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April 17, 2007

David Somers, Environmental Review Coordinator
Department of City Planning
City of Los Angeles, City Hall
200 N. Spring St, Room 750
Los Angeles, California 90012

Re: Draft Environmental Impact Report
Vesting Tentative Tract No. 61553, EAF No. ENV-2005-EIR

Dear Sir or Madam:

On behalf of Save Oak Savanna, an unincorporated association (a California non-profit corporation?), we hereby submit this letter in response to the Draft Environmental Impact Report ("DEIR") for Vesting Tentative Tract No. 61553, EAF No. ENV-2005-EIR in the City of Los Angeles in Los Angeles County ("Project").

The DEIR does not comply with the California Environmental Quality Act ("CEQA") *Public Resources Code* § 21000 et seq. The DEIR fails to fully inform the City and the public of the environmental consequences of this project and, accordingly, must be rewritten and recirculated for additional public comment. The DEIR does not disclose all significant impacts or require all feasible mitigation measures and the document fails to adequately analyze the smaller, environmentally-preferred alternative. The conclusion in the DEIR that all impacts but for construction noise and vibration can be mitigated to insignificance is erroneous and unsupported by substantial evidence.¹ (Page IV-1.)

The California Legislature enacted CEQA to protect the environment of California, *Cal. Pub. Res. Code* § 21000(a), to protect the environmental health of Californians, *Cal. Pub. Res. Code* §§ 21000(b), 21000(6), 21404(9), to prevent the elimination of plant and animal species due to man's activities, *Cal. Pub. Res. Code* §

¹The DEIR is referenced herein by section and page number citation.

21001(b), to create and maintain ecological and economic sustainability, *Cal. Pub. Res. Code* § 21001(8), and to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State." *Cal. Pub. Res. Code* § 21001(a).

The purpose of Environmental Impact Reports ("EIRs"), prepared to meet the objectives of CEQA, is "to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided," before a project is built. *Cal. Pub. Res. Code* § 21002.1(a). Specific data should be presented for a meaningful analysis of all significant impacts. *Berkeley Keep Jets Over the Bay v. Bd. Of Port Comm'n's* (2001) 91 Cal.App.4th 1344, 1381. The EIR cannot be approved if other feasible mitigation measures exist, and the agency "shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." *Cal. Pub. Res. Code* §§ 21002, 21002.1(b). Mitigation measures that are remote, speculative, vague, or incomplete are inadequate. *Federation of Hillside & Canyon Association v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260. Also, improper deferral of study and analysis of impacts and mitigation measures to the future violates CEQA. *Endangered Habitats League, Inc. v. County of Orange*, (2005) 131 Cal.App.4th 777, 793-794; *Cal. Code Regs.*, 14 § 15091. Here, the DEIR inadequately discusses significant impacts and project alternatives and fails to require all feasible mitigation.

The analysis and findings in the DEIR therefore are unsupported by substantial evidence. *Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 573; Kosta, et al., *Practice Under the California Environmental Quality Act* § 23.33 (CEB 2005). "[N]on-compliance with the information disclosure provisions of CEQA which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of CEQA, may constitute a prejudicial abuse of discretion..." *Stanislaus Natural Heritage v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 192. An EIR which does not address potentially substantial effects should be recirculated. *Sierra Club v. Gilroy City Council* (1990), 222 Cal.App.3d 30. These items are discussed below generally in the order they appear in the DEIR document:

I. The Description of Project Setting is Incomplete

An EIR must accurately disclose and evaluate the baseline conditions and existing development at the site. *Cal. Code Regs.*, 14 §§ 15125(a), 15126.2(a); *Environmental Planning & Info. Council v. County of El Dorado*, (1982) 131 Cal.App.3d 350. If the description of the setting is flawed the DEIR is deemed inadequate. *San Joaquin Raptor/Wildlife Rescue v. County of Stanislaus* (1994) 27 Cal.App.4th 713. Such deficiency taints the accompanying impact analysis and mitigation findings, rendering them legally inadequate as well. *Galante Vineyards v. Monterey Peninsula Water Mgt.* (1997) 60 Cal.App.4th 1109, 1122.

