Meeting Date: Monday, April 29, 2019

Staff: Michele Rodriguez, Adjunct Planner
       Greg Wolff, Acting Planning Director

Subject: Terraces of Lafayette Update

Purpose

Staff has scheduled this joint meeting to provide an update on the Terraces of Lafayette project to the City Council, Planning Commission and public. Staff also seeks the Council’s direction to proceed with additional environmental review.

Background

**Original Project: Terraces of Lafayette** - In March 2011 O’Brien Land Company (“Developer” or “Applicant”) submitted to the City of Lafayette an application for a project named the Terraces of Lafayette (the "Project") consisting of 315 moderate-income apartments on a 22.27-acre parcel located at the southwest corner of Deer Hill Road and Pleasant Hill Road. The parcel was zoned Administrative Professional Offices (APO) which allows multifamily residential units as a conditional use, with a permitted density of up to 35 dwelling units per acre. The City deemed the application complete in July 2011, which was followed by the City retaining Placeworks to prepare an Environmental Impact Report (EIR). Following publication of the Draft EIR, a public review period, and response to comments, the City Council certified the Final EIR for the Project in August 2013.

**Alternative Project: The Homes at Deer Hill** – As the Terraces Project headed into public hearings in the fall of 2013, the City Council directed staff to engage with the developer to see if there was a project that the developer would build that might be more acceptable to the broader community. In December 2013 a project alternative known as the Homes at Deer Hill (“Project Alternative”) was introduced to the Council and public. This alternative was thought to be more in keeping with Lafayette’s semi-rural character, and would build 44 single-family homes and a community park with a multi-purpose athletic field, playground, dog park and a parking lot.

In early 2014, the City and the Developer entered into a Project Alternative Process Agreement, suspending the Terraces Project to allow the Project Alternative to reviewed by the City. The agreement provided that if the Project Alternative application was denied, the Developer maintained the right to resume the original Terraces Project. A Supplemental EIR was prepared for the Homes at Deer Hill Project Alternative and certified, and in September 2015, the City Council approved the Homes at Deer Hill Project Alternative. A citizens group named “Save Lafayette” filed a referendum seeking to undo the approval and sued the City in 2016. Following the lawsuit and appeal, the City Council placed Measure L...
on the June 5, 2018 ballot. Measure L asked residents to vote yes or no on the Homes at Deer Hill Project Alternative. Measure L failed and the approval of the Homes at Deer Hill was undone.

**Terraces Project Resumed:** On June 15, 2018, the Developer submitted a letter requesting the City to resume processing the original Terraces of Lafayette Project. The Developer requested time to allow new legal counsel to review the project history. In the fall of 2018 the Developer informed City staff that it was preparing an Addendum to the certified Terraces EIR. This Addendum was prepared by a consultant to the Developer, FirstCarbon Solutions, and delivered to the City on December 18, 2018. (Attachment 3).

As processing of the Terraces apartment project has resumed five years after the certification of the Final EIR 2013, and during the interim there have been some design changes to the Project, other projects planned and constructed in and around the City, and planned and constructed regional transportation improvements, additional environmental review under the California Environmental Quality Act ("CEQA") is necessary. In circumstances when additional CEQA review is necessary, there are two types of documents that could be prepared: (1) a subsequent or supplemental EIR (an "SEIR"); or (2) an Addendum to the certified EIR.

The test for whether an SEIR is required, rather than an Addendum, is set forth in California Public Resources Section 21166 and CEQA Guidelines Section 15162, which provide that once an EIR has been certified, no subsequent or supplemental EIR shall be prepared for the project unless the lead agency determines, based on substantial evidence, one or more of the following:

(a) Substantial changes are proposed in the project that will require major revisions of the EIR;

(b) Substantial changes occur in the circumstances under which the project is being undertaken that will require major revisions in the EIR; or

(c) New information of substantial importance that was not known and could not have been known at the time the EIR was certified as complete becomes available.

An SEIR must be prepared if such changes or new information result in a new significant environmental impact or a substantial increase in the severity of a previously identified significant impact. An SEIR must also be prepared if mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR, or which were previously found infeasible but which are in fact feasible, would substantially reduce one or more of the project’s significant impacts, but the project applicant declines to adopt the mitigation measure or alternative.

An Addendum must be prepared if there are some necessary changes or additions to the prior EIR, but none of the above conditions requiring the preparation of an SEIR have occurred. Note that a public scoping meeting is required prior to preparation of a Draft EIR; there is no scoping meeting required prior to an Addendum, because an EIR has already been prepared.

**Preparation of Environmental Review Documents**

Under CEQA, the City may accept a draft CEQA document prepared by a project applicant or its consultant. Before using such a draft, the City must review and analyze the document, as any CEQA document must reflect the City's independent judgment, and the lead agency is responsible for the adequacy and objectivity of the document. The City selected Impact Sciences from the City's list of pre-
approved CEQA consultants to peer review and analyze, at the applicant's expense, the Addendum package submitted by the Developer.

The City asked Impact Sciences to assist with the following:

(1) The appropriate level of CEQA document for the Project at this point in time (Addendum or SEIR).

(2) The adequacy of the Addendum submitted by the applicant in meeting the requirements of CEQA.

(3) Identifying any deficiencies in the Addendum, and any needed further work or analysis.

