



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

T: 510.834.6600
F: 510.834.1928

www.wendel.com
pcurtin@wendel.com

March 2, 2021

Robin Miller, Director of Development
Trumark Homes
3001 Bishop Drive, Suite 100
San Ramon, California 94583
rmiller@trumarkco.com

Re: Proposed Dutton Meadow Project – Response to Santa Rosa City Planner Adam Ross

Dear Robin:

On behalf of Trumark Homes, you have asked us to review and respond to the City of Santa Rosa's Interim Senior Planner Adam Ross's email dated February 22, 2021, which responded to our prior letter, dated February 12, 2021, discussing the extent of environmental review that will be necessary for the proposed Dutton Meadow Project (the "Project"). Specifically, you have asked us to address the relevant CEQA exemption and reference to "new information" in the context of Vehicle Miles Traveled ("VMT") analysis mentioned by Mr. Ross, and their applicability to this Project.

As we discussed in our February 12th letter, and as Mr. Ross acknowledged in his email, CEQA provides various exemptions and streamlining provisions that allow residential housing projects, such as this Project, to implement a previously adopted specific plan analyzed in an Environmental Impact Report ("EIR") without conducting additional environmental review. In his email, Mr. Ross raised the City's potential ability to determine that VMT constitutes "new information" thereby dis-allowing the use of the CEQA exemptions and streamlining provisions. As explained below, the use of VMT does not qualify as "new information" allowing the Project to proceed without additional duplicative environmental review.

I. THE PROJECT IMPLEMENTS THE ROSELAND AREA SPECIFIC PLAN AND IS THUS EXEMPT FROM FURTHER CEQA ANALYSIS.

As Mr. Ross noted, both the Government Code and the Guidelines implementing CEQA provide exemptions when a residential project implements that envisioned in a specific plan, such as the Roseland Area/Sebastopol Specific Plan ("SP"). Specifically, CEQA Guideline section 15182(c)(1) provides that "where a public agency has prepared an EIR on a specific plan after January 1, 1980, a residential project undertaken pursuant to and in conformity to that specific plan is exempt from CEQA if the project meets the requirements of this section."

Residential projects covered by this exemption include zoning changes, subdivisions, and planned unit developments. (CEQA Guidelines §15182(c)(1).)

CEQA Guidelines section 15182 implements Government Code section 65457, which similarly states that “any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of [CEQA].” This exemption applies unless there is an event that triggers the need to prepare a subsequent EIR or negative declaration pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162.

The EIR for the Roseland Area/Sebastopol Specific Plan (“SP-EIR”) was certified 36 years after 1980, and the Project is consistent with and simply implements the SP as it relates to the Project site. Thus, the Project is exempt from further environmental analysis pursuant to Government Code section 65457, as discussed in more detail in our February 12th letter.

II. VMT METRIC IS NOT “NEW INFORMATION” THAT TRIGGERS ADDITIONAL CEQA ANALYSIS.

As discussed in our February 12th letter, the potential environmental impacts from the Project were evaluated in the City’s General Plan EIR and the SP-EIR, including the potential transportation impacts under the former Level of Service (“LOS”) metric. This analysis is sufficient to find that the exemption in Government Code section 65457 and implemented through CEQA Guideline section 15182 would apply to the Project. Government Code section 65457(a) further provides that if after adoption of a specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption does not apply unless and until a supplemental EIR is prepared and certified. Therefore, it must be considered whether the Project would trigger an event described in Public Resources Code section 21166, and require the preparation of a supplemental EIR.

Public Resources Code section 21166 provides only three potential scenarios where a subsequent or supplemental EIR may be required after preparation of an applicable EIR, such as the SP-EIR:

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

The Project is consistent with and implements the anticipated development of the Project area as contemplated in the General Plan EIR and SP-EIR, but with a less intensive number of residential units than the amount allowed under the General Plan and SP. Thus, no major revisions to General Plan EIR or SP-EIR would be required to approve the Project.

