

June McHuen

From: Jami Morritt
Sent: Monday, February 26, 2024 5:18 PM
To: June McHuen; Stacey Boyd
Subject: FW: public comment re 3180 Walnut Blvd for 27Feb2024 BOS meeting
Attachments: Contra Costa County - HAA Letter - 3180 Walnut Boulevard(1).pdf

For BGO & the minutes.

Jami

From: James Lloyd <james@calhdf.org>
Sent: Monday, February 26, 2024 4:53 PM
To: Candace Andersen <Candace.Andersen@bos.cccounty.us>; Supervisor_Burgis <Supervisor_Burgis@bos.cccounty.us>; John Gioia <John.Gioia@bos.cccounty.us>; Supervisor Carlson <supervisorcarlson@bos.cccounty.us>; Supervisor Federal Glover <DistrictFive@bos.cccounty.us>
Cc: Clerk of the Board <ClerkOfTheBoard@cob.cccounty.us>; Jami Morritt <Jami.Morritt@cob.cccounty.us>; Sonia Bustamante <Sonia.Bustamante@bos.cccounty.us>; Gayle Israel <Gayle.Israel@bos.cccounty.us>; Jen Quallick <Jen.Quallick@bos.cccounty.us>; Alicia Nuchols <Alicia.Nuchols@bos.cccounty.us>; Lisa Chow <Lisa.Chow@bos.cccounty.us>; David Fraser <David.Fraser@bos.cccounty.us>; Cameron Collins <Cameron.Collins@bos.cccounty.us>; Colleen Awad <Colleen.Awad@bos.cccounty.us>; Joseph Lawlor <Joseph.Lawlor@dcd.cccounty.us>; John Kopchik <John.Kopchik@dcd.cccounty.us>; Dominique Vogelpohl <Dominique.Vogelpohl@dcd.cccounty.us>
Subject: public comment re 3180 Walnut Blvd for 27Feb2024 BOS meeting

Dear Contra Costa County Board of Supervisors,

Please see attached CalHDF's public comment regarding agenda item 7.D.2, 3180 Walnut Boulevard, File No. CDSD21-09581, for the 27 February 2024 Board of Supervisors meeting.

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
james@calhdf.org



Feb 26, 2024

**Contra Costa County
Board of Supervisors
1025 Escobar Street
Martinez, CA 94553**

Re: Proposed Subdivision Development at 3180 Walnut Boulevard, CDS21-09581

By email: Candace Andersen, Candace.Andersen@bos.cccounty.us; Diane Burgis, supervisor_burgis@bos.cccounty.us; John Gioia, John.Gioia@bos.cccounty.us; Ken Carlson, SupervisorCarlson@bos.cccounty.us; Federal Glover, district5@bos.cccounty.us

Cc: clerkoftheboard@cob.cccounty.us; Jami Morritt, Jami.Morritt@cob.cccounty.us; Sonia Bustamante, sonia.bustamante@bos.cccounty.us; Gayle Israel, Gayle.Israel@bos.cccounty.us; Jen Quallick, jen.quallick@bos.cccounty.us; Alichia Nuchols, Alicia.Nuchols@bos.cccounty.us; Lisa Chow, Lisa.Chow@bos.cccounty.us; David Fraser, david.fraser@bos.cccounty.us; Cameron Collins, cameron.collins@bos.cccounty.us; Colleen Awad, colleen.awad@bos.cccounty.us; Joseph Lawlor, joseph.lawlor@dcd.cccounty.us; Dominique Vogelpohl, dominique.vogelpohl@dcd.cccounty.us; John Kopchik, john.kopchik@dcd.cccounty.us

Dear Contra Costa County Board of Supervisors,

The California Housing Defense Fund (“CalHDF”) submits this letter to inform the Contra Costa County Board of Supervisors that they have an obligation to abide by all relevant state housing laws when evaluating the proposed 10-unit residential subdivision at 3180 Walnut Boulevard (“the project”).

The Housing Accountability Act (Gov. Code, § 65589.5, the “HAA”) requires approval of zoning and general plan compliant projects unless findings can be made regarding specific, objective, written health and safety hazards. The project falls within the HAA’s ambit, as it complies with the local zoning code (R-20) and the County’s SL, Single-Family Residential Low Density (SL) General Plan designation, outlined in the staff report. Waivers and concessions of development standards pursuant to the DBL, discussed below, do not render the project noncompliant with local development standards for HAA purposes. (*Id.* at subd. (j)(3).) Thus, the Board of Supervisors must approve the subdivision development for the project unless it makes written health and safety findings, as described above – which it

**360 Grand Ave #323, Oakland 94610
www.calhdf.org**

cannot do, since the preponderance of the evidence in the record does not support such a finding.

