



City of Petaluma, California

Community Development Department
Planning Division
11 English Street, Petaluma, CA 94952

Project Name: Oyster Cove Mixed Use Neighborhood
File Number: PLPJ-2022-0005
Address/Location: 100 and 310 East D Street and O Copeland Street
 (APNs 007-700-003, -006, and -005)
Subject: Response to Comments on the
 Draft Initial Study/Mitigated Negative Declaration

1. INTRODUCTION

In accordance with the California Environmental Quality Act (CEQA) of 1970 (as amended) (California Public Resources Code 21000 et. seq.), the Initial Study/Mitigated Negative Declaration (IS/MND) was circulated for a 30-day public review and comment period from April 7, 2023, through May 8, 2023. This provides a response to comments received on the Public Draft IS/MND for the Oyster Cove Mixed Use Neighborhood project (SCH #2023040175) as well as responses to comments regarding environmental impacts, generally. Responses provided herein clarify and bolster the analysis and evidence provided in the IS/MND, as necessary. Although CEQA does not require the lead agency to prepare a response to public comments received on a Negative Declaration or a Mitigated Negative Declaration, the City has elected to prepare this response to comments for consideration along with the environmental document. This document, along with the IS/MND, attachments thereto and references, serves as the Final IS/MND.

2. CEQA REQUIREMENTS

Consistent with the requirements of CEQA, the City of Petaluma Planning Commission has reviewed and considered comments received on the IS/MND and recommended approval of the IS/MND and Mitigation Monitoring and Reporting Program (MMRP) to the City Council, with revisions and clarifications. No comments were received from state regulatory agencies. Individuals that submitted written comments to the City regarding environmental impacts and the environmental review document prepared for the project are listed below. Comments from individual members of the public include those provided prior to preparation of the IS/MND as well as during the public comment period for the IS/MND. In addition, comments and questions provided by the City of Petaluma Planning Commission and staff's responses are summarized below. The full public hearing, is available online at:

<https://cityofpetaluma.primegov.com/Portal/Meeting?meetingTemplateId=15290>.

3. MASTER RESPONSES TO COMMENTS

Comments received on the Draft IS/MND from various commenters raise similar themes that are addressed in the following master responses to comments.

3.1. Master Response to Comments: Flooding

Comments received on the Draft IS/MND assert that the project will result in significant environmental impacts related to flooding. As detailed in the IS/MND impacts of the project as it relates to flooding will be reduced to less than significant levels through implementation of the mitigation measures described in the IS/MND, Conditions of Approval imposed on the project, and through compliance with uniformly applied development standards.

The project complies with regulations for development in the floodplain and will not result in offsite flooding or cumulative impacts. As discussed in the IS/MND, the project is consistent with Chapter 6 (Floodway and Floodplain Districts) of the Petaluma Implementing Zoning Ordinance, which allows development within the Flood Plain-Combining (FP-C) district, provided that the portion of the site located within a special flood hazard area is elevated a minimum of 12-inches above the base flood elevation. As proposed, the project complies with this requirement as the site will be elevated to between 14 and 15.8 feet, which is 4 to 5.8 feet above the base flood elevation. In addition, the project will implement a stormwater control plan demonstrating design calculations that show post-project runoff for the 24-hour, 2, 5, 10, 25, and 100 year storm event does not exceed pre-project flow for each drainage management area (DMA), and that each DMA has appropriate stormwater quality treatment based on flow- or volumetric-based calculation, as outlined in the Small MS4 General Permit and in compliance with the Bay Area Stormwater Management Agencies Association (BASMAA) Manual.

3.2. Master Response to Comments: Sanitary Sewer Overflows

Sanitary sewer overflows (SSOs) have previously occurred in the area of Weller Street/D Street, which is a result of the deficient capacity of the pump station located at C Street. The City is in the process of addressing the deficiencies in this area. As shown on Sheet 7 of the Project Plans (Preliminary Utility Plan), the project will connect to an existing sewer manhole in Hopper Street and will convey wastewater from the site to Ellis Creek via a 24-inch sanitary sewer. The City of Petaluma Public Works & Utilities Department has confirmed with technical consultants, Woodard and Curran, that the existing system within Hopper Street has sufficient capacity to accommodate additional flows from the proposed project. As the project will not connect to the system with known deficiencies, impacts resulting from wastewater discharge will remain at less than significant.

3.3. Master Response to Comments: Biological Resources

As provided in the IS/MND, the project site is dominated by non-sensitive biological communities. Sensitive biological communities include coastal salt marsh fringe and tidal waters which. Impacts to coastal salt marsh fringe and tidal waters are limited to areas where one existing outfall will be repaired and one new outfall will be installed. Though the project has the potential to impact these sensitive biological communities, mitigation measures have been incorporated to reduce impacts to less than significant including Measure BIO-4, which requires the applicant to obtain necessary permitting from Responsible Agencies, including the

U.S. Army Corps of Engineers (USACE), California Department of Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB), and Measure HYDRO-2, which requires implementation of best management practices (BMPs) during project construction to eliminate runoff into the surrounding waterways.

The IS/MND also identifies the potential for the project to impact special status fish, bird, and bat species during construction, however, Measures BIO-1, BIO-2, and BIO-3 will reduce potential impacts to special status species to less than significant.

4. PUBLIC COMMENTS AND RESPONSES

Individuals that have submitted written comments to the City regarding environmental impacts and the environmental review document prepared for the project are listed below.

1. Pearsall, July 11, 2022
2. McKinnon, July 11, 2022
3. Lecht, May 27, 2022
4. Osinski, May 27, 2022
5. Bohner, May 7, 2023
6. Stuart, May 8, 2023
7. Sullivan, May 9, 2023

5. Public Comments and Responses

The following includes a summary of comments received by individual members of the public, identified by the commenter's last name. Comment letters related to environmental impacts and comments on the environmental review document are included in Attachment 1. Comments provided on the merits of the project are not required to be addressed in this response to comments document, which has been prepared to address substantive comments related to environmental impacts and the Draft IS/MND. Comments that have been received by multiple commenters on similar themes are responded to through Master Response to Comments, which are presented above in Section 3 of this document. Responses to individual comments unique to each commenter are enumerated and addressed below.

5.1. Pearsall Comment Letter

- The commenter asserts the project is too close to the river and wildlife habitat.

3.3 Master Response to Comments: Biological Resources

Comment #1: Commenter asserts the project would impede the fire department getting to east side due to additional traffic introduced by the project.

Response #1: The City of Petaluma operates three fire stations, including two located in east Petaluma (Fire Station #2 1001 N McDowell Boulevard and Fire Station #3 831 S McDowell Boulevard). In the event of an emergency, emergency personnel would be deployed from the nearest station. Furthermore, as stated in the IS/MND, emergency response vehicles have the ability to override traffic controls with lights, sirens, and signal pre-emption, and their ability to travel in opposing travel lanes in congested conditions would. Though the project will add

additional traffic to the surrounding street network, the location of fire stations throughout the city as well as emergency response vehicles ability to override traffic controls will ensure fire department access to the east side will not be impeded and impacts will remain at less than significant.

5.2. McKinnon Comment Letter

- The commenter raises general concerns related to flooding and climate change.
3.1 Master Response to Comments: Flooding
- The commenter raises concerns about biological resources, stating “What about the loss of wildlife?”
3.3 Master Response to Comments: Biological Resources

5.3. Lecht Comment Letter

- The commenter asserts concerns regarding development proximate to the Petaluma River stating “More importantly, the river is home to aquatic wildlife who will be negatively impacted by this development. Once the natural habitat is destroyed it is gone forever. We need to preserve nature in Petaluma, not build on it and pave over it. Also, the river banks are our flood control.”
3.3 Master Response to Comments: Biological Resources

5.4. Osinski Comment Letter

- Commenter asserts concerns regarding development proximate to the Petaluma River stating “it seems highly questionable being built on and around wetlands, which are such a rare and small percentage of the overall topography”
3.3 Master Response to Comments: Biological Resources

5.5. Bohner Comment Letter

- The commenter states that the project may result in significant impacts due to flooding.
3.1 Master Response to Comments: Flooding
- The commenter states that the project may result in significant impacts due to wastewater discharge, noting that the project will connect to a system that is subject to overflowing.
3.2 Master Response to Comments: Sanitary Sewer Overflows

Comment #1: Commenter asserts an Environmental Impact Report (EIR) is required and the IS/MND fails the “fair argument” test, stating that “substantial evidence” supports a “fair argument” that the project may result in potentially significant impacts, requiring the preparation of an EIR to comply with CEQA.

Response #1: “Substantial evidence” includes facts, fact-related reasonable assumptions, and expert opinions based on facts. It does not include arguments, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or socioeconomic impacts not related to the physical environment. (Pub. Res. Code Secs. 21080(e), 21082.2(c); Guidelines §

15384). Information provided by the commenter does not constitute “substantial evidence” in light of the whole record to create a fair argument as to the significance of any particular impact, either individually or cumulatively, as all significant impacts are either avoided or reduced to less-than-significant levels. Furthermore, an EIR is not warranted for the proposed project as potential impacts caused by the project can be reduced to less than significant levels. The project’s IS/MND tiers from the City’s General Plan EIR and the EIR prepared for the CPSP, both of which anticipate development at the project site for residential use. Further the City recently adopted the CEQA analysis prepared for the General Plan Housing Element Update, which specifically included the proposed residential development at the Oyster Cove site.

Comment #2: Commenter asserts that the project should be required to impose additional feasible mitigation stating “For example, the project site could be preserved in an undeveloped state either partially or completely, which would reduce its potential for causing flooding.”

Response #2: Retaining the site in an undeveloped state does not represent feasible mitigation under CEQA.

Comment #3: Commenter states that flooding can be reduced within the city through implementation of Petaluma General policy 8-P-31 and that the project is inconsistent with General Plan policy 8-P-30.

Response #3: General Plan policies 8-P-30 and 8-P-31 read as follows:

- **8-P-30:** Within a 200’ setback from centerline of the Petaluma River, within the UGB, no additional development shall be permitted on lands within that 400’ wide corridor, given natural and physical constraints, unless the proposed development fully complies with the interim development standards as defined in 8-P-29 B, until such time as the study referred to in Policy 8-P-29-B is concluded and approved by the SCWA and City of Petaluma. Thereafter all lands affected shall set aside the necessary river and/or creek corridor areas and, as development occurs, shall undertake the identified surface water containment enhancement improvements.
- **8-P-31:** In accordance with the studies undertaken for the Corps Flood Protection Project, existing areas subject to periodic surface water inundation and containment, within the Corona and Denman Reaches (Lynch Creek confluence with the Petaluma River upstream to the Old Redwood Highway over-crossing of Willow Brook Creek), shall be preserved and enhanced where feasible to reduce localized flooding.

The overarching Goal under which these General Plan policies are located seeks to “Provide surface drainage and flood protection facilities to meet the community’s needs of reducing flood hazards and potential property damage” referring to the area upstream of the Corps weir, and below the confluence of Willow Brook Creek. As such, policies falling within that goal, including 8-P-30 and 8-P-31 are applicable only to areas of the city that are upstream of the Corp weir and below the confluence of Willow Brook Creek with the Petaluma River, located within the FEMA floodplain, and adjacent to the Petaluma River. The project is located downstream of the Corp weir and therefore, policies 8-P-30 and 8-P-31 are not applicable to the project.

5.6. Stuart Comment Letter

- The commenter asserts that the project will result in significant impacts as a result of flooding.

3.1 Master Response to Comments: Flooding

- The commenter asserts that the project will result in significant impacts as a result of sewage overflows.

3.2 Master Response to Comments: Sanitary Sewer Overflows

Comment #1: Commenter asserts that the IS/MND does not meet the requirements of CEQA.

Response #1: The IS/MND has been prepared in full compliance with CEQA including providing an adequate level of analysis to identify and mitigate potential environmental impacts and meeting all statutory requirements for public review.

5.7. Sullivan Comment Letter

Comment #1: Commenter asserts that preparation of the IS/MND for the project represents piecemealing, stating “These banktop developments – the North River Apts, the Riverfront development, Scannell, and Oyster Cove should not be artificially piecemealed and evaluated separately for environmental impacts.”

Response #1: Review of projects individually does not constitute piecemealing under CEQA. CEQA charges the lead agency with considering the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. The analysis contained in the IS/MND considers the whole of the action, including construction and operation of the project and as such does not constitute piecemealing under CEQA.

Comments/Questions Raised by the Planning Commission

At the May 9, 2023 Planning Commission hearing, commissioners raised the following comments and questions. Provided below is a summary of staff’s responses. Full responses are included in the recorded public hearing available at <https://cityofpetaluma.primegov.com/Portal/Meeting?meetingTemplateId=15290>.

1. Requested additional information on consistency of project with the Sanitary Sewer Master Plan (SSSMP)

City Engineer, Jeff Stutsman provided additional information related to Sanitary Sewer Overflows (SSO), noting that SSO’s occurred in the past at the Weller Street area, but that SSOs in this area have been identified and are being addressed through upgrades to the C Street Pump Station as well as additional testing. Staff also noted that the project will not be connecting to the system experiencing SSOs but will connect to a 24-inch system located within Hopper Street. Staff further clarified that Woodward and Curran, the City’s consultant working on the SSMP update confirmed that recent studies analyzed developments in the area, including the proposed project, and that there is remaining capacity available to accommodate the project. As such, additional wastewater flows to this system as a result of the project can be accommodated.

2. Requested information on the difference between an Environmental Impact Report (EIR) versus a Mitigated Negative Declaration (MND) and how the necessary level of review is determined.

Staff provided information on the process of determining the level of environmental review required for a project under CEQA stating that, upon receipt of an application, staff determines if a project is subject to CEQA, reviews any technical information provided, and requests additional information as deemed necessary. Next, staff informed the Commission that upon determination of application completeness, an initial study is prepared using information contained in project application materials, technical analyses, and applicable policy documents (e.g. General Plan, Specific Plans, etc.). If the initial study concludes that potential impacts can be reduced to levels below significance with incorporation of feasible mitigation measures, and through compliance with adopted policies and regulations, a Mitigated Negative Declaration is prepared, which staff clarified was the case for the proposed project.

In addition, staff provided clarification on the difference between an MND and EIR, noting that an EIR requires preparation of an alternatives analysis, among other requirements.

3. Does CEQA include review of construction and operation.

Staff confirmed that CEQA requires analysis of impacts of both project construction as well as operation and that the Oyster Cove Mixed Use Neighborhood IS/MND includes an analysis of temporary impacts from construction such as dust and noise as well as an analysis of ongoing impacts associated with operation of the project such as people driving to and from the site, lighting introduced to the site, etc.

4. Is the project within the development capacity identified in the CPSP EIR, have we met the development capacity, do we know what capacity we're currently at.

Staff confirmed that the project is within the development capacity identified in the CPSP EIR, though specific numbers were not readily available to staff at the hearing. Following the public hearing, staff reviewed the CPSP EIR and existing and planned development, and identified that there are 406 residences and approximately 1.5 million square feet of commercial space remaining within the identified capacity for the Lower Reach Area, within which the project site is located. Furthermore, as noted by staff at the public hearing, development of the project was anticipated by the General Plan EIR, which was prepared after the CPSP EIR. Additionally, all impacts of the project are identified and analyzed in the project-specific IS/MND.

5. Was site-specific guidance provided in the General Plan EIR for the project.

Staff clarified that the General Plan EIR does not look at site-specific impacts of a particular development, but does consider impacts associated with development that would be permitted by certain General Plan land uses.

6. Questions related to Biological Resources:

- a. **Timing of site visits, does this capture a comprehensive analysis of resources onsite:**

Staff clarified that the site visit constitutes only one component of the overall analysis and that the conclusions of the Biological Resources Assessment are also supported by a variety of other empirical sources of information (e.g. California Natural Diversity Database) which all together is used to inform potential impacts.

- b. **Mitigation Measure BIO-4, does obtaining permits from the regulatory body adequately reduce potential impacts:**

Staff confirmed that obtaining permits from the Responsible Agencies (e.g. USACE, CDFW, RWQCB) is appropriate and accepted as adequate mitigation for reducing impacts to less than significant levels. Modifications were made to MM BIO-4 to clarify that preference shall be given to onsite mitigation, but that off-site or other mitigation may be approved, as deemed most appropriate by the regulatory agencies (see Final IS/MND and MMRP).

- c. **Mitigation Measure BIO-5, requested to amend the MM to be consistent with the arborist report to include 36-inch box tree:**

Modifications were made to MM BIO-5 to ensure consistency with the arborist report (see Final IS/MND and MMRP).

- d. **Commissioner noted error on Page 62 of the Draft MND related to setbacks from top of bank.**

Staff clarified that the error will be addressed in the Final IS/MND (see Final IS/MND page 55).

- e. **Requested clarification on whether the biological analysis included ongoing use of the site:**

Staff clarified that impacts of biological resources at project operation are included in the IS/MND.

7. **Asked if unhoused population was considered as part of the displacement analysis.**

Staff clarified that the displacement of unhoused populations is not considered an environmental impact under CEQA as the impact is related to the displacement of existing housing units and associated residents which would necessitate construction of replacement housing elsewhere, which could result in environmental impacts.

8. **Mitigation Measure HAZ-1, does erosion control apply to hazardous materials onsite:**

Staff clarified that erosion control does apply to hazardous materials and that the applicant will be required to comply with both the regulatory authority for treatment and disposal of hazardous materials, including erosion control, as well as standard erosion control requirements set forth by the City of Petaluma.

9. Mitigation Measure GEO-1, does preparation of a geotechnical report constitute:

Staff clarified that the Geotechnical Report identifies geotechnical concerns on the site and concludes that construction of the project from a geotechnical standpoint is feasible. Preparation of a design level geotechnical report is required by the City of Petaluma and State of California and is therefore considered adequate mitigation.

10. Requested clarification on why the level of environmental review of the Oyster Cove project (MND) differs from that of the Riverfront and Scanell projects (EIRs)

Staff provided clarification on the level of environmental review required for the various projects noting that the Scanell project requires an EIR as it proposes a General Plan Amendment to change the Land Use designation of the entire site from River Dependent Industrial to residential and that the proposal of single-family residences triggers a potentially significant impact regarding vehicle miles travelled. Staff also stated that an EIR was prepared for the Riverfront project at the request of the applicant and clarified that the EIR prepared for that project did not identify any significant and unavoidable impacts.

6. REVISIONS TO THE DRAFT IS/MND + MMRP

Changes and revisions to the Draft IS/MND and Draft MMRP are limited to clarification on alternative emergency vehicle access and refinements to mitigation measures. These changes are reflected in ~~striketrough~~ for deletions and underline for additions.

Clarification to the Project Description is presented on page 11 of the Final IS/MND (Attachment A hereto) and reflects an alternative secondary emergency vehicle access option as noted on Sheet 9 of the Tentative Subdivision Map Civil Set (6.15.22). The revised language clarifies that secondary alternative access may be provided via one of two options 1) Hopper Street access (as detailed in the Draft IS/MND), or 2) D Street access south of Building 2 (see page 9 of the Final IS/MND). Additionally, the Final IS/MND provides minor clarifying language to the following mitigation measures:

- BIO-4 (page 49)
- BIO-5 (page 49)
- HAZ-1 (page 71)

The Final MMRP, Attachment B hereto, replaces the draft mitigation measures set forth in the Draft MMRP and reflects minor clarifications to measures BIO-4, BIO-5, and HAZ-1. The Final MMRP shall be implemented by the responsible party as noted therein to adequately protect environmental resources and ensure that potentially significant impacts of the project are reduced to less than significant levels.

Minor refinement to the Public Draft IS/MND + Draft MMRP have been made as a result of the comments received and the responses provided, as well as to clarify the potential for alternative access to accommodate emergency vehicles. Consistent with the CEQA Guidelines,

information contained herein clarifies and bolsters the analyses in the Public Draft IS/MND and does not change the conclusions, present substantive new information, or otherwise trigger recirculation.

7. SUMMARY

This Response to Comments document along with the Attachments provide additional information and analysis that support the conclusions made in the Draft IS/MND.

The less than significant conclusion of the Public Draft IS/MND remains valid and is further substantiated by the additional documentation and responses provided herein and reflected in the Final IS/MND and Final MMRP. The City of Petaluma has considered comments provided on the Draft IS/MND, reviewed information developed through the responses-to-comments process, prepared a Final IS/MND and MMRP, and determined that the project does not meet any of the conditions under CEQA Guidelines Section 15073.5, which would otherwise require recirculation of the IS/MND prior to adoption. Therefore, the recirculation of a revised IS/MND or the preparation of an Environmental Impact Report (EIR) is not required for the project.

ATTACHMENTS

- A. Final IS/MND
- B. Final Mitigation Monitoring and Reporting Program