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April 5, 2016

**Via E-Mail**

Stuart M. Flashman  
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E-Mail: [stu@stufash.com](mailto:stu@stufash.com)

Re: Ballot question for CCSG Initiative

Dear Mr. Flashman:

As you may know, this firm serves as outside counsel to the City of Cupertino (“City”). At the request of the City Attorney’s Office on behalf of the City, this letter responds to the assertions in your letter dated April 5, 2016, made on behalf of your clients the Cupertino Residents for Sensible Zoning Action Committee (the proponents of the Cupertino Citizens’ Sensible Growth Initiative), regarding the ballot question for the Initiative. We request that you provide a copy of this letter directly to your client.

Your letter asserts that the 9212 Report for the Initiative incorrectly asserts that City “Neighborhoods” are not “Special Areas” pursuant to the General Plan. You further assert that, because “Neighborhoods” are allegedly “Special Areas,” the Initiative does not increase the height limits for Neighborhoods from 30 to 45 feet, as asserted in the 9212 Report. You claim your position is supported by Figure LU-1, which lists “Neighborhoods” under the heading “Special Areas.” This is incorrect and ignores the clear text of the General Plan.

The legend for LU-1 begins with “Special Areas,” which are clearly delineated by solid color boxes. These boxes correlate to the larger boxes on the left-hand side of Figure LU-1, which each end with the term “Special Area.” The legend then goes on to identify other areas, such as “Neighborhoods” (designated in white on the diagram) and “Hillside Transition” (designated by grey striping in the diagram). Nothing in Figure LU-1, including the legend, designates “Neighborhoods” as “Special Areas.”

Furthermore, even if the legend could be interpreted as placing a “Neighborhood” in the same column as a “Special Area,” when viewing Figure LU-1 in context with the remainder of the General Plan, there is no question that a “Neighborhood” is not a “Special Area.” Indeed, there is an entire chapter of the General Plan that explains the differences between the Special Areas and the Neighborhoods. The General Plan, Chapter 2 divides the City into Special Areas and Neighborhoods. The General Plan expressly states that it:

... organizes the city into 21 distinct Planning Areas, divided into *two categories*:

1. Special Areas that are expected to transition over the life of the General Plan and
2. Neighborhoods where future changes are expected to be minimal[.]

(Emphasis added, General Plan at PA-3.)

Chapter 2 further discusses the “Special Areas” as separate and distinct from the “Neighborhoods”. For your reference, the Special Area discussion starts at page PA – 4, and runs through PA-17. The Neighborhoods discussion starts at PA-18 and runs through PA-42. Furthermore, Figure PA-1 clearly delineates the City’s “Special Areas.” (General Plan at PA-5.) These “Special Areas” are the same as the “Special Areas” identified by solid colors in Figure LU-1. Figure PA-2 then identifies the “Neighborhoods.” (General Plan at PA-19.)

There is simply no question that a “Special Area” designation under the General Plan is entirely separate from a “Neighborhood” designation. *See Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300 (“The mere examination of . . . policy maps is insufficient to determine consistency.”) Therefore, even if Figure LU-1 could be read as labeling “Neighborhoods” in the same category as “Special Areas,” the more detailed language included within Chapter 2 of the General Plan dictates that “Neighborhoods” are not “Special Areas.” *Id.* Numerous other cases are in accord. *See, e.g., No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 244, 247-49 (general plan’s more general prohibition on “industrial” uses had to be read in the context of the plan’s express allowance of extractive activities within the open-space land-use designation); *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 823 (holding that city officials had “discretion to

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diverge from the details of the [Land Use] Map, so long as the variation serve[d] the plan's policies and objectives as well or better").

In sum, the plain text of the General Plan diagrams, including Figure LU-1, treat Neighborhoods as distinct from Special Areas. Furthermore, when the General Plan is read as a whole, there is no reasonable interpretation that a "Neighborhood" is a "Special Area." Thus, because the Initiative provides that "[o]utside of the Special Areas shown in Figure LU-1, building heights may not exceed 45 feet," the Initiative would increase maximum building heights in Neighborhoods from 30 feet to 45 feet.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker

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