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January 9, 2019

**VIA E-MAIL AND U.S. MAIL**

Robert B. Hodil  
Coblentz Patch Duffy & Bass LLP  
1 Montgomery Street, Suite 3000  
San Francisco, CA 94104  
E-Mail: rhodil@coblentzlaw.com

**Re: Permit Streamlining Act;  
Terraces of Lafayette (L03-11)3233 Deer Hill Road, Lafayette**

Dear Rob:

As you know, along with Allan Moore of Wendel, Rosen, Black & Dean LLP, we represent O'Brien Land Company, LLC and Anna Maria Dettmer, in connection with the above-referenced 315-unit apartment project ("**Project**").

We write to briefly follow up regarding our December 18, 2018 cover letter and supporting materials addressing the Project's compliance with the California Environmental Quality Act (Cal. Code. Pub. Res. § 21000 *et seq.* and 14 Cal. Code Regs. § 15000 *et seq.*) (collectively, "**CEQA**") and its status as "housing development project" under the Housing Accountability Act (Gov't Code § 65589.5) ("**HAA**"). We do so, in part, because we understand the City desires to engage in some amount of "peer review" of the Addendum, dated December 14, 2018, to the certified "The Terraces of Lafayette Environmental Impact Report," dated May 8, 2012 (SCH #2011072055) ("**EIR**"). This issue is critically important for many reasons, including the Project's status as a "development project" under the Permit Streamlining Act (Govt. Code § 65920 *et seq.*) ("**PSA**") that was deemed complete pursuant to the PSA in 2011.

As a general matter, we understand and support an *appropriate* peer review process, with the understanding that the Addendum is the legally-required CEQA compliance document for the Project's final discretionary approval, for the reasons we explained in our letters of June 29, October 25, and December 18, 2018. See, e.g., Pub. Res. Code § 21166 and 14 Cal. Code Regs. § 15162; see also *Save Our Heritage Organisation v. City of San Diego*, \_\_ Cal.App.5th \_\_ (October 24, 2018) (holding that the addendum process fills a gap in CEQA for projects with a previously certified EIR requiring revisions that do not warrant the preparation of a subsequent or supplemental EIR and that absence of public review reflects the nature of an addendum as a document describing project revisions too insubstantial in their effect to require further

environmental review). We must make clear, however, as we have discussed several times, that the City's review of the Addendum and related peer review process must commence and conclude expeditiously. Moreover, the process must be a legitimate attempt to ensure only that the Addendum is supported by substantial evidence, as required by CEQA (see, e.g., 14 Cal. Code Regs. § 15162(a) and *Friends of the College of San Mateo Gardens v. San Mateo Community College District*, 11 Cal.App.5th 596 (2017)), and not an open-ended attempt to gin up new evidence that might be used in an attempt to find some basis to deny the Project or to placate its vocal opponents.

Because it has now already been 22 days since we submitted the Addendum package and we have yet to be informed about the City's desired scope of work or even when such work will begin much less when it would end, we respectfully remind the City that the HAA defines "disapproving," a "housing development project" as including any instance in which a local agency does either of the following: (1) votes on a proposed project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit; or (2) fails to comply with the time periods specified in the PSA. Gov't Code § 65589.5(h)(5). Unlike CEQA's timelines, we note that the PSA's timelines are "mandatory," not "directory," meaning that the Project can be "deemed approved" if the timelines are not met. See, e.g., *Eller Media Co. v. City of Los Angeles*, 87 Cal.App.4th 1217 (2001).

In addition, because the City's failure to meet the PSA's deadlines can result in a "disapproval" of the Project within the meaning of the HAA, we also note that such failure would ripen all of the Project's remedies against the City. Among other things, our clients would be entitled to attorney's fees in the likely event they were to prevail in a lawsuit against the City brought under the HAA. In addition, the City would be subject to mandatory minimum fines of \$10,000 per unit if it fails to comply with a court order to approve the Project. Gov't Code § 65589.5(k). These penalties would increase to five times this amount if a court finds the City acted in bad faith. *Id.* at § 65589.5(l). Thus, in addition to attorney fees, Lafayette could be liable for approximately \$3.15 million if it violates our clients' rights by improperly denying the Project and failing to comply with a court order to approve the Project, and approximately \$15.75 million if a court finds the City acted in bad faith. In addition, in any such action to enforce our clients' rights under the HAA, the City would be required to prepare and certify the voluminous record of proceedings no later than 30 days after the petition is served, at the City's expense. *Id.* at § 65589.5(m).

We would like to meet with you as soon as possible to discuss this matter, but in the meantime, as we believe you have done since the City retained you, we encourage you

Robert B. Hodil  
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to help ensure the City promptly complies with the important legal obligations we continue to address on behalf of our clients.

Sincerely,

MILLER STARR REGALIA

A handwritten signature in blue ink, appearing to read 'Bryan W. Wenter', is written over the typed name.

Bryan W. Wenter, AICP

BVWW/kli

cc: Honorable Mayor Cameron Burks and City Councilmembers  
Niroop Srivatsa, Interim City Manager  
Dennis O'Brien  
Caryn Kali  
Dave Baker  
Anna Maria Dettmer  
Allan Moore, Esq.  
Arthur F. Coon, Esq.