Here, the description of the surrounding zoning and existing site conditions is flawed. The DEIR's inaccurate depiction of the existing conditions at the site infects the whole document and its description of the project's potential environmental impacts. For example, the DEIR concludes that the proposed project is similar in land use and density to the existing residences to the west of the project site. (Page II-31). This is untrue. The residences to the west are mostly RE-40 zoned with property sizes significantly larger than the proposed thirty-seven (37) units. The lot sizes and height variations sought by the developer do not adequately account for the neighboring land uses and the current park-like setting at the site. There are no houses in the immediate and adjacent areas. The project setting section of the DEIR also neglects to disclose the steep grade at the property and the fact that 27.5% of the site is over 15% grade - information buried later in the document. (Page V, F-21.) Further, there is no discussion of the existing Flood Control Easement at the site and impacts on the hillside properties at 4606 San Feliciano Drive, 22345 Mulholland Drive, and 22331 Mulholland Drive. Further, as discussed below, the DEIR fails to adequately identify the blue stream and riparian habitat on the site and does not account for impacts on the adjacent Department of Water and Power ("DWP") Girard Reservoir property. In addition, the DEIR improperly defers required biological and wildlife surveys. These shortcomings invalidate the DEIR's findings concerning, inter alia, aesthetic impacts, zoning consistency and mitigation measures.

II. Findings Of Insignificance on Hydrogeology, Water Supply, Police/Fire and Parks/Open Space are Not Supported by Substantial Evidence

Identification of a project's significant environmental effects is one of the primary purposes of an EIR. *Cal. Pub. Res. Code* § 21002.1(a). Despite this, the DEIR fails to identify or mitigate significant effects of the project in the areas of hydrogeology, water supply, police/fire and parks/open space.

A. Findings Of Insignificance on Hydrogeology are Not Supported by Substantial Evidence

The DEIR presents impermissibly conflicting views of the site hydrogeology, particularly with regard to the existence of the blue line stream and/or water on the project property. The TeraCor Resource Management April 2006 report performed with binoculars and the J. Byer Group, Inc. study of 2003 study of bore drillings illustrate this conflict. The J. Byer study disclosed blue line streams later dismissed by TeraCor. There is a strong probability of intermittent streams in this area. As a result, the DEIR conclusion that hydrogeological impacts are less than significant is unsupported by substantial evidence. (Page V, A-8-11.) These issues should be studied and mitigation measures formulated.

1. The DEIR Impermissibly Ignores the Blue Stream and Groundwater Impacts

The DEIR's analysis of the blue line stream is insufficient. Impacts on a stream constitute a significant impact pursuant to CEQA and the governing Mulholland Scenic Parkway Specific Plan ("MSPSP"). *San Joaquin Raptor/Wildlife Rescue v. County of Stanislaus*, 27 Cal.App.4th at 728 (findings on wetlands impacts inadequate). The DEIR states and accepts that there is a blue line stream on the property (Page V, D-28) but in other places it improperly denies the existence of the blue line stream stating, "[t]he project site is located in a primarily suburbanized area, and no stream or river courses are located in the immediate project vicinity." (Page V, D-9). In fact, the geology report used in the DEIR indicates considerable water underlying the major portion of the project site. From topological maps, the presence of water indicates the flow of the blue line stream course. Despite this, there is no hydrological testing to show the rate of movement of this water and its flow.

Even when the DEIR admits the blue line stream exists, the Report is dismissive and denies its importance even though this is a potentially significant impact. This contradicts substantial evidence from other agencies. The California State Department of Fish and Game letter concerning the Notice of Preparation, dated December 5, 2005 stated that the DEIR should include information regarding the blue line stream because "[t]he Department opposes the elimination of watercourses (including concrete channels) and/or the canalization of natural and manmade drainages or conversion to subsurface drains. All wetlands and watercourses, whether intermittent, ephemeral, or perennial, must be retained and provided substantial setbacks which preserve the riparian and aquatic habitat values and maintain their value to on-site and off-site wildlife populations." However, in response to this direct request by the agency having jurisdiction, the DEIR concedes "[a] formal delineation of wetlands and waters considered potentially jurisdictioned by the Corps or CDFG was not conducted on-site." (Page V, D-4). This violates CEQA's information disclosure requirements. *Cal. Pub. Res. Code* § 21002.1(a). Consultation and review with federal and State officials with regard to streambed alteration and section 401 and 404 permit applicability is required.

