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November 14, 2024

Via Email

Micah Hinkle, Community Development Director
Margaret Kavanaugh-Lynch, Planning Manager
April Talley, Northgate Town Square Project Director
Planning Commissioners
City Council
City of San Rafael
1400 Fifth Street
San Rafael, CA 94901

cc: Cristine Alilovich, City Manager

Re: Comments Concerning Final Environmental Impact Report for Northgate Mall Redevelopment Project (SCH# 2021120187) and October 29, 2024 Planning Commission Meeting

Dear City of San Rafael:

I write again on behalf of Responsible Growth in Marin (RGM), a 501(c)(3) nonprofit organization of Marin County residents and businesses formed to advocate for responsible growth that will enrich the community and promote a healthy, sustainable environment and quality of life for its members and the general public. RGM has been involved in the planning process for the Northgate Mall Redevelopment Project from the beginning and fully supports a mixed-use commercial and residential urban village at the existing mall site. RGM engaged with the City and Merlone Geier in a cordial manner for several years to effect improvements to the initial proposal. RGM also supported an increase in affordable housing units at the site (to no avail).

RGM retained technical experts to review and comment on the Draft EIR, and RGM members submitted their own CEQA comments. The October 18, 2024 Final EIR¹ addressed a revised project,² and provided responses to public comments. Many of the City's responses were incomplete or incorrect, as detailed below.

I. The City Selected an Environmental Baseline for the EIR Inconsistent with CEQA

As shown in Dan Smith's February 26, 2024 expert comments (Final EIR Comment Letter B-8C), the Draft EIR's analysis of traffic impacts relied on an improper hypothetical baseline assuming full occupancy and normal activity at the existing Northgate Mall. Specifically, the analysis used nationwide average trip generation data per gross leasable area for shopping malls established in the Institute of Traffic Engineers Trip Generation Manual ("ITE Manual"), which are based on normal shopping mall operations. Using this baseline, the Draft EIR determined that peak-hour traffic generated by the more than 3,500 new residents³ as well as about 220,000 square feet of commercial uses (including two drive-through restaurants),⁴ would be *less* than that of the existing mall. As a result, the City's development fee of \$4,246 per added peak hour trip will not go into effect. This hypothetical baseline also served as the basis for analyses of Project impacts on traffic, noise, air quality, and greenhouse gas emissions.

The City's choice of this hypothetical baseline of a normally operating mall was repeatedly contradicted by the obvious decline of Northgate Mall over the past two decades; it has attracted fewer and fewer clientele and, thus, traffic, ultimately leading the Developer to seek redevelopment of the entire site. Numerous residents have related their own observed experience of the mall's decline to the City throughout the CEQA process. And, as shown in detail in both Mr. Smith's and Dr. Phyllis Fox's expert letters (Final EIR Comment Letter B-8B), the use of this hypothetical baseline resulted in the EIR's failure to identify and mitigate significant Project impacts with respect to traffic and air quality.

¹ City of San Rafael, Northgate Town Square, Redevelopment of Northgate Mall into Mixed Use, News Updates; <https://www.cityofsanrafael.org/northgate-town-square-rev/#/project-description>.

² Final EIR, p. 2-1.

³ Final EIR, Table 2.A, p. 2-4.

⁴ Final EIR, pp. 2-2 and 2-3.

To date, the City has denied that its hypothetical baseline was improper.⁵ Instead, the City has argued that the applied average traffic rate from the ITE Manual “implicitly includes an average retail occupancy across all data collected” at actual shopping centers, “where occupancy and performance inherently vary.”⁶ The City then listed the mall’s quarterly vacancy rates from 2017 through 2021, claiming that “historical occupancy data demonstrates that the mall maintained consistently strong occupancy during an earlier time than when the traffic counts were collected for the [Traffic Impact Study] prepared for the proposed project. Specifically, when the current owner purchased the mall in the first quarter of 2017, the total vacancy was at 24,553 square feet, or only 3.2 percent of the total leasable square footage.”

The City’s use of variable vacancy rates alone to support its assumption of a fully functioning mall is misleading. As laid out in detail in Dr. Fox’s (and by many others) comments, over the past two decades, Northgate Mall lost quality stores to less and less inviting stores, and it failed to attract clientele, with parking lots becoming emptier and emptier (multiple comments by RGM members and the general public speak to the many boarded up stores and mostly empty parking lots). One noteworthy example of this trend is the Restoration Hardware (“RH”) Outlet, which leased the former Sears building. The Developer listed the entire Sears building as being occupied by RH Outlet to support the City’s “occupancy” claim.⁷ This ploy misrepresented the situation. While the RH Outlet may have leased the entire building, its operations only occupy a portion of the three-story building’s ground floor and does not attract many visitors, certainly not as many as Sears in its heyday. (According to RGM, the store is often empty with one employee overseeing the entire store.) A better indicator to gauge mall traffic would have been sales tax, which is often used as a proxy to support traffic studies. Further, malls, unlike residential developments, do not generate mostly peak hour traffic. Thus, the hypothetical baseline substitutes apples for oranges.

