

ATTACHMENT K

Strata-Baxter LLC Response Letter 6-1-16



STRATA EQUITY GROUP, INC.

June 1, 2016

Sent Via Email to: mbassi@cityofwildomar.org

Mr. Matthew Bassi
City of Wildomar
23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595

Re: Baxter Village Mixed Use Project

Dear Mr. Bassi and the City of Wildomar,

Strata Baxter, LLC has received and reviewed the late comment letter submitted to the City of Wildomar by the law firm Blum Collins LLP, dated May 31, 2016 regarding the Baxter Village Mixed Use Project (PA No. 14-0002) (“Project”) and its Draft and Final Environmental Impact Report (“EIR”). The late comment letter raises the following issues, which we address in turn.

Air Quality

The letter questions the methodology underlying the EIR’s Health Risk Assessment (“HRA”). The HRA recommended the use of particulate filters to limit indoor pollutant concentrations. The use of filters reduces potential impacts to less than significant levels as discussed in the Draft EIR. (See also, Draft EIR Appendix D [Health Risk Assessment].) The control efficiencies utilized to identify ventilation performance standards were based on the reported minimum efficiency reporting values (MERV), which are industry accepted standards. The use of air filters is an appropriate design feature, and the use of these filters results in a significant cancer risk of *less than* 10 in one million. Contrary to assertions in the letter, a consideration of time spent indoors or outdoors need not be considered in the HRA. Regulatory guidance from SCAQMD, OEHHA, and the U.S. EPA assume that source-receptor locations are static, and exposures are assumed to be continuous based on the averaging time under consideration. This HRA analysis assumes a “static” exposure scenario of *constant* exposure 24 hours per day, 7 days per week, for 30 years – a worst case scenario. Notwithstanding that, time spent indoors at residences is over 90% of the 24 hour day. The most recent version of the U.S. EPA’s Exposure Factor Handbook (2011 Edition), includes empirical data that suggests that, on average, over 21 hours per day are spent indoors *at the residence* for *all* age groups. (See Table ES-1 of the Handbook, available at: <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252>.)

The letter attaches and cites to U.S. EPA guidance relating to the use of early life exposure adjustment factors (A Framework for Assessing Health Risks of Environmental Exposures to Children, EPA/600/R-05/093F, September 2006) wherein adjustment factors are

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only considered when carcinogens act “through the mutagenic mode of action.” A mutagen is a physical or chemical agent that changes genetic material, such as DNA, increasing the frequency of mutations to produce carcinogenic effects. The use of adjustment factors is recommended to account for the susceptibility of producing adverse health effects during early life stages from exposure to these mutagenic compounds. None of the carcinogens considered in the study for this Project elicit a mutagenic mode of action and, therefore, the use of age specific adjustment factors is not warranted. As noted by the EPA, “no such adjustments are advocated for toxicants with either an unknown or non-mutagenic mode of action.” Thus Attachment A to the letter is not applicable to this Project.

The letter also questions the assumptions underlying the Draft EIR’s determination that emissions of NO_x are less than significant. As explained by the Project’s Air Quality Impact Analysis (see Appendix D of the Draft EIR), in addition to the mitigation measures identified, the Project will create a mixed use development and will increase land use diversity. Having different types of land uses near one another can decrease the amount of vehicle miles traveled because trips between land use types are shorter and some trips may be accommodated by non-automobile modes of transportation. Thus, the appropriate CalEEMod parameters were enabled as part of the air quality analysis to ensure this is taken into account. These design features were conservatively reflected in the “mitigated” project condition only. As such, the less than significant determination for NO_x is correct, the assumptions for these reductions were disclosed in the Draft EIR, and these assumptions are based on the industry-accepted CalEEMod emissions inventory model.

Biological Resources

The letter states that surveys for burrowing owl should be conducted closer in time to ground disturbance and that more than one survey is required to adequately assure owls are not present. Burrowing owl surveys are required for the Project under Mitigation Measure 4.4.6.1A. As discussed at length in the Final EIR on pages 93 and 94, the requirement for burrowing owl surveys within 30 days prior to ground disturbance is an MSHCP requirement, which was drafted consistent with state resources agency input and guidance. The letter provides no evidence for its allegations that the surveys required by the Project’s mitigation measure, and the MSHCP, are inadequate.

The project is not required to comply with the 2012 CDFW Burrowing Owl staff report, as under the MSHCP it is required to comply with the overlay requirements and the MSHCP protocol which only requires 1 round of surveys, but also requires a pre-construction survey within 30 days prior to ground disturbance. Therefore, the project is in compliance with the MSHCP, under which the burrowing owl is a Covered Species, as the surveys for this project were conducted pursuant to the MSHCP burrowing owl survey overlay requirements and corresponding protocol as documented in the project BRA. In further compliance with the MSHCP, a pre-construction survey will be conducted 30 days prior to ground disturbance to avoid potential direct take of burrowing owls that may occupy the site in the future. As such, a survey will be conducted closer to ground disturbance in compliance with COA BIO-3 of the project BRA. In addition, MM BIO-3 of the BRA addresses measures that should be taken should burrowing owls be found. Since the MSHCP does not have a protocol regarding

avoidance, the mitigation measure includes reference to the 2012 Staff Report with regards to exclusion of owls, if required.

The letter also objects to Biological Resources Mitigation Measure 4.4.6.3A on grounds it does not “assure in perpetuity mitigation.” This is incorrect. Mitigation Measure 4.4.6.3A requires the applicant to obtain several permits from the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, and CDFW. The measure requires that these permits incorporate, among other things, off-site replacement and/or restoration of CDFW jurisdictional streambed and riparian habitat within the Santa Margarita Watershed (at a ratio no less than 1:1), or within an adjacent watershed (at a ratio no less than 2:1) for permanent impacts. Whether off-site mitigation will occur on land acquired for this specific purpose, *or* through the purchase of mitigation credits at an agency-approved mitigation bank, *or* within an agency-accepted off-site permittee-responsible mitigation area has no bearing on whether the mitigation will be preserved in perpetuity. The letter does not explain why it opposes the use of mitigation bank credits or the use of an agency-accepted off-site mitigation area managed by the applicant. Whichever option is ultimately incorporated into the permits identified above will be reviewed and approved by the resource agency.

Greenhouse Gas Emissions

The letter objects to the use of the South Coast Air Quality Management District (“SCAQMD”) threshold for emissions per service population. However, this threshold is appropriate. As noted in the Final EIR, the City relied on the data identified by SCAQMD through its working group to establish the substantial evidence for use of the serve population/efficiency-based threshold. As noted in the Final EIR, the calculations behind this option are based on the same inventory calculated by CARB. The 4.8 metric ton per service population target is based on the same statewide 2020 GHG inventory in the CARB Scoping Plan, i.e., 295,530,000 MT CO₂e/yr. To derive the project level service population of 4.8 metric ton, SCAQMD took the 2020 statewide GHG reduction target for land use only (295,530,000 MT CO₂e/yr) and divided it by the total 2020 statewide population *plus* the total statewide employment for land use only (44,135,923 + 17,064,489) (i.e., $(295,530,000 \text{ MT CO}_2\text{e/yr}) / (44,135,923 + 17,064,489) = 4.8 \text{ MT CO}_2\text{e/yr}$). Thus, SCAQMD's threshold is another metric for assessing compliance with AB 32, based upon using numbers attributable to certain sectors and providing a finer grain analysis based on a per person methodology. The letter claims that the use of this threshold “double counts” however, as explained above, there is no such double counting occurring in the development and application of this threshold.

The letter also claims that the Project is inconsistent with SCAG’s Regional Comprehensive Plan, SCAG’s RTP/SCS, and the County of Riverside’s Draft Climate Action Plan. Regarding SCAG’s Regional Comprehensive Plan, as discussed in the Final EIR on pages 100-101, the threshold at issue is whether the Project is consistent with plans and policies adopted for the purpose of reducing greenhouse gas emissions. The Project is not required to demonstrate consistency with every land use plan and policy (here, the Regional Comprehensive Plan). The letter also provides no basis for its claim that the Project is inconsistent with the Regional Comprehensive Plan. Further, SCAG’s plan for reducing greenhouse gas emissions is its Sustainable Communities Strategy (“SCS”). As discussed in the Draft EIR, SCAG’s SCS was

approved on April 4, 2012. The SCS plans to concentrate future development and provide higher intensity development, including residential development, in proximity to transit hubs in order to reduce VMT and GHG emissions from personal vehicles. The SCS's Growth Forecast for the City of Wildomar assumes 13,000 households and 5,900 jobs in 2020, and anticipates 16,800 households and 9,300 jobs in 2035. Therefore, the Project fits within the SCS growth allocation and would not conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing greenhouse gases. As for consistency with the County's Draft Climate Action Plan, the Project is located within the jurisdiction of the City of Wildomar, not within unincorporated Riverside County. Therefore Attachment C to the letter is not relevant to this Project.

Land Use

The letter claims that the Project is inconsistent with several General Plan Land Use Element policies; however, the letter does not explain what these purported inconsistencies are based upon. Consistency with General Plan Land Use Policies was analyzed in the Draft EIR in Table 4.10.B, on pages 4.10-10 and 4.10-11. Further, contrary to what is stated in the letter, General Plan Land Use Policy LU 23.5 does not require that every commercial project include "actual provision" of transit service. Regardless, the Project concentrates commercial uses near higher density residential and transportation facilities, consistent with this policy. (See DEIR, Table 4.10.B.)

The letter also claims that the General Plan is somehow internally inconsistent where it purports to designate specific densities for areas designated as Mixed Use Planning Area ("MUPA"). Regardless, this Project includes a General Plan Amendment that changes the general plan designation from MUPA to Very High Density Residential ("VHDR"), Medium High Density Residential ("MHDR"), and Commercial Retail ("CR"). Thus, upon approval of the Project, the Project site will no longer be subject to the MUPA designation.

Transportation/Traffic

The letter claims that the pass-by reductions assumed in the Draft EIR are excessive; however, the letter does not explain upon what ground this claim is based. As discussed in the Final EIR, the trip reductions are associated with both internal capture and pass-by trips. These reductions are based on substantial evidence, as identified in the Draft EIR, including standard engineering practice and recommendations by the Institute of Transportation Engineers (ITE). As identified in the Traffic Impact Analysis (see pp. 39-41 of Appendix K of the Draft EIR [Traffic Impact Analysis]) there is a distinction between pass-by trips and internal capture trips, as follows:

Pass-by trips are defined as intermediate stops on the way from an origin to a primary trip destination without a route diversion. Pass-by trips are attracted from traffic passing the site on an adjacent street or roadway that offers direct access to the generator. These types of trips are often associated with retail uses such as gas stations and convenience stores, to name a few. As the Project proposes a commercial retail component, pass-by percentages were obtained from Table 5.6 of the ITE Trip Generation Handbook (2nd Edition, 2004) for the Shopping Center land use. As specified by the ITE Trip Generation Handbook, a 34% pass-by reduction on the shopping center portion of the proposed Project has been applied to PM peak hour and daily

vehicle trips in an effort to accurately represent potential trip generation characteristics. In contrast, internal capture is a percentage reduction that can be applied to the trip generation estimates for individual land uses to account for trips internal to the site. In other words, trips may be made between individual retail uses on-site and can be made either by walking or using internal roadways without using external streets. It has been assumed that approximately 12% of Project trips would remain within the Project boundary. The letter does not explain why it believes these assumptions, which are based upon standard and accepted industry standards and practices, are in error.

The letter disputes the use of 2013 traffic counts as the environmental baseline. The Project's Notice of Preparation was issued in 2013, and consistent with State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000 et seq.) section 15125(a), environmental impact reports must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published. This environmental setting normally constitutes the baseline physical conditions by which a lead agency determines whether an impact is significant. California courts have identified only a narrow set of specific circumstances under which an agency *may* deviate from use of this baseline. Thus, use of the 2013 traffic counts as the environmental baseline is appropriate. Regardless, the Draft EIR also analyzed the Project's impacts in the year 2018 (Project Opening Year), and post-2035 (General Plan Buildout).

Water Supply

The letter states that the Draft EIR fails to discuss Executive Order B-29-15; however this executive order is discussed on page 4.17-10 of the Draft EIR. In addition, the effects of the Governor's drought directives is discussed in the Final EIR's Responses to Comments, on page 116. Attachment B to the letter is a copy of one of the Governor's such directives, and is not directly relevant to this Project.

Recirculation

The letter claims that the Final EIR's "mention" of the following requires recirculation of the EIR: (1) EVMWD's Contingency Plan and drought conditions; (2) that DWR has designated Elsinore Basin as high priority for a Groundwater Management Plan; and (3) DWR projections regarding imported water supply. Under Public Resources Code section 21092.1, recirculation is required *only* when new information added to an EIR is "significant." New information is "significant" when it shows a new, substantial environmental impact resulting either from the project or from a mitigation measure; when it shows a substantial increase in the severity of an environmental impact and mitigation does not reduce that impact to insignificance; when it shows a feasible alternative or mitigation measure that the project proponent declines to adopt; or when it shows that the draft EIR was so fundamentally deficient and basically inadequate and conclusory in nature that public comment on the draft EIR was rendered meaningless. (*Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.) None of these circumstances are triggered by the mention of drought conditions, DWR's designation of the Elsinore Basin as a high priority for a future management plan, or DWR's imported water projections. Therefore, no recirculation is required.

The letter also claims that the Final EIR's revisions to Table 5.C trigger recirculation. As explained above, recirculation is required when new, substantial environmental impacts are identified, or where there is a substantial increase in the severity of an environmental impact that cannot be reduced to a less than significant level. As explained on page 117 of the Final EIR, the revisions made to Table 5.C do not change the conclusions of the EIR because impacts relating to energy use and conservation remain less than significant.

Alternatives

The letter states that the "No Project" Alternative analyzed in the EIR is contrary to what is allowed under the Project site's existing land use designation. This is incorrect. The "No Project" Alternative assumes a "worst case" scenario under which the site is developed consistent with existing General Plan and zoning designations for the property. As explained on page 6-4 of the Draft EIR, and further explained on pages 119 and 120 of the Final EIR, this would result in 18 acres of multifamily housing with a density of 30 units per acre (540 multifamily units). The letter does not explain why these assumptions are inconsistent with the existing land use designations applicable to the Project site.

Thank you for the opportunity to provide clarification on these issues, and please let me know if we can answer any additional questions related to the Project or its environmental review.

Sincerely,



Eric Flodine
for Strata Baxter, LLC