

ATTACHMENT #17

Responses to Comment Letters

The City received a comment letter from Patrick Soluri on May 23, 2018 (Soluri Letter), a letter from Mark Grote on June 13, 2018 (Grote Letter), a letter from Roy Benson on June 21, 2018 (Benson Letter), a letter from Randy Dodd on May 22, 2018 (Dodd Letter), an email from Linda Chang on May 23, 2018 (Chang Email), and a letter from Todd Edelman on May 22, 2018 (Edelman Letter) commenting on the Davis Live Student Housing project (Project). A Position Statement was received from the Davis Chamber of Commerce on April 26, 2018. The letters and email are responded to below. A response to the position statement is not necessary.

1. SOLURI LETTER

The Soluri Letter included numerous allegations as to problems associated with approving the Project. Although no response to the Soluri Letter is required, the City provides the following responses for clarity. The responses are organized in the order that each issue is presented in the Soluri Letter.

Response to Soluri Letter Section I.A.

Soluri states that the Project does not meet the affordable requirements of the California Environmental Quality Act (CEQA) section 21155.1(c) because the Project's affordable units are restricted to students. Soluri argues that section 21155.1 requires that the affordable housing must be made available to "families", which he construes to mean people with young children, and if the affordable housing in the project is made available to individual students, it would not satisfy the requirements of section 21155.1 because the individual students are not "families."

This comment is fully addressed in Attachment #7 (Public Resources Code Section 21155.1 Consistency Analysis for the Davis Live Project) commencing on page 29. First, the proposed affordable housing plan is not restricted to students, although the affordable beds will be rented on an individual basis. State and federal laws and regulations governing eligibility for affordable housing make clear that "families" include households of all sizes, including single person households. Section 21155.1 provides that at least 20 percent of the housing in a transit priority project will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income. The eligibility standards for very low income households and low income households under state law are set forth in Health & Safety Code sections 50079.5(a) and 50105. Those sections declare that the state income limits for low and very low income households are based on the qualifying limits for "low income families" and "very low income families" as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. Section 8 of the United States Housing Act of 1937, in turn, defines an "eligible family" as a "family or individual" that meets specified eligibility criteria and expressly includes a "single person." (See 42 U.S.C. §§1437a(b)(3)(A), 1437aaa-5(2).) Based on the plain language of the state and federal definitions for low and very low income households, a low income or very low income "family" can be comprised of a single person, if

the housing provided is meant for a single person household, as is the case here. Similarly, the City's Affordable Housing Ordinance defines "family" as "an individual or group of two or more persons occupying a dwelling unit and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent." (See Davis Municipal Code §18.05.020 (emphasis added).) Nothing in the statutory exemption indicates that the residential portion of a transit priority project must be provided to multi-person households or families with children, as Soluri suggests. The Project therefore provides affordable housing in a manner consistent with the requirements of Section 21155.1.

Response to Soluri Letter Section I.B.

Soluri states that the City has not properly considered whether the Project will harm special-status species under the federal Endangered Species Act of 1973, the Native Plant Protection Act, or the California Endangered Species Act.

This comment is fully addressed in Attachment #7, commencing on page 8. As stated in that analysis, the proposed project site is located in an urbanized area within the City of Davis and has been previously developed for residential uses. Past residential uses included a two-story building, associated parking lot and landscaping. The previous development on the site was demolished in early 2018. Demolition of the two-story building did not include removal of all existing vegetation; as a result, the project site is currently characterized as a highly disturbed, vacant lot, with scattered trees, shrubs, and ruderal vegetation. The site is surrounded by existing urban development. Considering the recent demolition of the previous development, the disturbed nature of the site, and the location of the site within an urbanized portion of the City, the project site is not wildlife habitat and does not support special-status plant species.

A search of the California Department of Fish and Wildlife's Natural Diversity Database for the Merritt and Davis 7.5-minute USGS topographic quadrangles was performed by Raney Planning and Management, Inc. (June 2018). No records of threatened or endangered plants were identified within the search area. A few records of plants having either a California Native Plant Society 1 or 2 rank were identified. However, the species types require habitats that do not occur on-site (e.g., vernal pools, valley and foothill grassland, chenopod scrub, alkali meadow), and the majority of occurrences are old records in locations where suitable habitats have since been removed.

