

August 6, 2018

File Number: 000X-167155

VIA E-MAIL AND HAND DELIVERY

Mayor Madolyn Agrimonti
and Members of the City Council
City of Sonoma
No. 1 The Plaza
Sonoma, CA 95476
E-Mail: citycouncil@sonomacity.org

Re: August 6, 2018 City Council Appeal Hearing
Sonoma Gateway Mixed-Use Project (Item 6.2)

Dear Mayor Agrimonti and Councilmembers:

This firm represents Broadway & MacArthur, LLC, the developer of the proposed Sonoma Gateway Mixed-Use Project located at 870 Broadway (the "Project"), which is scheduled for an appeal hearing on August 6th. We write to respond to the letter submitted by Hanson Bridgett, legal counsel for appellants Bill Willers and Victor Conforti, arguing that the Project requires additional environmental review under CEQA. As detailed below, the arguments in the letter have no merit, and the City Council should deny the appeal and approve the Project.

The Project is well-designed, compatible with the surrounding area, and complies with all applicable legal requirements. The City fully analyzed the Project's potential environmental impacts in an Initial Study and Mitigated Negative Declaration ("MND"), which addressed each of the topics required by CEQA. The City further supported the MND with multiple technical reports prepared by expert consultants, addressing traffic, noise, historic resources, environmental site conditions, and tree preservation. The City's planning staff have also prepared a detailed staff report for the appeal documenting the Project's compliance with the City's land use plans, zoning,

and development and design standards, and responding to each of the erroneous claims made in the appeal.

In the latest correspondence, Hanson Bridgett claims that the City should conduct additional environmental review for the Project and prepare an environmental impact report (“EIR”) to comply with CEQA. Hanson Bridgett and the appellants, however, have not identified any specific environmental impacts requiring further study, nor have they provided any evidence to support their claims. In particular, they have not submitted any technical reports by qualified experts to refute the analysis prepared by the City’s experts. The lawyers at Hanson Bridgett, in particular, do not have any relevant expertise that would allow them to opine on technical subjects like traffic, aesthetics, historic resources, architecture and design, and cumulative impacts. For the reasons detailed below, Hanson Bridgett’s specific CEQA arguments lack merit and should be rejected.

I. Hanson Bridgett raises issues that are outside the scope of the appeal.

Hanson Bridgett has raised issues that are outside the scope of the appeal. Municipal Code § 19.84.030(D) (“Scope of Land Use Permit Appeals”) mandates that a land use appeal “*shall be limited* to issues raised at the public hearing, or in writing before the hearing, or information that was not known at the time of the decision that is being appealed.” (Emphasis added.) Appellants failed to present many of the issues discussed below—including cultural resources impacts, land use impacts, and cumulative impacts—to the Planning Commission and/or in their written appeal. Those issues are therefore outside the scope of the appeal and should be disregarded.

II. The MND is an appropriate CEQA document for the Project; No EIR is required.

To require preparation of an EIR, the appellants must point to “substantial evidence” supporting a fair argument that the Project may result in a significant adverse impact on the physical environment. (*Porterville Citizens for Responsible Hillside Development* (2007) 157 Cal.App.4th 885, 899–900.) Substantial evidence includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” (Pub. Res. Code § 21080, subd. (e).) However, “argument, speculation, unsubstantiated opinion or narrative, and evidence which is clearly erroneous or inaccurate . . .” does not constitute substantial evidence. (Pub. Res. Code § 21080, subd. (e)(2).) Of particular importance for this appeal, “[i]n the absence of specific factual foundation in the record,

dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence.” (*Porterville, supra*, 157 Cal.App.4th at 901 [citing *Gentry v. City of Murrieta* (1995) 26 Cal.App.4th 1359, 1417].) Likewise, “unsubstantiated fears and desires of project opponents do not constitute substantial evidence.” (*Id.*)

Here, Hanson Bridgett and appellants have not submitted *any evidence*, much less substantial evidence, to contradict the conclusions of the MND. They have not submitted any technical or expert reports to refute the analysis prepared by the City’s experts. The Hanson Bridgett lawyers themselves do not have relevant expertise that would allow them to opine on technical subjects like traffic, aesthetics, historic resources, architecture and design, and cumulative impacts. The Hanson Bridgett letter is also based on a number of factual and legal errors. Thus, as explained in more detail below, appellants’ submittals amount to nothing more than erroneous statements, unsubstantiated arguments, speculation, and non-expert opinion, and they do not qualify as substantial evidence of any environmental impact. (Pub. Res. Code § 21080, subd. (e)(2).)