To support its the hypothetical baseline of full occupancy, the City cited a court case called *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94, which, according to the City, “rejected the argument that [Notice of Preparation]-date traffic counts rather than assumed historic trip generation should have been used as a proposed project’s baseline. In that case, approximately 150,000 square feet of anchor

⁵ Final EIR, pp. 4-4 through 4-12.

⁶ Final EIR, p. 4-6.

⁷ Final EIR, Table 4.A, Footnote 2 (“RH backfill for Sears vacancy”), p. 4-7.

department store space at a 1.15-million-square-foot regional mall had sat vacant for three years before the environmental review began.” Interpreting the case in the EIR, the City asserted that the court “upheld relying on underlying occupancy assumptions on the grounds that: (1) all of the mall’s square footage was constructed and entitled to be fully reoccupied at any time; and (2) the full occupancy assumption was not based on hypothetical operation, but instead on actual historic operation of the space at full occupancy for many years.”⁸

It is telling that the City could not rely on facts and evidence to support the EIR’s environmental baseline even though CEQA requires the City’s decisions to be based on substantial evidence every step of the way. Instead, it resorted to caselaw to justify its baseline. Worse still, the *North County Advocates* case cited in the EIR does not support the use of a hypothetical baseline based on ITE Manual trip generation rates for the Project. Specifically, *North County Advocates* addressed the demolition and reconstruction for commercial use of one building in a shopping mall, a former Robinsons-May store, which occupied 13 percent of the total leasable space at the mall and for which the owner had full entitlements for interior renovations and reoccupation.

The key to the court’s decision in *North County Advocates* was that the City’s traffic baseline was not hypothetical because it was not based solely on the entitlement to reoccupy the building at any time without discretionary action. Instead, the court made clear the traffic baseline was based on the actual historical operation of the space at full occupancy for more than 30 years, and the only recently fluctuating occupancy of the former Robinsons-May space three years prior to preparation of the EIR. In contrast, Northgate Mall did not see “historical operation at full occupancy” for at least a decade. And, the Developer seeks redevelopment of the entire 44.76-acre site into a mixed-use development for which it does not have any prior entitlements. Rather, it is seeking a list of entitlements including a zoning amendment to accommodate the Project’s land uses.⁹ The EIR cited several other cases to defend its hypothetical baseline, but each case is even more far-fetched and inapposite to the current situation than *North County Advocates*.

⁸ Final EIR, p. 4-6.

⁹ Final EIR, p.2-3 (“On June 4, 2024, the project sponsor re-submitted the project application with a number of design refinements and revised entitlement requests...”).

In short, rather than providing accurate and timely facts and evidence, the City pointed the public to a list of court cases, burdening concerned residents with the task of hunting down legal opinions and testing those opinions for their legal sufficiency against an ever-evolving proposed project in their own town. This, when residents' direct and personal experience makes clear the City's choice of an environmental baseline defied common sense.

RGM and residents of Terra Linda have raised legitimate concerns about the Project's substantial increase in traffic and its attendant impacts on air quality, operational noise, evacuation routes, and emergency response times. Regarding the latter, the additional study contracted by the City (Final EIR, Attachment B), which the EIR relied upon to relieve the Developer from providing monetary assistance to the City to address emergency responses, failed to even address the impact of increased traffic on the emergency response times of the San Rafael City Fire Department.

II. Requested Additional Traffic Measures

At the October 29, 2024 Planning Commission meeting, Commissioner Jon Previtali, who represents the North San Rafael/Terra Linda district, acknowledged existing, already dangerous conditions and requested that an increase in traffic due to the Project is a safety issue that needs to be addressed. He requested that follow-up traffic studies be included as conditions in the Project entitlements. However, his request was only included as a recommendation.

To address the Project's impacts on traffic and other environmental concerns (noise, air quality), RGM requests that follow-up traffic studies be included as conditions of approval in the Project's entitlements for future traffic studies into the City's Master Use Permit for the Project, similar to what has been required by the City for the Loch Lomond Marina property:

- 1) Six months following completion and full occupancy of Phase One of the project (2025 Master Plan) and one year following completion and full occupancy of Phase Two, an updated traffic study based on actual current traffic counts shall be prepared by a licensed Traffic Engineer approved by the City and funded by the Project sponsor to assess and report on:
 - a. On-site and off-site intersection operations, including Level of Service conditions on road segments and intersections on Northgate Drive,

Las Gallinas Avenue, Del Presidio, Freitas Parkway, Highway 101 interchanges, Merrydale Road overpass, and Los Ranchitos Road;

- b. General use and potential conflicts, including bypass traffic/diversions through the contiguous Terra Linda neighborhoods;
- c. If deemed necessary, the updated traffic study shall present recommendations, including but not limited to road improvements and/or lane conversions, additional emergency vehicle access, signalization and stop signs additions or adjustments, and traffic calming measures (e.g. speed bumps or other measures to deter bypass traffic) in surrounding neighborhoods; and
- d. The project sponsor shall post security (e.g., letter of credit, cash deposit) to fund needed circulation improvements and/or traffic calming measures deemed necessary).