The CNDDDB search indicated several historic records of active Swainson's hawk nests within the project vicinity. While the project site does not provide significant value as wildlife habitat, the mature trees located along the Russell Boulevard street frontage, as well as the mature trees along the site's perimeter could support nesting Swainson's hawk, as well as other migratory birds protected under the federal Migratory Bird Treaty Act.

Raney Planning and Management conducted a reconnaissance survey of the project site and perimeter areas on June 13, 2018. No evidence of active nests were found on the property. As indicated in section (b)(5) of this analysis, the proposed project is required to comply with all applicable mitigation measures and performance standards identified in prior environmental

impact reports. As shown in Attachment 1, the MTP/SCS EIR includes Mitigation Measure BIO-1b: Avoid, minimize, and mitigate impacts on special-status wildlife species. Among the requirements, those applicable to the proposed project include preconstruction surveys for nesting raptors, including Swainson's hawk. The applicable mitigation measures of the MTP/SCS EIR have been required in the project conditions of approval. The project applicant will be required to retain a qualified biologist to conduct preconstruction surveys for wildlife, and if protected species are found on-site, appropriate avoidance and minimization measures shall be implemented. The inclusion of these mitigation measures will prevent any harm to special-status species under the laws referenced in Soluri's letter.

Thus, implementation of the proposed project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, the transit priority project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

Response to Soluri Letter Section I.C.

Soluri states that the City must prepare a Preliminary Endangerment Assessment as defined in the Hazardous Substances Account Act (Act). (Health and Safety Code, § 25300 et seq.), rather than the Phase 1 analysis that was prepared to determine the existence of a release of hazardous substance.

Section 21155.1 requires that a preliminary endangerment assessment be conducted to determine the existence of any release of hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. (§21155.1(a)(4).) This subsection does not define the required assessment as a "Preliminary Endangerment Assessment" as defined by the Act, nor does it reference the Act in any way. Further, a Preliminary Endangerment Assessment conducted pursuant to the Act is meant to enable the Department of Toxic Substances Control (DTSC) to manage brownfield sites and school sites (See Health & Safety Code §25395.21; Education Code §17213.1; Preliminary Endangerment Assessment Guidance Manual ("Manual"), pages iv, 3.) It would make no sense to conduct this type of assessment in the context of a residential development like the Project.

Further, when Section 21155.1 was originally adopted, DTSC determined that this section did not provide a role for DTSC or identify specific methods for determining the potential for exposure of future occupants to significant health hazards from any nearby property or activity. (See SB375 Enrolled Bill Report from DTSC.) If Section 21155.1 requires the preparation of a Preliminary Endangerment Assessment under the Act, then DTSC would not have declared that it would have no role in this process, since DTSC oversees the development of Preliminary Endangerment Assessments.

Given these facts, the preliminary endangerment assessment called for pursuant to Section 21155.1 is not the equivalent of a preliminary endangerment assessment under the Act, and must simply “determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity” in accordance with the direction of the statute. This assessment is not required to do so in strict accordance with Health and Safety Code section 25319.5 and/or the Manual.

Nonetheless, even if the review of this project was required to follow the Manual, which governs the preparation of Preliminary Endangerment Assessments pursuant to the Act, it would not require the preparation of a Preliminary Endangerment Assessment. According to the Manual, a preliminary endangerment assessment is prepared after DTSC does the following: 1) identifies a potentially contaminated property; 2) determines that property should be evaluated further; and 3) determines that the property falls within DTSC’s clean-up authority. (Manual, page 3.) The Phase 1 for this site was conducted in a manner that is consistent with the analysis that would be utilized to determine whether a Preliminary Endangerment Assessment is necessary. As documented in the Phase I for this site, this site is not contaminated, and therefore would not proceed to the next step of requiring a PEA under the Manual, even if the Manual were applicable to the evaluation of the project site.

Response to Soluri Letter Section I.D.

Soluri states that the City has not analyzed whether the Project will risk public health exposures that exceed the standards established by any state or federal agency.

