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To: Nedzlene Ferrario, Senior Planner

From: James Laughlin, Deputy County Counsel

Date: June 4, 2015

Re: Appeal of Subdivision MS-14-03 (West – English Hills Estates)

Michael and Eileen Smith have appealed the Zoning Administrator's approval of the tentative parcel map for Minor Subdivision MS-14-03. The property to be subdivided, APN 0105-110-590, is owned by Brian and Eileen West, who are also the applicants for the project.

In their appeal letter, the Smiths claim that the subdivision should have been processed as a major subdivision by the County because Donald Pippo, who was a previous subdivider of the property, is also a subdivider for this project. To support their claim, the Smiths have submitted several documents, including the following:

A Grant Deed, recorded 10/14/2014, by which Donald Pippo, as trustee of the Pippo Family Trust, conveyed the property to the Wests, for a declared price of \$400,500.

A Deed of Trust on the property, also recorded 10/14/2014, naming the Wests as trustors and Donald Pippo, in his capacity as trustee of the Pippo Family Trust, as beneficiary, securing a debt of \$400,000.

Both the Subdivision Map Act and the County's Subdivision Ordinance generally require that a subdivision creating five or more lots be processed as a Major Subdivision (i.e., tentative and final map rather than parcel map). "Subdivision" is defined in the Subdivision Map Act as "the division, *by any subdivider*, of any unit or [contiguous] units of improved or unimproved land" for the purpose of sale, lease, or financing. (Gov. Code, § 66424 [emphasis added].)

Although the Wests proposed to subdivide their parcel into only four lots, their subdivision must be processed as a major subdivision if anyone who qualifies as a "subdivider" on their project was also a subdivider for their property or for contiguous property.

Donald Pippo was a subdivider for Major Subdivision S-01-02, approved by the County in 2003. That subdivision created the parcel now owned by the Wests (Lot 4) as well as other parcels contiguous on three sides to the West parcel. Therefore, if Donald Pippo is a subdivider on the West subdivision, then the subdivision was required to be processed by the County as a major subdivision and the Zoning Administrator lacked jurisdiction to take action on the project.

“Subdivider” is defined in the Subdivision Map Act as “a person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision for himself or for others,” although anyone acting only as employee or consultant for someone else is excluded from this definition. (Gov. Code, § 66423.) Given this definition, Donald Pippo<sup>1</sup> would be a subdivider on the West subdivision under any of the following three scenarios:

1. The Wests and Donald Pippo worked together in association to subdivide the West property for their collective benefit;
2. The Wests subdivided their property for the benefit of both Donald Pippo and themselves; or
3. Donald Pippo caused the Wests to subdivide their property for his own benefit.

The information presented in the appeal does not support the first or third scenarios. If the Wests and Donald Pippo have associated together in a formal or informal partnership to pursue this subdivision project, there is no direct evidence of such an association in the record, so the first scenario is not supported. Under the third scenario, the Wests would have been acting essentially as agents of Donald Pippo, rather than on their own behalf, in submitting the subdivision application to the County. The evidence presented does not suggest that the Wests were acting under the direction and control of Donald Pippo on this project.

The second scenario, however, appears to be supported by publicly-available information and reasonable inferences drawn from that information. The assessed valuation of the property (APN 0105-110-590) as of January 1, 2014, was \$23,770. Approximately ten months later, the Wests and Donald Pippo negotiated a purchase and sale contract for the property under which the Wests paid \$500 down and promised to pay \$400,000 later. The vast disparity between the assessed value of the property and the sale price, combined with the seller holding the note for virtually the entire sale price secured by the property, supports an inference that the seller expected the buyer to pay for the property purchase using the proceeds from a mutually-anticipated subdivision of the property.

Both the buyer and the seller were clearly aware that if the property was not subdivided as they anticipated, Donald Pippo could foreclose and regain title to the property, losing no property value from the failed transaction, while the Wests would be out only their \$500 down payment plus expenses. On the other hand, if the subdivision was successful, Donald Pippo would realize a delayed gain of approximately \$375,000 from the sale and the Wests would enjoy the profits from the subdivision project. The deal was structured so that both side bore some risk, but the Wests’ subdivision of their property would benefit both Donald Pippo and the Wests.

In deciding the appeal, the Planning Commission is not required to find that Donald Pippo was a subdivider on this subdivision. The evidence we review here would support such a finding, but the Commission must consider all of the information presented at the appeal hearing.

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<sup>1</sup> We assume that the Pippo Family Trust is a revocable living trust, so that any benefits conferred on trust by Mr. Pippo in his capacity as trustee are available to him in his capacity as grantor or beneficiary.