacts may arise from the Project's contradiction of numerous policies and regulations in the Town's General Plan, Municipal Code and Design Guidelines, which require the Town to ensure that development is compatible with, and does not "overwhelm," its site and neighborhood.

Further, as explained in Mr. Bexton's letter, the setbacks proposed for this Project make infeasible many of the elements of the landscaping plan which has been proposed for the Project. Since the "generous perimeter landscaping" in that plan is an important basis for the MND's conclusions that the Project's aesthetic impacts would be less than significant, the Town must consider whether Mr. Bexton's expert opinion supports a fair argument that infeasibility of the Project's landscape plan might result in a significant aesthetic or visual impact.

Mr. Hechtman asserts that "photographs of the existing condition submitted by Brewer Development" purportedly indicate that the landscaping proposed for the Project will make the Project less visible than "many houses in the neighborhood." Mr. Hechtman does not attach the photographs to his letter, however,

which makes it impossible to evaluate his assertion. Nor does Mr. Hechtman's statement address our comment that the MND should have (but did not) include photographs of the existing condition of the Project site, in order to permit public comparison of the Project to existing conditions. And most basically, Mr. Hechtman's assertion misunderstands CEQA. CEQA requires a comparison of the impacts of a proposed Project, relative to the environmental baseline it would alter. (Guidelines section 15125.) Under CEQA, the MND therefore needs to accurately describe the existing conditions *on the Project site*, and evaluate the aesthetic impacts of the Project based on a comparison to *those* existing conditions. As discussed in our comments and Mr. Bexton's letter, the proposed Project would be significantly more visible to the neighborhood than the existing structure, due both to its relatively greater size and height, and also the infeasibility of the proposed landscaping plan.

Air Quality and Noise

Our letter commented that the temporary nature of air emissions and noise associated with Project construction was not a legally adequate basis for the MND's determination that those impacts would be less than significant, since an impact which would exceed a significance standard may be significant under CEQA regardless of duration. Our comments also requested that the MND accurately describe all project activities which might contribute to air quality and noise impacts, including truck and vehicular trips which were left out of the MND's project description. These comments were supported by the opinions of an architect and a traffic engineer familiar with residential construction projects and their neighborhood effects. CEQA requires that an agency preparing a negative declaration to investigate arguments of potential impacts which are raised by the public and based on substantial evidence, such as that contained in the expert reports submitted with our comments. An agency's failure to so investigate may result in invalidation of a negative declaration. (*Meija v. City of Los Angeles* (2005) 130 Cal.App.4th 322 (personal observations of traffic conditions, coupled with absence of careful consideration of issues raised by agency planners, were sufficient to invalidate negative declaration).)

Biological Resources

Our letter described the requirement of CEQA that the lead agency consider "the whole of a project," and questioned whether tree removal in preparation for the Project, which apparently has already occurred after preparation of the arborist's report included in the MND, was considered in the MND. Mr. Hechtman's letter asserts that any tree removal which has already occurred was not part of the Project, based upon a letter which he does not attach. We reiterate our request that the Town clarify this point.

Geology and Soils

CEQA requires that the conclusions in an MND be based in substantial evidence. As evaluated in the expert letter from Berlogar Geotechnical Consultants, the geotechnical investigation conducted in connection with the MND appears inadequate, with regard to landslide potential and groundwater levels at the Project site. Mr. Hechtman's letter responds to this comment with irrelevant comparisons to projects in Los Altos Hills, which (unlike this Project) were determined not to require preparation of an MND or other CEQA document. This is a non-sequitur and is not a valid basis for concluding the Town's MND to be

adequately based in substantial evidence. We await the Town's response to the opinions of our soils expert in this regard.

Transportation, Traffic and Parking

Our comments requested that the MND, in describing the traffic contribution of the proposed Project, had failed to include all Project-related trips, including round trip soil hauling, deliveries of construction materials, and vehicles conveying workers to the site. Mr. Hechtman asserts that we "cite no law requiring determination of the total vehicle trips involved in construction of a single family residence." However, CEQA requires that, when an agency determines to prepare a negative declaration, it must provide in that document a description of the project. (Guidelines section 15071.) As was pointed out in our comment letter, CEQA requires consideration of "the whole of a project," including *all activities that will result from an approval which have the potential to cause an environmental impact.* (Guidelines section 15378.) Therefore, CEQA most certainly does require a single-family residential project, evaluated in an MND, to be described in a manner that comprehends *all* project activities which might contribute to environmental impacts. The MND recognizes that truck trips have that potential; it is therefore required to include and evaluate the impacts of *all* such trips that would result from Project approval. In addition, the MND fails to consider the cumulative effect of the truck trips from this project and other projects currently under construction in the immediate area and those including 425 Pinehill that are presently under consideration. The absence of any analysis of these potential cumulative effects from existing and known projects negates the conclusion in the MND that there would be no cumulative impact especially associated with Traffic.

