

RESPONSE TO CEQA COMMENTS – OCTOBER 2020 INITIAL STUDY

The following public comments were provided on the 2020 Initial Study/Mitigated Negative Declaration for the Fremont/Marquard Residential Project.

1. Comments by Liza Wozniak, 37 Marquard Avenue, dated November 11, 2020.

A. Section IV. BIOLOGIC RESOURCES,

General Comment

“The IS states that a review of the City General Plan and EIR indicated there were no potential biological impacts. The operative City General Plan dates from 2004, and is an inadequate reference for biological resources. The California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB) (2020) shows an active nest of northern spotted owls (*Strix occidentalis caurina*) a federal and California threatened species, approximately one quarter-mile from the subject lots. I have frequently observed the owls foraging uphill on Marquard and Fremont Sts. CNDDDB records show this nest (#MRN0114) has been continuously active with young each year from 2016 to 2020. The IS needs to assess the impacts of construction disturbance to this species, and to any other special-status species with potential to occur at the site. An updated search of sensitive species and natural communities must be completed under CEQA. The City must consult with CDFW and the US Fish and Wildlife Service regarding recommended measures to avoid disturbance to nearby nesting northern spotted owls.”

Response

In response to the comment, a survey for the Northern Spotted Owl (NSO) was conducted. The results confirmed that there have been nests identified a quarter of a mile from the site have been documented. Based upon the technical guidance from the US Fish and Wildlife Service, the biologist concluded that the previously identified nest locations were located so far away from the site that project construction would not disrupt nesting activities. Based upon his site visit, the biologist concluded that the habitat value for the NSO was “marginal” due to the lack of an understory, the nature of the tree canopy, and the adjacent residences. However, the biologist also recommended that an additional mitigation measure to require preconstruction nest surveys if tree removal was proposed to occur during the nesting season. This additional information has been added into the Recirculated Initial Study and the Mitigation Monitoring and Reporting Program.

B. Section VII.GEOLOGY AND SOILS.

General Comment

“The IS describes several significant impacts of the project, including ground shaking, seismic-related ground failure and liquefaction, soil spread, expansive soils, and landslides. The sole mitigation required for these impacts is Measure GEO-1, which states: “...sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer based upon the approved project.” This measure is inconsistent with the CEQA guidelines which state: “[f]ormulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.” (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

Measure GEO-1 improperly defers mitigation by loosely stating that an investigation will be done, without including any performance standards or other measures that would be taken to mitigate the significant impacts. CEQA case law has found measures like GEO-1 inadequate, c.f., “If the

measures are loose or open-ended, such that they afford the applicant a means of avoiding mitigation during project implementation, it would be unreasonable to conclude that implementing the measures will reduce impacts to less than significant levels.” (Rialto Citizens for Responsible Growth v. City of Rialto (2012) 208 Cal.App.4th 899, 945, 146 Cal.Rptr.3d 12 (Rialto Citizens for Responsible Growth).) This measure must be revised to include clear standards for addressing each significant impact it purports to mitigate.”

Response

The Rialto case referenced by the commenter was for a large commercial development in San Bernardino County. That project proposed to locate a commercial center on a previously undeveloped site. The claimants in the legal challenge alleged that the City of Rialto deferred mitigation by linking the mitigation of biologic resource impacts to future State and Federal wildlife resource agency permits. The case was eventually decided at the Court of Appeals in the City’s favor. The Court upheld the EIR’s mitigation measures for special status plant or wildlife species against a charge of improper deferral. Although no special status species had been identified onsite during the previous surveys, the EIR concluded that five special status species had the potential to occur on site. The EIR required that preconstruction surveys be done, and if special status species were identified then the applicant would be required to obtain incidental take permit from the State or Federal fish and wildlife agency as appropriate. The Court of Appeals held that this process was sufficient mitigation.

The commenter suggested that requiring a building permit-level geotechnical study based upon the approved project involves the deferral of mitigation. This is not supported by the CEQA Guidelines Section [Section 15126.4(a)(1)(B)] referenced by the commenter. Section 15126.4(a)(1)(B) refers to a discussion of situations where multiple mitigation measures are available to address an impact. The criteria referenced in this section also affirms the use of regulatory permits as mitigating actions. A portion of Subsection (a)(1)(B) states that, “(c)ompliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.”

