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Subject: Public Comment Vulcan-Shamrock received May 8, 2023

Good morning,

Attached is a public comment from property owner and business operator Vulcan Materials Company, doing business as Shamrock Materials Inc. (Vulcan-Shamrock), whose site is located immediately east of the proposed Oyster Cove project site. This public comment will be uploaded to the meeting agenda item. In its comment, Vulcan-Shamrock requests that the City include an additional project condition of approval requiring a grant of easement to Vulcan-Shamrock "for noise, dust, odors, vapors, vibration, illumination, and other related external effects from the continued operation of Shamrock's industrial facility - provided, of course, that such activities are in compliance with applicable regulations" (Public Comment, p. 2). Planning staff and the City Attorney have reviewed the proposal included in this public comment and provide these notes for the Commission's consideration.

1. Required CEQA review of the proposed Oyster Cove Mixed Use Neighborhood project did not analyze potential impacts of the existing Vulcan-Shamrock land use because CEQA review analyzes potential environmental impacts of the proposed project, as opposed to analyzing potential impacts of the surrounding environment on the proposed project.
2. The City greatly values Vulcan-Shamrock's participation in Oyster Cove's public review process by providing constructive comments. Staff notes that Deputy Planning Manager Tiffany Robbe met with Vulcan-Shamrock representatives and Oyster Cove project representatives on May 3, 2023, to discuss Vulcan-Shamrock's comments and to review Planning's proposed conditions of approval, which were the same as provided in Exhibit 1 of the draft Tentative Subdivision Map resolution.
3. While the public comment references operational activity that's taken place since 1945, Planning staff refer to a Conditional Use Permit approved by the Planning Commission on December 19, 1967 (Petaluma City Planning Commission Resolution No. U15-67) as authorization for the use of the property as described in the public comment. In "Exhibit A" to the resolution, Condition of Approval 6 requires that the use "shall comply with all applicable zoning ordinance requirements prior to and during the operation of the batch plant. These requirements shall include such things as complete control of dust, noise, and any other noxious effects within the boundary of the site."

4. The City shares Vulcan-Shamrock's interest in putting future property owners on notice about any potential for the nuisance that may be caused by Vulcan-Shamrock's operations that comply with the approved and vested 1967 Conditional Use Permit. Two proposed conditions (Conditions 14 and 15) contained in Exhibit 1 - Conditions of Approval of the draft Tentative Map resolution would do that. They require recordation with the Sonoma County Recorder a notice of potential impacts resulting from industrial activity as required by SmartCode §4.70.050(A) and that such notice shall be provided to future property owners through the recorded Covenants, Conditions, and Restrictions (CC&Rs) required for this condominium project. Future property owners would, at a minimum, receive such information through a properly executed property title search.
5. The legal doctrine of "coming to a nuisance" can be summarized as follows: If you are aware and voluntarily move next to a cement facility, then you then can't complain about the noise and dust caused by the cement facility. The City's proposed conditions of approval would create the awareness referred to by the doctrine.
6. The proposed easement they are requesting could have the effect of excusing non-compliance with applicable noise and air quality restrictions.

For these reasons, City staff recommend that the Planning Commission does not recommend the addition of a project condition of approval requiring a grant of easement to Vulcan-Shamrock "for noise, dust, odors, vapors, vibration, illumination, and other related external effects from the continued operation of Shamrock's industrial facility."

Staff are available to answer any questions.

Best,

Andrew

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