2) One year following completion and full occupancy of the project (2040 Vision Plan), an updated traffic study based on actual current traffic counts shall be prepared by a licensed Traffic Engineer approved by the City and funded by the Project sponsor to assess and report on:

- a. On-site and off-site intersection operations, including Level of Service conditions on road segments and intersections on Northgate Drive, Las Gallinas Avenue, Del Presidio, Freitas Parkway, Highway 101 interchanges, Merrydale Road overpass, and Los Ranchitos Road;
- b. General use and potential conflicts, including bypass traffic/diversions through the contiguous Terra Linda neighborhoods;
- c. If deemed necessary, the updated traffic study shall present recommendations, including but not limited to road improvements and/or lane conversions, additional emergency vehicle access, signalization and stop signs additions or adjustments, and traffic calming measures (e.g. speed bumps or other measures to deter bypass traffic) in surrounding neighborhoods; and
- d. The project sponsor shall post security (e.g., letter of credit, cash deposit) to fund needed circulation improvements and/or traffic calming measures deemed necessary).

Further, RGM specifically requests that Project impacts on the exit routes from the Quail Hill and Villa Marin residences (El Faisan Drive and Thorndale Drive, respectively) be mitigated by, for example, by requiring stop signs or traffic lights on Northgate Drive at the respective intersections to reduce impacts on queuing on these access roads, which is already often a problem during morning hours when Terra Linda High School students drive, or are driven, to school.

III. Requested Construction Manager

To mitigate the significant impacts on air quality and increased carcinogenic inhalation health risks found in its revised air quality study, the EIR requires that all diesel-powered construction equipment 50 horsepower or greater comply with the latest emission standards set by the EPA (Tier 4). With implementation of this mitigation measure, the EIR finds less than significant impacts.¹⁰ Yet, there is no guarantee that this will, in fact, happen. Construction equipment can last for a long time, and contractors do not, as a matter of course, buy all new machines just because new ones are available. Dr. Fox's March 4, 2024 comment letter provided substantial evidence that, "commercial contractors do not turn over their entire existing construction fleet and purchase all new equipment with the highest tier once it becomes available. This is because compliance with certain Tier levels is only required for manufacturing new off-road diesel-powered equipment engines..." and the California Air Resources Board ("CARB") only requires that commercial construction fleets "to reduce their fleet-average emissions by retiring older equipment and replacing the retired equipment with newer equipment, repowering older engines, or installing verified diesel emission control strategies in older engines; and by restricting the addition of older vehicles to fleets." The EIR's response is not responsive in that it simply claims that Tier 4 "equipment is readily available across fleet sizes, equipment types, and horsepower bins"¹¹ without any evidence.

Importantly, despite multiple requests for a dedicated, full-time on-site construction manager who is responsible for implementing this and other mitigation measures and is accessible to the public, the EIR does not require one. Requirements for

¹⁰ Final EIR, p. 5-3, Mitigation Measure Air-3a and Air-4.

¹¹ Final EIR, p. 4-446. The footnote provided as "evidence" merely reiterates Dr. Fox's comment that as of "2015, newly manufactured engines across all horsepower sizes are required to meet Tier 4 final emissions standards" without addressing any of the substantial evidence Dr. Fox provided why construction fleets do not operate only Tier 4 equipment.

construction managers are implemented in mitigation measures in CEQA documents for projects of all sizes and Northgate should be no exception.

The lack of a dedicated construction manager also affects noise monitoring. Instead of ensuring that construction noise levels are kept within mandated levels, the Final EIR simply states that “depending on community reporting, the City could determine that additional noise measurements or monitoring is warranted...” In other words, the developer wants the neighbors to do its job.

Construction managers must on site and be easily accessible to members of the public so that they can deal with concerns as they are happening. It is useless for a concern to be reported to the manager if it will be hours or days before the manager will be on site to know what was really happening. RGM requests that the City’s website posts the allowed hours of construction for the Project to assist in enforcement.

IV. Requested Additional Noise and Dust Mitigation

To address significant impacts with respect to construction and operational noise and dust at the closest four or five closest residences along Northgate Drive, RGM requests that the City require the Developer to provide financing for replacement of single-pane windows with double-paned windows to mitigate both construction and operational noise impacts and for installation of air conditioning to mitigate years of fugitive dust generated by Project construction during which windows cannot be opened for health and nuisance reasons. Similar mitigation has been required for other projects in the past.

Please consider these longstanding and well documented concerns and require the Developer to make the above-described concessions. Thank you.

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