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File No. 88591

March 8, 2022

VIA E-MAIL

Chris Rogers, Mayor
Members of the City Council of Santa Rosa
100 Santa Rosa Avenue
Santa Rosa CA 95404

Re: Hearn Veterans Village – Response to Issues Raised in Appeal

Dear Mayor Rogers and Members of the Council:

On behalf of the project sponsor, Community Housing of Sonoma County, this letter responds to the issues raised in the appeal filed by the West Hearn Residents for Rural Integrity, challenging the Planning Commission's unanimous approval of the Hearn Veterans Village Project. All of the issues raised in the Appeal were considered and addressed by your Planning Commission when they approved the Project, and the Appeal does not raise any new issues.

This letter focusses on the primary legal issues raised by the Appeal, and makes the following points:

- The legal standards cited in the Appeal are incorrect, and the CEQA statute and applicable case law, including California Supreme Court decisions, confirm an addendum is proper here;
- There is ample substantial evidence to support the CEQA Addendum as approved by your Planning Commission, including detailed analysis in the Addendum and in supporting studies;
- As noted in the Commission staff report, the Hearn Veterans Village use is consistent with the General Plan and Zoning for the site; and
- The Project is governed by the Housing Crisis Act and the Housing Accountability Act, and the Appeal makes no showing sufficient to support project denial under those statutes.

In brief, the Appeal miscites the legal standards governing this Project, and ignores the fact that a prior EIR evaluated the impacts of developing this site. The Appeal also mischaracterizes the facts regarding the project. The Hearn Veterans Village will provide important and expanded supportive housing opportunities for homeless veterans in Sonoma

County, and the appeal does not provide any sound legal or factual basis for denying the proposed project.

A. Under CEQA, An Addendum To The City's Certified 2016 Roseland Area EIR Is The Proper CEQA Document For Consideration Of The Project.

As the City's CEQA Addendum and staff report note, in 2016 the City certified the Roseland Area/Sebastopol Road Specific Plan EIR, which evaluated a specific plan and proposed annexation as well as other approvals. That 2016 Final EIR was a program EIR and included in its environmental analysis an assessment of the possible development of the Veterans Village project site. The 2016 Final EIR included the Hearn Veterans Village project site in its analysis, as part of the "West Hearn Ave" area shown on the project location and other maps in the project description in the Roseland EIR (see Figure 2.0-2 and following figures), and as described in the text discussion of the project location at page 2.0-1 of that EIR. The 2016 EIR evaluated a wide range of biology and other impacts, including the various sensitive species that have been raised as issues for the Hearn Veterans Village Project. (Roseland EIR, chapter 3.4 and Appendix 3.4). Also, the 2016 EIR states that it may be relied on for future development proposals (2016 EIR, page 1.0-2). Based on this, the City determined that a CEQA Addendum to the 2016 EIR was the proper CEQA document for the Hearn Veterans Village project.

The Appeal disregards all this, and argues that a new and separate EIR is required now. The provisions of CEQA and applicable case law demonstrate that the Appeal is simply incorrect, and is misciting the governing law. First, the CEQA Guideline governing program EIRs (Guideline 15168(c)(2)) states that, if an agency can make a finding under Guideline 15162 that no subsequent EIR is required, the activity can be approved as within the scope of the program EIR, and no environmental document needs to be prepared.

That Guideline provision applies here, and the factual evidence demonstrating that there is no new significant impact is set forth in the Addendum and its several Exhibits. Notably, the use of a CEQA addendum has been upheld in situations where any potential new impacts are avoided or mitigated through project changes or mitigation that is incorporated into the specific project, so the fact that some additional mitigation measures are being considered here does not bar the use of an addendum. *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 811 (mitigation measures avoided new impacts); *Snarled Traffic Obstructs Progress v. City & County of San Francisco* (1999) 74 Cal.App.4th 793, 802 (project design features avoided impacts).