Our letter further questioned the MND's conclusion that traffic impacts, which the MND recognizes as "potentially significant unless mitigation incorporated," would indeed be mitigated by a "Construction Management Plan," the details of which are not specified, either in the MND or in the Town's Code. Mr. Hechtman's letter appears to concede that there is at present no "Construction Management Plan" or traffic mitigation plan. As discussed in our comment letter, CEQA does not permit an agency to defer identification of mitigation measures, where the agency has not "articulated specific performance criteria that would ensure that adequate mitigation measures [are] eventually implemented." (See *Community for a Better Environment v. City of Richmond* (2010), --- Cal.Rptr.3d ----, 2010 WL 1645906.) Without provision of specific performance standards to be met in a future Construction Management Plan, the MND's mitigation of traffic impacts appears inadequate.

As further discussed in our letter, the MND needs to explain its determination that the "designated haul route" will mitigate the Project's potentially significant traffic impacts. A MND is required to explain its conclusions regarding potentially significant impacts and their mitigation; merely conclusory determinations will invalidate an MND. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

Mr. Hechtman criticizes the opinion of Mark Bowman, of Dowling Associates, regarding the potential safety impacts of use by construction workers of the Project's proposed northern driveway. Mr. Bowman is an expert in traffic safety, and his opinions are supported by factual evidence of project design and existing traffic and street conditions. By contrast, Mr. Hechtman's criticisms are not based in any evidence regarding the Project's potential for adverse safety impacts, but are merely vague aspersions directed at the motivations of my client. The Town is required to determine if substantial evidence, such as the

opinions expressed by Mr. Bowman, support a fair argument of a significant adverse impact and, if so, to include feasible mitigation to avoid or reduce such impact to a less than significant level.

Mr. Hechtman's assertions regarding the adequacy of neighborhood streets to safely accommodate project-related parking are similarly without supporting evidence. Therefore, the MND should evaluate the concerns raised, in Mr. Bowman's letter, concerning potential safety impacts of on-street construction parking, and mitigation by a measure which would require parking on-site or at a designated off-site area.

Very truly yours,

Steve Mattas
(pcp)

Steve Mattas

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meyers | nave riback silver & wilson
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Steven Mattas
Attorney at Law
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April 26, 2010

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Elizabeth Cullinan, Director of Building and Planning
Town of Hillsborough
1600 Floribunda Avenue
Hillsborough, CA 94010

Re: 3115 Ralston Avenue Residential Project

Dear Ms. Cullinan:

Thank you for the opportunity to comment on the proposed Mitigated Negative Declaration (MND) for construction of a proposed new residence at 3115 Ralston Avenue (hereinafter, the "Project"). We represent John and Leslie Wilson, neighbors of the proposed project, who reside at 3080 Ralston Avenue. We have several serious concerns about the proposed Project and the MND.

As a general comment, we feel the MND does not adequately satisfy CEQA's requirement for public disclosure of the potentially significant impacts of the Project. The MND is poorly organized, in that sources for, and explanations of, conclusions stated on the Initial Study Checklist are presented, not on the same pages as the checklist, but on separate pages. This makes the MND very difficult to read, and may violate the public disclosure requirements of CEQA. (See *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 659.)

The organization of the MND also makes it difficult or even impossible to understand which mitigation measures have been applied to which impacts. This, in turn, makes it difficult to impossible for the public to follow the MND's reasoning to conclusions that potentially significant impacts will be reduced to a less than significant level by mitigation. An explanation of an agency's conclusion that potentially significant impacts will be reduced or avoided through mitigation measures is a basic requirement for adequacy of an MND. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) The MND, to avoid violating CEQA, must be revised to explain which mitigation measures apply to which impacts, and how the Town has concluded that the mitigation measures will be effective in avoiding significant impacts.

Furthermore, the sources cited in the Initial Study Checklist are almost invariably vague and indefinite. For example, the Checklist cites sources such as "State Planning and Zoning Law," "General Plan" and BAAQMD CEQA Guidelines," without identifying which provisions of those laws, documents or regulations are relied upon. Other sources are even more vague, such as citations to "Planning Director," Building Official" or "Field Inspection." The vagueness of these source citations makes it nearly impossible for the public to verify the conclusions stated in the Checklist.

Our more-detailed concerns with the Project and its evaluation in the MND are described below:

1) **Aesthetic Impacts:** The Project is for a very large structure. In fact, the proposed structure is far larger than identified in the MND: As explained in the attached letter from Bexton Associates, architects and design planners, the actual size of the Project is over 14,436 square feet of living space, not the 12,717

square feet used for FAR calculations which is used in the MND. Nevertheless, and although the proposed structure will be nearly three times the size of the present residence on the Project site, the MND concludes that the Project would not have a significant aesthetic impact, compared to existing conditions. It is unclear how this determination was reached, particularly since the MND fails to present any visual information concerning the existing aesthetic condition of the Project site. We request that the MND be supplemented with additional visual evidence and analysis of the aesthetic changes which this Project would involve.