In this situation, the regulatory permits relate to grading and building permits that are required by the City of San Rafael. The issuance of these permits will be based upon the final City-approved project. These permits would address slope stability, erosion, and ensure the structural integrity of any proposed onsite buildings. The goal of this mitigation measure is to ensure that any future construction is safe and will be structurally sound when completed by requiring a geotechnical assessment based upon the approved project. In contrast, the preliminary geotechnical assessment provides an understanding for decision makers and the public onsite soil and geologic conditions based upon the proposed project. The preliminary assessment does not provide sufficient detail to support the issuance of a building permit since it was not based on the City-approved project. No changes are required to the Initial Study.

C. Section X. HYDROLOGY AND WATER QUALITY.

General Comment

“The IS notes on p. 32 that the site (40% grade) is subject to flooding from excessive run-off: “The site has been historically affected by excessive run-off/flooding from uphill sites.” It then claims, “The proposed project will not alter this existing drainage pattern.” The claim that the project will not alter existing drainage is inaccurate. The project will remove 8 mature coast redwood trees

and the associated ground cover located within and adjacent to the drainage on Moore Hill. Tree removal will clearly reduce the amount of water absorbed by vegetation, and increase the quantity of run-off onto Marquard Ave. The project lot shows existing damage from past floodwaters, and I have observed foot-deep torrents of water flowing down Marquard Ave. during storm events. Because this run-off quantity is already excessive, as the IS states, additional run-off would be a significant impact, and the project is obliged to mitigate the impacts of excessive run-off.”

Response

The commenter agrees with the Initial Study that the site has been historically affected by runoff from uphill locations because of an existing swale which drains areas above of the project site and disagrees with the Initial Study that existing drainage pattern is not changing, even though the elevations between Fremont Road and Marquard Avenue are not changing, because the commenter states that the removal of 8 mature coast redwood trees will alter the onsite drainage pattern. Staff disagree with this contention. While removing some of the existing trees may reduce the tree canopy and may increase the area susceptible to erosion, it will not alter the drainage pattern since water will continue to flow from higher locations to lower locations. No changes are required to the Initial Study.

D. Section XIII. NOISE.

General Comment

“The IS notes that "truck trips" will be required during construction but does not indicate the number of trips required, nor the number of daily trips. Marquard Ave. and Fremont Rd. are narrow, steep one-lane streets on which truck travel is both difficult and disruptive. The IS must estimate the quantity of daily truck trips needed to determine whether the impact is significant to the local area. In addition, the IS must consider the noise impacts on neighbors presently confined to their homes for work and school indefinitely due to the coronavirus, and the day care center, located within 500 feet of the site, where children play outdoors. 7 am to 6 pm weekdays and 9 am to 6 pm Saturdays are not "least intrusive" and not "workday". Please consider limiting the hours of work to 9 am to 5 pm on weekdays.”

Response

The commenter requested additional information on the number of anticipated vehicle trips involved with project construction. The applicant’s architect has provided estimates of the time required for project construction. This information will be incorporated into the Revised Draft Initial Study.

The Initial Study indicated that, “... construction of the project would temporarily alter the noise environment through the demolition/reconstruction of existing structures, the site preparation, grading and trenching, the hauling of materials offsite, and the construction of the foundations for new structures. Noise impacts resulting from construction depend upon the noise generated by various pieces of construction equipment, the timing and duration of noise-generating activities, and the distance between construction noise sources and noise-sensitive areas. The hauling of excavated materials and construction materials would also generate truck trips on local roadways. Construction hours are specified in Chapter 8.13 of the City municipal code.” In addition, the project will be conditioned to prepare a Construction Management Plan, including providing notifications to the affected neighbors.

The commenter also suggested that these impacts could be addressed through a mitigation measure to reduce possible noise impacts would be to shorten the allowable work hours on

Saturday to 9:00 am to 5:00 pm. That request for an additional mitigation measure will be forwarded to City decision makers.

2. Comments provide by: Victoria DeWitt, 40 Fremont Road, dated November 23, 2020.

A. Section I. AESTHETICS, Item a. “Have a substantial adverse effect on a scenic vista?”

Comment

“The removal of 9 redwood trees (8 significant) will have a major impact on the scenic vista enjoyed by several homes directly facing these trees on the west side of the property, accessed from the long driveway off Marquard. Other residents on Marquard will also lose the scenic vista of a redwood grove as well as residents driving or walking up Marquard. Residents living on the east side of the property, at 11 Marquard and 50 Fremont will also lose the scenic vista from their large windows facing the redwood grove.”

