Dear Mayor Barrett and City Council Members,

Please find attached a 2007 letter sent to City Council from the SF Regional Water Quality Control Board staff regarding Sid Commons proposed development. It is strongly worded with regards to not impacting the river, adhering to the Petaluma River Enhancement Plan and not impacting wetlands. In spite of this letter (included in the DEIR), the developer came back with a plan that still shows major impacts to the river from terracing and major impacts to wetlands from buildings on Parcel 09, which has been protected since 1982.

Planners cannot accurately quantify impacts to wetlands, since the wetland delineation expired in 2017 (valid for only 5 years as stated in the DEIR). Conditions have changed dramatically since that study was completed during drought in 2012. There have been no "boots on the ground" since 2012. Therefore we have no idea if the current proposal does or does not impact wetlands, and you should not approve the project based on statements from the developer or planning staff that they are now avoiding impacts to wetlands.

The terracing is not part of the City's Denman Reach program and terracing in this location will only benefit the developer for flood control for the development, as it is basically an in-channel stormwater detention basin, which will destroy a steelhead and Chinook salmon stream. Terracing in this location does however cause an increase in flood risk in downtown Petaluma.

Please find attached the 2020 letter from the Regional Board stating the same issues, and referencing the Regional Boards newly adopted regulations (1/1/2020).

Photo #1-Parcel 09, protected from development in 1982, shown in upper photo covered with seasonal wetlands (2020). Parcel 06, (lower part of photo) is upland and zoned for residential use. DEIR Chapter 2 Page 2-44: Executive Summary : "Alternative #2 would result in new development on the APN-006 property only, and would thus develop the least amount of undeveloped land. As a result, Alternative #2 would reduce or avoid many of the biological resource impacts of the other two alternatives (e.g., wetlands fill, tree removal, loss of riparian habitat). Alternative #2 (along with Alternative #3B) would also generate the least amount of new traffic and would produce less air quality emissions as compared to the other alternatives."

Photo #2- Alarming to note, Sonoma County was just identified by NOAA and Scrips Institute as having the largest
damage from Atmospheric Rivers in 11 Western States, primarily due to infrastructure built in flood prone areas and intensity of storms related to Climate Change.
Ms. Olivia Ervin  
City of Petaluma, Planning Division  
11 English Street  
Petaluma, CA 94952  
Email: oervin@cityofpetaluma.org

Subject: Comments on the Final Environmental Impact Report for Sid Commons Apartment Project, Sonoma County

Dear Ms. Ervin:

San Francisco Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to provide comments on the Final Environmental Impact Report (FEIR) prepared by the City of Petaluma Planning Division (the City) for the Sid Commons Apartment Project (Project) pursuant to the California Environmental Quality Act (CEQA). The City posted the FEIR for public review on December 9, 2019. Based on our review, we offer the following comments.

1. **Potential Impacts to Federal and State Jurisdictional Wetlands and Other Waters.** The FEIR acknowledges that a Clean Water Act (CWA) Section 401 water quality certification (401 WQC) from the Water Board and a CWA Section 404 Permit from the U.S. Army Corps of Engineers (Corps) will be necessary as the Project proposes to impact waters of the U.S. To ensure the impacts to waters of the US and waters of the State are correctly identified and analyzed, the appropriate agencies (Water Board and Corps) should verify the wetland and other jurisdictional water features at the study area. The FEIR considered only waters of the U.S. under Corps jurisdiction. However, waters of the State under Water Board jurisdiction include the channel above the ordinary high water mark (OHWM) and extends up to the riparian corridor.

The Water Board requires projects to avoid and minimize impacts to the maximum extent practicable before considering compensatory mitigation. The proposed Project will be required to develop a thorough and complete Alternatives Analysis (see #2 below) and Technical Design Basis to demonstrate that impacts have been avoided and minimized to the maximum extent practicable. The Technical Design Basis should include site-specific and reach-wide evaluations of: (1) the Petaluma River system’s hydrologic, hydraulic, and geomorphic conditions and processes;
the ecological function of the River and its riparian corridor; and (3) existing habitat value and flood protection opportunities. This technical basis should inform the development of project alternatives and clearly demonstrate how the chosen design avoids and minimizes impacts to the maximum extent practicable. The technical basis should consider not only one-time constructions impacts, but also long-term impacts of project activities.

For instance, the Project involves channel widening, a detention basin, and grade stabilization measures (riprap). These actions have the potential to impact sediment transport, erosion, and deposition characteristics and could potentially degrade habitat within this reach and upstream/downstream. Widened channels can promote increased sediment fall out and aggregation, resulting in more frequent sediment removal maintenance impacts to the reach. Hardening of the banks or outfalls with riprap grade control can often initiate erosional issues just downstream or upstream. When evaluating whether impacts have been avoided and minimized, long-term operational and maintenance impacts must also be considered.

The Water Board stormwater requirements include avoiding placing stormwater facilities (bioretention, LID, etc) within wetlands or other waters of the State. To meet State water quality standards, please ensure this avoidance measure is incorporated in the designs as they are developed.

