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January 18, 2019

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

Bryan W. Wenter  
Miller Starr Regalia  
1331 North California Boulevard  
Fifth Floor  
Walnut Creek, CA 94596

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

Dear Mr. Wenter:

On behalf of our client, the City of Lafayette, we are responding to your letter dated January 9, 2019, regarding the proposed 315 unit Terraces of Lafayette apartment project (the "Project").

The City is aware of the deadlines under the Permit Streamlining Act (Government Code section 65920 *et seq.*) (the "PSA"). The PSA's deadlines for approval or disapproval of a development project are triggered after compliance with the California Environmental Quality Act (California Public Resources Code section 21000 *et seq.*) ("CEQA"). See, e.g., Cal. Gov't Code §§ 65950(a)(1-3) (180-, 120-, or 90-day deadline from the date of certification of an environmental impact report ("EIR")), 65950(a)(4) (60-day deadline from the date of adoption of a negative declaration), 65950(a)(5) (60-day deadline from the determination that a project is exempt from CEQA); see also *Eller Media Co. v. City of L.A.*, 87 Cal. App. 4th 1217, 1221 (2001) ("Allegations that the CEQA determinations were not performed in a timely manner are not sufficient to state a cause of action for deemed approval of the applications [under the PSA]").

The PSA does not establish any deadlines for approval or disapproval of a development project following the completion of additional CEQA review in the form of either an addendum or a subsequent or supplemental EIR ("SEIR"). To the extent that the PSA potentially could be construed to apply to the current CEQA review process for the Project, that process has not yet been completed and, therefore, any conceivably applicable deadline under the PSA could not yet have been triggered. Nevertheless, the City is working in good faith to expeditiously complete CEQA review of the Project, as explained in detail below.

I understand that in July, then-Planning Director Niroop Srivatsa and other City staff members met with the applicant team and indicated that an SEIR likely would need to be prepared, and the applicant team had stated that an addendum instead would be the appropriate CEQA

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document, and that the applicant would be following up with the City. The applicant team then informed City staff that you were being retained as additional counsel, and told the City that some time would be needed for you to be brought up to speed as to all of the history related to the Project.

As you will recall, on October 25, 2018, then-City Manager Steven Falk, then-Planning Director Nirop Srivatsa, then-Assistant Planning & Building Director Greg Wolff, and I met with you, Allan Moore, and other members of the applicant team to discuss the additional CEQA review necessary for the resumed processing of the application for the 315-unit Project, which had been on hold for several years pursuant to a Process Agreement while an alternative single-family home project was under consideration. Both verbally and by a letter delivered at that meeting, you advocated for the preparation of an addendum to the EIR for the Project that was certified in August 2013, rather than a supplemental or a subsequent EIR, and informed us that the developer team had engaged a consultant and was already in the process of preparing an Addendum. The developer's unilateral election to start preparing an Addendum demonstrates an understanding and acknowledgement that, due to the passage of several years since the certification of the EIR and changes in circumstances during the interim, at least some level of additional CEQA review is warranted.

Under the CEQA Guidelines, a lead agency may accept a draft CEQA document prepared by a project applicant or a consultant retained by an applicant. Cal. Code Regs., tit. 14, § 15084(d)(3). However, before using a draft prepared by an applicant, the "lead agency shall subject the draft to the agency's own review and analysis, as the CEQA document "must reflect the independent judgment of the lead agency," and "[t]he lead agency is responsible for the adequacy and objectivity" of the CEQA document. Cal. Code Regs., tit. 14, § 15084(e). Accordingly, we have informed you that the City needs to independently review the Addendum package that you submitted to the City on December 18, 2018.

The Addendum includes detailed analysis of air quality, transportation, and other technical issues, and was accompanied by several technical reports. For that reason, the City has informed you that it needs to retain an independent CEQA consultant with expertise to review the Addendum. This approach has been upheld under the case law. See *Eureka Citizens for Responsible Gov't v. City of Eureka*, 147 Cal. App. 4th 357, 369 (2007) (upholding EIR where applicant prepared initial draft EIR, lead agency staff and independent consultant retained by lead agency peer reviewed the draft, and city council's finding that city reviewed and critiqued the document and applied its independent review and judgment to the applicant's work product was supported by substantial evidence). The City is now in the process of selecting and engaging with such a third party consultant.

The City received the Addendum package on the afternoon of December 18, 2018, the Tuesday before a two week period during which City offices were closed. The City began its efforts to engage an independent consultant that week, but due to both the City's holiday schedule and

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the availability of independent consultants over the holiday period, it has taken some additional time to solicit proposals from, select, and engage a consultant. Yesterday, the City selected Impact Sciences, Inc., as the consultant, and expects to have them under contract sometime today. They will be asked to begin reviewing the Addendum package immediately after being engaged.

The consultant will be asked to assist City staff in making three determinations. First, to determine the appropriate level of CEQA document for the Project at this point in time (Addendum or supplemental or subsequent EIR. Second, if an Addendum is the appropriate document, the consultant will peer review the Addendum submitted by the applicant and provide an opinion regarding its adequacy. Third, to identify any deficiencies in the Addendum, and the need for any further work or analysis.

The applicant's Addendum package is voluminous. The Addendum itself is nearly 200 pages, much larger than typical for an addendum, and the supporting technical studies combined are over 1,000 pages. Nevertheless, both consultants who submitted proposals anticipate being able to review these materials and provide their findings regarding the three determinations described above within approximately 3-4 weeks of being engaged.

The City's independent consultant may be asked to do additional work after this initial period, such as completing any additional technical work that the City in its independent judgment, informed by the consultant's review and analysis, determines may be necessary to comply with the requirements of CEQA.

Given the timing of the applicant's submittal and the size and level of technical detail in the Addendum package, the City has acted expeditiously in its efforts to meet its legal obligation to exercise its independent judgment and ensure that the CEQA document for the Project is adequate and objective, and will continue to do so.

We would be glad to meet with you and the developer team soon, likely sometime next week, and will respond to you soon with proposed dates and times.

Sincerely,



Robert B. Hodil

cc: Honorable Mayor Cameron Burks, Vice Mayor Mike Anderson, and City Councilmembers  
Teresa Gerringer and Steven Bliss

Coblentz  
Patch Duffy  
& Bass LLP

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Niroop Srivatsa, Interim City Manager  
Greg Wolff, Acting Planning & Building Director  
Allan Moore  
Arthur F. Coon