

Summary of Meeting with Margaret Kavanaugh-Lynch  
August 16, 2016

[Note: This summary is based on topics, rather than following the flow of the actual conversation. Further, the statements in this summary are based on my understanding of what Margaret was saying – I have not independently checked to see what is required by law.]

On August 16, 2016, Mark Miner (on behalf of Trail Trekkers) and Chris Conner (on behalf of ECHO) met with Margaret Kavanaugh-Lynch, Development Services Manager for El Cerrito. The purpose of the meeting was to discuss the Fairview Estates application filed with the City on July 12, 2016.

At the outset of the meeting, Margaret told us that by an August 11 letter, the City had informed the Developer that the application was incomplete. A copy of this letter is attached.

Margaret outlined the basic review process that will occur if the development proceeds.

A. **What the Developer Needs from the City.** Basically, there are three things that the Developer needs from the City:

1. To the extent the development is not in compliance with City zoning requirements, the Developer essentially needs a waiver of these requirements. That is obtained by creating a Planned Development District. As discussed further below, the proposed development is not in compliance with zoning requirements, so this presumably will be necessary.

2. In order to split the existing parcel into lots for development, the City needs to approve a Subdivision Map.

3. Design Review will be needed for the design of the homes before building permits could be approved by the City. Although the developer could be seeking Design Review at this time, it is typically done as a subsequent stage. (One question the City is asking the developer is whether they are seeking Design Review at this time.)

B. **The Review Process.** For each of these requirements, the Developer needs to go through a review process. The Planned Development District and the Subdivision Map are likely to be done concurrently. Design Review could also be done concurrently, or after the Subdivision Map is approved.

1. Application Submission. The Developer needs first to submit an application that the City deems to be complete. If the application is not complete, the City will notify the developer of the deficiencies in the application and take no further action until the missing items are provided. That is the stage we are at now – the City's August 11 letter is telling the developer that their application is not complete (more on that below). Margaret believes it's likely that given the magnitude of what is missing, there is a good chance that the next version will also be incomplete, in which case the City will again send a letter notifying the developer of the deficiencies.

a. My understanding is that the developer is required to pay for the City's review.

b. Once the application is complete, it will be posted on the City's website. Note that because the application is not yet complete, the application is not posted at this time.

2. Environmental Impact Report (EIR). The City's August 11 letter states that the project will likely require the preparation of an Environmental Impact Report (EIR). In our conversation, Margaret also stated that an EIR will likely be needed (the City cannot definitively say until the application is complete, but a development of this scope is almost certainly going to require an EIR).

a. The EIR is a process that is governed by California State law (CEQA) and is designed to provide information for the decision-making body. Thus, the EIR is not a determination of whether the project is acceptable, it is designed to provide the necessary information for the decision-making body.

b. The EIR analysis is done by an independent consultant that is hired by the City. The developer is required to pay the costs of the EIR, but the consultant is not hired by or work for the developer.

c. The first step in this process will likely be an "Initial Study". Margaret referred to this as creating the "table of contents" for the EIR. There are all sorts of impacts that might be covered by an EIR. Some (such as agricultural impacts) are not likely to be applicable; others (such as slopes, creeks, etc.) are. As part of the Initial Study there will be a Scoping Session, which would be a public meeting.

d. Once the Initial Study is completed, the actual EIR will be prepared by the consultant. The Draft EIR will be posted, and there will be a 30/45 day (not sure which) "circulation period" in which citizens can provide written comments. There will also be a public hearing during that circulation period.

e. If the application changes, that can result in changes being required to the EIR.

f. The City must certify the EIR as being sufficient and either approve or disapprove the application. Per Margaret, if the City wishes to approve the application, there must be a public hearing (a hearing is apparently not required to disapprove the application.)

### 3. Decision on the Application.

a. According to Margaret, the Planning Department will make a recommendation regarding the application. This will be based on the EIR, as well as El Cerrito's municipal codes (for example, the Creek Ordinance.) Margaret indicated that there would be at least one public Planning Commission meeting.

b. The ultimate decision, however, on whether to approve the application will be by the City Council. Once again, there will be at least one public hearing.

4. Other Jurisdictions. Because of the impact on the creeks, it will also be necessary to obtain a JARPA permit, which involves the Army Corps of Engineers and the California Regional Water Quality Control Board.

a. The developer submitted an application to the Army Corps. A number of us sent objection letters. There has been no word on that application, and Margaret suspects it is currently in limbo “waiting for the project to catch up”. (Note that the application to the Corps is based on a prior application to the City, not this version.)

b. One of the requirements for Army Corp action is approval or waiver by the Cal Water Board. As of last spring, no application had been submitted to the Water Board, and sources on the Board indicated that an application would not be approved due to issues with the upper creek.

c. There may be other requirements from other jurisdictions (we did not discuss.)

5. Timing. Margaret indicated that the EIR process will likely take at least a year, and she would expect that it is likely to be at least three years before the application is up for final approval.

