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September 26, 2019

**VIA E-MAIL (BDESATNIK@CITYOFREDLANDS.ORG)**

City of Redlands Planning Commission  
35 Cajon Street  
Suite 2  
Redlands, CA 92373

Re: 1600 Orange Avenue Luxury Apartments Project

Dear Members of the Planning Commission:

This firm represents LuxView Apartments (“Applicant”) with respect to its Orange Avenue Luxury Apartment Project (the “Project”) located at 1600 Orange Avenue in Redlands, California. The Project would develop a 328-unit low-rise luxury apartment complex spanning the northern and southern portions of Orange Avenue. The Project would consist of six new, 3-story apartment buildings and a clubhouse (with a total building area of 169,835 square feet) consisting of one, two, and three-bedroom units. The Project would include state-of-the-art amenities including a clubhouse featuring a gym, yoga and Pilates studio, game room, copy and print center with conference room, lobby, demonstration kitchen with bar area, pool room, and office amenities. Landscaping would include a 620 square foot splash pad fountain, a shade structure, a decorative metal fence with pedestrian gates, an outdoor swimming pool, a hot tub, and an outdoor fireplace.

The Project is consistent with all land use policies and development regulations including the newly-adopted City of Redlands General Plan Update, which designates the Property for Medium-Density Residential development, and all requirements of the City of Redlands Municipal Code. The City prepared a Mitigated Negative Declaration for the Project and in response to some of the public comments received, we supplement the record with the following information related to the adequacy and appropriateness of the MND under applicable CEQA laws.

**Standards for Adoption of the Mitigated Negative Declaration**

CEQA regulations require a reviewing agency to adopt a negative declaration if the initial study shows no substantial evidence that a project may have a significant effect on the environment, or if the initial study identifies potentially significant effects on the environment that can be mitigated to a point where no significant effects on the environment would occur and there is no substantial

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evidence that the project may have a significant effect on the environment. (Pub. Resources Code, § 21080(c); Guidelines §§ 15063(b)(2); 15064(f)(2)-(3); 15070.) The reviewing agency should consider the proposed mitigated negative declaration together with any public comments when approving a project. (Guidelines § 15074(b).)

As shown in the Recirculated Initial Study/Mitigated Negative Declaration (“Recirculated IS/MND”), each of the identified potentially significant impacts will be mitigated to a point where no significant impacts will occur. There is no substantial evidence that the Project may have a significant effect on the environment and we urge that the Planning Commission adopt the Recirculated IS/MND.

**The Project is Exempt Under CEQA, but Additional Environmental Review was Conducted to Inform the Public Regarding the Project’s Details**

California Public Resources Code section 21083.3 and California Environmental Quality Act (“CEQA”) Guidelines Section 15183 provide an exemption and/or limited additional environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an Environmental Impact Report (“EIR”) was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.

Guidelines Section 15183 specifies that examination of environmental effects shall be limited to those effects that: (1) are peculiar to the project or the parcel on which the project would be located, and were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent, (2) are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or (3) are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR. Guidelines Section 15183(c) further specifies that if an impact is not peculiar to the parcel or to the proposed project has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, then an additional EIR need not be prepared for a project solely on the basis of that impact.

The City of Redlands General Plan Update (“GPU”) establishes a blueprint for future land development in the City of Redlands that meets community desires and balances the environmental protection goals with the need for housing, agriculture, infrastructure and economic vitality. The GPU applies to all areas of the City of Redlands and directs population growth and plans for infrastructure needs, development and resource protection. The GPU included adoption of General Plan elements, which set the goals and policies that guide future development. The GPU also included a land use map, a public facilities map, and updates to implementing policies. The GPU updated the land use designation for the Project site to Medium Density Residential which allows for semi-detached and attached units at a density of up to 15 dwelling units per acre.

The GPU EIR was certified in conjunction with the adoption of the GPU on December 5, 2017. The GPU EIR comprehensively evaluated the environmental impacts that would result from Plan

implementation, including information related to existing site conditions, analyses of the types and magnitude of project level and cumulative environmental impacts, and feasible mitigation measures that could reduce or avoid environmental impacts.

While the Project is consistent with the analysis performed for the GPU EIR, the City elected to fully analyze the potentially significant impacts of the Projects, including impacts which were previously analyzed as part of the GPU EIR, and identified all feasible mitigation measures through preparation of the Recirculated IS/MND in an effort to provide additional transparency and information to the public. That said, CEQA limits the scope of the required review to those identified in CEQA Guidelines 15184 and to the extent the Recirculated IS/MND includes additional analysis beyond the required scope under CEQA, such analysis is merely for the benefit of the public. (See *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 700 [disapproved on other grounds by *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171].)