The DEIR finds that the blue line stream is canalized. "The blue line stream has since been modified on-site and off-site such that northerly flows are now intercepted under Mulholland Drive and conveyed into a subdrain and longer flow onto the project site." (Page V, D-28.) However, no documentation supports this claim, identifies where the canalization is located, when it was performed, if Department of Fish and Game permits were granted, and, if so, whether written permits exist. This finding therefore is not adequately substantiated.

Further, there is no discussion of groundwater impacts in the DEIR. (Page V, A-8-11.) The J. Byers Group report prepared for the project states that groundwater is present at shallow 16-23 feet intervals and is perched on bedrock. Yet, there is no discussion whether numerous pylons needed for the project will constrict the present groundwater or interrupt subterranean flow and how this can affect foundations and construction activities at the site.

Save Oak Savanna reserves the right to supplement the hydrogeology analysis in the record in response to the FEIR and any public hearing on this matter. *Bakersfield Citizens v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

1. The DEIR Ignores Riparian Habitat and Possible Wetlands

The DEIR also ignores riparian habitat and possible existence of wetlands. Page IV-21 of the DEIR states "[c]urrently, the existing unimproved project site drains northeasterly into the abandoned DWP Girard Reservoir, which carries off-site drainage into the San Feliciano Drive storm drain." By this assertion, water drains into the Girard Reservoir. This creates an aquatic and riparian environment 50 feet from the property line of the proposed project. It should be noted that there are numerous photographs that show standing water within the Reservoir suggesting a perennially riparian or wetland environment. This six acre land may soon be acquired by the Santa Monica Mountains Recreation and Conservation Authority ("SMMRCA") for conservation purposes. This unique wetland or riparian environment and the impacts on the adjacent Girard Reservoir requires bona fide consideration in a recirculated DEIR document.

2. The DEIR Contains Incomplete Stormwater Runoff Analysis

The DEIR concludes with cursory analysis that, "[t]he proposed project would result in an improved site that would convey runoff via streets into the same storm drain system, and no impacts are anticipated to occur." (Page V, A-9.) The DEIR further states, "[a]s the storm water from the project site would not exceed the capacity of existing storm drainage systems or require new or expanded storm water facilities, this impact would be considered less than significant." (Page V, A-15.)

These conclusions concerning runoff impacts are plagued by uncertainty and incomplete analysis. There is little methodology provided for the purported runoff calculations and a lack of information concerning the capacity of the existing San Feliciano Drive drain system. Also, there is no analysis of the drainage impacts of the proposed 1,317 feet of retaining walls on runoff flows and irrigation lines. This analysis is particularly crucial as members of Save Oaks Savanna reside downgradient from the project and report flooding during high rain events. Only a small drain measuring 12

feet by 8 inches currently exists between the downgradient houses and the proposed project. None of this is discussed in the DEIR. Further, there is little or no discussion of the existing Flood Control Easement at the site and the impacts of runoff from the six acre project on the adjacent hillside properties at 4606 San Feliciano Drive, 22345 Mulholland Drive, and 22331 Mulholland Drive, and whether retaining walls or other mitigation measures are required due to history of ground movement on the hillside.

B. Findings Of Insignificance on Water Supply are Not Supported by Substantial Evidence

The DEIR contends that water supply impacts are insignificant. (Page V, A-15.) This finding apparently is the result of the developer's consultant's query to the DWP resulting in a response dated November 19, 2004. In that letter, the DWP indicated it could not respond to specific queries regarding the existing infrastructure, water pressure, or upgrades to the system in the project area because, "[t]he water services requirements for projects like this are generally determined during the subdivision process, which follows the environmental process." In the initial portion of the letter, DWP stated, "[r]egarding water needs for the proposed project, this letter does not constitute a response to a water supply assessment ... Our understanding is that a water supply assessment by the water supply agency needs to be requested and completed prior to issuing a Negative Declaration or draft EIR."

Despite this, the DEIR does not include a "Water Supply Assessment" because it was not requested. This issue is a critical because the neighborhood surrounding the project, in fact, does have "water service problems/deficiencies." Many neighbors have low pressure to their homes at this current time. According to DWP Technicians at the Girard Pumping Station, the pumps at this site have to run almost continually during the Summer in order to provide minimal water service to the area. They do not believe that the existing water supply can accommodate any new housing. They further indicated that the developer would need to include new machinery necessary to maintain adequate water pressure for the new units. As a result, a water supply assessment must be completed, and an analysis of pumps and machinery to provide sufficient water pressure and impacts on the surrounding community. None of this is provided in the DEIR.