This comment is fully addressed in Attachment #7 commencing on page 14. The term “public health exposure” is not expressly defined in CEQA Section 21151.1. For purposes of the environmental analysis conducted by the City for this project, the City considered a public health exposure to occur through the exposure of persons or the environment to hazardous materials, the creation of or the exposure of persons to excess pollutant concentrations, and/or the creation of or exposure of persons to excess noise. As discussed in detail in that section, the City has completed the Phase 1 Environmental Site Assessment referenced above, as well as a Health Risk Assessment and a Noise Study to ensure compliance with the requirement to analyze potential public health exposures. As more specifically detailed in Attachment #7 and the Health Risk Assessment, the City has analyzed and fully addressed any potential risk of a public health exposure, fully addressing Soluri’s concerns.

Response to Soluri Letter Section I.E.

Soluri asserts that the City has not adequately analyzed whether the transit priority project and other projects approved but not yet built can be adequately served by existing utilities.

This comment is fully addressed in Attachment #7 commencing on page 2. Both Cunningham Engineering and the City Public Works Department evaluated existing utility capacity, including water, wastewater collection and treatment, drainage, landfill and energy capacity, and

determined that the Project and approved but unbuilt projects can be served based on existing utility capacity.

Response to Soluri Letter Section I.F.

Soluri asserts that the City has not met the requirement that the buildings and landscaping must be designed to achieve 25 percent less water usage than the average household in the region.

This comment is fully addressed in Attachment #7 commencing on page 26. As discussed in Attachment #7, the proposed project is designed to be 70 percent more efficient than the average per capita water use rate in the Sacramento Hydraulic Region and 33 percent more efficient than the average per capita rate within the City of Davis (cite). Further, the proposed Condition of Approval 17 for the Project requires that the applicant submit confirmation of compliance with the energy and water efficiency requirements to the City prior to issuance of building permits. These measures ensure that the Project will meet the water efficiency standards set forth in Section 21155.1 (see also Attachment #5, Development Agreement Exhibit G).

Response to Soluri Letter Section I.G.

Soluri states that the City inappropriately piecemealed demolition of a former structure on the Project site from the environmental review of the Project.

Soluri argues that the demolition permit that was issued for the fraternity house that previously existed on the Site should have been considered as part of the environmental analysis for the Project, and the failure to do so constitutes piecemealing of the Project. However, the demolition permit was a ministerial project that was issued before the applicant submitted an application for this Project. Both the CEQA Guidelines and the City's Municipal Code make clear that this demolition permit was exempt from CEQA review (CEQA Guidelines §15268; Davis Municipal Code §8.19.020.) The demolition permit was issued before the Applicant submitted its application for the Project, and was intended to address ongoing safety and health issues stemming from unauthorized occupants residing in the building. (See Staff Report to Historic Resources Management Commission, 10/16/2017.) The demolition permit was a separate, ministerial action that the City was required to issue under the terms of its ordinance. The City could not have conducted an analysis of the Project (for which it had not yet received an application) as part of the initial demolition permit. Because the demolition permit issuance was a ministerial action taken prior to the current application for the Project, it cannot be considered a piecemealed part of the Project.

Further, the City has not avoided any environmental review as a result of the issuance of the demolition permit. No aspect of the review of this project would have changed if the demolition permit has not been issued prior to the application for this project. The only alleged concern raised by Soluri is a claim that the prior use of the property as a fraternity house could have included affordable beds, resulting in a net loss in affordable housing. The fact that the building has been demolished does not prevent the City from knowing whether or not the Site previously contained affordable housing units. The Site was not subject to a regulatory agreement or covenant that would require any affordable housing on site, and there is no evidence to suggest

that any portion of the housing provided to dues-paying fraternity members were set aside for extremely low, very low or low income households. There is no evidence that any affordable housing was provided on the site during its prior use. There is no merit to Soluri's arguments, because the Project was not improperly piecemealed.

Response to Soluri Letter Section I.H.

Soluri states that the Project is not exempt from CEQA because the City has not incorporated all applicable mitigation measures from the 2016 MTP/SCS Environmental Impact Report.

This comment is fully addressed in Attachment #7 commencing on page 28 and in Appendix 1 to Attachment #7. The City has incorporated all applicable mitigation measures from the 2016 MTP/SCS Environmental Impact Report as conditions of approval for the Project, and therefore have been expressly incorporated into the Project (*See* Attachment 1 to the Planning Commission Staff Report) and Soluri's concern is without merit.