Response:

The Initial Study identifies that a scenic vista “is characterized as a panoramic view of attractive or impressive natural scenery.” Panoramic views relate to more distant views. The scenic vista of the site and surrounding area from across the valley will not appear to be noticeably different. The mélange of trees with one-, two-, and three-story residences is not changing. The potential for a scenic vista from the site is extremely limited due to the number of trees on and in front of the site. The project will not noticeably alter those views. The local scenery will also not substantially change. The existing scenery involves tree, roadways, and buildings in a forested setting. The project will not substantially alter that condition. The initial study recognizes that some alteration of the views is possible but determines that those changes will be less than significant. The removal of the redwood trees is addressed in another section of the Initial Study. No changes are required to the Initial Study.

B. Section IV. BIOLOGIC RESOURCES, Item d. “Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?”

Comment

“This project shows a poor attempt to comply with Municipal Code Section 14.25.050 by removing 8 significant trees and replacing them with only 3 new 15 gallon trees, when Code requires 21 more replacement trees, or 700% more than what is being proposed. Native seeds are a poor substitute for mature native trees like redwoods.”

Response:

The Initial Study identifies the requirements of Municipal Code Section 14.25.050. The Initial Study identifies that compliance with these code provisions can be achieved by replanting trees at a ratio of 3:1, paying an in-lieu fee, or a combination of the two. The project will be conditioned to comply with these code provisions. Therefore, project is not in conflict with this Municipal Code requirement. No changes are required to the Initial Study.

C. Section VII.GEOLOGY AND SOILS.

General Comment

“This site is rated in slope stability zone 3 (hazardous) and requires a geotechnical peer review prior to the application being deemed complete, per the Geotechnical Review Matrix, General Plan Appendix F and Planning Department’s procedures for geotechnical/hazardous soils review, Appendix C, Hillside Design Guidelines. The geotechnical review usually requires a response.

Miller Pacific Engineering Group previously provided peer review for a geotechnical report submitted for a project in 2008.”

Response

The General Plan describes Slope Stability Zone 3 as, “Areas where the steepness of the slopes approaches the stability limits of the underlying geological materials. Some landslide deposits that appear to have relatively more stable positions than those classified within Zone 4 are also shown here.” The requirements for the peer review of geotechnical reports, General Plan Implementing Action S-4a. Geotechnical Review of Proposed Development, requires that soil and geologic reports be peer reviewed to assess seismic hazards, liquefaction, landslides, erosion and sedimentation and other issues to determine if these issues have been adequately addressed. The City Public Works Department required a peer review of the 2007 Geotechnical Report and based upon that review, determined that no additional peer review was needed for a subsequent report since a review of the 2020 Geotechnical Report identified the same validated conditions as the 2007 Geotechnical Report.

No new environmental issues have been raised. The comment is noted.

- D. Section VII.GEOLOGY AND SOILS, Item a.iv) “Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving: Landslides?”

Comment

“An oral history taken from Virginia Borland who was the original owner of 54 Fremont says about the house: “It was built in 1925, built in 1924 and then it slid. There was a landslide and it slid down the hill fifteen feet.” This oral history was recorded in 1979 at the Anne T. Kent California Room, Marin County Free Library.”

Response:

The Initial Study identified that soil creep and landslides are a concern for future development. No changes to the Initial Study are required.

- E. Section VIII.GREENHOUSE GAS EMISSIONS, Item a. “Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?”

Comment

“The removal of redwood trees has not only an aesthetic effect but a real effect on greenhouse gases by removing the beneficial effects they have on climate change. According to Sempervirens Fund: “Studies show that coast redwoods capture more carbon dioxide (CO₂) from our cars, trucks and power plants than any other tree on Earth. Through the process of photosynthesis, redwood trees transform carbon dioxide – the leading cause of accelerating climate change — into the oxygen we breathe. When redwoods are cut down, burned or degraded by human actions, they release much of their stored carbon back into the atmosphere. And, they can no longer transform CO₂ into the oxygen we breathe. This is a double-whammy for the growing imbalance in the world’s carbon cycle and the climate’s stability”. They also provide a refuge for plants and animals to survive.”

Response:

The Initial Study identifies that the new residence and accessory dwelling unit would provide an incremental increase in greenhouse gas emissions. However, this incremental increase is consistent with the City’s adopted Climate Action Plan. The commenter also provides information consistent with the Initial Study, no changes to the Initial Study are required.