C. Findings Of Insignificance on Police/Fire are Not Supported by Substantial Evidence

On Page V, A-13, the DEIR indicates no impact as to police protection. However, this project will have an impact on this criterion. The proposed project is on the edge of the West Valley Division's patrol area. Furthermore, it abuts the jurisdiction of the Los Angeles County Sheriff's Office, creating an issue as to who would respond to this

location. The same issue is present with regard to fire protection. The Los Angeles City Fire Department has only a small station located three (3) miles from the proposed project. These facts should be disclosed and analyzed in a recirculated DEIR.

D. Findings Of Insignificance on Parks/Open Space are Not Supported by Substantial Evidence

With regard to parks and open space, the DEIR states, "the community is still deficient in the number of neighborhood parks. However, the proposed park with its incremental population contribution, is not likely to substantially increase the deterioration of park and recreational facilities in the area." (Page V, A-14.) This section of the DEIR fails to disclose and analyze the project's inherent negative impact on park and recreational facilities in the area and the impact of purchase or control of the Girard Reservoir by the SMMRCA. In its discussion of Alternative 3, the DEIR simply brushes these impacts aside: "[i]f these agencies were also able to acquire the project site, which amounts (sic) almost 50% of the Girard Reservoir perimeter, a public park of approximately 11 acres could be created by combining these two properties. Note: the Park Alternative does not meet the applicant's objectives."

The reality is that the construction of any homes on this property will deny the community the use of a minimum of six (6) acres of land for recreational or park usage. By the developer's admission, the area is deficient in parks, and the proposed project will exacerbate the problem. These impacts are not less than significant. The impact will be significant and should properly be included and discussed in the DEIR section: "Potentially Significant Impacts."

II. The Description, Findings and Mitigation of Aesthetic Height and Retaining Wall Impacts are Not Supported by Substantial Evidence

The DEIR improperly concludes that building height and retaining wall impacts from the project are insignificant and that the project's compliance with the MSPSP on these issues is in "substantial conformance." (Page V, B-20, F-20.) This is inaccurate as the project is inconsistent with and conflicts with existing R-1 zoning, the MSPSP viewshed and height regulations and violates existing *Los Angeles Municipal Code* retaining wall height provisions. (Page III-13-14, V, F-27.) Currently, the entire site and Girard Reservoir are parklike in nature. Further, a purchase of the adjacent drained Girard Reservoir by the SMMRCA for open space purposes is likely. (Page IV-6.) Now, thirty-seven homes are proposed. Five homes will be partially visible and two completely visible from Mulholland Drive. (Page V, B-3.) The project calls for five retaining walls totaling 1,317 in feet and double walls up to 17.6 feet in height. (Page V, F-27.) All of this exceeds existing rules and these impacts are by any measure

significant. The findings to the contrary are not supported by substantial evidence. (Page II-4-5, V, F-43.)

III. The Description, Findings and Mitigation of Aesthetic and Tree Impacts are Not Supported by Substantial Evidence

The Horticultural Tree survey referenced in the DEIR indicates that there are two species of trees that are protected: the Southern California Black Walnut and the Coastal Live Oak. The DEIR proposes that nine (9) Walnuts and nine (9) Oaks be removed. (Page II-3-4.) The developer planned removal of nine (9) of the eleven (11) existing Walnuts and the two largest and oldest Oaks on the property. The Report indicates the canopy size of the trees but there is no visual reference to show the impact of the tree canopies on the proposed houses or the effect of the construction on the irrigation lines. Trunk sizes also should be identified. Moreover, the site maps suggest that nearly all of these trees can be saved if the developer makes minor changes to the proposed project and reduces the number of units.