As explained in the letter from Bexton Associates, the Project would construct one of the largest houses in this portion of the Town, on a lot that contains one of smallest net usable areas within area. This is a potentially significant and unavoidable impact of the Project. The extraordinary size of the Project, relative to its relatively small net useable area of the lot and the larger lots in the neighborhood may conflict with section 17.32.040(E)(3) of the Municipal Code, which requires the Town to consider "[t]he project's aesthetic compatibility with the site and the neighborhood, including, without limitation, the impact of such square footage on the site and the neighborhood." Similarly, the Project may conflict with the Town's General Plan Land Use element contains Policy LU-2.2, which requires the Town to ensure that development proposals "do not overwhelm their sites on their neighborhood." Additionally, a Project of this size, in the context of its constricted site, may conflict with numerous sections of the Town's "Residential Design Guidelines," including Guideline 4.D ("Buildings shall conform to setback standards and should generally reflect the established development conditions of neighboring properties, including building setbacks and landscape treatments."); Guideline 5.A ("Building massing should generally conform to the buildings in the surrounding vicinity.") and Guideline 5.A.4 ("The building mass on sites in close proximity to other buildings or narrow streets should be appropriately scaled. Sites adjacent to open space features . . are more appropriate for larger building mass.").

As further explained in the letter from Bexton Associates, and contrary to the description in the MND, the Project would drastically reduce all but one of the existing setbacks on the site, in a manner that would effectively preclude much of the landscaping which is proposed as screening to mitigate the visual impacts of this overly large Project. Other proposed landscaping/screening would be precluded by the design of the front entry and driveway, as is explained in the Bexton Associates letter. The inability of the proposed landscaping to adequately screen the Project from surrounding properties may conflict with the Town's Design Guideline 11.A.2 ("A landscape plan should help implement site planning goals, such as maximizing views or creating visual buffer areas between the property and neighboring parcels").

The MND should be revised to accurately describe the visual and aesthetic impacts, on the site and the neighborhood, of so large Project on its relatively small lot; to evaluate the significance of those impacts in light of the City's development standards and policies; and the ability of landscaping mitigation to reduce or avoid those impacts, in light of the design constraints identified in the Bexton Associates letter.

2) **Air Quality and Noise:** The MND concludes that there would be no significant Air Quality impacts, based on an observation that construction emissions associated with the Project would be "temporary." This is not a valid conclusion under CEQA, as impacts which exceed significance thresholds can be significant impacts even though they are not permanent in effect. The same is true with regard to the MND's conclusion that noise impacts of Project construction will not be significant, on the ground that they

are "temporary." The MND must be revised to assess the potential significance of all impacts, whatever their duration.

This Project will involve considerable grading, excavation, filling and off-site hauling of excavated soil, all of which involves the use of heavy construction machinery which will emit air pollutants and produce noise. The Project will also result in at least 94 truck trips to and from the project site just to off haul soil. There will be additional truck trips to the site to deliver materials and equipment. These trips are not identified there their impact is not evaluated in the MND. The MND must be revised to evaluate whether noise emissions associated with Project-related construction machinery and truck trips will exceed any local, state or federal air quality standards.

3) **Biological Resources:** The MND states that 36 trees will be removed in connection with the proposed Project. The arborist's report evaluating the effect of tree-removal is dated January 22, 2010. It is our understanding that tree removal has occurred on the Project site since the date of the arborist's report. Does the arborist's report include all trees to be removed at the Project site, including any which may have been removed prior to approval of the MND and the Project? CEQA consideration of "the whole of a project," and further requires approval of environmental review documentation prior to approval of a project. If tree removal under the Project has occurred prior to the Town's approval of the MND, such actions may violate CEQA.

4) **Geology and Soils:** The Project will involve considerable grading, excavation and filling, particularly to accommodate the sizeable basement called for in the Project plans. The Project site is characterized by slopes, including some that are "steep." (See Geotechnical Report, page 4.) Yet the Geotechnical Report included in the MND contains no detailed evaluation of the proposed grading and excavation work. The amount of grading, excavation and filling required for this Project may conflict with the Towns' Design Guideline 4.B.1 ("Siting and design of structures should conform to the natural contours of the site and mitigate the need for extensive cutting, filling or terracing.").

The Geotechnical Report is based on inadequate investigation of existing conditions, particularly with regard to soil sampling, landslide potential, and groundwater levels, as described in an expert letter from Berlogar Geotechnical Consultants, which is attached to this comment letter. Furthermore, although the Report purports to describe soil conditions at the Project site, it includes almost no detailed evaluation of Project activities or construction details, but merely concludes that "[t]he site is considered suitable from a geotechnical aspect for the proposed a [sic] family dwelling house." CEQA requires that any conclusion except "no impact" requires an explanation. (See CEQA Guidelines, Appendix G.) Particularly in light of the "classic landslide potential" in the area of the proposed tennis court, which is identified in the attached letter from Berlogar Geotechnical Consultants, the MND should be revised to explain the conclusion that the grading and excavation will not destabilize the site's steep slopes.