Moreover, the City has discretion to determine whether the evidence offered by project opponents qualifies as substantial evidence. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928). It is also entitled to determine any disputed issues of credibility. (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 684.) The City should exercise that discretion here and make an express determination that Hanson Bridgett and appellants have not submitted any substantial evidence and that they lack credibility on each of the issues raised. The City should instead, as it is entitled to do, “rely on the expertise of its planning staff in determining whether a project will have a significant impact on the environment.” (*Porterville Citizens for Responsible Hillside Development* (2007) 157 Cal.App.4th 885, 901.)

Because there is no substantial evidence that the Project as mitigated may have a significant effect on the environment, CEQA mandates that the City “shall” prepare an MND. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 171; Pub. Res. Code, §§ 21080, subd. (c)(1), 21082.2, subd. (a); Cal Code Regs., tit. 14, §§ 15063, subd. (b)(2), 15064, subds. (f)(1)-(3), 15070, subds. (a),(b) (“CEQA Guidelines”).) The City’s decision to prepare an MND rather than an EIR was therefore appropriate.

1. The MND properly analyzed aesthetic impacts.

The MND fully analyzed the Project's potential aesthetic impacts and found that they would be less than significant. (MND, pp. 7–13.) As part of this analysis, the MND evaluated the Project's compliance with relevant design standards from the Development Code, the Design Guidelines for Infill Development in the Historic Overlay District, and the Broadway Corridor standards. (*Id.*) Moreover, the staff report for the appeal hearing further explains why the Project is consistent with all design standards and will not have significant aesthetic impacts (Staff Report, pp. 7–18, Tables 2–4), and it responds in detail to each of the aesthetic and design issues raised in the appeal (*id.*, pp. 25–29, 31).

Despite this extensive analysis, Hanson Bridgett argues that the Project will have significant impacts on scenic vistas of hills to the north and west of the site, as seen from adjoining public streets and sidewalks. Not so. The MND explains that the existing buildings on the site already block views of the hills to the north, and that views to the west are similarly limited because they are obscured by existing buildings and vegetation. (MND, p. 7.) Thus, under CEQA, these blocked views are part of the existing environmental “baseline,” and they are not impacts attributable to the Project. (CEQA Guidelines § 15125 [project impacts must be measured against existing environmental baseline].) Hanson Bridgett simply misunderstands CEQA's distinction between an environmental baseline and a project's impacts.

Hanson Bridgett further speculates that construction of new buildings and removal of trees may have various aesthetic impacts, including on visual character and lighting. Yet Hanson Bridgett does not specify what those impacts might be, and it does not provide any supporting evidence, much less the substantial evidence required by CEQA.

To the contrary, the MND and the staff report provide dozens of pages of analysis, explaining how the Project is consistent with applicable development and design standards and why it would not have any aesthetic impacts. (MND, pp. 7–13; Staff Report, pp. 7–18, 25–29, 31, Tables 2–4.) In particular, the Project complies with applicable Development Code standards that relate to visual character, including requirements for height, setbacks, scale, massing, and building coverage. (Staff Report, pp. 19, 25–26.) The Project is also compatible with the site plan criteria, architectural

considerations, and sustainable construction techniques from the Design Guidelines for Infill Development in the Historic Overlay District. (Staff Report, pp. 15–18; Municipal Code § 19.42.050.) Finally, the Project is visually compatible with the adjoining structures and traditional development patterns in the Broadway Corridor, and it complies with applicable Broadway Corridor guidelines and standards, including for height, setbacks, massing limits on the street frontage, and transitions to adjoining residential structures. (Staff Report, pp. 20, 26, 28–29.) The City is entitled to “rely on the expertise of its planning staff in determining whether a project will have a significant impact on the environment.” (*Porterville Citizens for Responsible Hillside Development* (2007) 157 Cal.App.4th 885, 901.) It should do so here, and it should reject the unsubstantiated and erroneous arguments advanced by Hanson Bridgett.

2. The MND properly analyzed cultural resource impacts.

It is undisputed that the existing buildings on the site are not historic, and that the MND properly concluded that demolishing them would not be a significant historic impact. (MND, p. 23.)

Hanson Bridgett, however, argues that the MND fails to analyze the Project’s potential impacts on the historic Broadway Corridor, and that the Project does not meet the planning and design standards for the Broadway Corridor. Neither claim is true.