- F. Section IX. HAZARDS AND HAZARDOUS MATERIALS, Item f. “Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?”

Comment

“The addition of an ADU at 54 Fremont will negatively impact the ability of an additional household to safely evacuate during an emergency because of the narrow one-lane road and increased risk of road blockage with additional vehicles having to exit the hill, putting everyone at increased risk of being trapped. The addition of an ADU will add potential calls for emergency services that are unable to meet standards for timely response because of access difficulty. Adding an ADU without required off-street parking and NO public parking on the street will result in illegally parked cars blocking access for fire and emergency vehicles, delaying response and putting everyone at risk. The ADU should be denied for health and safety reasons.”

Response:

The Initial Study recognizes the existing access limitations that the project is not changing. The project is not altering the existing road network or development pattern in the area. The one new residence on Marquard Avenue is proposed for an area that has better access than many of the other homes in the vicinity. The proposed accessory dwelling units would add an additional dwelling unit into an existing structure but would not physically interfere with any of the applicable emergency plans any more than the existing residences along Fremont Road. The project is not altering the current conditions. No changes to the Initial Study are required.

- G. Section IX. HAZARDS AND HAZARDOUS MATERIALS, Item g. “Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?”

Comment

“This risk is significant given the addition of another household (ADU) on Fremont Rd, as stated in f. above. The addition of an ADU will add another household that will have to evacuate down the same one-lane road that fire equipment will need to come up and with the additional vehicles, could result in trapping several residents, unable to get off the hill. An additional household could also contribute to or start a wildfire in an area where fire and emergency access is challenging with no recommended improvements.”

Response:

The Initial Study indicates that the project is located in an area the City of San Rafael identifies as Wildland Urban Interface area. As discussed in Comment F above, the existing access challenges and hazards will not be substantially altered with the project since the project is not altering the current conditions. No changes to the Initial Study are required.

- H. Section X. HYDROLOGY AND WATER QUALITY.

General Comment

“Previous engineering studies (Geoengineering, Inc. and Miller Pacific Engineering), described this site as located in a “drainage swale” originating about 400 feet upslope. The building of a new house below the existing house at 54 Fremont will increase the liability of 54 Fremont for funneling water runoff onto the Marquard property, which did not exist before. What drainage improvements are being made at 54 Fremont to prevent water runoff to the Marquard property.

There can be a substantial amount of water runoff onto this site. APN 12-041-13, a vacant lot uphill and across the street from 54 Fremont, can produce an impressive waterfall in winter months during heavy, or continuous rainfall. The City maintains a culvert at the base of this

property which funnels water runoff into the storm drain and down the large drainage tube next to the public stairs adjacent to 54 Fremont. During heavy rainstorms the culvert will overflow, flooding the street and sending water spilling over the street edge onto 54 Fremont and down the public stairs. See attached photo of water gushing down the public stairs during a winter storm. There should be an assessment of the capacity of the existing culvert and whether improvements are needed, as well as needed drainage improvements at 54 Fremont.”

Response:

The commenter describes the existing offsite hydrologic conditions that is not being affected by the proposed project. Comments noted.

I. Section XI. LAND USE AND PLANNING.

General Comment

“Both lots must comply with all Hillside Design Guidelines including the natural state requirement. As Alicia Giudice stated in her letter to the applicant, dated August 31, 2017:

“In addition, because the lots were historically developed as one development which appears to currently comply with the natural state requirement, the proposed lot line adjustment can only be approved if you can demonstrate that both lots will meet the natural state requirement.” “

Response:

Comment is an excerpt from a longer written communication; no environmental issues raised. Comment noted.

J. Section XV. PUBLIC SERVICES. Item a. “Fire protection?”

Comment

“The Fire Department has stated that it is unable to provide emergency fire or EMS services that meets NFPA Standard 1710 response time criteria to this area because the existing roadway does not accommodate fire apparatus vehicles and does not meet CFC provisions for Fire Apparatus Access Roads. This is precisely why the Fire Department did not want an additional house with access from Fremont Road. The proposal of an additional household, whether in a separate house or an ADU is the same. The current access for fire and emergency vehicles on Fremont Road does not support the addition of another household such as an ADU. The ADU should be denied for health and safety reasons.”

Response:

The topic question in the Initial Study asks if the project would result in the need for new facilities or would it significantly increase response times: The area is served by an existing fire station located half a mile from the site. The project will also not change the existing access challenges. The project would also not alter the Fire Department’s response times (over the existing situation). No changes to the Initial Study are required.