CalHDF also writes to emphasize that the Density Bonus Law (Gov. Code, § 65915; the “DBL”) offers the proposed development certain protections. The Board of Supervisors must respect these protections. In addition to granting the increase in residential units allowed by the DBL (one additional unit in this case), the Board of Supervisors must not deny the proposed waivers and concessions with respect to minimum lot size, minimum lot width, setback requirements, and use of gross area for the density calculation unless it makes written findings as required by Gov. Code, § 65915, subd. (e)(1) that the concession or waivers would have a specific, adverse impact upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The County, moreover, bears the burden of proof on any such findings. (*Id.* at subd. (d)(4).)

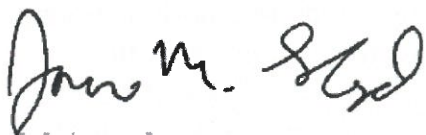
As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: it will bring increased tax revenue and new customers to local businesses; and by providing new housing it will reduce displacement of existing residents. While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the Board of Supervisors to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations



Integral Consulting Inc.
433 Visitacion Avenue
Brisbane, CA 94005

telephone: 925-895-4302
www.integral-corp.com

MEMORANDUM

To: Andy Bye, Calibr Ventures
From: Sadie McGarvey, Integral Consulting Inc.
Date: February 26, 2024
Subject: Grayson Road 10-Lot Subdivision Project – Response to Ecological Evaluations, Grayson Road 10-Lot Subdivision, #CDSD20-09531

The below discussion of project impacts to natural resources has been prepared in response to the February 19, 2024 ecological evaluation letter prepared for Ms. Lisa Shikany by Chad Roberts, Ph.D. (*Ecological Evaluations, Grayson Road 10-Lot Subdivision, #CDSD20-09531*; herein referred to as the February 2024 Shikany Letter). Nearly all components of the February 2024 Shikany Letter have been addressed multiple times in the previously submitted Response to Comments letters and memos (Response to Comments letter provided to Joseph Lawlor of Contra Costa County on July 31, 2023, the January 3, 2024 Response to Comments, and the January 10, 2024 Response to Comments Memo regarding the Regional Water Quality Control Board Letter). However, Dr. Roberts makes multiple new erroneous assertions regarding onsite resources and impacts to those resources, and these are addressed specifically below.

The Project site is located on an urban infill 3.05-acre property surrounded by existing residential development. Due to the small size and infill nature of the Project site, which additionally experiences regular and significant disturbance including biannually discing, mowing multiple times throughout the growing season, and tree trimming throughout the year (as necessary), the onsite upland woodland communities (i.e., valley oak and mixed woodland) do not exhibit the functions and values expected of an interconnected forest resource system, as represented in the February 2024 Shikany Letter. As noted above, nearly all onsite areas above/beyond the Grayson Creek top of bank (TOB) are regularly disturbed for fire suppression, precluding the existence of significant understory vegetation development. Valley oak woodland and mixed oak woodland plant communities are not rare plant communities in this region, with Contra Costa County alone supporting a roughly 81,000 acres of oak woodland¹. As a disturbed infill site surrounded by existing residential development, the onsite

¹ UC Oaks. 2022. Oak Woodland Policies of 41 California Counties. University of California Agricultural and Natural Resources Cooperative Extension. Accessed on February 21, 2024 at <https://oaks.cnr.berkeley.edu/description-of-county-oak-conservation-policies/>



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February 26, 2024

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upland woodland communities are plainly not part of a larger interconnected system of oak woodlands.

A review of historic aerial photography demonstrates that conversion of onsite vegetation from orchard to fallow field (1950s/1960s), and the later ecological succession into the Valley oak, mixed, and riparian woodland that are currently dominating the site. This conversion coincided with the residential development of the surrounding lands. It is clear that at no point in recent history have the upland woodland communities on the Project site been part of a system of contiguous undisturbed upland communities or oak woodlands that provide the enhanced ecological values and services at the landscape level as falsely asserted in the February 2024 Shikany Letter; rather, the onsite upland woodland communities function as marginal stands of oaks and various non-native trees, isolated within a matrix of residential development. The assessment presented within the February 2024 Shikany Letter that the entire Project site provides a functionally important role for most mobile wildlife species in the region is inaccurate and does not reflect the historic or regional context of the Project site or actual longstanding site conditions. Regardless, Project design includes the avoidance of approximately 30 percent of the onsite trees, all other trees will be replaced. Implementation of the project design (including woodland avoidance measures) and Mitigation Measure Biology 2 minimize impacts to onsite trees and woodlands through avoidance, to the greatest degree possible, and replacement, which reduces the magnitude of permanent tree/Valley oak and mixed woodland habitat removal.