5) **Transportation/Traffic:** The MND recognizes that the off-haul of 935 cubic yards of soil, requiring at least 94 truck round-trips (188 total off-haul truck trips), will result in potentially significant impacts to local traffic and circulation. These off-haul truck trips will indeed represent a significant alteration to existing traffic conditions in the neighborhood. Additionally, the project will entail an unspecified additional number

of truck trips for delivery of construction materials, and an unspecified number of vehicular trips by construction personnel. To give an accurate picture of the potentially significant construction traffic impact of the Project, the MND must be revised to identify the total number of vehicle trips (car and truck) which will be associated with Project construction.

The MND concludes that this potentially significant impact will be less than significant after mitigation. The MND apparently bases this conclusion on mitigation including a requirement to follow a truck haul route that includes Ralston Avenue, Provident Drive, Chateau Drive and Highway 280 (Mitigation Measure 1.d) and on an observation that the applicant will be required to prepare and comply with a "Construction Management Plan" under the Hillsborough Municipal Code. However, the MND contains no explanation of its determination that the designated haul route will avoid this potentially significant impact. An MND is inadequate under CEQA without an explanation, based on evidence, for all conclusions with regard to potentially significant impacts.

The Municipal Code, moreover, fails to define "Construction Management Plan," and the MND defers providing any details of the requirements of such a Construction Management Plan. For these reasons, the MND fails to explain how the requirement to prepare a Construction Management Plan supports the conclusion that the Project will have no significant traffic and circulation impacts. By deferring designation of the requirements of a Construction Management Plan and explaining how they will avoid a significant impact, the MND may violate CEQA. (See *Sundstrom, supra.*, 202 Cal.App.3d at 307.)

The MND also fails completely to examine whether Project construction will cause significant parking impacts, as discussed in the letter from Dowling Associates, Inc., transportation engineers, which is attached to this comment letter. The MND should be revised to require that all construction-related parking occur on the project site or at a designated off-site location. Furthermore, Mitigation Measure 1.d should be revised to avoid potential safety impacts which could result from use by construction trucks of the Project's proposed northern driveway route, as explained in the expert letter from Dowling Associates.

Very truly yours,

Steve Mattas

STM:PSH
1407642.1

BEXTON ASSOCIATES

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Phone: (415) 897-8629, Fax: (415) 897-8699
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04-22-10

John B. Wilson
3080 Ralston Avenue
Hillsborough, CA 94105

Subject: **Response to Mitigated Negative Declaration** for
3115 Ralston Avenue, Hillsborough

Dear Steven,

I am writing to respond to the aesthetic and view impacts of the proposed house.

The MND states that the house is 12,717 square feet in size. That size is, however, the modified figure used for FAR calculations, not the actual square footage, which is 14,436 square feet of living space. This replaces a house that is only 5,065 square feet. In other words the proposed structure is almost three times larger. This structure would be one of the largest houses in this portion of Hillsborough, on one of the smallest lots. The minimum lot size is 2 acres and the net size of this lot is only 1.74 acres. Furthermore, the existing house is only one story and therefore less intrusive in this wooded area that prizes the rural feeling. The new house besides being almost three times larger, is over double the height – two stories with higher ceilings. Coverage is drastically increased. In an area that has an average of 5.2% FAR this is 16.82%. If we take the area of actual living space to lot size, the average is about 10.95% while this developer is proposing 19.09%. The net result is far different from the rural appearance that characterizes this old Hillsborough neighborhood and creates a dangerous precedent for other smaller lots with old houses. Another factor to consider is that a portion of the lot, that is included in the area calculation, is actually a long thin unbuildable strip for a second driveway access. In terms of visual crowding on the site, you could argue that this long thin strip of approximately 3,500 square feet should be excluded. If it were excluded, the FAR figures would be increased by another 4.5%. The net result is a very large house on a smaller than standard lot.

The new structure, while of pleasing design and detail is long and linear with rooms strung out along a single loaded corridor, running front to rear on the lot. This not only increases the square footage but encroaches on setbacks on both sides.

The MND states that "The proposed residence would be set in generally the same building footprint as the current residence but would be set back further from the two street sides..". In actuality, only what is called the "left side" setback from Pinehill Road is increased by a small amount, not for landscaping, or for woodlands like many of the lots in the area, but to allow for a

tennis court to be built. Other setbacks are drastically reduced. The right setback is reduced by approximately 40 feet. The rear setback is reduced by about 45 feet. The most significant setback for neighborhood impact is the front setback from Ralston Avenue. The existing single story main house has a 70 foot setback. Only a separate, open, eight foot tall carport extends beyond that. The new structure is 31'-8" high with a projecting exercise room 18'-6" high on the front side and the setback is reduced from 70 feet to only 55 feet. In this neighborhood the average street setbacks are closer to 80 to 100 feet, especially for the larger houses.

