



DEVELOPMENT PERMIT APPLICATION
DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION

City of Hayward
 777 "B" Street Hayward CA, 94541
 Phone: (510) 583-4200
 FAX: (510) 583-3649

TYPE(S) OF APPLICATION:

- | | | |
|---|--|---|
| <input type="checkbox"/> Zone Change | <input type="checkbox"/> Site Plan Review | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Administrative Use Permit | <input type="checkbox"/> Zoning Conformance Permit |
| <input type="checkbox"/> Tentative Parcel/Tract Map | <input type="checkbox"/> Parcel Map/Final Map | <input checked="" type="checkbox"/> Other: <u>Amend Condition of Approval</u> |

PROJECT INFORMATION:

Project Name: Mission Crossing Location: 25501 Mission Boulevard
 Assessor Parcel Number(s): 444-0060-004, 444-0060-019, 444-0060-030, and 444-0060-031 Tract/Parcel No. (if applicable): _____
 Existing Zoning District(s): T4-1 and T4-2 MB-NN Existing General Plan Designation: Sustainable Mixed-Use
 Project Description (attach additional sheets if necessary): As explained in further detail in the attached letter, Meritage Homes of California, Inc. respectfully requests that the City of Hayward amend Condition of Approval No. 166 for the Mission Crossing Project (approved by Resolution No. 17-057)

APPLICANT & PROPERTY OWNER INFORMATION:

Applicant Name(s): Barry Grant Company Name: Meritage Homes of California, Inc.
 Mailing Address: 860 Stillwater Road 200A City: West Sacramento State: CA ZIP: 95605
 Primary Phone: (916) 840-3553 Email: Barry.Grant@meritagehomes.com
 Property Owner(s): Meritage Homes of California, Inc.
 Mailing Address: 860 Stillwater Road 200A City: West Sacramento State: CA ZIP: 95605
 Primary Phone: (916) 840-3550 Email: _____
 Invoices To Be Directed To: ☒ Applicant ☐ Property Owner ☐ Other _____

CERTIFICATION STATEMENT:

- I/We certify that I/We are presently the legal owner(s) of the property of the above-referenced property.
- I/We acknowledge the filing of this application and certify that all the above information is true and accurate and that I/We have familiarized myself/ourselves with the relevant provisions of the Hayward Municipal Code.
- I/We hereby guarantee, as an authorized agent, applicant, property owner or project sponsor, that I/We individually and jointly assume full responsibility for all costs incurred by the City in processing this application.
- I/We understand and agree that unpaid balances may be referred to a collections agency, and failure to pay all charges will result in a hold on any processing of current and/or future permits at the property.

NOTE: A person acting as an agent of the property owner(s) shall attach a notarized letter of authorization from the legal owner.

Applicant Signature: Barry Grant Date: 4/13/2021

Property Owner Signature: _____ Date: _____

CITY STAFF USE ONLY:

PAYMENT VALIDATION

Application #	Work Order #	Received By:
Fixed Fee:	Deposit:	Check #
Project Planner:	Date Received:	

KRISTINA D. LAWSON
MANAGING PARTNER
DIRECT DIAL (925) 746-8474
DIRECT FAX (925) 746-8490
E-MAIL klawson@hansonbridgett.com



April 13, 2021

VIA E-MAIL AND OVERNIGHT DELIVERY

Planning Division
City of Hayward
777 B Street
Hayward, CA 94541

Re: Letter in Support of Application to Amend Mission Crossing Project Condition of Approval No. 166

Dear Planning Division Staff:

On behalf of our client, Meritage Homes of California, Inc. ("Meritage"), we respectfully submit this letter in support of Meritage's application to amend Condition of Approval No. 166 to the Conditional Use Permit that was approved by the Hayward City Council for the above-referenced 140-unit Mission Crossing Project ("Project"). (See Resolution 17-057, Condition No. 166, referred to herein as "Condition No. 166.")¹

Condition No. 166 specifies that the certificates of occupancy for the 100th through 140th residential units at the Project will not be issued until vertical construction of a separate, unrelated hotel project (which was originally planned at a location adjacent to the Residential Project). Meritage has no interest in that hotel project and has no control over the hotel project – Meritage therefore and therefore **cannot** construct the hotel project.

As we have explained in our prior correspondence with this City, it is currently impossible for the hotel developers to secure financing due to the ongoing COVID-19 pandemic and its effect on the hospitality industry. Continued enforcement of Condition No. 166 will ensure that occupancy of 40 of the Project's housing units will be delayed indefinitely. Accordingly, immediate amendment of Condition No. 166 is necessary to prevent harm to public welfare that will occur by keeping 40 desperately-needed housing units out City's housing supply.