In contrast to the onsite upland woodland communities that are not part of a larger interconnected system of oak woodlands, the onsite riparian woodland is part of a contiguous riparian corridor along Grayson Creek, both up and downstream from the Project site. While 0.21 acre of riparian habitat will be impacted by the Project, those impacts will be 1) along the northern border of the onsite riparian habitat, with no impacts below the TOB of Grayson Creek; 2) authorized by CDFW through the Lake and Streambed Alteration Agreement (LSAA) application process; and 3) mitigated in a manner determined to be suitable to both the County (through CEQA and County Tree Ordinance compliance) and CDFW (through the LSAA process), including the replacement planting of riparian woodland tree species. The proposed project was designed to accommodate a 50-foot creek setback to avoid impacts to the adjacent Grayson Creek and surrounding habitat to the greatest extent feasible, including the avoidance of trees within the riparian corridor. Implementation of the project design (including riparian avoidance measures) and Mitigation Measure Biology 2, minimize impacts to onsite riparian trees and woodland through avoidance and replacement, which reduces the magnitude of permanent tree/riparian habitat removal. Onsite replacement planting has been determined to be feasible by the licensed landscape architecture firm RW Stover & Associates, Inc, who are familiar and experienced with California native oak woodland and riparian trees and their growth requirements and conditions, and who created the Tree Mitigation Plan.

The February 2024 Shikany Letter includes an erroneous conclusion that the biological assessments prepared by Olberding Environmental, Inc and Johnson Marigot Consulting (now

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Integral Consulting, Inc) identified potential concerns regarding potential Project impacts to onsite or site adjacent aquatic resources regulated pursuant to the Clean Water Act (CWA) – both assessments concluded that the Project *would not* result in impacts to water of the U.S./State (WOTUS) regulated by USACE pursuant to Section 404 of the Clean Water Act (CWA) and by the RWQCB pursuant to the Section 401 of the CWA and the Porter Cologne Water Quality Control Act. Dr. Roberts discusses the changing regulatory landscape regarding impacts to WOTUS in light of the 2023 *Sackett v. USEPA* wetlands case, which held that the Clean Water Act extends only to wetlands that have a continuous surface connection with “waters” of the United States – i.e., with a relatively permanent body of water connected to traditional interstate navigable waters, 33 U.S.C. § 1362(7). The Sackett case addresses the jurisdiction of USACE to regulate seasonal wetlands and ephemeral linear features (neither of which occurs on the Project site), and as Grayson Creek is perennial “Other Water”, USACE/RWQCB jurisdiction over the creek has not changed as a result of the Sackett ruling. To that point, the limits of CWA jurisdiction include the Ordinary High Water Mark of flowing features, and permitting requirements are triggered by proposed placement of fill materials below the plane of the Ordinary High Water Mark; the project does not propose placement of any fill materials within the CWA jurisdiction, and CWA permits are not required.

Dr. Roberts’ conclusion is that the proposed project will result in “unmitigated and significant” impacts and therefore the CEQA analysis should include an Environmental Impact Report. Dr. Roberts has based this determination on his conclusion that the proposed mitigation measures do not mitigate the proposed impacts to a less than significant level. While we appreciate his opinion and his background in forest ecology, the majority of his letter is focused on describing vegetation associations, and defining riparian functions and forest growth patterns, but it does not focus on the Project site itself. He indicates that he has not visited the site, and has derived his understanding of the site from the reports prepared by Olberding Environmental, Inc and Johnson Marigot Consulting, but then somehow concludes that those reports do not accurately describe the project’s impacts. The site actually consists of an infill lot that has been consistently manipulated for decades and is highly disturbed. The onsite understory has been consistently removed for fuel management, and the functions and services associated with the onsite upland vegetation has been historically suppressed. While any proposed development of this site can be expected to result in some biological impact, just as the historic land practices that constitute the actual, accurate baseline for this issue have, the proposed development project includes setbacks to protect the riparian corridor and Grayson Creek, as well as a replanting plan intended to minimize, avoid, and mitigate for impacts to the greatest degree possible. The inclusion of these measures clearly reduces the impact of this project to a less than significant level. The standard for use of an Initial Study / Mitigated Negative Declaration is that project impacts must be reduced to less than significant, including mitigation (as is the case here); it does not require project impacts to be mitigated to “none.” In addition, mitigation goals are calibrated on existing (current) functions and values—the CEQA baseline—they do not contemplate the historic condition (which in this case has never been an undisturbed or interconnected upland woodland community), nor the loss of ecological function due to historical land practices. Given the proposed avoidance, minimization, and mitigation measures, the determination by the County that the project

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February 26, 2024

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impacts are “less than significant” is accurate, and the Initial Study/Mitigated Negative Declaration that was completed pursuant to CEQA is appropriate and consistent with all that CEQA requires.