Despite the fact that the Recirculated IS/MND includes additional analysis beyond what is required under CEQA, we address the main issues raised in response to the Recirculated IS/MND below.

#### **The Traffic Impact Analysis Data Is Appropriate and Adequate Under CEQA**

Numerous commenters (submitting a form comment letter) claimed that the traffic impact analysis submitted as part of the Recirculated IS/MND was incomplete or outdated. Specifically, commenters claimed that the Initial Study did not include Grove School families or an analysis of Grove School drop-off or pick-up times and that the 2017 Traffic Impact Analysis was completed prior to the addition of nearby industrial warehouses and housing developments. Additionally, the commenters state that an updated study should include an analysis of pedestrian and bicycle usage around the development.

The Traffic Impact Analysis performed in connection with the Initial Study is sufficient under CEQA. Consistent with CEQA regulations, the Traffic Impact Analysis used existing traffic volumes as the baselines for traffic impact analysis and were measured in November 2017 using the AM peak period (7-9 AM) and the PM peak period (4-6 PM) of surrounding streets. The traffic volumes and baseline used in the Initial Study include the peak travel period pursuant to CEQA and properly account for travel to and from the Grove School.

Further, the Traffic Impact Analysis performed in connection with the Initial Study adequately accounts for future development in the area. The Traffic Impact Analysis took into account forty-four (44) potential future development projects that were pending and approved/unconstructed, and provided for general area-wide traffic growth based on regional forecasts derived from the San Bernardino Transportation Analysis Model (SBTAM).

The Traffic Impact Analysis was performed in accordance with the parameters outlined in the County of San Bernardino Congestion Management Program (CM) as adopted by the City of Redlands, which takes into account minimum phase times for pedestrians and bicyclists. The Traffic Impact Analysis documents existing pedestrian and bicycle facilities and provides additional review of proposed crosswalk improvements. Additionally, Mitigation Measure TRANS-4 would construct roadways along the project frontage, including sidewalks and parkway improvements to their

ultimate half-section width. The Project will construct new sidewalks along the project frontage and a crosswalk across Orange Avenue at the eastern leg of the Orange Avenue and Iowa Street intersection, which will facilitate local pedestrian mobility near the Project.

Additionally, RK Engineering Group, Inc., submitted an additional comment letter reviewing the Traffic Study performed in connection with the Project. RK Engineering claims that the Project has a significant impact to the intersection of Alabama Street at Orange Avenue for General Plan Buildout Year 2040 conditions, and the Project should be responsible for 100% of the improvements at this intersection. The claim is incorrect, speculative, and is not based on technical data or other evidence, which pursuant to CEQA, is not sufficient to overcome the standard of review for preparation of an EIR. (“The mere existence of a public controversy does not satisfy the fair argument standard. (Georgetown Preservation Society v. County of El Dorado (2018) 30 Cal.App.5th 358, 374; Pub. Resources Code, § 21082.2(b).) Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence supporting a fair argument of significant environmental effect.” (Wollmer v. City of Berkeley (2011) 193 Cal.App.4th 1329, 1350-1351.) (“If there is disagreement among expert opinion **supported by facts** over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.” (Guidelines § 15064(g)(emphasis added)).

As shown in the Traffic Impact Analysis, the Project contributes to 19.3% of the new trips at the Alabama Street at Orange Avenue Intersection and should therefore not be responsible for 100% of the costs of improvements necessary to mitigate the deficient Levels of Service forecast to occur only under General Buildout (Year 2040) conditions. The Project will pay its fair share in restriping the eastbound approach to provide a dedicated left turn lane and restripe the westbound approach to provide a dedicated left turn lane to mitigate any potential impacts.

#### **CEQA Requires a Nexus Between the Project’s Impacts and Required Traffic and Safety Mitigation Measures**

The form comment letter submitted by numerous commenters also discussed traffic and safety for families. The comments requested traffic mitigations for student safety including curb extensions and high-visibility crosswalk markings where Iowa and Nevada intersect with Orange Avenue. The comments also requested additional curb extension on the North side, mid-block crosswalks on Orange Avenue, as well as warning signs, speed bumps and roadway lighting around the mid-block crosswalk. The commenters also propose that a crossing guard be provided, or that Orange Avenue be closed to through traffic.