1. Background Regarding the Mission Crossing Project

In 2015, MLC contracted to purchase the 9.72-acre parcel located at 25501 Mission Boulevard and Berry Lane (the "Entire Parcel"), which MLC and Meritage desired to develop as a residential project. In initial planning discussions between the City and MLC during the Fall of 2015, the City made it known that it strongly desired that the portion of the Entire Parcel along Mission Boulevard be developed as a hotel project. As a result, the Entire Parcel was planned and divided as (1) a hotel parcel consisting of 2.2 acres along Mission Boulevard (the "Hotel

¹ The original project applicant was a Meritage affiliate known as MLC Holdings, Inc. ("MLC") that eventually transferred its contract and development rights for the Residential Parcel to Meritage.

Parcel") and (2) a residential parcel consisting of 7.52 acres (the "Residential Parcel") and 140 planned home sites. Since Meritage's and MLC's business is homebuilding and neither have any experience or interest in the hotel industry, MLC and Meritage located a reputable unrelated hotel developer known as Manchester Hotels ("Manchester") and contracted to sell the Hotel Parcel to Manchester.

Through subsequent collaborative efforts between MLC/Meritage, Manchester, and the City, the Entire Parcel was planned as separate hotel and residential components. However, when the Project was approved in 2017, the City added a last-minute condition of approval that specifies the certificates of occupancy for the 100th through 140th units will not be issued until vertical construction of the hotel has commenced. (See Resolution 17-057, Condition No. 166.) Thereafter, Meritage closed its purchase of the Entire Parcel and then sold the Hotel Parcel to Manchester in December 2017. As a result, neither Meritage nor MLC has any interest in or control over the Hotel Parcel or the development of a hotel on the Hotel Parcel.

Development of the Residential Project commenced immediately after the City's approval thereof and in light of the severe shortage of affordable housing Meritage encountered tremendous demand for the residential units. 100 units have been sold and delivered to homebuyers. Unfortunately, construction of the separately owned hotel project has reportedly been delayed indefinitely due to the unprecedented economic challenges facing the hotel industry caused by the COVID-19 pandemic. The hotel site has been graded, but no vertical construction has commenced and due to the delay with the hotel construction the City has refused to issue further certificates of occupancy for the Residential Project. As a result, Meritage has not been able to deliver 14 completed units to waiting homebuyers and has had to cease construction of the last 26 units. In addition to greatly frustrating and inconveniencing waiting homebuyers, the resulting Project delays have caused significant negative impacts to the quality of life of the Hayward families who have already moved into their new Meritage homes. This brings us to the core of the problem: although Meritage has no control over the construction of the hotel project, the City has refused to amend Condition No. 166 in a reasonable, good faith manner that would allow Meritage to complete the Residential Project. This has forced Meritage and future project residents into an impossible position.

2. Justification for Amendment to Condition No. 166

Pursuant to Municipal Code section 10-1.3260, conditions of approval may be amended or modified to ensure that a project's "use is consistent with the findings" that the project "is desirable for the public convenience or welfare" and will "not be detrimental to the public health, safety, or general welfare." (See *also* Mun. Code, § 10-1.3225 [findings for conditional use permits].) Here, immediate amendment of Condition No. 166 is necessary to effectuate the City's findings in support of approving the Project, which specify that the Project will promote public welfare by "increas[ing] the supply of needed housing opportunities within the City and substantially improv[ing] currently underutilized property." (Resolution 17-057, Finding No. 14.)

As discussed above, the site of the proposed hotel is not owned by Meritage, and Meritage has no control over future development on that parcel. As the City is well aware, a third-party hotel developer processed entitlements, construction documents, and other plans for the hotel through the City's Planning, Public Works, and Building Departments — a process that took more than two years despite the developer's good-faith diligent entitlement processing efforts. It is manifestly inequitable for the City to deny housing to 40 households and greatly

inconvenience the 100 existing households based on an independent, unrelated third party development project, even more so given that the hotel project (1) could have been built years ago had the City's approval process been conducted in a timely manner; and (2) is not currently economically feasible due to the worst global pandemic in 100 years.

It is also important that the City understand how the construction delays are negatively impacting existing Hayward homeowners at the Project site. To provide a few examples:

- The park along Drive Aisle E (which includes a community garden and tot-lot that Meritage built) has been fenced off, and we understand that it will not be opened to the public until construction of all 140 units is complete. Due to the construction delays, community residents have been denied access to this important amenity. To make matters worse, because the park is fenced-off, some children have taken up the dangerous habit of playing in the street.
- Access to Torrano Avenue (via Drive Aisle A) is currently limited to construction traffic, and residents are forced to enter and exit the site through the narrow secondary access point on Berry Avenue (via Drive Aisle C). Drive Aisle A has also been closed to pedestrians, which has significantly inconvenienced residents who need to travel to locations to the south.
- Guest parking has been substantially restricted throughout the Project site, which has proven to be yet another burden and inconvenience. Residents are allowed to park in their garages, but driveways are too narrow for guest parking, and parallel parking has been forbidden at many locations due to safety concerns. The shortage of guest parking has forced drivers to park at inconvenient locations (often far from their destination), and it has led to numerous traffic conflicts within the Project site as guests hunt for scarce parking spaces.
- Ongoing construction noise, dust, and vibration have been an ongoing hardship for community residents.