As to potential “new information,” CEQA Guideline section 15162 provides that, to trigger the preparation of a subsequent or supplemental EIR, the “new information” must be (1) “of substantial importance”; and (2) “was not known or could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified.” (CEQA Guidelines §15162.) Further, “[t]he new information must show the ‘project will have one or more significant effects not discussed in the previous EIR’ or ‘[s]ignificant effects previously examined will be substantially more severe than shown in the previous EIR.’” (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 526.)

Even though the metric for analyzing traffic impacts has changed from LOS to VMT since the preparation of the SP-EIR, this change in methodology does not necessitate the preparation of a new traffic analysis using VMT. The SP-EIR in fact recognized the then incoming VMT methodology and included a discussion regarding VMT in the context of both traffic and air quality impacts. (See pages 3.14-25 and 3.3-29 of the Draft SP-EIR.) Therefore, it cannot be said that information about VMT and related potential impacts “was not known or could not have been known” when the SP-EIR was certified.

If the VMT methodology were to qualify as new information, it is not “of substantial importance” and does not “result in an impact not previously analyzed” since the SR-EIR included a robust traffic analysis, and identified impacts and mitigation measures that are applicable to this Project. Since traffic effects were already analyzed as significant in the previous EIRs, the use of the VMT matrix will not result in any new impacts since both metrics focus on traffic effects. Thus, the use of VMT as opposed to LOS does not qualify as “new information” which would necessitate additional environmental review.

This determination is consistent with the decision in *Concerned Dublin Citizens v. City of Dublin*, 214 Cal. App. 4th 1301 (2013) which discussed the analysis of greenhouse gases (GHGs) under CEQA. In that case, the EIR did not analyze environmental impacts from GHGs (because it was not required under CEQA at that time) but it contained an adequate air quality analysis. The court concluded that impacts on air quality were considered using the then applicable thresholds, and the required new thresholds for GHG analysis did not constitute new information. Because that EIR analyzed air quality impacts and the effects of GHGs were known at the time that the EIR was certified, the court found that the issuance of the new CEQA thresholds for GHGs was not “new information.” As provided in CEQA Guideline section 15168, if the City “finds that pursuant to Section 15162, no subsequent EIR would be required, the [City] can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.” (CEQA Guidelines §15168(c).)

Earlier this year, the Governor's Office of Planning and Research ("OPR") published responses to frequently asked questions regarding the conversion from LOS to VMT. (See <https://www.opr.ca.gov/ceqa/updates/sb-743/faq.html>.) Under the question heading "Can I still tier from or rely on an environmental document that uses LOS?," OPR explained that, when tiering from a previous EIR that used LOS, a City should, pursuant to Public Resources Code section 21094 and CEQA Guideline section 15152, *focus on the analysis of impacts that were not analyzed as significant in the prior EIR, not which metric was used to analyze the prior impacts.*

The SP-EIR analyzed traffic impacts in detail and found several transportation impacts to be significant and unavoidable, others less than significant, and still others to be less than cumulatively considerable with specific mitigation measures. In addition, the SP-EIR even discussed the incoming VMT methodology. As Mr. Ross noted in his email, OPR also explained that "an agency may use its discretion to determine that a VMT analysis is not required for later-prepared [environmental] documents," but such a determination "should be supported by substantial evidence and should be guided by the circumstances of the project." "Substantial evidence" is a deferential standard, defined in the CEQA Guidelines as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines §15384 (a); See also *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 804.)

Here, substantial evidence supports a finding by the City that the GP-EIR and SP-EIR sufficiently analyzed the potential transportation impacts of the Project, and in preparing and certifying its analysis, the City knew of potential impacts related to VMT, and thus, no "new information" that might trigger the preparation of a subsequent or supplemental EIR exists. Therefore, the exemption from further CEQA analysis found in Government Code section 65457 is applicable to this Project and is supported by substantial evidence.

