

STAFF REPORT

PROJECT INFORMATION:

Application: PLN210052; Request to Reconsider Agricultural Mitigation Measure AG-1 applied to the Promontory/Bluffs Project Approved by the Planning Commission in April of 2018.

Date of Hearing: November 17, 2021

Applicant: Stringer, Bates

Owner: Bates Stringer Hollister II, LLC, under option to Century Communities

Location: The project site is bordered on the west by Southside Road, on the south by agriculture, and on the north and east by the Ridgemark Country Club development.

APN: 025-420-005, 025-420-006, 025-420-019

General Plan: RM Residential Mixed

Zoning: R-1 Single Family Residential

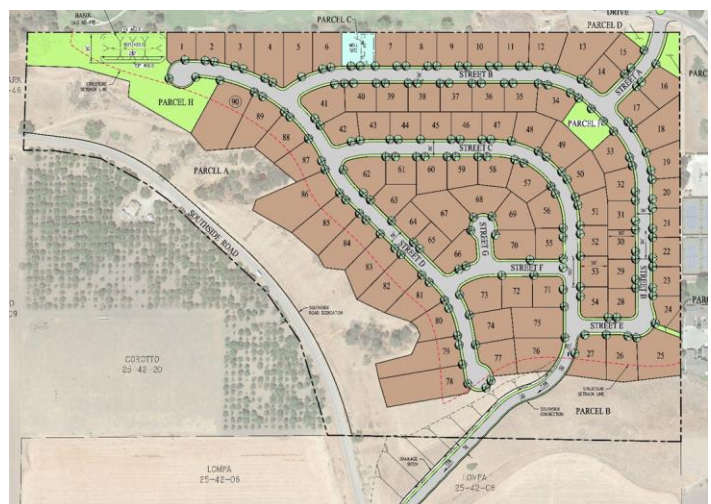
Project Planner: Taven M. Kinison Brown

BACKGROUND

On April 2, 2018, the Promontory/Bluffs 90-lot subdivision development at Ridgemark was approved by the Planning Commission in Resolutions #2018-02 and 2018-03 (attached), subject to conditions of approval and environmental mitigation measures.

Agricultural Mitigation Measure AG-1 Agricultural Conservation requires that, “prior to issuance of any grading permits, the project proponent shall provide that for every one (1) acre of FMMP¹ Important Farmland (Prime Farmland, Farmland of Statewide Importance, and Unique Farmland) on the project site that is permanently converted to non-agricultural use as a result of project development, one (1) acre of land of comparable agricultural productivity shall be preserved in perpetuity.”

During the environmental review that preceded the Commission’s action to approve the project (3-2) in April of 2018, the original developers, Bates Stringer Hollister LLC, challenged the property’s Prime Farmland designation and the General Plan requirement for financial compensation acre-for-acre on the property. Much of the discussion that evening at the Planning Commission hearing though involved the southerly through-access road down to Southside Road, internal street improvement standards and affordable housing, not agricultural mitigation.



¹ State Farmland Mapping and Monitoring Program

Planning Commission Motions and Actions in 2018. At that Planning Commission meeting in April of 2018 a motion to allow for streets and roads to deviate from County standards by not requiring sidewalks, pathways, and bike lanes, failed (see the attached Minutes). A recess was called. Following the recess, the developer interjected to the hearing body and public that they would be willing to provide on-site second units to meet the 15% affordable housing targets required by code. A new motion was made incorporating the addition of 13 on-site affordable housing units. The motion to approve the Promontory / Bluffs Subdivision passed 3-2.

Following the Planning Commission Actions in 2018. In review of the April 2, 2018, Planning Commission Meeting Minutes, no discussion was had that night regarding the applicant's concerns of how the Agricultural Mitigation AG-1 was applied and incorporated into the Draft and Final Environmental Impact Report certified that evening. No appeal was made by the applicant to the Board of Supervisors regarding the imposition of MM AG-1 within 10 days of the Planning Commission determination. No appeal was made under provisions of the California Environmental Quality Act within 90 days of the Planning Commission's determination to certify the Environmental Impact Report.