Again, we hope that you can appreciate the need to resolve these burdens by allowing Meritage to complete construction and occupancy of all 140 units as soon as possible.

Furthermore, it bears emphasis that ensuring timely completion and occupancy of all 140 units will guarantee that the City receives its complete share of affordable housing impact fees and parkland fees, pursuant to Condition Nos. 164 and 165 of Resolution 17-057. The affordable housing impact fees are especially crucial in light of the ongoing housing crisis and considering that the City of Hayward received a grade of "D" for its production of required moderate, low, and very-low income housing. (N. Johnson *et al.*, *Daily Breeze* (Jan. 31, 2021) "Report card: California cities, counties failing again on affordable housing goals," available at <https://www.dailybreeze.com/2021/01/31/report-card-california-cities-counties-failing-again-on-affordable-housing-goals/> [as of April 12, 2021].) Resolving the issue of Condition No. 166 now will result in both the construction of additional housing units, the continued employment of construction crews, and the payment of additional impact fees — all of which would be lost, or at least significantly delayed, if the City continues to demand that MLC meet the currently-impossible and commercially impracticable standard set forth in Condition No. 166.

3. Findings in Support of Amendment to Condition No. 166

The Municipal Code's procedures for amending conditions of approval do not require the City to make new findings in support of the amendment. Nevertheless, to the extent that new findings are required, we respectfully submit the following justifications for the findings:

a. The proposed use is desirable for the public convenience or welfare:

As noted in the City's original findings, completion and occupancy of all 140 residential units will "increase the supply of needed housing opportunities within the City and substantially improve currently underutilized property." (Resolution 17-057, Finding No. 14.) Timely completion and occupancy of all 140 units will guarantee that the City receives its complete share of affordable housing impact fees and parkland fees, pursuant to Condition Nos. 164 and 165 of Resolution 17-057. Furthermore, completion and occupancy of all 140 residential units will resolve the negative impacts associated with ongoing construction activities, which include the inability to access the park along Drive Aisle E, the obstruction of access to Torrano Avenue (via Drive Aisle A), restrictions to guest parking, and ongoing construction noise, dust, and vibration.

b. The proposed use will not impair the character and integrity of the zoning district and surrounding area:

As noted in the City's original findings, the "residential uses will not impair the character and integrity of the zoning district but will enhance it by revitalizing it with inhabitants." (Resolution 17-057, Finding No. 15.) Furthermore, "[t]he project will integrate land uses consistent with the Urban General Zones in the Form-Based Code, conform to designated density, and implement sustainable measures of development." (*Ibid.*) Timely completion and occupancy of all 140 units is an essential precondition for enhancing and revitalizing the neighborhood with new inhabitants.

c. The proposed use will not be detrimental to the public health, safety, or general welfare:

As noted in the City's original findings, "residential uses will not be detrimental to the public health safety, or general welfare" and the residential uses "will improve the area with productive uses and increase the available supply of housing." (Resolution 17-057, Finding No. 16.) Furthermore, "the site is designed with adequate circulation and incorporates measures of sustainability such as the urban farm, solar energy, and water quality measures." (*Ibid.*) Timely completion and occupancy of all 140 units is an essential precondition for improving the area with productive uses and increase the available supply of housing.

d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved:

As noted in the City's original findings, the "residential uses are in harmony with applicable City policies by reinvigorating abandoned or underperforming properties," and the Project "will be configured to meet current development needs." (Resolution 17-057, Finding No. 17.) Furthermore, the "residential uses will be placed in proximity to create a community atmosphere" and "[p]ublic improvements will be updated and function as intended." (*Ibid.*) Timely completion and occupancy of all 140 units is an essential precondition for creating

harmony with City policies that contemplate the reinvigoration and revitalization of the zoning district. Timely completion and occupancy will also facilitate the creation of the "community atmosphere" that was described in the original findings, and it will also advance the City's goal of maximizing housing opportunities.

4. Conclusion

Thank you in advance for your prompt attention to this matter. Please contact my office at the telephone number above should you wish to discuss this application further.

Very truly yours,



Kristina D. Lawson

KDL:EFR

cc: Kelly McAdoo, City Manager (Kelly.McAdoo@hayward-ca.gov)
Michael Lawson, City Attorney (Michael.Lawson@hayward-ca.gov)
Miriam Lens, City Clerk (Miriam.Lens@hayward-ca.gov and cityclerk@hayward-ca.gov)
Sara Buizer, Planning Manager (planning.division@hayward-ca.gov)
Mark A. Reynolds, Vice President, Senior Litigation Counsel, Meritage Homes of California, Inc. (Mark.Reynolds@meritagehomes.com)
Megan Kirkeby, Deputy Director, Housing Policy Development, California Department of Housing and Community Development (Megan.Kirkeby@hcd.ca.gov)