The MND goes on to state that "Additionally, generous perimeter landscaping is proposed...". Once again the actual situation is quite different. Large trees have been removed and replaced with a thin band of low tress to screen the tennis court and house from Pinehill Road. This barely screens the structure and does nothing for noise from the tennis court. On the Ralston side, the entry configuration precludes any adequate landscaping due to the reduced setback and sharply curved driveway.

The cover rendering of the front entry is an inaccurate drawing. It shows the driveway with a gentle curve allowing landscaping around the exercise room located on that front elevation. In actuality the exercise room is exactly where the original carport used to be located. The driveway went directly into the carport. Now the driveway must enter straight off the street and then curve around the exercise room to reach the parking courtyard. It is this driveway configuration that causes the problem. The driveway is in the exact location where tree screening is most critical to reduce impacts from the street and neighboring houses.

The landscaping plan shows three Coastal Redwoods placed to screen the building in the front. Due to the driveway configuration, however, the Redwood at the critical corner of the exercise room is only a few feet from the building and the other two are still too closely placed to be able to provide the expected screening. Clearly there is not enough room for this intended landscaping due to the driveway configuration.

For this very large house to have a minimal impact on the neighborhood, several mitigating measures need to be taken. The house would need to be reduced in size and reconfigured to enlarge setbacks and reduce coverage. Since the tennis court is very close to the street and neighboring houses on that side, some kind of sound attenuation is needed. The driveway should be relocated to provide an uninterrupted band of tree screening at the exercise room to reduce the impact on the street and neighboring properties.

Sincerely,

W. Harold Bexton, Architect

Via E-Mail and Mail

April 22, 2010
Job No. 3250.000

BGC
BERLOGAR
GEOTECHNICAL
CONSULTANTS

Mr. Peter Hayes
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

Subject: Geotechnical Concerns
Proposed Horton Residence
3115 Ralston Avenue
Hillsborough, California

Dear Mr. Hayes:

At your request, we have reviewed the following documents for completeness:

- Draft Initial Study and Mitigated Negative Declaration.
- Geotechnical Site Investigation by J. Yang and Engineers dated January 15, 2010, Project No. J10-1488 and subsequent letters dated March 13, 2010 and April 1, 2010.
- Letter by Clifford Bechtel and Associates Inc. dated March 11, 2010.
- Architectural Plans for the proposed Horton residence by HABITAT dated 3/22/10 consisting of Sheets A-01 through A-09 and Sheet A-10 through A-17.
- Boundary and Topographic Survey by B&H Surveying, Inc. dated September 2009.
- Grading, Drainage & Utility Plan by Clifford Bechtel and Associates dated 3/31/10 consisting of Sheets C-1.1 and C-1.2

After our review of the cited documents, I conclude that a number of geotechnical issues have not been adequately evaluated. These issues are as follows:

1. Geotechnical Investigation – The geotechnical engineer drilled 3 borings and reported that 6 drive sampling events were attempted. The geotechnical engineer boring logs indicate that a sample was recovered from only one of six sampling attempts and that he was "unable to recover sample due to broken soil" on the other 5 attempts. In my judgement, the subsurface geotechnical conditions cannot be adequately characterized if samples are not recovered for examination by trained professionals.

   The site was extensively graded for the construction of the existing residence. The topographic survey by B&H Survey shows classic landslide topography in the area of the tennis court. This possible landslide was not investigated nor addressed in the Geotechnical Site Investigation.

2. Draft mitigated Negative Declaration – Mitigation 1q. reads as follows: "If groundwater is discovered during any stages of project excavation, the foundation drainage design shall be revised to incorporate positive measures to prohibit continuous draining/pumping of the groundwater once construction is completed. No foundation drains shall be utilized to drain any water below the normal high water mark for groundwater / aquifers. The soils engineer of record shall determine the high water mark for the project using defendable engineering methods."

   Clearly this mitigation measure has not been satisfied. Consider that

   a. The borings for the Geotechnical Site Investigation on January 12, 2010 . The borings were drilled after 3 years of drought and before the majority of the 2009/2010 winter rains. We note that the borings only extended a few feet below the bottom of footing level for the proposed basement. As such, the absence of free groundwater in the borings is not meaningful in establishing, using defendable engineering methods, the high water mark for the project.

   b. The first paragraph on page 10 of the Geotechnical Site Investigation reads "Drainage behind retaining walls should consist of a 4-inch diameter perforated pipe surrounded by filter gravel, ½ inch to 1 inch in size wrapped with filter fabric." This type of drainage system is installed at the basement footing level. Thus, for the proposed basement wall, the drain system may extend below the normal high water mark and thus be in violation of Mitigation 1q.