2020 Vesting Tentative Map Extension. There was virtually no further movement by the developer (with the County RMA) to implement the project until the two-year approval on the Tentative Map was nearing expiration. An expiration would have required the developer to completely start over. On March 2, 2020, the developer sent a letter (attached) requesting to extend the Planning Commission's 2018 Tentative Map approval (File Number PLN200029). The reason given for the delay in processing a Final Map effort with the County was that the negotiation process with the Ridgemark Homes Association for access through the gated Ridgemark community to get to the new subdivision site had not concluded. No mention of concerns with Agricultural Mitigation Measure AG-1 were mentioned. The one-year map extension was approved under the Planning Director's authority in May of 2020, extending the life of the Tentative Map to April 2 of 2021. State (emergency) laws for Covid relief have since been applied to all housing projects in the state, allowing the approved tentative map and its conditions and mitigation measures to not expire during the time of the state declared emergency (still in effect).

Following the County granting the Tentative Map Extension in May of 2020, developer Bates Stringer LLC began to re-visit the conditions of approval and mitigation measures of the Tentative Map. In particular to this review is the environmental mitigation measure requiring compensation for loss of Important Farmlands.

AGRICULTURAL MITIGATION MEASURE AG-1 (of PC Resolution 2018-03)

Agricultural Mitigation Measure AG-1 Agricultural Conservation further clarifies that, "said mitigation shall be satisfied by the applicant through:

- a. Granting a perpetual conservation easement(s), deed restriction(s), or other farmland conservation mechanism(s) to the County or qualifying entity which has been approved by the County, such as the San Benito County Agricultural Land Trust, for the purpose of permanently preserving agricultural land. The required easement(s) area or deed restriction(s) shall therefore total a minimum of 36.4 acres of FMMP Important Farmland. The land covered by said off-site easement(s) or deed restriction(s) shall be located in San Benito County; or
- b. Making an in-lieu payment to a qualifying entity which has been approved by the County, such as the San Benito County Agricultural Land Trust, to be applied toward the future purchase of a minimum of 36.4 acres of FMMP Important Farmland in San Benito County, together with an

- endowment amount as may be required. The payment amount shall be determined by the qualifying entity or a licensed appraiser; or
- c. Making an in-lieu payment to a qualifying entity which has been approved by the County, such as the San Benito County Agricultural Land Trust, to be applied toward a future perpetual conservation easement, deed restriction, or other farmland conservation mechanism to preserve a minimum of 36.4 acres of FMMP Important Farmland in San Benito County. The amount of the payment shall be equal to 110 percent of the amount determined by the qualifying entity or a licensed appraiser; or
 - d. Any combination of the above

As the developer engaged with the San Benito County Agricultural Land Trust, they learned that the cost of, “Granting a perpetual conservation easement(s), deed restriction(s), or other farmland conservation mechanism(s) would be **\$869,755**.”

DEVELOPER’S CONTENTIONS

Please refer to the developer’s full request to remove Mitigation Measure AG-1 (attached 145 pages). In summary from Page 1 and Page 2, the developer contends:

The project does not significantly impact agricultural resources; therefore, no mitigation is required. As discussed herein, the Mitigation Measure was adopted based on 1) incomplete and incorrect data and analysis in the EIR stage, and 2) improper imposition of mitigation requirements despite findings of the County that no mitigable condition exists. The project site does not contain Important Farmland (neither Prime nor of Statewide Importance nor Unique), and therefore no mitigation is warranted. Indeed, the County acknowledged that the project site is “undeveloped grazing fields” and “agricultural activities had not occurred on-site for many years” – conclusions which compel removal of the Mitigation Measure.

BSH (Bates Stringer Hollister II, LLC) respectfully requests that (1) the County amend the MMRP to remove the Mitigation Measure and Adopt a Resolution incorporating the revised MMRP, or (2) allow for an Addendum to the EIR, taking into account the evidence provided herein, and once the EIR is amended or otherwise brought current, the County then amend the MMRP to remove the Mitigation Measure and adopt a Resolution incorporating the revised MMRP.

STAFF EVALUATION

The developer’s contention has two components; first is their reasoning for why the mitigation measure should not be applied, and second, the several actions they request the County take to remove the mitigation measure.