Response to Soluri Letter Section II.

Soluri argues both that the Project is not consistent with the General Plan, and that the General Plan amendment to establish a new land use designation for "Residential Very High Density" creates an internal inconsistency in the General Plan. The letter fails to articulate why Soluri thinks that the General Plan amendment creates an internal inconsistency within the general plan, but the Findings included as Attachment 1 to the Staff Report describe in detail how the Project, including the general plan amendment, will conform with and further many of the policies set forth in the General Plan, in particular those visions, policies and goals focused on encouraging infill development, and providing adequate rental housing to serve the City's housing needs. (See Staff Report Attachment 1, Finding #2.)

Further, despite Soluri's claims, the Project, including the General Plan amendment, is not inconsistent with the General Plan, and in fact furthers several of the policies cited by Soluri. With respect to Policy LU A.1, the Project is consistent with setback requirements established for the Planned Development zoning established for this Site. These requirements are consistent with the base setback requirements set forth in the Municipal Code, and are appropriate for the Site due to the City's desire to provide dense, student oriented housing in close proximity to the U.C. Davis campus and the desire to encourage density consistent with the City's goals for infill development. The Project as designed also includes interior open space in lieu of open space that would otherwise be provided by increased setbacks, and the use is consistent with the existing multifamily, student oriented rental housing on the adjacent parcels.

Soluri claims that the Project is inconsistent with Policy LU A.3, requiring "a mix of housing types, densities, prices and rents, and designs in each new development area." The Project is a single infill development project in an already developed area. It is clearly not, in and of itself, a "new development area". And would not be required to include multiple housing types within this single project. Further, this Project does add to the mix of housing types, densities, prices and rents, and designs within the surrounding area, in that it will provide a higher density project with larger units that will be rented on a per bed basis, providing a new housing type for single

residents (particularly students). This is a housing type that does not currently exist in the vicinity of the Project, and therefore adds to the diversity of housing in the area. The Project would in fact further Policy HOUSING 1.1, notwithstanding Soluri's claims to the contrary.

Soluri next contends that the Project is inconsistent with Policy HOUSING 1.3, which encourages "housing to meet the needs of single persons and households with children with extremely low, very low and low incomes." Soluri argues that the Project is inconsistent with this Policy because the Project would not meet the needs of households with children. The Policy does not require every single project to provide affordable housing for single persons and children. It requires the City to take steps to encourage the development of such housing in the City. The City has furthered this policy through its adoption and implementation of the City's affordable housing ordinance, and this Project complies with the City's ordinance. This Project is therefore consistent with and in fact furthers Policy HOUSING 1.3, by including affordable housing for single persons.

Soluri next criticizes the reduction in parking for the project, while never explicitly addressing how or why this restriction is inconsistent with the City's General Plan. In fact, the parking reduction is consistent with Standard TRANS 5.1a, which provides that developments which incorporate SACOG Blueprint Principles shall have reduced parking requirements. Further, the Staff Report includes a detailed discussion of the parking standards established for the Planned Development district for this Project. For the reasons outlined in the Staff Report, the parking standards established for this Project are appropriate and consistent with the City's General Plan.

Finally, Soluri notes that the Project proposes a dense unit mix, but does not claim that the Project is inconsistent with the General Plan as a result of this density. This comment does not raise a legal concern and therefore does not require a specific response.

2. GROTE LETTER

Grote asserts that the Project does not meet the requirements for a Transit Priority Project under Public Resources Code section 21155.1 because that section requires that affordable housing be provided for families, rather than individuals.