3. The proposed new residence and landscape improvements would result in an estimated 40% increase in impervious surfaces compared to existing residence and landscape improvements. The increase in impervious surfaces will produce a corresponding increase in surface runoff. This is not a geotechnical concern but thought it appropriate to bring to your attention.

Respectfully submitted,

BERLOGAR GEOTECHNICAL CONSULTANTS

Frank Berlogar
RCE 20383, Exp. 9/30/11
GE 142, Exp. 9/30/11

FB:jmb

Copies: Addressee (3)

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Dowling Associates, Inc.
Transportation Engineering • Planning• Research • Education

April 22, 2010

Mr. John B. Wilson
3080 Ralston Avenue
Hillsborough, CA 94010

Subject: P10018

Dear Mr. Wilson:

We have reviewed the *Draft Initial Study and Mitigated Negative Declaration for the New Single Family Residence, 3115 Ralston Avenue, Hillsborough, CA*, published April 7, 2010 with regard to transportation and circulation impacts.

There are several areas in the Mitigated Negative Declaration (MND) where insufficient data are provided to properly address impacts and the findings of less-than-significance appear not to have a strong basis in the information provided in the document. There are also passages that are vague that should be more carefully described. Finally, there appears to be a need to restate one impact as potentially significant. Our review comments are provided below.

Mitigation 1.d.

The haul route for earthwork material is specified as being along "Ralston Avenue to Provident Drive to Chateau Drive exiting towards Skyline Boulevard and Highway 280"; however, there are two project site driveways that connect to Ralston Avenue. One driveway is located on the upper, southern portion of Ralston Avenue and a second driveway is located on the lower, northern portion of Ralston Avenue. The ambiguity of the mitigation measure could leave open the possibility of using the lower, northern driveway for construction activities.

No analysis of traffic operations was provided in the MND to support the designation of the earthwork haul route and the ambiguity at least should be resolved. Use of the lower, northern driveway for hauling earthwork materials and construction access in general may result in a different finding with regard to the Evaluation of Environmental Impacts (page 16). If the lower, northern driveway is used, Finding XV.d: "Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) . . . ." should be identified as "potentially significant unless mitigation incorporated." Clarification of the mitigation measure to require use of the upper, southern driveway would not change the findings.

Our assessment is that the use of the lower, northern driveway for construction access is undesirable for the following reasons:

1. The site distance for the driveway is restricted to approximately 110 feet looking east from the driveway and 220 feet looking to the west. The Caltrans Highway Design Manual recommends 7.5 seconds of corner sight distance, or 275 feet for a 25 mph travel speed on level ground. In addition, due to the use of the driveway by heavily loaded trucks, the 275-foot sight distance may need to be increased to avoid interference with Ralston Avenue traffic. Our assessment was made without adjusting the sight distance requirement for heavy trucks and would apply to all construction vehicles.

2. The eastbound Ralston Avenue grade appears steeper than 8 percent and would compound the deficiency in sight distance for drivers looking west to exit the driveway. The Caltrans Highway Design Manual suggests that for long grades greater than 3 percent, the corner sight distance should be increased by 20 percent. This adjustment would require a corner sight distance of 330 feet, and the 220 feet of sight distance available would be only two-thirds of the required amount.

3. The corner sight distance for the westbound Ralston Avenue approach to the driveway is approximately half the required amount. Heavy vehicles turning left from the driveway onto the 8 percent grade of Ralston Avenue would accelerate slowly and would interfere with westbound Ralston Avenue traffic. A case could be made that vehicles on Ralston Avenue would be able to see vehicles entering the street and could slow to avoid a conflict. Even if such an argument is made, the stopping sight distance for a vehicle traveling at 25 mph on Ralston Avenue would be 150 feet and the 110 feet of sight distance available would 40 feet less than adequate.

4. Ralston Avenue just west of the lower, northern driveway is narrow with only 16 feet of width and no shoulder. The constrained roadway width combined with the steep grade and inadequate sight distance would contribute to a potentially unsafe haul route.

Our assessment is that the use of the upper, southern driveway for construction access is preferred for the following reasons:

1. The site distance for the driveway is approximately 340 feet looking south from the driveway and the grade appears to be relatively flat. The corner sight distance would be consistent with Caltrans recommendations. No trucks would turn left from the driveway, so the restricted 130-foot sight distance to the north from the driveway would not be a significant consideration.

2. A vehicle turning left from southbound Ralston Avenue into the driveway would be visible to southbound traffic approximately 220 feet in advance of a potential encounter. Southbound vehicles would require 150 feet of stopping sight distance, so the sight distance for this condition would be more than adequate.

3. The width of Ralston Avenue was estimated at greater than 24 feet on both sides of the upper, southern driveway and would provide adequate room for turning movements.

The assessment provided above also leads to the conclusion that construction material deliveries should also be directed to the upper, southern driveway. Our findings are that Mitigation 1.d. be revised as follows:

"The haul route for earthwork material and project deliveries is exclusively through the project's southern driveway to upper Ralston Avenue to Provident Drive to Chateau Drive exiting towards Skyline Boulevard and Highway 280."

