Community Development Department
City of Petaluma
11 English Street
Petaluma, CA 94952-2610
Attn: Betsi Lewitter

Re: Initial Study/Environmental Checklist for the Sid Commons (Oak Creek II) Apartments Project, Petaluma, Sonoma County, California SCH #2007072041

Dear Ms. Lewitter:

We have reviewed the Initial Study (IS)/Environmental Checklist for the Sid Commons (Oak Creek II) Apartments Project (Project). The IS evaluates the potential environmental impacts from the construction of a subdivision (312 apartments) on an 18.93-acre site. The subdivision would be located at the terminus of Graylawn Avenue, between the railroad tracks that form the western boundary of the site and the Petaluma River that defines the eastern boundary. We appreciate the opportunity to provide our comments and convey how our Board’s policies may relate to the Project. We offer the following comments.

The IS does not consider the impacts to the seasonal wetlands that are located on the project site. The development of the parcel as proposed could violate State policy and the Board’s Basin Plan and be in conflict with the objectives and policies of the Petaluma River Enhancement Plan (River Plan).

The IS does not address impacts to the on-site wetlands even though they were identified by the U.S. Army Corps of Engineers (USACE) (11/20/2004 letter) and in the River Plan. Section 4 of the IS states “the USACE determined that any work within the designated Study Area Boundary (as shown on the delineation map) will not involve the discharge of fill materials into regulated waters of the United States, and that the interstate commerce nexus to these particular waters (as mapped within the Project site) is insufficient to establish Clean Water Act Jurisdiction. The USACE determined that these waters are, therefore, not subject to regulation by the USACE under Section 404 of the Clean Water Act.” So as stated above, the USACE identified the on-site wetlands and the River Plan also identifies two wetland features on page 63.
And while the on-site wetlands were not determined to be Corps jurisdictional, the State has jurisdiction over wetlands that are deemed non-jurisdictional and the development of the site as proposed could violate State Policy. Activities in areas that are outside of the jurisdiction of the Corps (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act and may require the issuance of either individual or general waste discharge requirements (WDRs) from the Water Board. The project would also have to comply with the State’s Wetland Conservation Policy and the Water Board’s Basin Plan.

The State’s Wetland Conservation Policy (Policy) requires that there is no net loss of wetlands and the Water Board’s Basin Plan implements this policy requiring that development avoid existing wetlands to the maximum extent feasible. The Policy not only requires that there is no net loss of wetlands but also requires an overall net gain in the quantity and quality of wetlands. In addition, the Water Board’s policy as stated in the Basin Plan and the California Water Code Section 13142.5 states that the “Highest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive sites.” Therefore, the Water Board would not be able to permit the project unless the project proponent had adequately demonstrated that they had avoided the wetlands to the maximum extent possible.

The fill of the wetlands is also inconsistent with the policies that apply to the River Oriented Development Zone (ROZD) that is mapped in the River Plan. The two major wetland features identified on the project site are within the boundaries of the ROZD and therefore subject to ROZD policies such as Policy #20. The purpose of Policy #20 (Page 80) is to “Protect, restore and enhance areas of fragile habitat isolated in the ROZD, such as oaks and seasonal wetlands, whenever feasible.” The fill of the wetlands would be in conflict with this policy.

The removal of the mature oaks in both the upland and riparian areas is inconsistent with an objective of the River Plan and mitigation requirements for the Oak Creek I development. The River Plan includes Objective #3 (Page 67 - Section 3.3.3 Access and Enhancement Objectives) that has the stated purpose to “Protect and preserve the existing communities of mature riparian vegetation and restore and enhance native riparian and upland habitats.” The mature oaks would qualify as mature riparian vegetation and the upland oaks provide important upland habitat. According to the IS, the removal of the mature oaks on the project site is also prohibited as a condition of approval of the existing Oak Creek I residential development. While the IS identifies this as a significant impact and offers to mitigate for the loss of the oaks by establishing a remnant oak preserve upstream of Lynch Creek, the project proponent should consider complying with the previous mitigation requirements. The project proponent should verify and comply with applicable Oak Creek I permit requirements including any conditions that would have required that these specific oaks be protected into perpetuity. In addition, the
removal of any trees that were identified as mitigation for Oak Creek I should be replaced at a ratio that would create an overall net increase in mature oaks and mitigate for the temporal loss of habitat at the Oak Creek I project.

Overall, the project proponent should comply with State Policy and existing regulatory requirements, and the City of Petaluma should not grant exceptions to the established River Plan. The project proponent should avoid the on-site wetlands to the maximum extent feasible and comply with all previous mitigation requirements. The City of Petaluma should implement the objectives and policies of the River Plan especially since the River Plan was developed through a coordinated planning effort that included the input from numerous groups including representatives from Federal, State, and local governments. Staff strongly encourages the project proponent to protect the existing wetlands and encourages the City of Petaluma to follow its own local plans and enforce existing regulatory requirements that call for the protection of existing wetlands, riparian habitat, and mature oaks on the project site.

If you have any questions please contact Abigail Smith at (510) 622-2413, or email her at asmith@waterboards.ca.gov.

Sincerely,

Abigail Smith
Sonoma County Watershed Coordinator

cc: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044

Bill Cox, CDFG Yountville
Bryan Matsumoto, USACE

J. Cyril Johnson Investment Corporation
125 Willow Road
Menlo Park, CA 94025