

## Leslie Carmichael

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**From:** Dave Hopkins <dhopkins@srgnc.com>  
**Sent:** Thursday, September 01, 2016 5:16 PM  
**To:** Bob Cushman; Foster City City Council  
**Cc:** Curtis Banks; Foster City City Manager's Office; Kevin Miller; Leslie Carmichael; City Attorney; Tamsen Plume - Holland & Knight LLP (tamsen.plume@hklaw.com)  
**Subject:** RE: Public Comment: Planning Commission Study Session, Pilgrim Triton, Phase C, September 15, 2016  
**Importance:** High

To: Planning Commissioners and Members of the City Council  
Subject: Response to Memorandum from B.Cushman dated 9/1/16  
CC: Bob Cushman, Kevin Miller, Curtis Banks, Leslie Carmichael, Jean Savaree, Tamsen Plume

We have reviewed Mr. Cushman's memo that addresses the Pilgrim Triton Master Development Agreement (MDA) and have consulted with our legal counsel that negotiated and drafted the MDA. We offer the following response for the record.

- We are in full compliance with the obligations under the MDA.
- The MDA does not require or mandate development of the site.
- The primary purpose of the MDA is to "vest" or "lock in" certain rules for the property, including allowed use and massing of the buildings, for a period of 10 years (to 2020) to allow each owner a level of certainty to plan and develop the property.
- The Annual Review is a simple process that provides the City a yearly "check in" on the status of development. Please note the following language that appears verbatim on the Annual Review form (and which is attached to Mr. Cushman's memorandum). The *only* purpose in requesting the Developer report on its activity relates to the City's potential determination in the future to extend the term of the MDA past 2020, *if* an extension were to be requested.

*Note that Developers have no affirmative obligation to process permits and construct and sell commercial/retail space and/or residential units under the Development Agreement. Accordingly, the discussion provided in connection with the above may not be used to establish a breach of the Development Agreement. However, the Parties intend that these factors will be taken into account in City's determination of whether to extend the Term of the Development Agreement pursuant to Section 1.3.2.2.*

- Sares Regis has submitted a formal application for a Major Amendment to the MDA that will come to the Planning Commission and City Council for its consideration. This process will address all of the parking, traffic and CEQA compliance topics that are raised in Mr. Cushman's memorandum.

We have been active in the community of Foster City since the 1990's, we know the history of the Pilgrim Triton Master Plan, we clearly understand our rights and obligations under the Master Development Agreement, and we look forward to receiving further input from the Planning Commission on September 15<sup>th</sup>.

Sincerely,  
Dave

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**From:** Bob Cushman [<mailto:boborsandy@aol.com>]  
**Sent:** Wednesday, August 31, 2016 1:30 PM  
**To:** [council@fostercity.org](mailto:council@fostercity.org)  
**Cc:** Banks Curtis; [manager@fostercity.org](mailto:manager@fostercity.org); Dave Hopkins  
**Subject:** Public Comment: Planning Commission Study Session, Pilgrim Triton, Phase C, September 15, 2016

Please distribute the attached to all members of our City Council and to all Planning Commissioners, with courtesy copies to Curtis Banks, and our City Manager.

The attachment is intended to provide each of you with new information as well as some ideas that might create leverage to strengthen the City's negotiating position with Sares Regis. I would also like the attachment to be entered into the public record for that meeting. Thank you

Bob Cushman  
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