



**MILLER STARR  
REGALIA**

1331 N. California Blvd. T 925 935 9400  
Fifth Floor F 925 933 4126  
Walnut Creek, CA 94596 www.msrlegal.com

Bryan W. Wenter, AICP  
Direct Dial: 925 941 3268  
bryan.wenter@msrlegal.com

June 10, 2019

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

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

Michele Rodriguez, MUP, AICP, LEED AP  
Adjunct Planner  
City of Lafayette  
3675 Mount Diablo Blvd., #210  
Lafayette, CA 94549  
E-Mail: mrodriguez@ci.lafayette.ca.us

**Re: Applicability of Gateway Constraint Policy to Terraces of Lafayette  
3233 Deer Hill Road, Lafayette  
L03-11, HDP06-11, DR03-11, TP07-11**

---

Dear Rob and Michele:

On behalf of our client, O'Brien Land Company, LLC ("**O'Brien**"), we write to address Michele's recent inquiry how the "Gateway Constraint Policy" ("**Policy**") of the Lamorinda Action Plan ("**Action Plan**") relates to the refined site plan (Attachment 1) for the above-referenced 315-unit apartment project ("**Project**"). To improve the Deer Hill Road – Stanley Blvd./Pleasant Hill Road intersection, the refined Project plans propose to add dedicated lanes on Pleasant Hill Road for right turns onto Deer Hill Road and onto Highway 24.

Under Section 2.1 of the Action Plan, the Policy is to "[m]aintain capacity constraints at selected gateways with the intent of preserving and improving mobility on Routes of Regional Significance within Lamorinda." Section 5.3 of the Action Plan explains that, to achieve that objective, the Policy seeks to preserve the status quo by setting the "maximum number of through lanes and lane widths for SR-24 inbound gateways and similarly, identif[ying] limits on the number of lanes for arterials such as Pleasant Hill Road and Camino Pablo."

However, even with the Project's proposed dedicated right turn lanes—to facilitate southbound right turns from Pleasant Hill Road at Deer Hill Road and at Highway 24 rather than to facilitate through traffic—Pleasant Hill Road would remain a four-lane, north-south arterial, with unchanged lane widths, from the SR-24 interchange on the south to Taylor Boulevard on the north. The Project is thus consistent with the Policy and the City has the authority to approve the turn lanes.

Nevertheless, even if the City might somehow attempt to treat these environmentally-beneficial Project refinements as through traffic lanes to be denied rather than dedicated lanes for right turns at specified intersections, neither the General Plan Circulation Element nor the Action Plan and its Policy are a valid basis for disapproving the Project.

For reasons we have previously explained at length, and as the City has repeatedly acknowledged, the Project is a “housing development project” under the Housing Accountability Act (Gov’t Code § 65589.5) (“HAA”). The HAA prohibits a local agency from disapproving a housing development project or conditioning its approval in a manner that renders the project infeasible, including through the use of design review standards, unless the agency makes written findings, based upon a preponderance of the evidence in the record, that the project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. *Id.* at § 65589.5(d)(2). The HAA defines a “specific, adverse impact” to mean “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” Moreover, inconsistency with the general plan land use designation or zoning ordinance shall not constitute a specific, adverse impact upon the public health or safety. *Id.*

As relevant to the Project, there are no “objective, identified written public health or safety standards or policies” in the Circulation Element that could form a valid basis to disapprove the Project. Instead, the “basic concept” of the Circulation Element is expressly to:

“make the existing system work as efficiently as possible. This position is based on the assumptions that 1) No substantial expansion of the system or its capacity is envisioned, and 2) Traffic levels within the city are influenced by land use decisions outside the city’s control . . . .”

The Circulation Element is thus focused on quality of life goals and policies benefitting Lamorinda residents that have nothing to do with health and safety and that are subjective rather than objective, such as the following:

**Goal C-2      Regulate traffic so as to preserve the peace and quiet of residential areas.**

*Through-traffic tends to take the route of least resistance, often resulting in a high through volume of traffic taking residential streets located adjacent to busy traffic corridors. It is essential that through traffic on local streets be discouraged to protect the quality of life and safety of residential neighborhoods located adjacent to heavily-traveled corridors.*

Policy C-2.1 Manage Traffic Flow: Discourage diversion of through-traffic onto local streets.

Program C-2.1.1: Develop measures to limit through-traffic on residential streets when necessary.

**Goal C-3** **Regard the quality of life in Lafayette and maintaining community identity as more important than accommodating through-traffic.**

Policy C-3.1 Community Identity and Through Traffic: Place a higher priority on safety, encouraging a pedestrian-oriented design and scale; and on maintaining the quality of life and identity of residential neighborhoods than on accommodating through-traffic.