Number of Vehicle Trips

The number of construction related vehicle trips described in the MND is not correct. With at least two feet of freeboard as required in Mitigation 1.h., it is estimated that approximately 10 cubic yards of earth materials would be hauled per load. That leads to a reasonable conclusion on page 21 of the MND that "The off-haul of 935 cubic yards of earth materials would result in approximately 94 truck trips off site." However, the report fails to state that empty trucks would arrive at the site resulting in another 94 trips. The MND should be revised to identify, and assess the potential significance of, the true total number of truck trips (188).

In addition, there is no discussion of the number of trips that would result from deliveries of construction materials (each delivery resulting in one inbound and one outbound trip) and there is no discussion of trips to and from the site by employees during construction. The MND should further be revised to identify, and assess the potential significance of, these additional vehicular trips associated with construction of the project.

The number of trips to and from the site is expected to be greater than the 94 truck off-site truck trips identified in the MND. The underestimation of the number of trips accessing the site should be remedied prior to approval of the MND. In addition, the increased number of trips further supports exclusive use of the upper, southern driveway for project access and egress.

Traffic Management Plan

On page 21, XV Transportation/Traffic, the following statement is made:

"Potential traffic increases/alterations beyond those normally associated with single family residential land use would be temporary, however, and subject to the requirements of a Construction Management Plan under the Hillsborough Municipal Code. With the proposed mitigation measures, traffic impacts would be less than significant."

The temporary nature of "traffic increases/alterations beyond those normally associated with single family residential land use" is not sufficient to designate an impact as less than

significant. The discussion under Mitigation 1.d., above describes impacts that could occur on a temporary basis that would be significant.

A search of the Hillsborough Municipal Code yielded no results for "Construction Management Plan." Under the section of the Code titled "Construction Management" there is discussion of a "Preconstruction meeting" and "Qualified superintendent on construction site." These sections of the Code grant authority for the chief building official to impose requirements but do not require that this occur and do not lay out specific requirements to be enforced.

Mitigation 5 calls for a construction phasing plan and a traffic management plan; however, no specific requirements for those plans are identified. The requirements for a Construction Management Plan and Traffic Management Plan should be more well-defined in the mitigation measure.

Parking

There is no discussion in the MND regarding parking except the Finding XV.f. that the project would have no impact on the adequacy of parking capacity. No on-street parking was identified within reasonable walking distance of the project site and parking on the street may result in potential safety hazards. The MND should impose a mitigation measure that requires that all construction related parking would be required to take place on the project site or at a designated allowable off-site location.

Air Quality

The discussion on page 20 under III Air Quality states that ". . . the project would not result in any long term pollutant increase, nor violate air quality standards. During construction and grading activities there may be temporary dust or odors or particulate matter generation on and around the site. However, these impacts are temporary and would be less than significant due to the temporary nature of construction and grading. Implementation of mitigation measures for dust control would further insure that air quality impacts are less than significant."

The temporary nature of air quality impacts is not sufficient to designate an impact as less than significant. In addition there is no discussion of pollution generated by the operation of heavy equipment on the project site, haul vehicles, or other vehicles accessing the site. This information should be included in the report. At the very least, Findings III.d and III.e should be revised to indicate that the impact would be Potentially Significant Unless Mitigation [is] Incorporated for consistency with the discussion on page 20.

Noise

The discussion on page 21 under XI Noise states that ". . . . A potential increase in noise beyond that normally associated with single family residential land use would be temporary, however, and subject to the noise thresholds of the Hillsborough Municipal

Code. Additionally, airport noise exists regardless of the project. Noise impacts would, therefore, be less than significant."

The temporary nature of noise impacts is not sufficient to designate an impact a less than significant. If the project causes a "potential increase in noise beyond that normally associated with single family residential land use," the temporary nature of such noise levels would still be significant. If the noise thresholds of the Hillsborough Municipal Code are enforced, there should be no potential increase in noise beyond that normally associated with single family residential land use.

According to the Municipal Code, noises of construction are classified as discretionary noise and would be limited to Monday through Friday between Eight A.M. and Five P.M. with a limit of 100 dBA 25 feet outside the property line and on Saturday between Ten A.M. and Five P.M. with a limit of 70 dBA outside of the property plane.

Please contact me at 510-839-1742 x117 if you have any questions.

Sincerely,
Dowling Associates, Inc.

Mark Bowman, P.E.
Principal

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Farrokh & Scheherezade Sharabianlou
2915 Ralston Avenue, Hillsborough, CA 94010

Re: 3115 Ralston

May 2, 2010

Dear Design Review Board Members,

I live at 2915 Ralston Avenue. Our house is in the same neighborhood as 3115 Ralston. In fact it is close enough that we were included in the mailing list for notification. This area consists of mostly lots over 2 acres. This specific lot is not. It is much smaller. I have eight wonderful neighbors. 3115 is not our immediate neighbor but it is close enough that any activity will affect our property one way or another. We are told by the project owners that they are not planning to occupy this house. They have an accepted offer to purchase. Please note the following items.