First, as explained above, the City fully evaluated the Project’s compliance with all relevant development and design standards, specifically including the Broadway Corridor. (MND, pp. 10–11, 40–41; Staff Report, pp. 10–17, 27–29.) Second, planning staff have determined that the Project is substantially consistent with the Broadway Corridor; that appellants’ claims to the contrary are erroneous; and that impacts related to the Broadway Corridor would be less than significant. (*Id.*)

The Hanson Bridgett letter does not undermine the City’s analysis. Hanson Bridgett has not submitted any supporting evidence showing that the Project is inconsistent with the Broadway Corridor. Additionally, Hanson Bridgett itself does not have any relevant technical expertise that would qualify it to opine on cultural resource impacts and compliance with the City’s technical planning requirements. Finally, Hanson Bridgett’s claims are erroneous and are refuted in detail by the staff report. As noted above, the City Council is legally entitled to rely on the opinions of its own planning staff. (*Porterville Citizens, supra*, 157 Cal.App.4th at 901.) It should do so here,

and it should expressly find that Hanson Bridgett and appellants lack credibility on this issue.

3. The MND properly analyzed land use and planning impacts.

Hanson Bridgett also argues that the Project will have significant land use and planning impacts because it is inconsistent with the Design Guidelines for Infill Development in the Historic Overlay District. This argument fails for the same reasons discussed above. First, the City has fully analyzed the Project and determined that it is consistent with the guidelines. (Staff Report, pp. 15–18, 25, 27–29; Municipal Code § 19.42.050.) Second, Hanson Bridgett has not offered any contrary evidence and is not qualified to opine on the Project’s consistency with the City’s technical design guidelines. Third, Hanson Bridgett’s and appellants’ claims are unsubstantiated, erroneous, and refuted in detail by the City’s planning staff. (Staff Report, pp. 15–18, 25, 27–29.)

4. The MND properly analyzed transportation and traffic impacts.

The MND fully analyzed the Project’s potential traffic impacts, and it supported its analysis with a Traffic Impact Study (“TIS”) prepared by an expert traffic engineering firm. The MND and TIS show that the relevant intersection at Broadway and East MacArthur will continue to operate acceptably with the addition of Project traffic. In the near term, the intersection would continue to operate at LOS B (a.m.) and LOS C (p.m.)—both with and without the Project. (MND, p. 50, TIS, p 11.) Under year 2040 cumulative conditions, the intersection would continue to operate at LOS C (a.m. and p.m.)—both with and without the Project. (*Id.*) In other words, the Project will not cause any change to the intersection’s levels of service, and the City properly determined that the Project’s impacts will be less-than-significant. Caltrans also reviewed the TIS and did not identify any issues with the impact conclusions.

Hanson Bridgett argues that the Project will cause a significant impact by degrading the intersection from LOS B to LOS C. This is factually and legally untrue. Factually, Hanson Bridgett simply mischaracterizes the report, which clearly shows that the Project is not responsible for degrading the intersection LOS. (TIS, p. 11, Tables 8 and 9.) Legally, even if the Project were to degrade the intersection to LOS C, that would not be a significant impact. Under the City’s and Caltrans’ standard thresholds of significance, LOS B and LOS C are acceptable and a significant impact does not occur

until LOS D. The City, as lead agency, has broad discretion to choose its own thresholds of significance. (See CEQA Guidelines § 15064.7; *Oakland Heritage Alliance v. City of Oakland*, 195 Cal.App.4th 884, 896 (2011) [agency has discretion to rely on adopted standards to serve as significance thresholds for a particular project].) Hanson Bridgett and appellants have not submitted any evidence, much less substantial expert evidence from a qualified traffic engineer, demonstrating that the Project would have a significant impact notwithstanding the City's chosen thresholds of significance.

Hanson Bridgett also argues that the MND and TIS should have considered additional study intersections, including Second Street East/MacArthur and First Street West/MacArthur. The City's expert traffic consultant, however, properly determined which study intersections to include and exclude, given the Project's trip generation rate, proximity to the intersections, traffic levels, and other relevant factors. Once again, Hanson Bridgett and appellants have not submitted any evidence whatsoever, much less evidence from a traffic expert, showing that the Project would have significant impacts on additional intersections. The City Council should expressly find that Hanson Bridgett's and appellants' erroneous arguments and unsupported non-expert opinions lack credibility, and it should reject them.