Pursuant to CEQA Guidelines 15064.7, the analysis prepared under the Traffic Impact Analysis was performed in accordance with the methodology, performance standards and thresholds of significance established by the City of Redlands for the evaluation of traffic impacts associated with development projects. In accordance with CEQA regulations, there must be a nexus between project-related significant impacts and the requirement of a project to provide mitigation. CEQA requires mitigation where the project satisfies one or more thresholds of significance established by the City of Redlands.

The City of Redlands has defined a significant transportation impact as one where a proposed development is forecast to cause a degradation in the performance of a study intersection, as measured by the Level of Service, beyond the established thresholds. Based on the findings of the Traffic Impact Analysis, project-related significant impacts are adequately mitigated with implementation of Mitigation Measures TRANS-1 and TRANS-4. CEQA does not require that the Project remediate off-site issues where there is no corresponding project-related significant impact. Further, although not required under CEQA, the Project will add a new sidewalk and crosswalk at the intersection of Iowa Street and Orange Avenue.

While the Project will generate additional trips, the Project is forecast to generate substantially fewer trips than the sum of the approved City of Redlands General Plan land uses for the properties that surround the school. Based on the thresholds of significance established by the City of Redlands, an increase in the amount of traffic alone is not considered a significant impact. The Project presents a relatively few number of project-generated trips forecast to travel along Orange Avenue east of Iowa Street and the addition sidewalk improvements and new crosswalk will result in the Project not creating any significant impact. Further, there is no need to close Orange Avenue and closing Orange Avenue would be in conflict with the City's General Plan.

#### **The Project Includes Measures to Mitigate Concerns Related to Construction Impacts**

Commenters also submitted comments regarding construction mitigation measures. The comments state that the City should not permit construction equipment and hauling routes around Montessori in Redlands and the Grove School while students are in school. The commenters also request that street closures not occur during peak pick-up and drop-off hours and that regular traffic flow is not interrupted while school is in session.

Mitigation Measure TRANS-2 requires that a construction work site traffic control plan be submitted to the City for review and approval prior to the issuance of a grading permit or the start of any construction work. At this time, it is impracticable to submit the plan prior to project approval because the construction plans are unknown and hypothetical until a contractor is hired, and because existing conditions near the project vicinity are subject to change.

Because a construction work site traffic control plan must be submitted prior to the issuance of a grading permit or the start of construction, it is reasonable for the City to conclude that the traffic control plan, as approved by the City, will mitigate any potential impacts. Standard practice dictates that any plan avoid peak commute periods, route heavy trucks along major arterials (such as Alabama Street), and coordinate with school schedules and utility providers as necessary, and comply with state and federal traffic control standards outlined in the manual on Uniform Traffic Control Devices.

#### **Noise Study Included Additional Analysis and No Additional Impacts Were Identified**

RK Engineering Group, Inc. submitted a comment letter regarding the potential noise and vibration impacts from the Project. Based on the issues raised in RK Engineering Group's letter, the construction noise from the Project was re-evaluated using an alternative methodology and all phases of the project (not just the worst-case scenario) were modeled. The results of this additional

analysis did not change the levels of impact, significant conclusions or the required mitigation measures noted in the original noise study.

Any potential noise impacts of the Project would be consistent with the City of Redlands General Plan EIR, which found that the impacts are consistent with the General Plan and would be less than significant with compliance with Section 8.06.120 of the City of Redlands Municipal Code. Project construction activities will not occur outside of the hours of 7:00 AM and 6:00 PM, Monday through Saturday, and the construction noise emitted during these hours is exempt from the City's noise ordinances. Consistent with the City of Redlands General Plan EIR, any substantial temporary increase in ambient noise levels from construction is considered less than significant if the activities comply with the City's Noise Control Ordinance (Municipal Code § 8.06.090).

### Conclusion

Pursuant to CEQA, the mere existence of a public controversy does not satisfy the fair argument standard for the purposes of requiring preparation of an EIR. (*Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 374; Pub. Resources Code, § 21082.2(b).) "Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence supporting a fair argument of significant environmental effect." (*Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1350-1351). For all of the reasons discussed above, the Recirculated IS/MND adequately identifies, analyzes and mitigates all of the Project's potentially significant impact. We believe that the Orange Avenue Luxury Apartments Project will provide significant benefits to the City of Redlands and will provide much needed assistance to California's current housing crisis.

Very truly yours,



Justine K. Nielsen

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