



PLANNING  
COMMISSION  
MEETING  
8/20/15

COMMUNICATION  
6B.1  
AGENDA ITEM  
# 6B

## MEMO

**TO:** Planning Commission  
**FROM:** Karlo Felix, Associate Planner  
**CC:** none  
**DATE:** Thursday, August 6, 2015  
**SUBJECT:** Item 6.B – The Meadows Amendment

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The applicant has requested that this item be continued to allow for further analysis of correspondence received from Napa Residents for Responsible Development. Staff recommends that this item be continued to a date uncertain.

PLANNING  
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8/20/15

COMMUNICATION  
CB.2  
AGENDA ITEM  
# CB

**Felix, Karlo**

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**From:** Rob Anglin <anglin@htralaw.com>  
**Sent:** Wednesday, August 05, 2015 3:00 PM  
**To:** Felix, Karlo  
**Cc:** MacNab, Ken  
**Subject:** Re: Meadows Amendment: Opposition Letter

Karlo,

I've talked with our project team regarding the letter that came in today. We would like a continuance from tomorrow night's hearing to provide time to thoughtfully review and respond to the letter.

Please feel free to contact me with any questions. Thanks.

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PLANNING  
COMMISSION  
MEETING  
8/20/15

COMMUNICATION  
6.B.3  
AGENDA ITEM  
# 6.B

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August 5, 2015

VIA E-MAIL AND OVERNIGHT MAIL

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Re: Opposition to Agenda Item 6.B 15-0072-DR, The Meadows Amendment

Dear Commissioners and Mr. MacNab:

These comments are submitted on behalf of **Napa Residents for Responsible Development** ("Napa Residents") in opposition to the proposed recommendation for approval of Design Review Permit for revisions to the approved Master Plan for the Meadows Care Facility at 1800 and 1900 Atrium Parkway ("Project"). The proposed action also includes adoption of a proposed CEQA determination that the potential environmental effects of the Project revisions were adequately examined by the Mitigated Negative Declaration and Initial Study for the Meadows Revised Master Plan adopted January 21, 2014 ("2014 MND"). This matter is scheduled to be heard

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DEPARTMENT

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by the City of Napa Planning Commission at its August 6, 2015 regular meeting, Agenda Item 6.B 15-0072-DR.

Napa Residents oppose the recommendation of approval on the grounds that the City's reliance on the 2014 MND violates CEQA and is not supported by substantial evidence. The Project proposes significant changes and additions to the plan approved under the 2014 MND. These changes may result in significant traffic and air quality impacts that were not considered or evaluated in the 2014 MND. As discussed below, these changes require preparation of a new or revised CEQA document.

#### **I. INTEREST OF NAPA RESIDENTS FOR RESPONSIBLE DEVELOPMENT**

Napa Residents for Responsible Development is an unincorporated association of individuals and labor organizations that are concerned about environmental and public health impacts from development in the region where its members and their families live, work and recreate. Napa Residents is comprised of Napa City and County residents and Sheet Metal Workers Local 104, Plumbers and Steamfitters Local 343, the International Brotherhood of Electrical Workers Local 180, and their members and their families and other individuals that live and/or work in Napa County. Because individual members of Napa Residents and its member organizations, live, work, recreate and raise their families in the City of Napa, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself, and thus be directly exposed to any health and safety hazards that exist onsite.

In addition, Napa Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses and industries to expand in the region, and by making it less desirable for businesses to locate and people to live here. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## II. OVERVIEW OF CEQA REQUIREMENTS

CEQA has two basic purposes, neither of which is satisfied by the City's proposal to rely on the 2014 MND for the Project. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.<sup>1</sup> To fulfill this function, the discussion of impacts in a CEQA document must be detailed, complete, and "reflect a good faith effort at full disclosure."<sup>2</sup> An adequate CEQA document must contain facts and analysis, not just an agency's conclusions.<sup>3</sup> The City's CEQA analysis must disclose all potential direct and indirect, significant environmental impacts of the Project.<sup>4</sup>

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.<sup>5</sup> If an MND or an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.<sup>6</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.<sup>7</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the CEQA document to meet this obligation.

Under CEQA, a lead agency must not only adopt measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.<sup>8</sup> A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of

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<sup>1</sup> 14 Cal. Code Regs. § 15002(a)(1) ("CEQA Guidelines"); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>2</sup> CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>3</sup> See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

<sup>4</sup> Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

<sup>5</sup> CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

<sup>6</sup> Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

<sup>7</sup> *Id.*, §§ 21002-21002.1.

<sup>8</sup> CEQA Guidelines § 15126.4(a)(2).

impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>9</sup> This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”<sup>10</sup>

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether tiering or another appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared CEQA document could be used for the project, among other purposes.<sup>11</sup> The initial study must accurately describe the project, identify the environmental setting, identify environmental effects and show “some evidence” to support those conclusions, and a discussion of ways to mitigate the significant effects of the project, if any.<sup>12</sup>

CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.<sup>13</sup> A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project “would not have a significant effect on the environment.”<sup>14</sup>

When a proposed project is a modified version of a previously approved project for which an EIR or an MND has been prepared, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;

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<sup>9</sup> *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no evidence that replacement water was available).