Moreover, a finding that the use of the VMT metric qualifies as "new information" would preclude the City from invoking CEQA streamlining provisions and exemptions that rely on previously-prepared EIRs that did not use the VMT metric. The use of the VMT metric was not required until July 1, 2020. So, under that interpretation, the City could never rely on an EIR that was certified prior to July 1, 2020 wherein the LOS metric was utilized, as a basis for a CEQA exemption for a project that would normally have tiered from that prior EIR. This would render many CEQA streamlining and exemption provisions meaningless and preclude the City from using this exemption, such as when the same exemption was invoked last year in the approval of the Burbank Avenue Subdivision project, which tiered from the same Roseland Area/Sebastopol Specific Plan and SP-EIR applicable to this Project.

III. PROJECT IS FURTHER EXEMPT FROM ADDITIONAL CEQA REVIEW BECAUSE IT IS CONSISTENT WITH THE GENERAL PLAN AND ZONING.

The Project is further exempt from additional environmental review under Public Resources Code section 21083.3 which limits CEQA review of certain projects consistent with the general plan or zoning for which an EIR was prepared to environmental effects that are “peculiar” and which were not addressed as significant in a prior EIR, or which new information shows will be more significant than described in the prior EIR. “Consistent” means that the density of the project is the same or less than the standard allowed in the general plan or zoning action which a previous EIR was certified. (CEQA Guidelines §15183(i)(2).) An impact is not “peculiar” if uniformly applied development policies or standards apply to the project that will substantially mitigate an environmental effect.

The Project is consistent with the General Plan for which an EIR was certified. In addition, the site has been zoned through the SP to allow for the proposed density and the SP-EIR was certified that analyzed these zoning changes.

Under this provision, CEQA review is limited to effects upon the environment which are peculiar to the parcel or to the Project which were not addressed as significant in the GP-EIR or SP-EIR, or which substantial new information shows will be more significant than described in the prior environmental review. There is no evidence in the record to substantiate a peculiar impact. Rather, the information and studies prepared by the applicant and provided to the City demonstrate that the Project will not result in any significant environmental impacts that were not previously analyzed.

This streamlining provision was drafted as an exemption under CEQA. See, *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 CA4th 273, overruled on other grounds in *Hernandez v. City of Hanford* (2007) 1 CA4th 279; *Gentry v. City of Murrieta* (1995) 36 CA4th 1359 (courts have interpreted this provision as a CEQA exemption). This is important since CEQA precludes the City from requiring EIRs for projects that are CEQA exempt. (CEQA Guidelines §15300.4.)

IV. CONCLUSION.

CEQA streamlining provisions and exemptions are intended to promote finality and efficiency by limiting the circumstances under which environmental review is required for projects that have already been reviewed under CEQA. As recently explained by the court in *Willow Glen Trestle v. City of San Jose*, (6th Dist. 2020) 49 Cal.App.5th 127, “[i]f every action [in connection with a project] had to be considered an ‘approval,’ each and every step that the City took toward implementing an approved project would necessarily constitute another ‘approval on’ the project, thereby endlessly reopening the City’s long-final consideration of the project’s environmental impacts.”

In addition, public agencies are directed by CEQA to “reduce delay and paperwork” by identifying projects which fit within an exemption and to therefore exempt the project from further CEQA processing, and to use previously-prepared EIRs when they adequately addressed

Robin Miller
March 2, 2021
Page 6

WENDEL ROSEN LLP

a project's potential impacts, as allowed by the streamlining provisions. (CEQA Guidelines §§ 15006, 15300.4.) We trust the City will comply with these CEQA mandates.

This Project clearly fits within the CEQA streamlining provisions, and further qualifies as a project exempt from CEQA.

Please call if you have any questions.

Sincerely,

WENDEL ROSEN LLP



Patricia E. Curtin

cc: Trevor Brown, Assistant Project Manager, Trumark