



September 7, 2004

Rob Eastwood  
County of Santa Clara Planning Office  
County Government Center  
70 W. Hedding  
San Jose, CA 95110

Santa Clara County Planning Commission  
County Government Center  
70 W. Hedding  
San Jose, CA 95110

**Re: Mitigated Negative Declaration, File No. 8647-50-70-03B-03G (Bansal Residence)**

Dear Mr. Eastwood and Members of the Planning Commission;

The Committee for Green Foothills submits the following comments on the Mitigated Negative Declaration (“MND”), File No. 8647-50-70-03B-03G (“Bansal Project”). The County cannot legally approve this project based on the existing MND. CGF additionally notes that deficiencies in the County planning process interfere with proper review of land-use decisionmaking, and that this massive, 17,000 square-foot “house”, more than half a football field in length, demonstrates a need for a County policy on maximum floor size. CGF requests that the Planning Commission of its own accord review this particular project as well as the procedural problems and floor size problems described in this letter.

CGF wishes to emphasize that nothing in this letter is meant to criticize Mr. Eastwood, the County staff planner reviewing the project. Mr. Eastwood has always been professional, helpful, and courteous in response to our requests for information. The problem at the County level is with the County’s process.

#### **I. Deficiencies in the MND for the Bansal Project**

Several flaws in the MND render it inadequate as a basis for deciding to approve the Bansal Project. The flaws include the following:

- **Little difference in the mitigated versus non-mitigated visual impact if the house is situated on the ridgetop.** The Initial Study for the Bansal Project correctly concludes that the 160-foot long, 34-foot high house situated on a ridgetop would have significant visual impacts to the surrounding community, as can be seen by the attached viewshed analysis (Attachment A). The Initial Study then states that moving the house to a position behind the ridgeline would mitigate the visual impact, comparing the viewshed analysis in Attachment B. CGF questions whether moving the house provides sufficient mitigation, but the MND also proposes a second option – keeping the house on the ridgetop, with 27-foot maximum height.

The 27-foot, ridgetop mitigation provides little substantial reduction in the project’s visual impact, as can be seen in Attachment C. The homes on the valley floor nearest the project are especially unaffected by the 27-

foot limitation. Given the substantial impact from what should properly be described as a giant mansion, making it slightly shorter in height does not make that impact less than significant. We additionally note that no explanation in the MND indicates why the 27-foot height limitation constitutes adequate mitigation.

- **No analysis of guest house visual impact.** Given the massive size of the Bansal Project, the MND must analyze all components of that project, including the 1,000 square-foot guest house. The placement near the northern property line suggests the guest house will be highly visible throughout the valley floor, and thus constitute a significant visual impact.

Had the project applicants proposed a normal-sized, two to three thousand square foot house, the 1,000 foot guest house would have seemed a significant addition that required analysis. Here, the applicants propose a behemoth, but that does not excuse analysis of the guest house. The guest house should be analyzed for its own visual impact and for the combined visual impact of the guest house and main structure.<sup>1</sup>

- **Significant visual impact from the relocated house position.** Simply put, a 160-foot long, 17,000 square foot house is too big to hide. As can be seen in Attachment B, the house in its relocated position will still be highly visible to the south and east. The viewshed analysis is inadequate in failing to show what visual impacts exist more than 250 feet east of the project. Attachment C suggests that the visual impacts are significant. Attachment D suggests some improvement in altering the height from 35 to 27 feet in the relocated position, and an adequate viewshed analysis to the east might support that mitigation. Mitigation that further lowers the house height, possibly to a 20-foot maximum, should also be subject to viewshed analysis to determine if such mitigation is helpful.

## II. Procedural problems demonstrated by the Bansal Project.

The Bansal Project demonstrates both procedural and substantive policy problems at the County planning level. The procedural problem derives from the fact that the County Planner who prepared the MND must also judge whether criticism of the MND, such as that found in this letter, is justified. Given that the planner would not have circulated the MND unless the planner believed the document was adequate, the current process places the planner in a difficult position of having to admit the original document he or she authored was inadequate before the planner can agree with the criticism.

CGF further notes that had this project required only a building permit, then no appeal to the Planning Commission would have been possible if the project were to be approved unchanged. The next step for a dissatisfied party would therefore be litigation, without an opportunity for the Planning Commission or Board of Supervisors to oversee the issue.

CGF recommends that the County amend its procedures so that all Negative Declarations and Environmental Impact Reports are decided by appointed reviewing bodies such as the Planning Commission, or by the Board of Supervisors, but not decided by the staff who prepared the documents. Alternatively, we recommend that all Negative Declarations and Environmental Impact Reports which generate opposition, such as this MND, be decided by

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<sup>1</sup> The MND and Initial Study also fail to include renderings of the mansion's visual impact from various viewpoints on the valley floor. CGF believes such renderings would demonstrate the project's impact is significant.

appointed reviewing bodies or by the Board of Supervisors.<sup>2</sup> We request the Planning Commission take appropriate steps to initiate this change in procedure.

### III. Substantive policy problems demonstrated by the Bansal Project.

A 17,000 square foot mansion goes far beyond the size needed in a single family residence. CGF questions whether a building of that size meets the intent of the County General Plan and zoning ordinance of providing for a single family residence. Allowing this giant building sets a bad precedent for the future, where equally or even more extravagant structures will be proposed, and approval of the Bansal Project as an argument for approving their own behemoths.

CGF recommends that the County clarify that single family residences cannot properly include 17,000 square foot buildings. The Bansal Project could and should be rejected as not meeting the test of what properly constitutes a single family residence, but regardless of what happens for this particular project, the County should consider defining what size of building is so large that it no longer constitutes a single family residence. Something far, far smaller than 17,000 feet would be appropriate.

Please contact us if you have any questions.

Sincerely,

*<signed>*

Brian A. Schmidt  
Legislative Advocate, Santa Clara County

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<sup>2</sup> Review by the supervisors of staff members who prepared the documents is also inadequate. Staff supervisors are not impartial, and their review would not solve the central problem of the need for public oversight by the Board of Supervisors or their appointed representatives.