From: Clerk of the Board
Sent: Monday, February 26, 2024 3:36 PM
To: Supervisor John_Gioia; Supervisor Candace Andersen; Supervisor_Burgis; Supervisor Carlson; Supervisor Federal Glover
Cc: Monica Nino; Julie Enea; Joyce Ring-Reaves; June McHuen
Subject: FW: Grayson Road 10-Lot Subdivision CDS20-09531, File #24-0618 for BOS 2-27-24 Meeting
Attachments: Grayson Creek Letter_02252024-2.docx

The email below and the attachment above were received in the Clerk of the Board's office.

Stacey M. Boyd
 Deputy Clerk
 Clerk of the Board
 1025 Escobar St., 1st Floor
 Martinez, CA 94553
 (925)655-2002 (Desk)
 (925)655-2000 (Office)

-----Original Message-----

From: Pat <[redacted]>
Sent: Monday, February 26, 2024 1:31 PM
To: Clerk of the Board <ClerkOfTheBoard@cob.cccounty.us>
Cc: Lisa Chow <Lisa.Chow@bos.cccounty.us>
Subject: Grayson Road 10-Lot Subdivision CDS20-09531, File #24-0618 for BOS 2-27-24 Meeting

Clerk of the Board,

I am sending the attached letter from Mr. Michael McDowell, former Scoutmaster of Scout Troop 405 in Pleasant Hill. Mr. McDowell knows Supervisor Carlson through the Troop and Church of the Resurrection which sponsors this Scout Troop.

This email is in regard to the Grayson Road 10-Lot Subdivision CDS20-09531, Agenda File #24-0618 for Board of Supervisors 2-27-24 meeting. I would appreciate a reply to confirm your receipt of this email transmittal.

Thank you very much,

Patrick King

February 25, 2024

Contra Costa County Board of Supervisors
Clerk of the Board
1025 Escobar Street
Martinez, CA 94553
Delivery via email: clerkoftheboard@cob.cccounty.us
Cc: Lisa.Chow@bos.cccounty.us

RE: Grayson Road 10-Lot Subdivision CDSD20-09531, File #24-0618 for BOS 2-27-24 Meeting

To Whom It May Concern:

I am a concerned citizen and resident of Pleasant Hill, California. In addition, I am the former Scoutmaster of Troop 405 in Pleasant Hill with an Eagle Scout Project associated with the Grayson Creek watershed.

The above referenced project proposal to build a 10-Lot Subdivision along Grayson Creek threatens the habitat of many animal species and trees. I urge you to deny this project. Surely there are more suitable areas within the confines of Pleasant Hill to construct ten (10) large single-family homes that won't disrupt what little greenspace still exists in the area.

As you will no doubt hear from others, this stretch of creek is an important wildlife habitat area in Pleasant Hill, and one of the most important wildlife areas in Contra Costa County.

My association with the area was as one of the adult advisers for an Eagle Scout Project. The Eagle Scout Project was part of an effort to restore Wood Ducks in Grayson Creek, an effort that remains ongoing today. This restoration project is both adjacent to and across from the proposed project site. The site was selected as the best possible habitat in Pleasant Hill for the return of Wood Ducks, which have not nested in the city for 50 years. While the Eagle Scout that carried out this project is now an adult, he is still involved with the data collection as a college student. The construction of 10 single-family homes in this area would essentially destroy this effort at habitat restoration.

As a Pleasant Hill homeowner, I can attest to the fact that the most prevalent wild animal in areas already developed are the sewer rats (Norway rats) and the roof rats (or Black rats). These animals are pests and not part of the endemic ecology of the area. All the building of houses along Grayson Creek will do is destroy the habitat for native and endemic species and provide an opening for more rats.

It is my understanding that the proposed project will result in the destruction of nearly 100 trees. Trees that are the nesting areas for many species of birds (including raptors and owls that help to control the suburban rat population) and some mammals (squirrels, raccoons, bats,

etc.). Not to put too fine of a point on it, but the loss of raptors and owls (predators that help to control the rodent populations) through habitat loss will allow the rodent population to flourish. The trees also serve to shade Grayson Creek and provide cooling islands within the suburban habitat. The removal of the trees and resulting understory will also eliminate habitat for other mammals such as deer and fox.

The last thing the City of Pleasant Hill and surroundings need are fewer trees and more concrete. I strongly urge you to reject this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McDowell". The signature is fluid and cursive, with a large initial "M" and "D".

Dr. Michael McDowell, PhD
11 Dublin Court
Pleasant Hill, CA
734-730-5328