5. The MND properly analyzed cumulative impacts.

As required by CEQA, the MND evaluated the Project's potential cumulative impacts for all environmental topics (MND, pp. 6, 56), and it included particularly detailed analysis of cumulative air quality impacts (MND, pp. 15–17), cumulative noise impacts (MND p. 42–43; Noise Study, pp. 10, 15), and cumulative traffic impacts (MND, pp. 49–50; TIS, pp. 8–11). The MND also imposed four mitigation measures—including for hydrology and water quality and utilities and service systems—to reduce all potential cumulative impacts to a less-than-significant level.

Hanson Bridgett argues that the cumulative impact analysis is inadequate. Yet it does not specifically identify which part of the analysis is allegedly inadequate, nor does it submit any evidence demonstrating a potentially significant cumulative impact. Rather, Hanson Bridgett appears to suggest that the cumulative analysis should include more detail. CEQA, however, does not require MNDs to study cumulative impacts at the same level of detail as the impacts of the project alone. (CEQA Guidelines § 15130(b); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2012)

205 Cal.App.4th 552.) The level of detail provided by the City is more than adequate and is consistent with CEQA's requirements.

Hanson Bridgett also argues that the MND should have analyzed the cumulative impacts of the Project together with the nearby Altamira Apartments Project. But it once again fails to specifically identify what those alleged impacts would be or to submit any supporting evidence. In addition, Hanson Bridgett fails to recognize that CEQA authorizes two different approaches to cumulative impact analysis: (1) a list-based approach, considering related projects (such as Altamira Apartments); or (2) a plan-based approach, considering projections of future development contained in a General Plan. (CEQA Guidelines § 15130(b).) Here, the City properly chose to rely on the plan-based approach by evaluating the Project together with the future growth projections contained in the General Plan. The City had no obligation to use the list-based approach.

III. The Planning Commission approval process complied with CEQA.

Hanson Bridgett suggests that the Planning Commission erred by failing to consider and vote on the MND and the Project approvals in the correct order. As detailed in the staff report, however, this allegation is factually incorrect. (Staff Report, p. 25.) The Planning Commission extensively considered both the Project and the environmental issues, and it voted to adopt the MND before voting to approve the Project. There was no procedural error. In addition, the appeal renders the argument moot because the City Council will now be the final decision-making body on the Project.

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In short, the City has fully and properly evaluated the Project's environmental impacts in the MND, and appellants and their lawyers have not submitted any evidence

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to the contrary. The City Council should deny the meritless appeal and approve this long-planned, well-designed Project, which will be an asset for the community.

Very truly yours,



Alexander L. Merritt
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Tom Origer & Associates

Archaeology / Historical Research

August 6, 2018

RE: Historical significance of the property at 870 Broadway, Sonoma

Dear Mr. Hunter:

I am writing in response to concerns expressed regarding potential impacts to historic resources arising from the proposed project at 870 Broadway, Sonoma, Sonoma County, California. As you know, JRP completed an analysis of the historical significance of the buildings on the property, and I provided a review of their methods and conclusions. The buildings were found to not meet criteria for inclusion in the National Register of Historic Places or the California Register of Historical Resources. Further, JRP's methods and thorough analysis were found to be clear and complete.

The concerns expressed relate to potential impacts to the Broadway Corridor, as defined by the City of Sonoma (§19.32) where the area north of MacArthur Street is described as possessing *"a clear visual organization defined by historic structures with landscaped front yards and generally regular setbacks, street trees, and a consistent street width. South Broadway, in contrast, features a patchwork of older (but not historic) commercial buildings, new commercial and multifamily residential development, historic single-family homes and remnant agricultural buildings. These uses are interspersed with vacant parcels."*

While the subject parcel is located at the northeast corner of Broadway and MacArthur, the existing conditions are more reflective of the South Broadway area. The lack of historically significant structures, absence of street trees or any form of landscaped setback to align with the residential landscaping to the north, and the presence of residential structures to the north and east all reflect the conditions of the South Broadway area.

I have not completed a detailed review of the proposed development for compatibility with the City's goals for the Broadway Corridor; however, the replacement of the existing buildings, which do not contribute to the historical significance of the corridor, with residential structures that incorporate an appropriate setback from the street and landscape elements compatible with surrounding residential development would not comprise a significant impact to the ability of the Broadway Corridor to convey its historical importance.

Cordially,



Janine M. Origer
Senior Associate