September 16, 2013

BY E-MAIL AND U.S. MAIL

Heather Hines  
Petaluma Planning Manager  
11 English Street  
Petaluma, California 94952  
cityclerk@ci.petaluma.ca.us

Re: Environmental Review for Maria Drive Apartments

Dear Ms. Hines:

I am writing on behalf JDA West, the applicant for the 35 Maria Drive Apartments Project ("Project"), which was recommended for approval by the Planning Commission on August 13, 2013. The Eastside Neighbors Coalition ("Coalition") submitted a comment letter at the Planning Commission hearing, suggesting that the Mitigated Negative Declaration ("MND") prepared for the Project was inadequate and that the City should instead prepare an Environmental Impact Report ("EIR").

As explained more fully below, the Coalition has not met its burden of providing substantial evidence to show that additional environmental review is required. The existing environmental review fully addresses the topics raised by the Coalition, including impacts to East Washington Creek and traffic, and provides substantial evidence demonstrating that those impacts will be less than significant after mitigation. In particular, the Project will not have any direct impacts on East Washington Creek. The creek is located outside the Project site, and while the Project will not involve any work in the creek it will actually enhance the creek by incorporating features to reduce and filter storm water runoff. With respect to traffic, the Project will not cause any decrease in the overall level of service and will only increase projected delays at the East Washington/North McDowell intersection by one second. This is not a significant impact. Moreover, the Project will pay substantial traffic impact fees, and these will fund circulation improvements that will improve the operation of the intersection under future conditions. Finally, the Coalition offers no evidence for its claim that the Project will cause congestion on Maria Drive, and the independent traffic study prepared for the Project refutes that claim.

I. There Is No Basis for Additional Environmental Review Under CEQA

As an initial matter, the Coalition misstates the legal standard governing the preparation of EIRs. The Coalition’s letter implies that CEQA favors the preparation of EIRs and only allows the preparation of MNDs under limited circumstances. That is incorrect. CEQA provides that
where the lead agency determines there is no substantial evidence that the project as mitigated will have a significant effect on the environment, it “shall” prepare an MND. (Pub. Res. Code § 21080(c).)

Here, the City conducted a thorough environmental review of the Project, including review by independent experts, and determined that after mitigation there was no substantial evidence that the Project would have a significant effect on the environment. Therefore, the City properly determined to prepare an MND for the Project. As detailed below, the Coalition has not met its legal burden of providing substantial evidence which shows that additional environmental review is required. (See Friends of B Street v. City of Hayward (1980) 106 Cal.App.3d 988, 1002; Pub. Res. Code § 21080(d); CEQA Guidelines § 15384.)

II. The MND Fully Analyzed the Issues in the Coalition’s Letter and Found No Significant Environmental Impacts

The Coalition’s letter claims that additional environmental analysis is needed with respect to biological, traffic, and density impacts. However, it does not provide any evidence, much less substantial evidence, in support of its claims. CEQA is clear that “[a]rgument, speculation, [and] unsubstantiated opinion or narrative... does not constitute substantial evidence.” (CEQA Guidelines § 15384.) Consequently, the letter fails to provide any legal justification for additional environmental review. Moreover, as detailed below, the MND fully analyzed each of the topics raised in the Coalition’s letter, and properly determined that there were no significant environmental impacts.

A. Biology

The Coalition’s letter claims that the MND failed to acknowledge the existence of an adjacent riparian corridor; failed to adequately describe the project’s setting as including the riparian corridor; and failed to consider impacts to adjacent properties and habitat with respect to the riparian corridor. The Coalition does not offer any evidence in support of these claims, much less substantial evidence of an environmental effect that would require preparation of an EIR. The Coalition’s letter does not even identify or describe what environmental impacts it claims the Project will have on the riparian corridor.

The environmental review of the Project demonstrates that the Coalition’s claims are false. First, the MND expressly and repeatedly acknowledged the existence of East Washington Creek and the riparian corridor. Second, the MND properly described the Project’s setting in relation to the riparian corridor by noting that the Project site is immediately south of the creek. Third, and most importantly, the MND included substantial evidence demonstrating that the project would not have a significant environmental effect on the creek or the riparian corridor. In particular, as noted in the MND and confirmed by staff at the Planning Commission hearing, the riparian corridor is located outside the Project site; the Project will not involve any work in the riparian corridor or have any direct impacts on the riparian corridor; the Project is consistent with the existing development on the Project site and will not result in any new biological impacts on the riparian corridor; the Project’s buildings will continue to be set back from the creek so as to prevent any adverse biological impacts to the riparian corridor; and the
Project will not have any impacts on fish, wildlife, or migration routes in the creek. (See MND, pp. 7, 23–25.)

The MND further explains that with mitigation the Project will not have any significant indirect impacts on hydrology and water quality. The Project will not significantly change the existing drainage pattern of the site, and in fact, the Project will actually enhance the riparian corridor by reducing and filtering runoff into East Washington Creek. Storm water runoff from the existing development is not treated before it enters the creek. However, the Project will implement biofilters and bioretention features to remove pollutants from runoff and provide storm water retention for the 85th percentile 24-hour storm. In addition, the Project will incorporate a robust tree planting plan and will disconnect roof downspouts where possible to provide additional storm water treatment and onsite storm water retention. With the implementation of these features, the Project will significantly enhance the riparian corridor along East Washington Creek. (See MND, pp. 37–41.)