*The roadway improvements required to accommodate through traffic to achieve more efficient traffic flow shall not be implemented if they are found to have significant adverse impacts on the quality of life and safety of residential neighborhoods.*

The lion's share of the Circulation Element is concerned with quality of life, not safety. And to the extent the Circulation Element addresses safety concerns, those concerns are addressed in generic, qualitative terms such as the following:

**Goal C-1** **Develop a safe and efficient circulation system that respects Lafayette's quality of life and community character and is consistent with other City goals.**

Program C-1.1.3: Work with residents, businesses and property owners who wish to improve traffic safety and solve circulation problems.

Program C-1.1.4: Provide staff to assist residents with information and direction regarding the City's process for recommending ideas for traffic safety and circulation improvements.

Policy C-1.4 Roadway Maintenance: Maintain roadways to provide for the public's safety.

Policy C-1.6 Traffic Safety: Improve the safety of the roadway system.

The Circulation Element provision that might most plausibly be characterized as based on "objective, identified written public health or safety standards or policies" is as follows:

Policy C-1.5      Roadway Improvements: Plan for and implement changes to the roadway system so that the system is safe and efficient for all modes of travel while preserving the semi-rural character of the community.

Program C-1.5.1: Continue to develop and implement a five-year Capital Improvement Program (CIP).

Program C-1.5.2: Construct the following roadway improvements at the time an analysis of traffic service levels and safety factors establishes a necessity for such improvements:

Intersection of Deer Hill Road with Happy Valley Road:

- install traffic signal

Intersection of Deer Hill Road with Oak Hill Road:

- install traffic signal

Intersection of Pleasant Hill Road and Olympic Blvd.

- install traffic roundabout or traffic signal

Intersection of Oak Hill Road and State Route 24 eastbound off-ramp

- install traffic signal

Intersection of First Street and State Route 24 eastbound on-ramp

- install traffic signal

But even if the requirements of Circulation Element Policy C-1.5 might fairly be characterized as addressing objective, written public health or safety standards or policies, much less “objective, written public health or safety standards or policies” within the meaning of the HAA, those requirements have nothing to do with the portions of Pleasant Hill Road that are subject to the Project’s proposed improvements.

Similarly, there are no “objective, identified written public health or safety standards or policies” anywhere in the Action Plan, much less in the Policy, that could form a valid basis to disapprove the Project. In particular, to meet the Action Plan’s Multimodal Transportation Service Objectives (“**MTSOs**”) for the performance of each of the Routes of Regional Significance the Policy contains the following actions:

- 4.01 – Investigate appropriate mechanisms, including maintaining existing roadway lanes and widths and restrictive signal timing and metering, to discourage use of arterial roads as a substitute for freeway travel.

- 4.05 – Explore opportunities to work with TRANSPAC to develop a traffic management program to discourage use of westbound/southbound traffic using Pleasant Hill Road north of SR-24 to bypass the I-680 SR-24 interchange.

But neither of the foregoing actions have anything to do with health or safety within the meaning of the HAA and even if they did those actions are not objective. Instead, those actions are generically focused on traffic, congestion, and mobility issues irrespective of health and safety. Moreover, like the Circulation Element, the Action Plan is replete with references to maintaining a high quality of life for Lamorinda residents and any references therein to safety are open-ended, and not objective by any measure.

Accordingly, for the reasons explained above, the Project's proposed site plan refinements are consistent with the Policy. Nevertheless, there is nothing in the Action Plan or the Policy that qualifies as an "objective, identified written public health or safety standard[] . . . or polic[y] within the meaning of the HAA and, thus, any alleged inconsistency between the Project and the Action Plan and Policy is irrelevant.

We thus remind the City that subjecting this Project to the most onerous standards for approval is not tenable. In particular, we remind the City that under the HAA:

1. it must interpret and implement the law in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing (Gov't Code § 65589.5(a)(2)(L));
2. the legislature's express intent is that the conditions that would have a specific, adverse impact upon the public health and safety arise infrequently (*Id.* at § 65589.5(a)(3));
3. the City has limited authority to deny the Project (*Id.* at § 65589.5(d));
4. the burden of proof is on the City should it attempt to deny the Project (*Id.* at § 65589.5(i)); and
5. there are substantial consequences if the City improperly denies the Project (*Id.* at §§ 65589.5(k), (l), (m), and (n).

For the foregoing reasons and in light of the fact that the refined site plan is environmentally-beneficial and would improve the quality of life of Lamorinda residents once the Project is built, we encourage the City to support and not oppose the proposed dedicated right turn lanes. We also encourage the City to begin

Robert B. Hodil  
Michele Rodriguez  
June 10, 2019  
Page 6

expeditiously processing the Project and bring it to the Planning Commission for a decision on the merits at the earliest possible time.