Regarding the Applicants Reasoning for Removal

- 1) *Incomplete and incorrect data and analysis in the EIR stage.*
 - In the course of environmental review, state Farmland Mapping and Monitoring Program (FMMP) resources were referred to by the County’s environmental consultant and the subject site was shown as being Prime Farmland. With such an impact identified, the County General Plan requires compensation for the loss of such important farmland, and the mitigation measure AG-1 was appropriately included in the draft environmental impact report.
 - Included in the EIR record and again in the applicant’s full request to modify/remove Mitigation Measure AG-1 are letters and opinions/advisements from Geary Coates, Brigantino,

and former subject property owner and farmer, Roy Lompa attesting to the Bluffs Promontory Property not being irrigated and not being productive.

- When an “appraisal” of the property was submitted by the developer during the course of responding to comments in the environmental review disagreeing with the characterization of Prime Agricultural Soils, the Final EIR response to comments referenced once again the authoritative source of the FMMP and reiterated the state designation of Prime Farmland and Unique Farmland for 36.4 acres.
- Only coming to light since the applicant filed for a Tentative Map Extension in 2020, and trying to implement conditions of approval, the developer has now fleshed out the **\$869,755** cost to meet the condition / mitigation measure.
- The developer has now found with a returning look at the State FMMP mapping resources that the State FMMP have changed the non-irrigated subdivision site from a Prime Farmland designation to Grazing Lands designation. This “change” was not known at the time of PC decision and had not come to light for three years. No mistake was made leading into the Certification of the EIR.

2) *Improper imposition of mitigation requirement despite findings of the County that no mitigable condition exists.*

- While the applicant contended that the subject property should not be classified as requiring agricultural mitigation leading up to the April 2, 2018, Planning Commission certification of the Environmental Impact Report and the approval of the Tentative Map, the developer did not pursue any of their administrative remedies at that time to have the County reconsider their actions.
 - No appeal was made by the applicant to the Board of Supervisors regarding the imposition of MM AG-1 within 10 days of the Planning Commission determination.
 - No appeal was made under provisions of the California Environmental Quality Act within 90 days of the Planning Commission’s determination to certify the Environmental Impact Report.
- In staff’s estimation, had the developer thought the approval of their project was improper in its imposition of mitigation requirements, they would have submitted an appeal to the Board of Supervisors with a fee of \$575 (in April of 2018).

Regarding the Applicant’s Request for Actions by the County

As the reconsideration of a 3-year-old Tentative Map approval and EIR lies with the Planning Commission, staff believes it would have been presumptuous for staff to have drafted additional documents at this time recommending a specific action to the Planning Commission for this hearing.

Staff is of the opinion that the Planning Commission may wish to review the record (EIR, Reports, Resolutions, Minutes), the applicant’s extensive materials, open the public hearing, receive a presentation from staff, testimony from the applicant, receive comments from the public, if any, and then provide direction to staff. Should the Planning Commission wish to make changes as requested by the developer, then the item may be continued to the regular meeting of December 15, 2021, and staff can be prepared with the appropriate environmental documentation and resolution reflecting the Commission’s intent to approve the removal of MM AG-1.

Or, if after testimony November 17, the Planning Commission does not agree with the developer that the Environmental Impact Report needs to be revised with an addendum or that Mitigation Measure AG-1

should be stricken and that a new Planning Commission resolution be drafted, then staff can return on December 15, 2021, with a resolution reflecting the Commission's intent to deny the request.

As with all public hearing items being decided before the Planning Commission, decisions may be appealed to the Board of Supervisors, according to adopted codes, procedures and adopted fee schedule.

ADDITIONAL EFFORTS BY THE DEVELOPER

As the question of the appropriateness of MM AG-1 is yet to be decided, and the developer is anxious to get groundwork underway in preparing the site and installing infrastructure prior to housing construction, the **timing** of MM AG-1 is problematic to these efforts. The mitigation measure states at its introduction that, "Prior to issuance of any grading permits, the project proponent shall provide (acre-for-acre mitigation for loss of farmlands as discussed herein).

In efforts by Bates Stringer Hollister II LLC (seller) to sell the Promontory Subdivision to the housing construction company, Century Communities of California, LLC (buyer), the cost and expense of Mitigation Measure AG-1 is yet to be resolved. Bates Stringer Hollister II LLC has offered an encumbered escrow holding of **\$869,755** to be paid to Century Communities of California, should Bates Stringer Hollister II LLC remain liable for the cost of the loss of agricultural lands.