<sup>10</sup> *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

<sup>11</sup> CEQA Guidelines §§ 15060, 15063(c).

<sup>12</sup> CEQA Guidelines § 15063(d) (emphasis added).

<sup>13</sup> *See, e.g.*, Pub. Resources Code § 21100.

<sup>14</sup> *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.<sup>15</sup>

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) 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;

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<sup>15</sup> Pub. Resources Code § 21166; CEQA Guidelines § 15162.

- (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.<sup>16</sup>

Only where *none* of the conditions described above have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.<sup>17</sup> The determination of whether supplemental analysis is required must be supported by substantial evidence.<sup>18</sup>

### III. PROJECT CHANGES

CEQA requires that public agencies provide a complete and accurate description of a project and its environmental impacts.<sup>19</sup> “Deficiencies in the record” create more room for argument that a CEQA document is inadequate, because they allow for a “wider range of inferences” about a project’s potentially significant impacts.<sup>20</sup>

By proposing to rely on the 2014 IS/MND, the City attempts to fit the currently proposed Project into the City’s analysis of the previously proposed Project. This is misleading and inaccurate. The new proposal is substantially different in scope from the Project evaluated in the 2014 MND. Among other

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<sup>16</sup> CEQA Guidelines §§ 15162(a)(1)-(3).

<sup>17</sup> CEQA Guidelines § 15162(b).

<sup>18</sup> *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).

<sup>19</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311; see also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

<sup>20</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.



changes, the new proposal: (1) increases the number of new residential units constructed from 52 to 92; (2) adds a new below-grade parking garage; and (3) authorizes additional demolition activities.

Despite these changes, the Planning Commission Staff Report concludes that approval of the revised Project does not require any additional CEQA review and that the City may instead rely on the 2014 MND. This determination is not supported by substantial evidence or analysis of any kind, and fails to take into account that the traffic and air quality impacts from the proposed changes in the Project were not evaluated in the 2014 MND. The failure to support this determination by any analysis or substantial evidence violates the requirements of CEQA.<sup>21</sup>

**A. The Addition of 40 new Residential Units Will Result in New and More Severe Traffic Impacts than Evaluated under the 2014 MND**

The 2014 MND concluded that the proposed Project was unlikely to have any significant traffic impacts because it would only add 15 *net* living units. The 2014 proposal provided for the demolition of 37 existing living units and the construction of 52 new living units, for a net increase of 15 units.

The revised Project proposes demolition of 40 existing living units and the construction of 92 new living units, for a net increase of 52 units. Accordingly, the 2014 MND's unsupported assumption that the Project would not increase net living units by an amount sufficient to potentially impact traffic is not applicable to the current Project. A net increase of 52 residential units will result in increased traffic generation well beyond the de minimis increase in units contemplated in the 2014 MND, and has the potential to result in significant traffic impacts. Moreover, no analysis or study of any kind has been prepared to support staff's conclusion that the traffic analysis in the 2014 MND is applicable to the revised Project. Accordingly, the reliance on the 2014 MND is arbitrary and not supported by any substantial evidence. The potential impact of the proposed Project changes on traffic must be meaningfully disclosed and evaluated in a new EIR.

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<sup>21</sup> See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

**B. The Project Changes Will Have New and More Severe Significant Impacts on Air Quality**


Construction of the revised Project may also result in new and more severe air quality impacts than contemplated or evaluated in the 2014 MND. The construction of the underground garage will require substantially more grading and storage and disposal of dirt than contemplated in the 2014 MND. Moreover, digging and construction of an underground facility is likely to require additional heavy diesel equipment operation. The proposed additional demolition activities will further increase hazardous particulate matter emissions from dust and diesel equipment operations. These new and increased dust and diesel emissions may pose significant health risks to the sensitive elderly population that resides immediately adjacent to this activity.

Moreover, no analysis or reports have been prepared to support staff's conclusion that the analysis of air quality impacts in the 2014 MND is applicable to the increased intensity of construction activities proposed in the revised Project, or that the mitigation measures proposed in the 2014 MND are sufficient to reduce any new impacts below a level of significance. Accordingly, the reliance on the 2014 MND analysis is arbitrary and not supported by any substantial evidence. The potential impact of the proposed Project changes on air quality and the health of adjacent sensitive receptors must be disclosed and evaluated in a new EIR.

**IV. CONCLUSION**

For the reasons set forth above, we urge the Planning Commission to recommend denial of the proposed Design Review Permit for revisions to the Master Plan for the Meadows Care Facility, and to direct that a subsequent CEQA analysis be prepared to evaluate the potential environmental impacts of the Project.

Sincerely,

  
Thomas A. Enslow



TAE:lj

August 5, 2015  
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