B. Traffic

The Coalition’s letter raises two main claims regarding the Project’s traffic impacts, neither of which is correct. First, the letter claims that the Project would cause a deterioration in the existing level of service at East Washington Street and North McDowell Boulevard. Second, the letter claims that the Project does not include adequate mitigation for traffic impacts. Substantial evidence in the MND, the traffic study, and staff’s presentation refutes the Coalition’s claims. The existing environmental review for the Project fully and adequately addresses traffic issues, and no further review is required.

(1) LOS at the East Washington Street/North McDowell Boulevard Intersection

The Project’s traffic study evaluates effects on the level of service (LOS) at this intersection under three scenarios: existing, baseline, and future. Under existing conditions, the intersection is projected to continue operating acceptably at LOS D with the addition of the Project. Under baseline conditions, which includes near-term traffic increases associated with approved projects that may be constructed in the next several years, the intersection is projected to operate unacceptably at LOS E both with and without the Project. This finding is consistent with the environmental review prepared for East Washington Place and Deer Creek Village. Under future conditions, local circulation improvements will improve operation back to LOS D both with and without the project.

The Coalition’s assertion that the Project would cause operation at this intersection to drop from LOS D to LOS E is factually incorrect. As staff reiterated at the Planning Commission hearing, the intersection will operate at LOS E regardless of whether the Project is constructed. The only impact attributable to the Project is an increase in the average delay at the intersection by 1.0 seconds as compared to baseline conditions without the project. This delay will be imperceptible to drivers and is a less-than-significant impact. Moreover, the Project will pay substantial traffic impact fees which will fund circulation improvements throughout the City. These improvements will benefit this intersection, and under the cumulative scenario, will improve its operation to LOS D. (See MND, pp. 51–57; traffic study.)
(2) Mitigation to Address Impacts on Maria Drive and the East Washington Street/North McDowell Boulevard Intersection

The Coalition's letter states that no mitigation has been proposed to address congestion on Maria Drive that could result if identified improvements, including signal phasing changes and the extension of Rainier Avenue, are not implemented. With respect to signal phasing changes, it is our understanding that the City intends to complete these upgrades in the coming months. Additional near-term improvements that will reduce congestion at East Washington Street/North McDowell Boulevard include the forthcoming opening of a new northbound on-ramp to US 101 and implementation of updated coordinated signal timing along the East Washington Street corridor. Over the longer-term, it is important to reiterate that the City has committed to completing and funding the extension of Rainier Avenue through its inclusion in the City's General Plan and the citywide traffic impact fee program. The Project's traffic analysis is consistent with the analyses for the East Washington Place and Deer Creek Village, both of which assume the Rainier Interchange will be completed in the future.

There is no substantial evidence supporting the Coalition's claim of increased congestion on Maria Drive. As shown in the traffic study, existing vehicle turning movement volumes collected at East Washington Street/Maria Drive and South McDowell Boulevard/Maria Drive do not suggest a demonstrable pattern of "cut-through" traffic on Maria Drive associated with drivers trying to avoid the East Washington Street/North McDowell Boulevard intersection. During the course of the p.m. peak hour at the East Washington Street/Maria Drive intersection, 48 drivers were counted making a northbound right turn movement and 43 were counted making a westbound left turn movement. These volumes, which would include the type of cut-through traffic described above, are relatively low and at the levels that would be expected to be associated with existing development served by Maria Drive. Based on the calculations contained in the traffic analysis, under "Baseline plus Project" conditions (before Rainier is complete), drivers would be expected to realize no time savings in using Maria Drive as an alternate route in the east-to-south direction, though may experience a modest time savings in the south-to-east direction. Because this traffic pattern has relatively low volumes in the range of 100 vehicles during the p.m. peak hour, any diversion effect to Maria Drive would be difficult to perceive. Even if 50 out of the 100 drivers traveling from south to east chose to divert to Maria Drive, traffic volumes on the street would remain well within the levels expected for a Collector street, which Maria Drive is identified as in the General Plan. (See MND, pp. 51–57; traffic study.)

C. Density

The Coalition's letter points out that the MND contained in error in the density calculation for the nearby Addison Ranch development. Staff corrected the error at the Planning Commission hearing and confirmed that the correction had no impact on the environmental analysis for the Project. Accordingly, this issue should not require any further attention.
III. The Coalition Waived its Comments by Failing to Submit Them During the Public Comment Period

Finally, the Coalition never raised any of the points in its letter during the public comment period on the Initial Study and MND. The Coalition submitted its comments late, after the close of the public comment period and immediately before the public hearing. By doing so, the Coalition waived its comments.

Thank you for your consideration of this letter. Please let me know if you have any questions.

Very truly yours,

Judy V. Davidoff
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc:
Petaluma City Council
Alicia Guidice, Petaluma Senior Planner
Eric Danly, Petaluma City Attorney
Marty Brill, JDA West
Tom Messervy, JDA West