The case law cited by the Appeal in fact supports the conclusion that an addendum is appropriate. In *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1321, the court held that it was improper to proceed under Guideline 15168(c)(2) when the county was approving a new terrace mining project that was outside the boundary of the area designated and evaluated for terrace mining in the prior program EIR. Here, in contrast, the project site is plainly within the area evaluated for residential use in the program EIR, and is consistent with the density that was evaluated.

Finally, the Appeal claims that CEQA's "fair argument" standard applies here, and that an EIR is required if they have made a fair argument of significant impact. CEQA case law also confirms the Appeal is wrong on this point. This actually involves two questions, both of which are reviewed under the substantial evidence standard, pursuant to which the City's determination will be upheld as long as it is supported by substantial evidence.

The first question is whether it is appropriate to proceed under CEQA's standards for subsequent review, as the City is doing here. The Supreme Court has specifically addressed this question, holding that the pertinent question is whether a previously certified EIR is relevant to the later project, and that question is predominantly factual and reviewed under the substantial evidence standard. *Friends of the College of San Mateo Gardens v. San Mateo Community College Dist.* (2016) 1 Cal.5th 937, 951. The court event went so far as to state that the occasions when a reviewing court would reverse such an agency decision will be "rare, and rightly so." Thus, the City is on solid ground in proceeding as it is, under CEQA's provisions for subsequent review, including the use of an addendum.

The second legal question is then whether a further EIR is required based on an argument of new impacts. And on the point the case is clear and unequivocal – an agency decision that a further EIR is not required, and a document such as an addendum is appropriate, will be upheld as long as any substantial evidence supports the agency decision. There is a long line of CEQA cases establishing this point, from *Committee for Re-Evaluation of the T-Line Loop v. San Francisco Mun. Transp. Agency* (2016) 6 Cal.App.5th, back to *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065.[1] The Appeal's claim that the "fair argument" standard applies here is simply wrong.

B. Substantial Evidence Supports The Addendum's Conclusions That There Will Be No Further Environmental Impacts Requiring Another EIR, And All Of The Environmental Issues Raised In The Appeal Were Fully Considered By The Planning Commission.

There is ample substantial evidence supporting the Addendum's conclusion that there are no new significant environmental impacts requiring a new EIR. This evidence is set forth in the Addendum analysis itself, with well over 100 pages of detailed analysis discussing potential environmental impacts, explaining why there are no new significant impacts. The Analysis in the Addendum is also supported by detailed studies, including the December 2020 Biological Resource Assessment prepared for the project, and the April 2021 Additional Biological Evaluation. The Addendum and these studies have answered all the questions raised by the Appeal, including the questions raised in the biological letter submitted with the Appeal.

As the Planning Commission staff report concludes, the Addendum "was reviewed by City Staff who determined that the project would not cause new significant environmental effects or substantial increases in the severity of effects beyond those previously identified in the 2016 EIR." The Appeal does not present any new information, and fails to present any valid basis for

[1] A full list of the ten appellate decisions making this holding is set forth in Kostka & Zischke, *Practice Under the California Environmental Quality Act* (2d Ed.) §19.55.

rejecting City staff's previous determination that there are no new significant impacts requiring a further EIR.

C. The Project Is Consistent With Existing Zoning, And The Proposed Use Is Allowed As A Matter Of Right.

As City staff noted in the Planning Commission staff report, this Project's supportive residential use is allowed as a matter of right. The project site is designated in the City General Plan as Very Low Density Residential, and the City staff report states that the project is consistent with the General Plan designation and with applicable General Plan policies. The project site is Zoned RR-20-RH (Rural Residential-Rural Heritage). The RR (Rural Residential) zone is the primary zone for this lot, and that zone allows residential uses by right.

D. The Appeal Fails to Demonstrate Any Basis for Rejecting or Limiting the Project Under the Housing Accountability Act and the Housing Crisis Act.