2. Alternatives. For the Water Board to permit the proposed Project pursuant to CWA, Section 401, we require a project proponent to conduct an alternatives analysis consistent with the U.S. Environmental Protection Agency’s 404(b)(1) Guidelines (Guidelines). The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) incorporates the 404(b)(1) Guidelines by reference to determine the circumstances under which filling of wetlands, streams or other waters of the U.S. and/or the State may be permitted. In accordance with the Basin Plan, filling, dredging, excavating and discharging into a wetland or water of the state is prohibited unless the project meets the least environmentally damaging practicable alternative (LEDPA) standard as determined through the 404(b)(1) alternatives analysis. Although the LEDPA analysis is not required by CEQA, a project proponent may tailor the EIR to fulfill both the CEQA and 404(b)(1) requirements to help expedite the Water Board’s issuance of a 401 Certification and/or waste discharge requirements under Porter-Cologne. Accordingly, we recommend the City prepare and analyze alternatives in the FEIR that would meet the LEDPA standard to help expedite future Water Board actions, and avoid the potential need for a FEIR supplement or amendment.

The Guidelines sequence the order in which proposals should be approached: 1) Avoid - avoid impacts to waters; 2) Minimize - modify project to minimize impacts to waters; and, 3) Compensate – once impacts have been fully avoided and minimized, compensate for unavoidable impacts to waters. When it is not possible to avoid impacts to water bodies, disturbance should be minimized. Compensatory mitigation for lost water body acreage and functions through enhancement, restoration, and/or
creation should only be considered after disturbance has been minimized. Where impacts cannot be avoided, the enhancement, restoration, and/or creation of adequate mitigation habitat to compensate for the loss of water body acreage, functions and values must be provided pursuant to the California Wetland Conservation Policy (also known as the "no net loss" policy; Executive Order W-59-93).

The following are some of the items that should be analyzed in the Alternatives Analysis:

A. Alternative Floodplain Terracing Locations: To ensure the Project will avoid and minimize impacts to existing habitat and beneficial uses to the maximum extent practicable, the Project should perform a reach-wide analysis of habitat value, and alternate locations along the Petaluma River where floodplain terracing could occur with less impacts to a highly functioning riparian corridor. Other locations that would provide flood reduction with less impacts compared to the proposed terracing location (individually or in some combination) should be included in the Alternatives Analysis.

B. Nature-based Floodplain Terracing Alternatives: To demonstrate that the Project has been designed to avoid and minimize impacts to waters of the State, the Project should perform an analysis of alternative floodplain terracing techniques and grade stabilization techniques. The preliminary site designs show an engineered overflow weir and culvert linking a basin and terraced floodplains to provide flood control. It is unclear at this point what potential impacts the design may present for fish and amphibians, such as stranding or ponding. We encourage naturalistic designs that can passively engage during high flows and drain back into the river un-interrupted for habitat continuity and to mimic natural sediment transport processes. Mitigation Measure BIO-5C requires that restoration efforts along the channel will create habitat forming complexity within the floodplain terracing. If disturbance of mature riparian habitat cannot be avoided, the Project should consider re-using willows and large wood on-site to provide habitat features, riparian cover, or as biotechnical stabilization measures.

3. Potential Impacts to Biological Resources. The Water Board regulates waters of the State to protect beneficial uses that support the health and success of aquatic species. Beneficial uses the Petaluma River currently supports include, but are not limited to, preservation of rare and endangered species, fish spawning, fish migration, and cold and warm freshwater habitat (Basin Plan, Chapter 2 and Table 2.6). The Petaluma River is also listed on the Clean Water Act 303(d) list of impaired water bodies due to elevated fecal indicator bacterial levels. A Bacteria and Nutrients TMDL is in development to address the current impairment to beneficial uses. The Project must be designed to protect these beneficial uses and the FEIR should consider all potential impacts to beneficial uses and water quality that could result from the Project.
Please note that the 401 WQC will require additional monitoring beyond what is outlined in *Mitigation Measure BIO-5C, Habitat Mitigation and Monitoring Plan*. The 5-year monitoring period will also include geomorphic monitoring for any sedimentation and/or erosion impacts at the terracing site with the requirement to implement adaptive management measures where necessary. Also, we will require a minimum of 10 years of monitoring for any slow growing trees planted for mitigation to adequately assess their successful establishment.

If you have any questions about our comments please contact Nicole Fairley of my staff at nicole.fairley@waterboards.ca.gov or (510) 622-2424.

Sincerely,

Nicole Fairley
Water Resource Control Eng.

Cc: CDFW:
   James Hansen, James.Hansen@wildlife.ca.gov
   Corps, SF Regulatory Branch,
   Sahrye Cohen, Sahrye.e.cohen@usace.army.mil
   U.S. EPA, Jennifer Siu, Siu.Jennifer@epa.gov
   City of Petaluma, Tiffany Robbe, trobbe@cityofpetaluma.org
   Kallie Kull, kalliekull@gmail.com
   State Clearinghouse, State.Clearinghouse@opr.ca.gov
Date:  AUG 15 2007
File No. 2148.02 (AHS/MB)

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 RODZ 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 RODZ, 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

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