This comment is similar to the first comment referenced from the Soluri Letter above. The proposed affordable housing plan is not restricted to students, although the affordable beds will be rented on an individual basis. State and federal laws and regulations governing eligibility for affordable housing make clear that "families" include households of all sizes, including single person households. Section 21155.1 provides that at least 20 percent of the housing in a transit priority project will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income. The eligibility standards for very low income households and low income households under state law are set forth in Health & Safety Code sections 50079.5(a) and 50105. Those sections declare that the state income limits for low and very low income households are based on the qualifying limits for "low income families" and "very low income families" as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. Section 8 of the United States Housing Act of 1937, in turn,

defines an “eligible family” as a “family or individual” that meets specified eligibility criteria and expressly includes a “single person.” (*See* 42 U.S.C. §§1437a(b)(3)(A), 1437aaa-5(2).) Based on the plain language of the state and federal definitions for low and very low income households, a low income or very low income “family” can be comprised of a single person, if the housing provided is meant for a single person household, as is the case here. Similarly, the City’s Affordable Housing Ordinance defines “family” as “an individual or group of two or more persons occupying a dwelling unit and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.” (*See* Davis Municipal Code §18.05.020 (emphasis added).) Nothing in the statutory exemption indicates that the residential portion of a transit priority project must be provided to multi-person households or families with children, as Grote suggests. The Project therefore provides affordable housing in a manner consistent with the requirements of Section 21155.1.

3. BENSON AND DODD LETTERS

Mr. Benson’s comments focus on the need for apartment housing and concurs that the project site is appropriate, but concludes that the density and height of the proposed project is not appropriate for the site. Mr. Benson further notes that parking is a concern and expresses support for saving the trees. Mr. Dodd similarly comments that the project is too large with insufficient parking. These issues have been addressed throughout the staff report.

4. CHANG EMAIL

Ms. Chang comments that parking is inadequate. This is addressed in the staff report. She further comments on noise due to the project’s activity areas. Activities within the amenity plaza may include noise creating activities or the use of noise amplifying devices. Such activities would be residential in nature and would not include commercial activities. Thus, the sound generated by such activity would not be anticipated to be substantial. Furthermore, the amenity plaza is located within the interior of the project site. Existing residences to the east and west of the project site would be shielded from noise emanating from the amenity plaza by the intervening structures. The amenity plaza would be open to off-site areas on the south side of the project site; however, the project site is bordered by the Russell Boulevard right-of-way to the south, and the closest receptors would be future residents at the redeveloped Orchard Park site. The Orchard Park site is located over 190 feet south of the project site, and dense vegetation intervenes the project site and the Orchard Park site. Accordingly, the orientation of the amenity plaza would ensure that noise emanating from the amenity plaza would be blocked by intervening structures prior to reaching the nearest off-site receptors, or would be reduced with distance between the amenity plaza and future receptors at the Orchard Park site. Finally, noise producing activities within the amenity plaza would be subject to all applicable regulations within the City of Davis’ Noise Ordinance (Condition #24). Such regulations include restrictions on the use of noise amplifying devices in certain situations, and provisions regarding violations of noise standards. Should any future activities within the amenity plaza result in violation of the City’s Noise Ordinance, nearby residences may report such violations and the City would take enforcement actions to abate the violation. Ms. Chang also comments on safety related to the City of Davis Fire being able to serve the proposed project. Based on communications with the Fire Department, the Fire Code is

designed to ensure the building can be served by the Fire Department, with or without a ladder truck. The Code requires the building to have fire sprinklers, as well as adequate water pressure. Ms. Chang also raised concerns regarding the loss of the oak trees on Russell Boulevard. The cork oak trees are being preserved and conditions of approval are included to ensure their protection during construction. Ms. Chang's final comment states that the proposed project would increase trash in the area. The proposed project includes a trash and recycling room on the ground level and trash chutes to this room on all floors of the building. In addition, Condition #57 requires the applicant to keep the property free of trash and debris.

5. EDELMAN LETTER

Mr. Edelman's comments focused primarily on parking and bicycle parking/access, which have been addressed throughout this staff report. Mr. Edelman provides suggestions for project design including relocating the bicycle plaza to the other side of Russell Boulevard with a bridge to connect or moving the bicycle parking to the Russell Boulevard frontage, eliminating parking and providing additional apartments on the first floor, create a roundabout with bicycle priority at the intersection of Russell Boulevard and Orchard Park Drive. The applicant has considered, but declined to modify the project to reflect these suggestions. Mr. Edelman also comments on the process moving too quickly and the need for additional Commission review. Although the project is not returning to SCC and BTSSC, the project is returning to PC with additional information upon which to make a recommendation to City Council.