K. Section XVII. TRANSPORTATION.

General Comment

“The additional vehicle trips added by the addition of the ADU at 54 Fremont will create more impacts on traffic flow with additional maneuvering of vehicles required as more vehicles drive up and down the one-lane, two-way roadway, requiring more vehicles to back uphill to accommodate oncoming traffic. No roadway improvements are proposed with this project.”

Response:

The Initial Study identifies that the project would result in additional vehicle trips on the existing road network as well as the narrow winding character of the nearby roads. Additional street frontage improvements immediately adjacent to the lower lot are proposed as part of the project. No changes to the Initial Study are required.

- L. Section XVII. TRANSPORTATION, Item c. “Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?”

Comment

“The driveway of the house facing Marquard is located on a narrow dangerous curve with low visibility and a history of near head-on collisions. The addition of a driveway and parking for a total of 4 cars that will be maneuvering at this dangerous curve needs to be thoroughly reviewed for necessary road improvements to minimize vehicle collisions from the increased activity at this dangerous curve in the road.”

Response:

The project will not alter the existing roadway location or configuration. According to the project plans, the driveway to the proposed Marquard Avenue residence is located on the outside of the existing curving roadway. This location maximizes the potential visibility by vehicles accessing the garage of the proposed residence. No changes are required to the Initial Study.

- M. Section XVII. TRANSPORTATION, Item d. “Result in inadequate emergency access?”

Comment

“The proposed project with the addition of an ADU at 54 Fremont can result in a degradation of emergency access because of additional vehicles illegally parked and blocking the road. No additional off-street parking is proposed for the ADU and there is NO street parking on Fremont Road which is a very narrow road, measuring 9 to 12 feet wide. This area is not conducive to residents taking public transportation because there are no sidewalks and very sparsely spaced street lights. The ADU should be eliminated for health and safety reasons.”

Response:

The project will not alter the existing roadway location or configuration. The commenter speculates that future residents would park illegally to block the road. No new environmental issues have been raised and no changes to the Initial Study are required.

- N. Section XX. WILDFIRE, Item c. “Substantially impair an adopted emergency response plan or emergency evacuation plan?”

Comment

“The addition of an ADU at 54 Fremont will negatively impact the ability of an additional household to safely evacuate during an emergency because of the narrow one-lane road which increases the risk of road blockages from additional vehicles having to exit the hill, putting everyone at increased risk of being trapped. The addition of an ADU will add potential calls for emergency services that are unable to meet standards for timely response because of access difficulty. Adding an ADU without required off-street parking will result in parked cars blocking access for fire and emergency vehicles, delaying response and putting everyone at risk. The ADU should be denied for health and safety reasons.”

Response:

The Initial Study identifies the issues raised by the commenter. No changes are required to the Initial Study.

- O. Section XXI. MANDATORY FINDINGS OF SIGNIFICANCE, Item b. “Have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?”

Comment

“54 Fremont has NOT been occupied by permanent residents for over 10 years and has sat vacant many of those years. With the recent approval of a new SFD at 38 Upper Fremont and the remodel of 54 Fremont with the addition of an ADU, the amount of traffic will increase with the usual addition of 2 cars per residence and additional delivery vehicles for the new residences as a result of COVID. Because the roads are so narrow, when two cars meet, someone has to back up onto private property in order to pass. However, the most difficult stretch is the length of Fremont Road between Marquard and Trost and there is nowhere to pull over so usually the uphill driver must back up on a narrow curving road. I have sometimes had to back up to let one car go by only to have to back up again for another car that wasn’t visible when I started down the road again. With the cumulative addition of housing, this problem will get worse. This stretch of Fremont Road lacks adequate visibility because the road is narrow and curved. Some type of road improvement, traffic warning system should be placed at Fremont /Trost and Fremont/Marquard to warn vehicles of on-coming traffic in order to avoid vehicles having to back-uphill on a narrow curved road.”

Response:

The commenter repeats information provided in the Initial Study. The scale and location of the project indicate that it could only have the potential for a local area of effect and would not be cumulatively considerable. No changes are required to the Initial Study.

P. Attached Image.

“Image of water gushing down public stairway adjacent to 54 Fremont during a winter storm.”



Note: The image has been rotated 90° to realign the image so that the ground surface is at the bottom of the image.

Response:

The image is of the adjacent (offsite) pedestrian walkway. Comment noted.