The fact that the Project is consistent with the General Plan and Zoning has important ramifications for the Council's consideration of the Appeal; it means the Project is protected by two state laws, the Housing Accountability Act and the Housing Crisis Act. Both of these statutes place substantial limits on a City's ability to reject or impose conditions upon housing projects that are consistent with general plan and zoning designations. Without going into great detail, under these statutes, a project cannot be rejected unless there is a showing of a "a specific, adverse impact" on public health and safety and there is "no feasible method to satisfactorily mitigate" that impact other than disapproving the project or approving a lower density. Government Code §65589.5(j). Under these statutes, the Appeal fails to make any showing sufficient to support their request that the Council "revoke project approval".

In sum, the Appeal lacks merit, and the Project will provide important and needed services to homeless Sonoma County veterans. On behalf of Community Housing Sonoma County, we ask that the Council reject the Appeal and affirm your Planning Commission's approval of the Hearn Veterans Village. If there are any questions, the project team and I will be available at your hearing to respond to them.

Very truly yours,

Michael H. Zischke

MHZ:rsl
cc: Monet Sheikhali, City Planner
Sue A. Gallagher, City Attorney
Ashle Crocker, Assistant City Attorney
Community Housing Sonoma County
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-----Original Message-----
From: Mary Stephenson [redacted]
Sent: Monday, February 28, 2022 5:09 PM
To: _CityCouncilListPublic <citycouncil@srcity.org>
Subject: [EXTERNAL] Support of Hearn Veterans Village

My name is Mary Stephenson and I own a townhouse at [redacted]. I want to reiterate my support for Hearn Veterans Village. This is a well-designed project with a reasonable subdivision of four lots into residential parcels that can provide a variety of housing types. It will fit nicely in the neighborhood. Most importantly, it will provide much needed housing and support services for local veterans. I urge the Council to ignore the Nimbies and uphold the Planning Commission's decision.

Mary Stephenson
[redacted]

From: Lennie Moore [redacted]>
Sent: Friday, February 25, 2022 11:24 AM
To: Rogers, Natalie <NRogers@srcity.org>
Cc: Johanna Greenberg <ruffmagic@gmail.com>; _CityCouncilListPublic <citycouncil@srcity.org>
Subject: [EXTERNAL] Questions for Council Members to ask staff re: Veterans Village Appeal

Hi Councilwoman Rogers,

You asked us awhile back to come up with a list of questions you can address with City Planning. I brought this to our neighbors and am providing you with our initial list. There could be more as we get closer to the City Council meeting, but this would get the conversation going. My apologies for the delay in getting this to you. It sometimes takes awhile as we're all busy. Please let me know if there are any questions or concerns you have that you still need from staff (or from us). Thanks!

Questions for City Planning/Staff:

- **How did City Planning and the Applicant come up with exactly 3.01 acres?**
  This number has been on every communication about this project, including the Applicant's website. There is no official record of survey on file with the City (which I've confirmed with the City Clerk). Both City and County permit lookup tools list According to City records (attached in the .zip file) the total acreage as 2.9343 (with GIS displaying 3.0622). City Planning has stated that GIS data is inaccurate. City Planning and the applicant need to demonstrate where this 3.01 acre value comes from as there is no basis on this number from what's on record.
- **How can the applicant do the four parcel subdivision with only 2.9 acres?**
  If the existing buildings have to occupy at least one acre, then the remaining 1.9 acres is not enough, according to our zoning, to subdivide into four parcels. The applicant would have to subdivide into only three parcels.
- The "Hearn Veterans Village_LLA Exhibit" pdf (performed by BKF and submitted October 2020, attached) shows 3.11 acres total, with four proposed subdivisions split into half acre parcels from 1.99 acres. As this is not an official record of survey, and the City has not referred to or recognized this document in any of the Planning Commission meetings or communications with the public, it can not be relied upon until the acreage is confirmed and approved by the City. Additionally, **If the minimum subdivision according to our zoning is a half acre, is it legal to subdivide into four parcels from 1.99 acres? Or does it have to be above 2 acres in order to do this?**
- **Why did City Planning use the applicant's mitigation recommendations from the failed MND and the applicant's poor biological review?**
- **Why were Dr. Smallwood's mitigation recommendations ignored and not included in what was presented to the Planning Commission?**
- **Did City Planning include our attorney Rebecca Davis and Dr. Smallwood's comments and analysis when submitting to CEQA for approval? What about Fish & Wildlife? Why not?**
- **How can an 18,500 sq ft addition to a site with an existing 5700 sq ft facility be consistent with the applicable zoning and rural character of West Hearn Ave?**
- **How can this project not have a significant impact on the lives of the residents and the biological resources that are integral to this neighborhood?**
- **How can City Planning ignore the special nature of the -RH designation for West Hearn Ave., which is unique to any other zoning within the City?**
- **How can the City ignore the intent and spirit of the Annexation agreement with West Hearn Ave. by pushing through a gigantic urban project such as this?**
- **What substantial evidence does City Planning have to support every one of the Addendum's conclusions about the project's "less than significant" impact on biological resources?**
- On my property (within 300' of the applicant's) we are actively doing land restoration and regenerative agriculture. On several of my neighbor's properties, they are additionally doing activities which encourage and support wildlife habitat (there are several owl boxes installed here on West Hearn Ave). These are prime examples of the intent and spirit of our Rural Heritage designation, and how our community is committed to preserving this unique environment we have on West Hearn Ave. The applicant's site is also directly adjacent to City protected open space and, next to this, CA Dept. of Fish & Wildlife properties. **How can there be a "less than significant impact" with wildlife restoration projects so close to the site? What evidence does City Planning provide to support their position?**

- **Why did City Planning not follow CEQA guidelines and require the applicant to execute (as environmental conditions of approval) "environmentally superior" alternatives and mitigation measures in accordance with the law?**

Please let us know what you find out. And thanks for your consideration.

Sincerely,

--
Lennie Moore
www.lenniemoore.com
[redacted]

From: Lennie Moore [redacted]>
Sent: Tuesday, March 1, 2022 8:49 PM
To: Rogers, Natalie <NRogers@srcity.org>
Cc: Johanna Greenberg <ruffmagic@gmail.com>; _CityCouncilListPublic <citycouncil@srcity.org>
Subject: [EXTERNAL] Re: Questions for Council Members to ask staff re: Veterans Village Appeal

Dear Councilwoman Rogers,

You had also asked for a list of "asks" for the City, the Applicant, and City Planning from us.

We, the West Hearn Ave Residents for Rural Integrity ask for the following:

1. **An EIR must be done, rather than the Addendum.**
    - The City is not following the law. CEQA requires that a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.
    - We have presented substantial evidence throughout this process to support this position.
    - This evidence has been provided through Dr. Smallwood's report and commentary, our attorney Rebecca Davis' commentary, and all of our neighbor's evidence and commentary.
    - An addendum is not appropriate when:
        - Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new
          significant environmental effects or a substantial increase in the severity of previously identified significant effects;
        - Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or
          Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified

significant
effects; or

- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the
previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
(C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce
one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

2. **Reduce the scale of the project.**
    - Move buildings further from vernal pools.
    The lot line adjustment and the proposed density of the building locations does not properly take into account the protection of the established vernal pools on this site.
    - Sub-divide the 1.99 acres into two parcels, and reduce the number of buildings to two main houses and their adjoining ADUs.
    The proposed 18,500 sq ft addition (which is apartment style housing, no matter how it's been labeled) does not follow the nature and spirit of the Rural Heritage designation for West Hearn Ave., and our Very Low Density land use.
    - Reduce the number of people.
    See above regarding reducing the number of buildings.
    - Add a Condition of Approval prohibiting doubling up of people in bunk beds, limiting the population to 16 additional persons
    (one person per bedroom, this is outside of the 15 Veterans currently on-site).