1. Set back and lush green feel of the neighborhood:
Hillsborough is an exclusive luxurious town. Price of the properties are a clear indication of that. Privacy should matter to you. It has a dollar value. This building is too close to the neighbors' house. We ask that the set back to be 100 feet to give enough space so that the privacy of the other properties are not taken away. This allows trees to be planted to bring back the lush green and the feel that was destroyed after the project owners removed bunch of trees. Please note that the average set back in Hillsborough is 113 and in our neighborhood is 97. The property at 3115 is 55. Why?

2. Square footage. It is too big. Is this the new design plan for our town, mansions on small lots just like the block near Crocker school? By approving this large structure you are going to encourage and will start a trend for other properties in our neighborhood. Just take a look at the map and picture my house with 8 neighbors each over 14,000 sqft.! homes with tennis courts. These are not flat lots. The structure feels and look much bigger. It overwhelms the neighborhood. Please keep it under 8000.

3. Sewer. Have you not the property owners done a study or even have asked the public works department if the existing sewer lines which Town of Hillsborough services can support this Mansion Madness? Per public works main sewer lines are very old and fragile. They need to be replaced.

4. Traffic and Neighbors Safety. Have you not the property owners asked the police department to increase their monitoring when a new mansion is being built? The larger the building the more time it takes to build and the more traffic it creates. It is not the job of the property owners to direct traffic. It should be part of your routine procedure. I would like to ask you to provide a sign in English and Spanish to be placed at each site to remind the workers to pay attention to the posted speed limits specially when they are traveling down hill. Also please request more police presence. This is one more reason to have a larger set back.

5. Tennis court. Have you considered the size of the lot, the position of the property and the tennis court? Tennis balls when hit the ground cause echoes for the properties below. I would like to ask you to please increase tennis court set back and have it shielded with a combination of walls and trees. This way it sets an example for other properties in the neighborhood who are planning to build a similar design.

6. It a common knowledge to adjust the size and comply with other issues that may prevent from obtaining an approval and then to add what was deleted by asking for an over the counter permit. Therefore, I would like to ask you when a final approval is given on any design either to our likes or dislikes that design to be the maximum size and set back etc..permitted. Therefore, no future alterations to the size or other items could be made via over the counter permit.

Sincerely,

Scheherezade Sharabianlou

Thank you. Yes I do want you to list my issues in the list that is required of you to submit to ADRB. I thought that it was your role and I did not need to ask. You said the residences' issues are part of the decision process. I want to see that ADRB in fact do exercise what they preach. Based on this theory 3115 should not be approved if neighborhood do not like the project. Therefore it can't be "The candidate for approval" as you told me.

Council and ADRB members need to listen to the neighbors. They MUST follow the rules they have set. And that is not to approve this project until there is a compromised agreement. They do not live in our neighborhood we do. They need to listen to us.

Regards,

Scheherezade

From: Elizabeth Cullinan <ECullinan@HILLSBOROUGH.NET>
To: Farrokh Sharabianlou <eprints@pacbell.net>
Cc: John Wilson <john@hyannisportcapital.com>
Sent: Wed, April 28, 2010 9:38:03 PM
Subject: RE: Email from Scheherezade Sharabianlou. Don't delete!

Thank you for your comments and I actually enjoyed our conversation today. I am sorry that I couldn't address your concerns. Really it will be the ADRB and City Council that confirm the final decisions and I think that we can't confirm that the proposal as submitted is a "done deal". Each site and project will need to speak for themselves. I will be happy to forward your comments ot the ADRB and City Council for their consideration. Your comments are an imperative part of the decision making process.

Elizabeth Cullinan

-----Original Message-----
From: Farrokh Sharabianlou [mailto:eprints@pacbell.net]
Sent: Wed 4/28/2010 7:09 PM
To: Elizabeth Cullinan
Cc: John Wilson
Subject: Email from Scheherezade Sharabianlou. Don't delete!

Dear Ms. Cullinan,

I have been sending you emails from my other email address. I am a bit unhappy with our conversation today. What I concluded is that the 3115 is a done deal. It is going to be approved. This confirms comments from the project owner to me that it is going to be approved. But why is it that part of the requirements for ADRB's approval which is neighbors interest do not have any impact on ADRB's decision? Then why is it part of the ADRB's approval process? We aren't kids! I am concerned that if this project is approved there will be other large structures would be built. An example is 425 Pinehill. Just because we like Alex's beautiful design does not mean we like his idea for our neighborhood.

I do not care if the project owners hired an attorney. I have not hired an attorney yet! I live in this town and you need to address my issues. If you are not permitted to answer my questions then have your attorney speak to me. I demand that you include in your list of issues you forward to ADRB you list MY issues which are: