

**Linda Neal**

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**From:** Michele Gardner  
**Sent:** Wednesday, January 04, 2017 4:29 PM  
**To:** Town Council; Bruce Ackerman (Bruce Ackerman); Cindy Swift (Cindy Swift); 'Esther Gonzalez-Parber,'; Laura Kehrlein (laura@fdvinearchitects.com); Mimi Newton; Norma Fragoso; Phil Green  
**Cc:** Garrett Toy; janet.coleson@bbklaw.com; Linda Neal  
**Subject:** FW: Please forward to staff, planning commission and council

Mayor, Council, Commissioners:  
Below please find a letter regarding Victory Village.  
Thank you,  
Michele

Michele Gardner  
Town Clerk | Assistant to the Town Manager  
Town of Fairfax | 142 Bolinas Road | Fairfax, CA 94930 | 415.458.2343  
[www.townoffairfax.org](http://www.townoffairfax.org)

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**From:** Diane Hoffman [mailto:hoffman\_diane@yahoo.com]  
**Sent:** Wednesday, January 04, 2017 1:23 PM  
**To:** Michele Gardner <mgardner@townoffairfax.org>  
**Subject:** Please forward to staff, planning commission and council

Dear Planning Commission,  
It is not clear who is to blame but the town of Fairfax is not following the law in terms of the proposal at the Lutheran Church site. If the town is sued we all loose. Please read the paragraph below from the attorneys letter to the town. I am hoping you do the right thing.

Here, the Town's process violates a central purpose of CEQA that environmental review take place during and not after the agency planning process. See *Save Taro, supra*, 45 Cal.4th at 130 ("[T]he later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage.") Finally, we have concens about the substance of the Town's actions and project including traffic impacts, aesthetics etc. In particular we are concerned about the Town's proposal to amend the Town's Planned Development District Ordinance (Fairfax Town

Code Chapter) to allow for a future streamlined review process for sites such as this one that are identified as Opportunity Sites in the Town's Housing Element. To our knowledge, the MND does not address the cumulative effects of developing these sites, nor does it direct the reader to any prior Environmental Impact Report that has done such an evaluation.

Diane Hoffman  
33 Porteous Ave.  
Fairfax, Ca. 94930

***Diane Hoffman***  
*REAL ESTATE, WITH INTEGRITY  
AND ATTENTION TO DETAIL*  
**Bradley Real Estate**  
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## Linda Neal

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**From:** Michele Gardner  
**Sent:** Wednesday, January 04, 2017 4:27 PM  
**To:** Linda Neal  
**Subject:** FW: Public Comment re: Victory Village

Hi Linda.  
For your information.  
Thanks,  
Michele

Michele Gardner  
Town Clerk | Assistant to the Town Manager  
Town of Fairfax | 142 Bolinas Road | Fairfax, CA 94930 | 415.458.2343  
[www.townoffairfax.org](http://www.townoffairfax.org)

**From:** Denise Larsen [mailto:deniserlarsen@gmail.com]  
**Sent:** Wednesday, January 04, 2017 2:53 PM  
**To:** Michele Gardner <mgardner@townoffairfax.org>  
**Subject:** Fwd: Public Comment re: Victory Village

----- Forwarded message -----

**From:** Denise Larsen <deniserlarsen@gmail.com>  
**Date:** Wed, Jan 4, 2017 at 2:49 PM  
**Subject:** Public Comment re: Victory Village  
**To:** [bcoler@townoffairfax.org](mailto:bcoler@townoffairfax.org), [rgoddard@townoffairfax.org](mailto:rgoddard@townoffairfax.org), [jreed@townoffairfax.org](mailto:jreed@townoffairfax.org),  
[dweinsoff@townoffairfax.org](mailto:dweinsoff@townoffairfax.org), [placques@townoffairfax.org](mailto:placques@townoffairfax.org), [gtoy@townoffairfax.org](mailto:gtoy@townoffairfax.org),  
[gardener@townoffairfax.org](mailto:gardener@townoffairfax.org), [lineal@townoffairfax.org](mailto:lineal@townoffairfax.org)

This is in regards to Public Comment due by 1/4/17 on Victory Village. Please forward to the Planning Commission members, as well. Thank you.

Hello Everyone,

I, like many citizens, have several concerns about the proposed Victory Village (VV) project. At this time, I will limit my comments to current the environmental impact and the probable change in the town of Fairfax itself.

The town has codes/laws/zoning carefully put in place over several decades designed to protect the town, its small town and unique character, and environment/wild areas. Although the VV project is noble in its intention, the town should not be changing its laws/codes/zoning to fit any project. Any project should come up with plans that fit the town's laws/codes/zoning. Of course, any small variances or changes to allow any project can be granted but the VV project is asking for major changes in several areas.

I am concerned about making major zoning changes to allow the VV property to be subdivided into 2 and possibly 3 parcels and allowing a major concentration of development/units on property zoned for 1 unit per 7 acres. This is a major change. Even if the property went against current laws/codes/zoning and was allowed to

subdivide and develop the 2 acre site, how would the town in the future ever be able to protect the remaining 18 acres? Or any other properties that are now and have always been fairly natural and wild? Why would some developer not come in and demand or sue to have the same exceptions/privileges on their property that the town seems so freely to want to give to VV? Does the town think that the remaining 18 acres could be subdivided into two 9 acres parcels and that the most that can happen is that two homes max will be built? Is the town willing to put itself into long and expensive litigation when some other developer wants what VV got?

It appears that the town is putting itself into a very dangerous situation and once precedent has been set, the floodgates will be open. Please at least be aware that could happen here. All one has to do is look at what happened in the Sacramento Valley where the small, individual, unique and cute towns like Fair Oaks, Orangevale, Rocklin, Folsom, Roseville, etc. became blurred or disappeared except in name only. Look at Sebastopol where the locals don't even try to go downtown anymore, drive through the neighborhoods to get around, and where a 6 story hotel is going in right in the heart of downtown while a huge two story building housing a CVS is being built across the street and high end businesses are moving in. Please do not think this cannot possibly happen here. Citizens settled in Fairfax, not a Daly City or a San Rafael, for a reason. Prove to us you could approve VV and protect the rest of the land/environment/feel here. I don't think you can.

The traffic study needs to be done at worst case scenarios times/days, not a light or mid-range. How about Wed am between 7:30-11am? How about a Friday afternoon or a Saturday? How about summer and Sunday afternoons? To have the report state there would be very little, if any impact, is not realistic. Considering how bad the traffic and parking has become over the last 10 or 15 yrs or so, how would 54 new units on the west end of town not have major impact, not just from the individuals or couples living in the units but from the workers, visitors for a myriad of reasons, deliveries, etc? Traffic and parking issues have continued to increase while there have not been any major developments for a very long time. But there have been lots of homes being remodeled into bigger ones, developments of 5 to 10 or more homes/units going in over the years, younger families with young children buying homes, etc. Look how bad traffic and parking have become without any major development projects. And the town is seriously considering and trying to force more major development projects on the town under the guise of transit oriented development and/or affordable housing. That people won't drive and only use non-car transportation in VV or any other developments in the works or future is only AN ASSUMPTION and does not take into account the visitors (service people, support/medical people, deliveries, friends and family visits, boy or girlfriend visits and staying over, Uber, etc.) who will be driving to any one resident here.

While the VV developers state their other properties average out as needing .7 parking spaces per unit, ALL of their other properties are not out "in the sticks" without walkable shopping, services, etc nearby. It does not matter if the state currently requires .5 parking spaces. Most affordable senior housing is built right near frequent, fast, reliable and affordable major transportation (which does not and will not exit here) and right near services, medical offices, grocery stores, etc. As someone in support of VV sarcastically stated at the planning commission in Dec., "Should we be building these along the 101 corridor?" YES!! VV is being billed as an active senior living development, not assisted living. Seniors drive and have visitors. They have needs beyond catching a bus, having one errand and nothing to carry from and back home but a small bag of groceries.

The sheer amount of trees being asked permission to remove and the amount of land that will now be covered with increasing water run-off is concerning. Even if 46 or so of the 70+ trees being asked for removal are replaced, a young tree does not provide the habitat or root system that holds the soil or uses water that a tree many decades old can. And speaking of water, where is all the water coming from to support more and more residents and developments?

As stated earlier, the town's codes/laws/zoning are trying to be being changed or seem to be ignored or interpreted "differently" to allow this kind of development. Changing zoning to allow a structure 40.5 ft high and 3 stories of development versus 2, and in actuality is 4 stories in height, again opens the door wide for

everyone else to want and expect the same and more. And sue if not given the same that VV gets. This height would also impact the environment and neighbors with blocking the sun and shading areas that were not experiencing that before. At their presentation, the developers touted their huge, dramatic, showcase entry as needed so people could find the entrance. A couple of low-cost, small signs stating "Entrance" with an arrow as ones drives onto and through the property would suffice. Plus the costs to heat and cool a two-story open lobby entrance area with an adjoining gathering place for residents would not make sense where a green design is considered. In short, it is not necessary or needed.

I found it very interesting that a person who appeared to be a rep of the VV project speak during the public comment time at the last PC meeting and went on about studies showing the huge positives of "aging in place." I found it ironic that this whole plan and how it is being financed does just the opposite. Aging in place??? If this project is approved, what is it going to be like for the seniors in other areas of the Bay Area and beyond applying for a unit out of necessity only to be uprooted from their family, friends, neighbors, doctors, dentists, neighborhood grocery stores, service people, support system, gym, seniors' groups, activities, church, etc, etc. at a very important time in their lives? If this developer was a "true" non-profit in reality (and not just meeting some minimum standards required by law), perhaps they would finance and build in a way that would respect the concept of the importance of "aging in place" and give priority to Fairfax seniors. This should be happening in towns and cities all over, people taking care of their own so they are not uprooted and having to start over just when they need help the most. Fairfax, by virtue of what it has represented in the past, could, with other cities and towns, lead the way.

Lastly, the spirit of any CEQA is the **accumulative impact** of a project and all the others coming forward through the town and county, as well as where the past has taken a town. The accumulative impact appears to be completely disregarded. Fairfax is limited in several ways, including water, infrastructure and open space/wild areas. And once the town changes its laws/codes/zoning to appease developers, we will not be able to turn back. Do not be under the illusion that Fairfax is in some magic bubble that will protect it from the worst of development once that door has been opened, even with deep pockets, which we don't have. Talk to some Sebastopol locals first. It appears that the VV project is putting Fairfax at a major crossroads/turning point for everything else in the pipeline now and in the future. I hope you all will look at the big picture and choose wisely.

Thank you for your time and consideration.

Respectfully,  
Denise Larsen  
Fairfax, CA

**Linda Neal**

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**From:** Diana Perdue <dperdue199@gmail.com>  
**Sent:** Wednesday, January 04, 2017 11:43 AM  
**To:** Garrett Toy; Linda Neal; Michele Gardner  
**Subject:** Fwd: CEQA-Victory Village

Town staff, planning & town council,

Begin forwarded message:

**From:** Diana Perdue <dperdue199@gmail.com>  
**Subject: CEQA-Victory Village**  
**Date:** January 4, 2017 at 11:23:05 AM PST  
**To:** Garrett Toy <gtoy@townoffairfax.org>, mgardner@townoffairfax.org

I would like to contest the victory village projects processing and approval procedures being used by the Town of Fairfax and the study that supports such. It is my belief that a project such as this would harm Fairfax and set forth a pattern of development counter to what Fairfax expects and stands for. It invalidates our building policies and rules as well as our zoning parameters. VV is inappropriate in both size and location. It has not been properly vetted by the town citizens and the streamlined review being fast tracked is an affront to the public. The required approval of a planned development district ordinance and other opportunity sites listed to be developed hidden in the VV information package was devious.

Thus far the process has violated the entire purpose of CEQA, which is that environmental review MUST take place during and not after the planning process. That not only are public comments required but that they are actually considered. That the impact assessments be genuine.

What you presented to the public was an article that suggests the project had predetermined approval. This is not what I expect from town staff, the planning commission or the town council. You are in trusted roles and one would expect you to honor them. Instead I see the entire group being deceitful. It is positively a shame to disregard our town, do not give it away.

Diana Perdue  
Fairfax

## Linda Neal

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**From:** Michele Gardner  
**Sent:** Wednesday, January 04, 2017 4:46 PM  
**To:** Town Council; Bruce Ackerman (Bruce Ackerman); Cindy Swift (Cindy Swift); 'Esther Gonzalez-Parber,'; Laura Kehrlein (laura@fdivinearchitects.com); Mimi Newton; Norma Fragoso; Phil Green  
**Cc:** Garrett Toy; janet.coleson@bbklaw.com; Linda Neal  
**Subject:** FW: Affordable Low Income Senior Housing

Mayor and Council, Planning Commissioners:  
Below please find another letter, which some of you may already have received.  
Michele

Michele Gardner  
Town Clerk | Assistant to the Town Manager  
Town of Fairfax | 142 Bolinas Road | Fairfax, CA 94930 | 415.458.2343  
[www.townoffairfax.org](http://www.townoffairfax.org)

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**From:** Kathy Flores [mailto:k-flores@comcast.net]  
**Sent:** Thursday, December 29, 2016 4:56 PM  
**To:** Michele Gardner <mgardner@townoffairfax.org>  
**Subject:** Affordable Low Income Senior Housing

Hello Michele, I was not able to get everyone's email address. Can you please forward this email to the Planning Commission, Staff and Town Council. Thank you - K

December 29, 2016

Dear Planning Commission:

First of all, I would like to have my comments regarding "Victory Village" development made a part of the record.

Secondly, I am not against Low Income Senior Housing, but I feel that it is important to be consistent with the requirement of State Housing Law, the California Environmental Quality Act ("CEQA") and the Town's Municipal Codes and regulations and any decisions made to have adequate public input.

The 450 page Developers document was released to the public on December 9, 2016. The Initial Study was published on November 30, 2016 with minimum public notice and a public comment period of 20 days: the **bare minimum** allowable under statute for comment under CEQA. After receiving the Lawyer's letter, Garrett Toy extended public comments to January 4, 2017, however it is an extremely busy this time of year and most do not have time to read the 450 page document within this time frame or be able to send in their comments. In order for all residents in our community to have the opportunity to send their comments, I am asking the Town Council to extend the comment period to **January 20, 2017**.

Thirdly, it seems the Planning Commission, with the backing of the Developers, is attempting to circumvent the Town Code in order to streamline the rezoning of **ALL** other **Opportunity Sites** in Fairfax- without adequate public process or comment and without any analysis of the environmental impacts of those future projects.

Some, but by no means all of the impacts might include increases in housing density and population, traffic congestion and parking demand, aesthetics, public services and infrastructure demands, increases in permeable surfaces and subsequent polluted runoff, and floodplain and water resources impacts, to name just a few. All of these cumulative impacts require careful analysis and if found to be significant, require mitigation.

It appears that the Staff is attempting to use public support for senior housing as a “Trojan Horse”- to slip a major city wide zoning change past the unsuspecting eyes of the Planning Commission and the public, thus opening the door to a series of major developments, for which there will be inadequate analysis or fact-based decision-making, and for which there will be extremely limited public input opportunities in the future.

There’s no turning back once our town laws, codes and zoning that have saved and kept Fairfax’s small town environment character are ignored or changed.

Thank you,

Kathy Flores

Kathy Flores  
[k-flores@comcast.net](mailto:k-flores@comcast.net)



## Linda Neal

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**From:** Michele Gardner  
**Sent:** Wednesday, January 04, 2017 4:36 PM  
**To:** Linda Neal  
**Subject:** FW: Victory Village

FYI  
Thanks, Michele

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**From:** Laura Ralph [mailto:lauraralph44@hotmail.com]  
**Sent:** Tuesday, January 03, 2017 6:36 PM  
**To:** Garrett Toy <gtoy@townoffairfax.org>; Vice Mayor Peter Lacques <placques@townoffairfax.org>; Council Member Barbara Coler <bcoler@townoffairfax.org>; Council Member Renee Goddard <rgoddard@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>; Mayor John Reed <jreed@townoffairfax.org>; Michele Gardner <mgardner@townoffairfax.org>; Council Member David Weinsoff <dweinsoff@townoffairfax.org>; lineal@townoffairfax.org; bruce@laughingcrows.net  
**Subject:** Victory Village

While I agree affordable senior housing is needed; I oppose the Victory Village project as it now stands. The letter from Community Venture Partners (CVP)/ Bob Silvestri clearly spells out the many problems with the project from inadequate traffic studies, public notice & comment period. What I find particularly disturbing is that zoning changes were attempted to be made by placing the information in a footnote. I believe we have town officials who cannot be trusted. Aside from the Victory Village project here is another example of town officials not being fully honest: After the council officially declared they were taking changes to Bolinas Road "off the table"; the last meeting I attended D. Weinsoff brought up the issue of making changes to Bolinas Road. So what is it? Are the changes "off the table" or are you planning to make changes behind the backs of residents? With the hidden zoning / code changes that were attempted to be pushed through in a footnote of the Victory Village document and TC continuing to discuss changing Bolinas Road; this leaves me with no confidence in our town officials.

Laura Ralph

## Linda Neal

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**From:** Michael Aaronson <drmik41@gmail.com>  
**Sent:** Monday, January 02, 2017 11:46 AM  
**To:** larry@lakassociates.com; Linda Neal  
**Subject:** Victory Village

To Linda Neal and the Fairfax Planning Commission:

After reading the entire Mitigated Negative Declaration for the Victory Village project, I thought wow, this is a lot to consider all at the same time. Then I was fortunate to read the the Marin Post. I am in complete agreement with all of the points raised in the letter to Linda Neal from Craig Silvestri of Community Venture Partners, Inc. that puts everything in a clear context. The Planned Development District Ordinance regarding streamlining review of this and future projects in opportunity sites is particularly objectionable, and appears to circumvent the wishes of many residents of Fairfax.

There are shortcomings to the project in its present form, including insufficient parking and an inadequate traffic analysis.

Processing future projects one at a time ignores the cumulative traffic and environmental impacts of development occurring in the opportunity sites. This process should be revised in an orderly sequence with adequate opportunity for public review and comment. Cumulative effects of development in the town cannot be ignored. Future development should not be streamlined and embedded under the veneer of this one development.

Thank you for the opportunity to comment,

Michael Aaronson

89 Laurel Drive

Community Venture Partners, Inc.  
*A Catalyst for Sustainable Solutions*

December 20, 2016

**Via Email Submission**

Town of Fairfax Planning Department  
142 Bolinas Road  
Fairfax CA 94940  
Attn: Linda Neal ([lneal@townoffairfax.org](mailto:lneal@townoffairfax.org))  
Garret Toy ([gtoy@townoffairfax.org](mailto:gtoy@townoffairfax.org))

Re: Fairfax's CEQA Review for Victory Village Senior Housing Project

Dear Ms. Neal:

Community Venture Partners ("CVP") is submitting this comment letter on behalf of Charles Cornwell and other concerned residents of Fairfax. Our comments regard the proposal before the Fairfax Planning Commission to recommend the Victory Village Senior Housing Project (the "Project") for approval, its Initial Study and proposed adoption of a Mitigated Negative Declaration, and its requisite General Plan Amendment and the Planned Development District Ordinance, and approval of the zoning text and map amendments, a parcel map, a density bonus agreement, design review, and excavation permit and a traffic impact permit as first submitted to and heard by the Fairfax Planning Commission on December 15, 2016.

This letter is a companion letter to the previous correspondence on this project by our legal counsel, Michael Graf, dated December 15, 2016, and is incorporated herein, by reference.

Let me state from the outset that **our comments are not about senior housing, per se, or the need for affordable senior housing in Fairfax and Marin County. CVP fully supports the important goal of providing affordable senior housing.** However, we believe that any project proposed to meet that goal must be appropriate to its location and neighboring community, and its approval process must be transparent, equitable to all concerned, and consistent with the requirements of State Housing Law, the California Environmental Quality Act ("CEQA") and the town's municipal codes and regulations, and any decisions made regarding it must be evidence based and the result of adequate public input.

It is with regard to these issues that we have significant concerns.

**Background**

In recent years, the Town approved a General Plan Update and a new zoning ordinance that provided for "by right," high density residential use in downtown commercial zones and on sites identified as "opportunity sites." There was no environmental impact report ("EIR") or requisite analysis that would have been required under an EIR to support either

the General Plan Update or the proposed zoning ordinance. The CEQA process used was that of an Initial Study and Negative Declaration.

Subsequently, the residents of Fairfax brought a successful petition, signed by more than 1,000 Fairfax voters, to overturn the new zoning ordinance through a referendum. After much delay, this petition was endorsed by the Town Council, apparently because they knew that bringing it before the public for a vote would have only resulted in the same outcome.

The Town Council made no secret of its displeasure about this turn of events. A disconnect between the elected officials of the Town and a significant number of its residents appears to have persisted ever since.

The newly proposed Planned Development District Ordinance (the “Ordinance”) and its “streamlining” review process appears to be an attempt to resurrect the provisions of the previous “by right” zoning ordinance in a way that ensures less public awareness of zoning changes in the future (fewer public notices) and fewer opportunities (public hearings) where the public can provide input on the Town’s project review process. This brings into question the Town’s commitment to transparency. As it stands, the public is faced with what can only be described a highly unusual public process for Victory Village that raises significant questions regarding CEQA and compliance with the Town’s own municipal codes.

### **Inadequate Public Notice and Public Comment Period**

There is no question that the proposed approval of the Victory Village project is major decision for the Town of Fairfax that will be precedent setting for decades to come. At the December 15<sup>th</sup> Planning Commission hearing, Town Manager and acting Planning Director Garret Toy stated that [there is]

*No question the project before you, its 54 units, 53 affordable senior units, one manager unit... It's the largest project this town has seen in thirty years.*

This statement considered, one would hope that the Town would make a significant effort to provide the Planning Commission and the general public with adequate time and opportunity to evaluate and comment on the proposal. Instead, the Town has pursued a fast track process that seems designed to do the exact opposite.

Although a public workshop on the project was held on November 12, 2016, the December 15<sup>th</sup> hearing was set to be the first and last opportunity the Planning Commission would have to review and recommend the final Project Proposal for approval. And, they were not only being asked to recommend the Victory Village project itself but to endorse a host of lengthy, interrelated and complex documents, including the Initial Study, a Planned Development District Ordinance, parcel and zoning map changes, a density bonus agreement, project design review, and a long list of formal Resolutions, in one fell swoop.

In our opinion, this was unreasonable and did not and does not allow sufficient time for public comment.

### **The Project's truncated public comment period violated CEQA**

In my experience attending project planning hearings for 23 years in Marin, the type of expedited processing employed by Fairfax for this project is unprecedented. The documents to be reviewed, which were only released to the public in the Staff Report on December 9, 2016, were over 450 pages in length. Yet, in spite of this massive "data dump" by the Town on the Planning Commission and its citizenry, the public comment period was set at 20 days, six days after the Staff Report's publication. Technically, the Initial Study was published on November 30, 2016 with minimum public notice and a public comment period of 20 days: the bare minimum allowable under statute for comment under CEQA, *see* Pub. Res.Code § 21091(b). As has been expressed by many, coming right before the biggest holiday season of the year, the public comment period was truncated to the point of absurdity.

In addition, by scheduling the decision-making approval hearing on December 15<sup>th</sup>, a full 5 days before the end of the public comment period (allowing only 15 days to comment), the Town was not only in violation of the law under CEQA, but for all intents and purposes it suggests its decision to approve the project was already predetermined before all comments by the public would even be received, much less considered.

An objective observer would be hard pressed to conclude that the Town has been acting in good faith. It also raises serious legal and ethical questions about the integrity of this project's entire review and approval process. Under CEQA public comments are required to be an integral part of an agency's decision-making process, not an afterthought, as the Town of Fairfax has treated public comment on the Project.

To repeat the opinion voiced in Mr. Graf's comment letter,

In *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 130–131, the Supreme Court noted that to "be consistent with CEQA's purposes, the line [for conducting CEQA review] must [not] be drawn so...late that such review loses its power to influence key public decisions about those projects." In our view, the Planning Commission's proposed Resolutions are entirely premature given that the CEQA process is still underway and no one in the Town has even considered public input on the project or MND. *See* Pub. Res. Code § 21091(d)(1) ("lead agency shall consider comments it receives on proposed mitigated negative declaration.").

Here, the Town's process violates the entire purpose of CEQA, which is that environmental review must take place during and not after the agency planning process.

[T]he later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. ... For that reason, "EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design." *Save Tara, supra*, 45 Cal.4th at 130.

In essence, the Town of Fairfax has not complied with either the planning or the zoning process established in the Government Code or the CEQA process set out in the Public Resources Code. Specifically, Fairfax appears to be adopting an unprecedented truncated planning process which does not provide a legally adequate level of public review or impact assessment.

Under these rules, at a minimum, the entire Initial Study should be recirculated for a proper public comment period to occur and the previously drafted Resolutions reconsidered and redrafted and recirculated after all public comment has been received and considered.

### **The Project Description is defective under CEQA**

Neither the Staff Report nor the Resolutions or the Initial Study provide a clear and complete Project Description, which is required under CEQA to assist the public in fully understanding the decisions the Planning Commission is being asked to make and the Project's environmental impacts.

"An accurate, stable and finite project description is an essential element of an informative and legally sufficient EIR under CEQA" (see CEQA Guidelines §15124, citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App.3d 185, 199 [139 Cal. Rptr. 396]). Several courts have invalidated CEQA documents for their failure to provide an adequate Project Description. For example, in *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4<sup>th</sup> 859 [134 Cal.Rptr.2d 322], the California Supreme Court found that an EIR was invalid because it omitted a meaningful discussion of the conditions in the northern part of the proposed water supply system. (See also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376.)

In fact, it appears that the Town has deliberately attempted to hide what is arguably the most significant and impactful aspect of the Project in what are essentially footnotes in the documents, regarding the required approval of an amendment to the General Plan, e.g.,

*The existing Planned Development District Ordinance (Town Code Chapter 17.112) will require revision in order to reflect General Plan requirements and to allow a more streamlined review process for sites, such as this one, that are identified as Opportunity Sites in the Town's Housing Element.*

As such, the Project Description is incomplete and inadequate because it does not sufficiently alert the reader to the significance and impacts of the proposed Ordinance.

The way the Project is described and presented forces the reader to attempt to sift through the voluminous and numerous documents to gain this important project information. This violation of this project description requirement is further demonstrated throughout the Staff Reports, the Initial Study and the other project documents in that the potential overall environmental impacts of the sum total of all the approvals sought for the project are never actually discussed, rendering reasonable environmental analysis impossible.

### **Cart before the horse decision-making**

The Staff's recommendation to endorse the Planned Development District Ordinance and its requisite streamlining provisions are procedurally improper and inadequate under CEQA. As presented to the Planning Commission and the public, the "project" constitutes an improper attempt by Staff to "hide" the requisite streamlining approval inside the approval of Victory Village, an individual project, and sabotages the public process to achieve its approval.

Of the nine items included for approval only eight only pertain to the Victory Village project itself, while one other, the Planned Development District Ordinance impacts all of the identified "opportunity sites" that are located throughout the Town, in addition to Victory Village. As noted, the approval of Victory Village is fully contingent and solely dependent upon a prior approval of "streamlining." This fact is not clearly explained in the Staff Report's presentation to the public and the Planning Commission.

Further, the approval of the Ordinance and streamlining, and the appropriate public process that this would demand under the Town's own codes and regulations, is in no way similar to the eight approvals sought for the Victory Village proposal itself. This action by Staff, and the inclusion of the approval of other aspects of the Project, such as design review and granting specific entitlements, violates Chapter 17 of the Town's Code, regarding Planned Development Districts, and discards the public process required to make such General Plan and zoning changes. In addition, by bundling the Planned Development District Ordinance and its dependence upon a General Plan Amendment to allow for a streamlined approval process inside of the approval of the Victory Village project, the Town has entered into an improper and inadequate environmental review process under CEQA.

To an objective observer, by including the approval of the Planned Development District Ordinance within a single project approval, the Staff Report's recommendations to the Planning Commission appear to be an attempt to circumvent the Town Code in order to streamline the rezoning of all other opportunity sites in Fairfax, for future high density projects, without adequate public process or comment in the future, and without any analysis of the environmental impacts of those future projects.

Worse still, the Staff Report is not only recommending that the Planning Commission approve the Planned Development District Ordinance and assume the future approval of the streamlined approval process for all other opportunity sites in Fairfax, but it is

attempting to actually implement the streamlining process to gain approval of the Victory Village project before that streamlining process has even been considered or created by the lead agency (the Town Council).

This nonsensical and improper “cart before the horse” process alone potentially invalidates the Staff Report, its drafted Resolutions, and this project’s public review process so far, in its entirety.

### **Failure to comply with CEQA in considering the Ordinance**

The Staff Report states:

*Planned Development District ordinance (Town Code Chapter 17.112) will require revision in order to reflect General Plan requirements and to allow a more streamlined review process for sites, such as this one, that are identified as Opportunity Sites in the Town's Housing Element. This revision was specifically contemplated in the 2015-2023 Housing Element.*

However, when Fairfax considered its General Plan Update and its prior “by right” zoning ordinance, the Town did not conduct an EIR or do the studies and analysis that would have required. The Town addressed CEQA requirements by conducting an Initial Study and the adoption of a Negative Declaration. Therefore, the Town has no prior document to tier off to satisfy CEQA requirements for Victory Village or for the recommendation of the Planned Development District Ordinance and streamlining.

The fact that streamlining was “contemplated” in the 2015-2023 Housing Element does not in any way satisfy the CEQA requirements for identification of significant impacts, their analysis and mitigation if needed, or for an evidenced based decision-making process for the Ordinance or any individual project subject to that Ordinance, including Victory Village..

Further, since the entire Initial Study and all its attachments and conclusions are based solely on the specific Victory Village project, and since there was no EIR conducted for the General Plan Update, the consideration of the Planned Development District Ordinance and the implementation of streamlining on the Victory Village project itself has not been properly or adequately analyzed or considered. To propose the Planning Commission recommend the Ordinance in absence of its compliance with CEQA clearly violates both the spirit and the letter of the law.

In summary, the Initial Study does not in any way assess the impacts of the Planned Development District Ordinance, despite clear CEQA requirements that the Initial Study do so. Instead, the Initial Study simply makes unsupported conclusions that impacts are not significant, without citing adequate data or qualitative analysis regarding those impacts.

In a situation such as this, a full EIR is required.



### **Failure to consider cumulative impacts**

It is impossible for any agency to adequately identify, consider, analyze, or mitigate cumulative impacts on a project by project basis. Processing projects one at a time, as the Staff is recommending, would, therefore, *forever* ignore the cumulative environmental impacts. However, this appears to be precisely what Fairfax is proposing to do.

### Segmentation

With regard to the Ordinance and streamlined approvals, CEQA prohibits the segmentation of related projects into smaller pieces in an attempt to avoid analysis of cumulative environmental impacts. A public agency may not divide several “projects” (e.g., opportunity sites) into smaller individual projects, such as Victory Village, in order to avoid its responsibility to consider the environmental impacts of the all the projects as a whole. See *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171.

Here, even though the Town is asking the Planning Commission to recommend a Planned Development District Ordinance and its requisite streamlined approval process, which will certainly impact the development, density and environmental impacts of other sites in Fairfax, the Initial Study fails to address or even mention those potential cumulative impacts in any way.

Worse, the Town is thereby indicating *its conscious intention to engage in inappropriate segmenting or piece-mealing* in considering of all potential cumulative impacts, for all future approvals of development projects on other opportunity sites, in addition to Victory Village. These potentially significant cumulative impacts that the agency has failed to consider, identify, analyze or mitigate include Aesthetics, Biological Resources, Greenhouse Gas Emissions, Land Use / Planning, Population / Housing / Traffic / Transportation / Mandatory Finding of Significance, Agricultural Resources, Cultural Resources, Hazards & Hazardous Materials, Mineral Resources, Public Services, Tribal Cultural Resources, Air Quality, Geology / Soils, Hydrology / Water Quality, Noise, Recreation, and Utilities / Service Systems.

Consideration of cumulative impacts is key to providing decision-makers and the public with a comprehensive view of the approvals being sought. It is clear that streamlining would provide significant incentives to build new high density, multifamily development. Some but by no means all of the concomitant impacts might include increases in housing density and population, traffic congestion and parking demand (irrespective of statistical density upper limits found in the code), public services and infrastructure demands, increases in permeable surfaces and subsequent polluted runoff, and floodplain and water resources impacts, to name just a few. All of these cumulative impacts require careful analysis and if found to be significant, require mitigation.

This fact alone potentially negates all of the finding of the Initial Study, because although dependent upon the approval of a new citywide Planned Development District Ordinance,

the Initial Study only looked at the Victory Village in isolation, and therefore is far too limited in scope, analysis or evidence, regarding the cumulative impacts that would result.

#### Future opportunity site proposals

To this observer, then, it appears that the Staff is shamelessly attempting to use public support for senior housing as a Trojan Horse, to slip a major city wide zoning change past the unsuspecting eyes of the Planning Commission and the public, thus opening the door to a series of major developments, for which there will be inadequate analysis or fact-based decision-making, and for which there will be extremely limited public input opportunities.

Much more importantly this subterfuge by Staff, this attempt to put in place a process whereby projects are approvable under a general zoning ordinance streamlining review, but which will allow them to be approved on a case by case, standalone basis, completely disregards and circumvents *ever* having to recognize, account for, analyze or mitigate the cumulative impacts of those projects as an outcome of the Ordinance. This proposed future process violates both the spirit and the letter of the law under CEQA.

As written and submitted for review and approval, the Initial Study is grossly inadequate in all aspects and provides no evidence whatsoever, either way, regarding the impacts or lack thereof from the adoption of streamlining. It is also important to note that although Victory Village may be an affordable senior housing project, as proposed, future projects on other opportunity sites, which will also benefit from the approval of the Ordinance and streamlining, are not guaranteed to provide a significant amount of affordable housing above and beyond the Town's inclusionary regulations. In fact, it is extremely likely the vast majority of new housing units proposed on other opportunity sites will consist of high priced, luxury units. The economics of development guarantee this outcome.

Based on the approval process Fairfax is attempting to put in place, facts such as this may never be addressed, adequately or otherwise, thereby denying the public their right to comment.

#### **One example of inadequate impacts analysis: traffic**

We have reviewed the Parisi Transportation Consultants Traffic Study dated October 16, 2016. We would note that a weekend day peak hour analysis was not conducted for existing conditions. It is the weekend, particularly in the good weather months, when recreational traffic would be highest on Sir Francis Drake Boulevard (S.F. Drake) that may result in greater traffic congestion in Fairfax than the Parisi Study indicates. Further traffic counts would need to be conducted to arrive at appropriate assumptions.

The Parisi analysis of the project impact is based on previous Parisi analysis of General Plan traffic volumes. Of the 11 intersections reported for the General Plan conditions, 5 are found by Parisi to operate at LOS "E" and "F." This LOS condition exists in spite of the fact that the Town of Fairfax has adopted LOS "D" as the minimum acceptable service

level standard. It is not clear why this condition exists in the General Plan when several intersections were reported to operate in clear violation of the Town's adopted LOS standard. Therefore, the General Plan and the Town's adopted LOS standards are inconsistent and demand clarification prior to any consideration of the Ordinance.

4 of the 5 intersections with substandard LOS traffic loads are also found by Parisi to now operate at LOS "E" and "F" for existing traffic. Oddly, because Parisi claims the addition of project traffic to these intersections does not degrade the already substandard LOS letter grade, the project is found by Parisi, and in the Initial Study and Staff Report, to have no significant impact on existing conditions, even though it is in violation of the Town LOS standards, and clearly even the addition of a single car will certainly *increase its lack of compliance* with that Town standard, and therefore must be identified as significant.

Nowhere does the Town, the Ordinance or the Staff Report acknowledge this truth or attempt to define at what point this creates a significant impact that requires mitigation, if that is even possible. Where is a plan for that and where is it identified and analyzed as required under CEQA.

As written, the logic being employed by Parisi and Fairfax would mean one could always continue to add more traffic to a failing intersection without the impact ever becoming significant. However, the CEQA test is rather, whether the addition is cumulatively significant; the worse the existing levels, the less traffic, not more, needs to be added to cause a significant impact.

Parisi finds that the addition of project traffic would degrade one intersection from an acceptable LOS D to an unacceptable LOS E, assuming General Plan traffic volumes. This intersection, S.F. Drake at Mitchell Drive/Alhambra Circle, is described by Parisi as having such a low traffic volume that it is not suitable to mitigate the substandard LOS with a traffic signal. No other mitigation measure is suggested. But why not, since it is in violation of the Town's LOS standard? Are the Town standards of Fairfax so fanciful and subject to political desires that they are essentially irrelevant? If so, how are the Planning Commissioners supposed to interpret or implement the standards?

All good questions, which remain unexamined.

Under commonly accepted interpretations of the standards for significant impact, the fact that a single project would add to an already unacceptable condition, e.g. the LOS "E" and "F" existing operation at 4 intersections, would be considered a significant impact of the project.

The awkward result of these procedures is demonstrated by the findings in the project Staff Report, which states that

*... the proposed project would not cause the performance of intersection roadway linkages to fall below acceptable level of service or otherwise further reduce the system performance within the Town of Fairfax.*

This is clearly not the case as found in the Parisi analysis of the intersection of S. F. Drake and Mitchell Drive/Alhambra Circle discussed above.

The Staff Report also finds

*... the project's average daily traffic will not increase the traffic volume on any roadway segments or intersection approaches of the Town's principal circulation system by more than one percent or by more than 100 vehicles.*

This is also incorrect because the Parisi study reports that the project would add 8 vehicles to the 10 peak hour vehicles projected for Mitchell Drive at its intersection with S. F. Drake (an increase of 80%). It appears that errors and miscalculations of this kind are found throughout the analysis of traffic impacts as well as other documents that purport to support the findings of the Initial Study. But, because the public comment period has been so extremely truncated and the documents so voluminous, it was simply impossible for us to go into this level of detail on all the information provided.

In addition, the issue of the cumulative impacts of Victory Village and all of the opportunity sites affected by the Planned Development District Ordinance and streamlining procedures being used to process the Victory Village project are never addressed or acknowledged by Parisi.

### **An EIR is required**

There is little question that the Victory Village proposal and its Initial Study, as it has been presented, is inadequate for the purposes of asking the Planning Commission or the public to consider the Planned Development District Ordinance and the streamlined approval process being used for Victory Village and the approval of the Victory Village project itself.

The Town would be prudent to not allow any projects that are proposed on opportunity sites, including Victory Village, to be brought before the Planning Commission and the public until a thorough public process has been undertaken and completed with regard to the proposed streamlined approval process: to do otherwise would be both improper and in violation of the Town's own regulations.

Our analysis of the Staff Report, the Initial Study and all their appurtenant documentation as presented, indicates that a complete EIR adequately assessing the overall and cumulative impacts of such a proposal is required in order to move forward.

We ask that the Town carefully consider this requirement and all our comments before continuing its present approval process for Victory Village.

Respectfully submitted for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Silvestri', with a stylized flourish at the end.

Bob Silvestri  
President  
Community Venture Partners, Inc.

## Linda Neal

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**From:** Gregory Nudd <gregnudd@me.com>  
**Sent:** Tuesday, December 20, 2016 4:16 PM  
**To:** Linda Neal  
**Cc:** Lenore Alford  
**Subject:** Victory Village CEQA comment and question

Hi Linda,

I'm a resident of Canyon Village and a supporter of the Victory Village project. I support housing as many low-income seniors as possible and this project has done a good job of minimizing footprint in green space while maximizing the housing opportunity. My only practical concern is the poor intra-Marin transit system. So, we'll have to work with Whistlestop and Marin Transit to make sure the future residents have adequate transportation options.

Comment on the CEQA document:

With California transitioning away from petroleum-fueled vehicles, all new multi-family development should include electric vehicle charging stations for residents. This should be a mitigation for the air quality impacts of the new development, as it will reduce NOx, VOC, PM2.5 and GHG emissions from the development once people are living there. It's much less expensive to plan these charging stations from the start than to retrofit them later.

General Development Question:

I see that the density bonus agreement is listed as a discretionary action by the Town. Based on my 5-minute Google search of information on the statute, it doesn't look like the Town has much discretion. Is that right? On what basis could the Town deny the density bonus agreement?

Thanks in advance for your time and for doing this job, which I'm sure opens you up to a lot of misplaced anger from some elements of the community.

Greg Nudd  
15 Deuce Ct.  
Fairfax  
415-488-6249

**Michael W. Graf  
Law Offices**

227 Behrens St.,  
El Cerrito CA 94530

Tel/Fax: 510-525-1208  
mwgraf@aol.com

December 15, 2016

**Via Email Submission**

Town of Fairfax Planning Department  
142 Bolinas Road  
Fairfax CA 94940  
Attn: Linda Neal ([lneal@townoffairfax.org](mailto:lneal@townoffairfax.org))  
James Moore ([jmoore@townoffairfax.org](mailto:jmoore@townoffairfax.org))

**Re: Town of Fairfax's CEQA Review for Victory Village Senior Housing Project**

To Whom it May Concern:

I am writing on behalf of Community Venture Partners, Charles Cornwell and other Fairfax residents in regards to the Victory Village Senior Housing Project. The Project proposes a lot split into three parcels, with a 53 unit housing project on the smallest parcel. The Project proposes General Plan and zoning amendments necessary for project approval and amendments to the zoning code proposing streamlined review process for all 'opportunity areas' identified in the General Plan.

We have concerns about the manner in which the Town is currently reviewing this Project under the California Environmental Quality Act ("CEQA") Pub. Res. Code §§ 21000 *et seq.* Currently, the Town is proposing to adopt the project along with a mitigated negative declaration ("MND") under CEQA. On November 30, 2016, the MND was circulated for a twenty day comment period, the minimum required under CEQA, *see* Pub. Res. Code § 21091(b), along with *456 pages of project materials*. That comment period for this massive amount of information is set to expire on December 20, 2016, in the middle of the holiday season. As far as we are aware, prior to this, there had been *no hearing* held by the Town, alerting the public about the Project.

Given these facts, we would request that the Town extend the CEQA comment period on the Project until into the second week January 2017, in order to allow citizens to get up to speed on what the Town is proposing, and not have to do so in the middle of the holidays when people are busy and distracted with a multitude of activities. Here, an extension is warranted, given that this project has apparently been in the works for years and that the Town's choice of a CEQA review period right in the middle of the holiday season at this time raises some troubling questions about its commitment to citizen input.

A further concern is the timing of tonight's Planning Commission hearing, at which staff is proposing the Commission adopt resolutions recommending to the Town Council approval of the Project and MND, as well as necessary amendments to the Town General Plan and zoning code. Here, the Commission is proposing to recommend adoption of the MND before the public comment process has been completed. How can the Commission make such a recommendation when it has not considered public comment pursuant to CEQA?

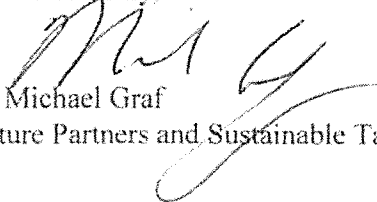
In *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 130-131, the Supreme Court noted that to "be consistent with CEQA's purposes, the line [for conducting CEQA review] must [not] be drawn so...late that such review loses its power to influence key public decisions about those projects." In our view, the Planning Commission's proposed Resolutions are entirely premature given that the CEQA process is still underway and no one in the Town has even considered public input on the project or MND. See Pub. Res. Code § 21091(d)(1) (lead agency shall consider comments it receives on proposed mitigated negative declaration.)

Here, the Town's process violates a central purpose of CEQA that environmental review take place during and not after the agency planning process. See *Save Tara, supra*, 45 Cal.4th at 130 ("[T]he later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage.")

Finally, we have concerns about the substance of the Town's actions and project including traffic impacts, aesthetics etc. In particular we are concerned about the Town's proposal to amend the Town's Planned Development District Ordinance (Fairfax Town Code Chapter) to allow for a future streamlined review process for sites such as this one that are identified as Opportunity Sites in the Town's Housing Element. To our knowledge, the MND does not address the cumulative effects of developing these sites, nor does it direct the reader to any prior Environmental Impact Report that has done such an evaluation.

The need for affordable senior housing is clear, but in order to provide for such housing, the Town must retain the trust of its citizenry. The Town's procedure so far on this Project does not engender such trust. At this juncture we reiterate our request for a comment period extension until the second week in January. We also request that the Planning Commission hold off on any decision on this project until CEQA review is completed.

Yours Truly,

  
Michael Graf

On behalf of Community Venture Partners and Sustainable Tam/Almonte

cc: Town Council via email