Impact Sciences Review

Impact Sciences has reviewed the applicant-sponsored Addendum prepared by FirstCarbon Solutions and has submitted a memorandum to the City dated April 5, 2019 detailing its conclusions (Attachment 2). The following is a summary of Impact Sciences' findings.

(1) The appropriate document for additional CEQA review of the Project at this point in time (Addendum or SEIR).

Impact Sciences review of the Project, as described in the applicant-prepared draft Addendum, did not identify any substantial changes to the Project when compared to the original Project analyzed in the certified EIR. Impact Sciences also concluded that there did not appear to be substantial changes in the circumstances under which the Project is being undertaken that would require major revisions to the Final EIR. Therefore, Impact Sciences concluded that an Addendum would be the appropriate document for additional environmental review of the Project under CEQA.1

Impact Sciences also recommended changes to some of the methodologies used and assumptions made in the technical analysis of the Project used in the applicant-prepared draft Addendum. Additional technical studies are also necessary, the results of which would confirm whether an Addendum is the appropriate document under CEQA.

(2) The adequacy of the Addendum submitted by the applicant in meeting the requirements of CEQA.

As discussed below, Impact Sciences determined that the Addendum submitted by the Applicant is not adequate and requires substantial revision.

(3) Identifying any deficiencies in the Addendum, and the need for any further work or analysis.

Impact Sciences concluded that the Addendum submitted by the applicant is inadequate and requires substantial revisions and additional technical analysis. Necessary changes include new or significant revisions to technical studies to analyze the Project’s transportation, air quality, and noise impacts, (and potentially greenhouse gas impacts), using methodologies and assumptions recommended by Impact Sciences. Some of the conclusions made were not accompanied by sufficient evidence or justification. Additional information is required on demolition and removal of asbestos and lead-based paint, cultural resources impacts, and salvaging of blue wildrye grass. Updated information is needed on population and housing, energy, and wildfire risks. Further detail regarding Impact Sciences' conclusions and recommendations is set forth in Impact Sciences' memorandum. (Attachment 2).

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1 Peer Review memo from Impact Sciences, dated April 5, 2019. Section 1: Level of CEQA Analysis.
Next Steps
City staff will proceed with having Impact Sciences prepare necessary revisions under contract with City. This will ensure that the City has oversight and manages the process and can exercise its independent judgment in preparing the Addendum, and is able to fulfill its legal responsibility for the adequacy and objectivity of the Addendum. Issues previously analyzed and the conclusions of the certified Final EIR, with respect to impacts, including aesthetic and land use impacts, will not be changed unless warranted by changes in the Project, changes in the circumstances under which the Project is being undertaken, or new information previously not considered.

If the further analysis recommended by Impact Sciences reveals unanticipated new or substantially more severe significant impacts, City staff will reexamine whether an Addendum or an SEIR is the proper document for additional environmental review as discussed above. Impact Sciences is providing a scope of work, timeline, and cost to the City, which will be shared with the applicant. The completion of the work may take 3-6 months.

Referral to Committees
One of the Planning Commission’s roles is to refer projects to other City commissions for their review and recommendation. In 2013, the Project was referred to agencies, service providers and City Commissions including the Parks, Trails, and Recreation (“PTR”) Parks Subcommittee; PTR Commission; Circulation Commission, and Design Review Commission (Attachment 1). Minor revisions to the site plan have been proposed by the Developer and are being refined and generally include the addition of bike and roadway lanes on Deer Hill Road and Pleasant Hill Roads, driveway enhancements, and on-site shifts in parking location for stormwater retention, and creek setback. Given these changes we recommend the Transportation & Circulation Commission review the changes after they have been accepted by both Public Works and Caltrans, or modified to reflect the recommendations of Public Works and Caltrans.

Recommendation
1. Receive the written and oral staff report and ask any questions of staff.
2. Allow the Applicant to present (including the proposed changes to the project).
3. Open the public comment period.
4. Allow the Applicant an opportunity to rebut.
5. Direct staff to proceed with hiring Impact Sciences to prepare the Addendum for the Project.

Attachments
1. Referral form from 2011-2013
3. Terraces of Lafayette EIR Addendum prepared by FirstCarbon Solutions dated December 18, 2018, or www.lovelafayette.org/Terraces
4. Public Comments
From: Greg Wolff, Senior Planner • (925) 299-3204 • gwolff@ci.lafayette.ca.us  
Re: L03-11 O’BRIEN LAND CO., LLC (APPLICANT), AMD FAMILY TRUST (OWNER), APO ZONING: Request for a Land Use Permit, Hillside Development Permit, Design Review Permit, Grading Permit, and Tree Permit for the construction of 14 buildings (seven three-story and seven two-story) consisting of 315 apartments. The application also proposes two additional buildings - a club house (13,300 sq.ft.) and a leasing office (950 sq.ft.) as well as 569 parking spaces. The residential building area is 332,395 sq.ft; the total project building area is 410,547 sq.ft. and would require removal of 92 trees and 500,000 cubic yards of earth movement. The property is located within the Hillside Overlay District at 3233 Deer Hill Road. APN 232-150-027 (The project is referred to as "The Terraces of Lafayette")

The City of Lafayette will be holding public hearings on the Terraces of Lafayette. To inform the Planning Commission’s review and action, we invite you to submit comments prior to November 1, 2013.

Materials related to this application can be found at www.lovelafayette.org/terraces

Please contact Greg Wolff, Senior Planner if you would like hard copies of the plans forwarded to you or if you have any questions or comments. Thank you in advance for your time.