Sincerely,

MILLER STARR REGALIA



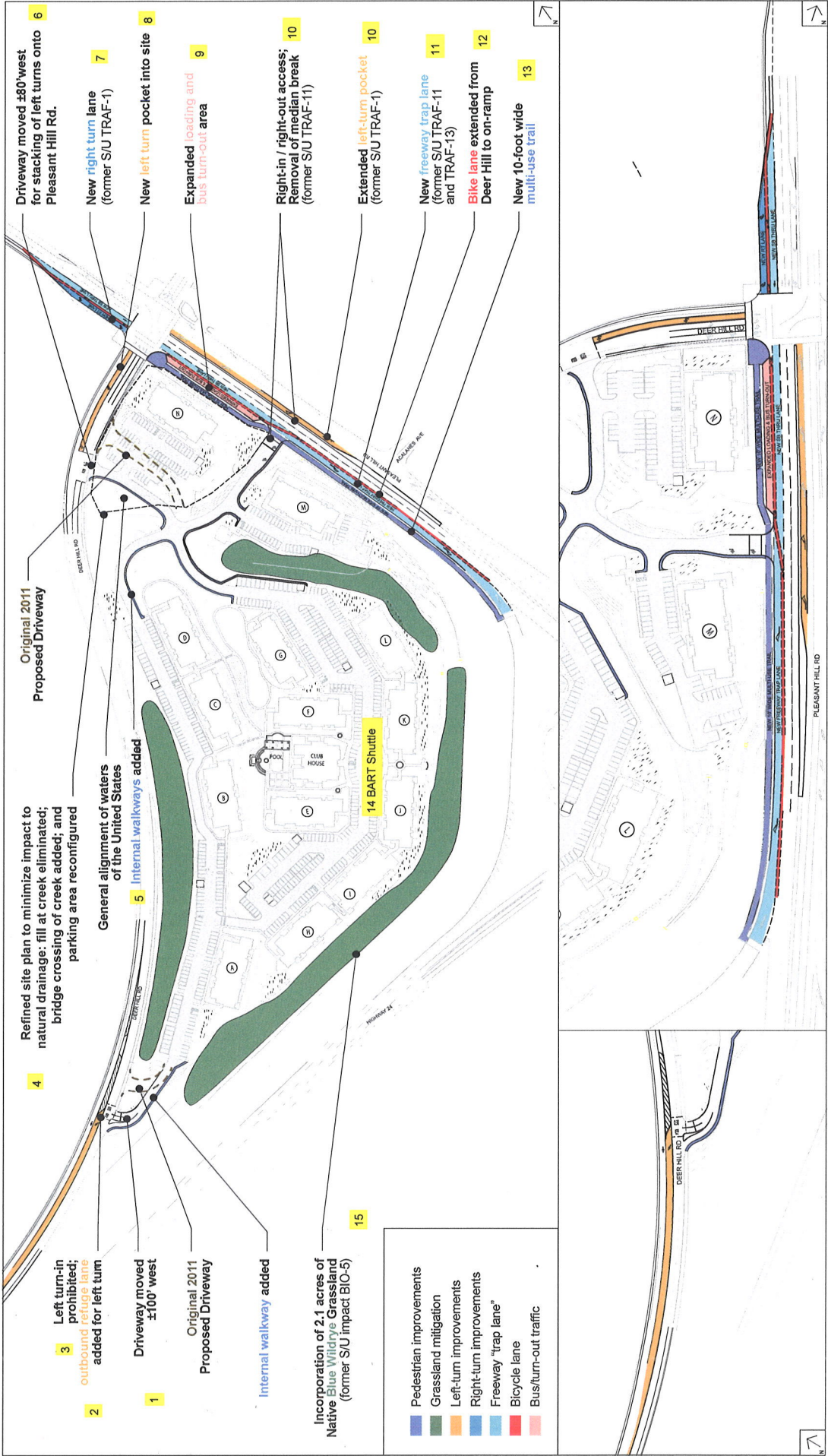
Bryan W. Wenter, AICP

BWW/kli

Attachment 1: Site Plan Refinements

cc: Honorable Mayor Mike Anderson and City Councilmembers  
Niroop Srivatsa, Interim City Manager  
Greg Wolff, Acting Planning Director  
Dennis O'Brien  
Caryn Kali  
Dave Baker  
Allan Moore, Esq.  
Arthur F. Coon, Esq.

# **Attachment 1**



Terraces of Lafayette Project: Site Plan Refinements