3. **Trees and all plantings should be planted in the ground, not in boxes.**
    - This will encourage wildlife, store water and carbon into the soil, screen the buildings, provide shade and A/C cost savings.
    - Tree boxes will do none of these, as they are severely limited in boxes.
    - Trees will also provide a screen and respite from viewing the complex for the residents of West Hearn Ave.
    - In-ground plantings should be native and drought tolerant, such as Valley Oak, Coast Live Oak, Bay Laurel, Northern CA native pines, fruit trees and evergreens.
    - These types of trees don't interfere with building foundations, as they have deep taproots versus surface root systems.

4. **Do not cover over or surround vernal pools with cement.**
    - Surrounding vernal pools with anything (except for native trees, grasses, flowers and forbes) is not "saving" or "preserving" vernal pools. It contributes to the destruction of the vernal pool system.

5. **Pave all hard surfaces with porous materials.**

- The design shows the paving (plus the housing footprint) will cover at least 1.5 acres of this site (an inordinate amount).
- Using porous materials on the proposed paved surfaces allows water absorption into the aquifer and cools the area more efficiently than concrete or asphalt.
- Porous materials are just as accessible to residents, and are less expensive than asphalt or concrete.

Lastly, the City needs to do the following:

1. **Require the Applicant to make changes.**
   - The developer has refused to engage with the neighborhood, or make any significant changes. The City needs to direct them to do so.

2. **Critically review Dr. Shawn Smallwood's report and adjust from City Planning's stated "less than significant impact" to a more stringent and accurate level of impact in line with Dr. Smallwood's findings.**
   - The City is not following CEQA laws. Or the City's own rules for that matter. They need to do the right thing.

3. **Upgrade the level of mitigation measures to cover the heightened impacts, as illustrated in Dr. Smallwood's report.**
   - The current mitigation measures are from the Applicant's original MND biological report, to which the MND was thrown out by the City and replaced with the Addendum.
   - These need to be updated to reflect the findings in Dr. Smallwood's report, instead of ignoring the existence of this evidence.

4. **City Planning cannot rubber stamp proposals that don't meet the rigorous CEQA standards.**
   - We know the City has put pressure on the Planning Department to push along development projects, in order to get housing built.
   - We understand the intent behind these pressures, but in this effort to push this Applicant's proposal through, Planning has not done their due diligence in scrutinizing this project's merits or in following CEQA laws.
   - This has continued with no remedy, even after we have presented evidence to the City through Dr. Smallwood's observations, our attorney's legal points, and our neighborhood's commentary.

5. **Stop ignoring the importance of our -RH Rural Heritage designation.**
   - We are not an "in-fill" street. This is a unique corridor, with a custom designation that the City negotiated with us in good faith during the Annexation.
   - We are the only neighborhood that has this designation.
   - The intent and spirit of our Very Low Density, small farms, agricultural uses, environmental, and Riparian Corridor protections need to be honored.
   - A single 24,000 sq ft facility is not in character with the 1000-1200 sq ft homes that are the majority of what we have on this street, and which we negotiated to preserve as an agricultural rural heritage land use.
   - This is not a building proposal that respects the nature of what we have established here, this project is not in-line with what the City had promised to preserve.

6. **Actively mitigate climate change.**

- Reserve large urban projects such as this proposal for the City Center and urban/industrial zoned sections (such as Corporate Center Parkway where the new VA building is located).
- Protect the rural/edge communities and environments.
- Allow for real green spaces within the City boundaries, including green-minded communities such as ours, as this is beneficial for the entire City.
- A greener City allows for increased local food security, supports ecological health, prevents fires, mitigates drought, and better controls flooding.

Sincerely,

Lennie Moore, Principal
West Hearn Ave Residents for Rural Integrity