C. **What is lacking in the Application**. As noted above, we are at the initial stage in the application process. The City has informed the developer that the application is incomplete. The letter sets forth what is missing, but among the items are the following:

1. Project Description - the City wants a document discussing the project and what the developer wants. This includes:

- a. a better description of the property, including boundaries, topography, existing trees;
- b. a better description of the proposed development;
- c. a explanation of what exactly the developer is asking for at this time (i.e. what permits? What modifications to City requirements, such as zoning? Design Review?);
- d. specific information relating to the creeks;
- e. whether the proposed streets will be public or private;
- f. specific statements of how the project meets various approval criteria.

2. Open space plan; information relating to recreation and open space.

3. Specific information required to make a creek determination. This includes a Creek Protection and Riparian Habitat Plan, as well as various required reports:

- a. Hydrology Study
- b. Biological Study
- c. Soils Report
- d. Civil Engineering Drawings

4. Information on existing or proposed easements

5. Information regarding the proposed streets (including lighting)

7. Areas subject to inundation or stormwater overflow

8. Margaret also mentioned that geotechnical reports will be needed, both a global one and one for each house.

9. She also mentioned that there will need to be a Homeowners' Association to handle costs relating to the development.

10. As mentioned, the developer is likely to offer "tradeoffs" in return for the City's waivers of its requirements. (In other words, convince the City that the City is better off waiving the requirements because of what the developer is giving up in return). At this point, it is not clear exactly what these proposed tradeoffs are.

D. **The Planned Development (PD) District.** It is important to realize that the City has no legal obligation to agree to a Planned Development District. Essentially, a PD District is necessary when the developer wants to deviate from the existing zoning rules.

a. Parcel Size. The parcel is zoned RS-10, which means that each lot is required to be at least 10,000 square feet. Per the current plan, most of the lots are under this threshold, and many are significantly under (by my calculation, 25 of the lots are 7,500 square feet or less).

i. As noted, the City has no obligation to waive its zoning requirements. Instead, the developer offers something in return for the waiver. For example, a developer might ask for lots that are smaller than required, in return for more open space that is not developed at all.

ii. It appears that the developer may be taking that tack here, by "offering" not to develop the portion of the parcel that is below the southern creek. As Mark and I both pointed out, it is unlikely that any development of that portion of the property would be economically feasible, so there is a question of how much of a "give" that is from the developer.

iii. Note that the developer could also increase the size of the existing lots so that they meet the 10,000 square foot threshold. If the developer did this, then there would no longer be a need for a waiver vis-à-vis lot size. However, that will reduce the number of houses that would fit on the parcel. (By my calculation, this would reduce the number from 38 to at most 29 – and likely fewer.)

b. Height and Setbacks. The development also needs to comply with certain requirements as to building heights and setbacks. It is not clear whether this proposal is in compliance, although at least vis-à-vis height it appears it is not. Again, to the extent it does not comply, the City would need to waive the requirement.

E. **The Creeks.** Margaret indicated that she was particularly concerned about the proposed treatment of the upper creek. There are also issues relating to the lower creek.

1. Margaret is of the view that the application is finally acknowledging that there is an upper creek. She said the City's view is that there absolutely is both an upper and lower creek.

2. It is not completely clear what the developer appears to want to do with the upper creek. Based on the plans, it appears the proposal is to change the course of the uppermost portion, then culvert the remainder of the currently daylighted creek. However, it appears that

the developer may be proposing to daylight the lower portion of the creek, which is currently culverted.

a. Margaret expressed some skepticism about this plan, and said that the City definitely needs more information in order to evaluate it.

b. I noted that this proposed daylighted creek appears to run right next to our properties and that I believe the Stege septic pipe also runs in the same spot.

c. As noted above, the work on the creek also requires approval from the Corps of Engineers and the California Water Quality Control Board. These are separate from City approval.

3. As with the Planned Development District, it appears that vis-à-vis the upper creek the developer is asking for a waiver from current requirements (the El Cerrito Creek ordinance).

4. Margaret also expressed some concern regarding the treatment of the lower creek, in particular the large retaining walls that they propose to put above the creek. She indicated that they would need to see more information regarding it.

5. We also had some discussion of the proposed collector ponds and issues of stormwater drainage. She noted that ponds are not something that they see and again they will need more information. I noted concerns regarding (i) a stormwater pond located above our property; and (ii) what happens to these ponds throughout the year – do they dry out? Do they provide a mosquito habitat?

F. **Slide Zone.** The entire parcel is in a Hazardous Soils area (i.e., a Slide Zone). Note that if you go to the City of El Cerrito website and click on “City GIS” it will take you to a map of the City which (among other things) will show the various slide zones. It also shows the zone for the Hayward Fault, which is a bit to the east.

1. Margaret expressed some skepticism of the idea of being able to “fix” the slide zone by building on it. (We also noted that it could destabilize the area around it.) At the same time, she noted that there is a lot of buildings in El Cerrito that are in Slide Zones, and that building in such areas likely can be done so long as the necessary engineering work is done.

G. **Summary.** Margaret made clear that we are at the outset of what could be a very long process, and that at this point the City lacks the information to make any determination.

1. At the same time, there are serious issues relating to the proposed development. Margaret stated that at this point it is not an approvable project.

2. However, she also said that she expects that eventually houses could be built on the hillside, assuming the developer is willing to do the work/incur the cost. The question will be how many houses can be built and at what cost, and thus whether a development is economically feasible.