On September 28, 2021, the Board of Supervisor's through action on the Consent Calendar, reviewed the item titled, "*Ratification of provisionally approved escrow instructions securing agricultural mitigation fee required by the certified EIR and Conditions of Approval for Subdivision TSM-15-94 (Promontory/Bluffs), and authorize Michael Chambless to approve escrow holdback agreement, subject to County Counsel approval.*

In the interim, the fee is to be held in escrow until the matter has been resolved. The escrow instructions have been conditionally approved by RMA staff and require ratification by the Board of Supervisors for final authorization.

ENVIRONMENTAL EVALUATION

The County of San Benito completed an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA), and the Final EIR was presented to the Planning Commission which reviewed and considered the information contained in the Draft EIR prior to making its recommendation on the project². The Planning Commission certified the EIR in Resolution 2018-02 on April 2, 2018. The EIR identified potentially significant impacts to aesthetics, agricultural resources, biological resources, cultural resources, geology and soils, greenhouse gas emissions, noise, transportation and Tribal and Cultural Resources which could result from the project as originally submitted. Changes or alterations were incorporated into the project which avoid or substantially lessen the potentially significant environmental effect identified in the Final EIR.

When considering a change to an approved project that was subject to CEQA and had an EIR prepared and certified, industry practices, state statutes and case law require the lead agency to make a few new evaluations and determinations on how to best document the environmental review under the present project. In this case, the present project is the requested removal of a mitigation measure to offset previously identified impacts to agricultural resources.

² Together, the Draft Environmental Impact Report and the Final Environmental Impact Report is simply called the Environmental Impact Report. (DEIR + FEIR = EIR)

The developer is making the case that the original environmental impact identified to protected Prime Farmland and Unique Farmland was incorrectly applied to the subject property. The Applicant is making the case that since the impact should not have been assigned to the development, that no mitigation measure should have been assigned.

The CEQA Guidelines provide direction in **Section 15164 Addendum to an EIR or Negative Declaration:**

- a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. *(Some changes are being requested)*
- b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred. *(Not applicable)*
- c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration. *(Can be included with PC action)*
- d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project. *(This applies, unless the PC action is to deny the request)*
- e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence. *(Can be included with PC action)*

Should the Planning Commission agree that impacts to Important Farmlands should not have been applied to the project because of the several opinions/advisements and the newer revised FMMP mapping indicate **grazing lands** as the most appropriate assignment for the land, then there is no impact to such protected resources. As such, there would be no need or General Plan policy direction to mitigate for a non-impact. If this is the direction of the Commission, then staff can return to the Commission December 15, 2021, with the documentation and record necessary to support the Addendum. Should the Planning Commission share an intent to deny the applicant's request, then no further environmental review is necessary, such actions are exempt from the California Environmental Quality Act.

STAFF RECOMMENDATION

Drawing from earlier dialogue in this staff report, staff is of the opinion that the Planning Commission may wish to review the record (EIR, Reports, Resolutions, Minutes), the applicant's extensive materials, open the public hearing, receive a presentation from staff, testimony from the applicant, receive comments from the public, if any, and then provide direction to staff.

- Should the Planning Commission wish to make changes as requested by the Developer, then the item may be continued to the regular meeting of December 15, 2021 and staff can be prepared with the appropriate documentation reflecting the Commission's intent to approve the removal of MM AG-1.

- Or, if after testimony received November 17, the Planning Commission does not agree with the developer that the Environmental Impact Report needs to be revised with an “Addendum,” or that Mitigation Measure AG-1 should be stricken, and that a new Planning Commission resolution be drafted, then staff can return on December 15, 2021, with a resolution reflecting the Commission’s intent to deny the request.

ATTACHMENTS

- A. Resolution 2018-02 RESpc 2018-02 Bluffs Promontory EIR Cert
- B. Resolution 2018-03 RESpc 2018-03 Bluffs Promontory Conditions
- C. Minutes from April 2, 2018, Planning Commission
- D. March 2, 2020, Letter Requesting Map Extension
- E. County Letter to Approve Tentative Map Extension (unsigned)
- F. Applicant’s request to Modify MM Ag-1 (145 Pages)
- G. Escrow Document for MM AG-1
- H. Links to the Bluffs Promontory EIR
 - a. [Bluffs-Public-Draft-EIR](#) (506 Pages)
 - b. [08-08-2018 Final EIR Bluffs at Ridgemark](#) (154 pages)
 - c. [Bluffs-EIR-Appendices](#) (532 Pages)