The City has an obligation to ensure that all feasible alternatives or mitigation measures are required and incorporated into the project, based on substantial evidence in the EIR, *Cal. Pub. Res. Code* § 21081; *Cal. Code Regs.* 14, § 15091(b), and must adopt a monitoring program to ensure that the mitigation measures are implemented. The EIR must undertake all feasible mitigation measures regardless of whether they reduce effects to below a threshold of significance. *Cal. Pub. Res. Code* § 21002 (agencies should not approve projects if there are "feasible mitigation measures available which would substantially lessen the significant environmental effects" of such projects); *Cal. Code Reg.* 14, § 15002(a)(3) (agencies must prevent avoidable damage "whenever it finds measures to be feasible"). CEQA defines the term "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." *Cal. Code Regs.*, 14, § 15364. The relevant analysis is whether the mitigation condition is capable of being accomplished and not whether the mitigation will reduce the threat to a less than significant level.

Despite this, the DEIR does not disclose or evaluate that only four units - Units 6, 7, 30 and 37 of the condominium project - could be deleted to save the protected trees that the developer wishes to remove. Such mitigation is feasible. Also the DEIR should study eliminate of tree removal for road placement and propose that internal streets go around eliciting trees. All of this is contemplated and appropriate pursuant to the MSPSP Section 5.B.4 and Guideline 12. This should be disclosed and analyzed in a recirculated DEIR. Further, more specificity should be provided with regard to the replacement trees and additional mitigation can include trees of same trunk size,

canopy and age. Mitigation measures that are incomplete, as here, are inadequate. *Federation of Hillside & Canyon Association v. City of Los Angeles*, 83 Cal.App.4th at 1260.

Further, Save Oak Savanna reserves the right to supplement the horticultural analysis in the record in response to the FEIR and any public hearing on this matter. *Bakersfield Citizens v. City of Bakersfield*, 124 Cal.App.4th at 1184.

IV. The Disclosure, Findings and Mitigation of Wildlife Impacts are Not Supported by Substantial Evidence

The Project has significant impacts on fauna. Due to the existence of a natural, relatively undisturbed area, there is a great deal of concern regarding this section of the DEIR. (Page V, D- 1-29.)

In response to the Notice of Preparation ("NOP"), several agencies indicated that the DEIR must include a vigorous survey of the flora and fauna in the immediate environment of the proposed project. The California State Department of Fish and Game's letter dated December 5, 2005 stated that the DEIR should include, "[a] complete, recent assessment of flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, and locally unique species and habitats." It further advised that the DEIR "should also analyze relative to their effects on off-site habitats and populations. Specifically, this should include nearby "public lands, open space, adjacent natural habitats, and riparian ecosystems." So too, the SMMRCA in its letter dated December 5, 2005 stated "[t]he Notice of Preparation must address the existence and value of this 12-acre (half publicly-owned) natural area and disclose that it is connected to a large natural area via protected public land."

Despite this, there is substantial insufficiency and incompetence in the TeraCor Report that assesses the biological resources in the project area. TeraCor confirms that "[c]ontinuing urbanization in the Woodland Hills area displaces and destroys wildlife and permanently removes native plant communities." The DEIR reports that appropriate mitigation efforts will entail detailed surveys by appropriate specialists at the time of construction or immediately preceding the construction. The developer will "[c]onduct field surveys to determine the presence or absence of special status reptiles on the project site," as well as other biological mitigations. (Page II-11-20.) These surveys must not be postponed until the time of construction.

The DEIR violates the rule against deferral of the study of impacts and the specifics of mitigation requires. *Endangered Habitats League, Inc. v. County of Orange*, 131 Cal.App.4th at 793-794. Photographs and other evidence exists of species including but not limited to blue heron, desert woodrat, hawks and bobcats at the project site. The Project requires significant federal involvement because of its potential impacts on federally listed endangered species, including a biological opinion from the United

States Fish and Wildlife Service that the project will not jeopardize the existence or recovery of any federally protected species. This Project cannot and should not move forward without federal and State consultation.

Moreover, the DEIR ignores the SMMRCA's request to consider impacts on the Girard Reservoir and erroneously contends that there are no riparian habitat onsite. Page IV-21 of the DEIR states, "[c]urrently, the existing unimproved project site drains northeasterly into the abandoned Department of Water and Power Girard Reservoir, which carries off-site drainage into the San Feliciano storm drain." It should be noted that numerous photographs that show standing water within the Reservoir suggesting a perennially riparian or wetland environment. This raises serious questions as to the competency of the report, specifically whether there are the isolated plants, in fact, outgrowths of the DWP flora, if the plants and animals in the DWP property dependent upon the biological resources of the proposed site, whether the EIR process require that the total environment be assessed in order to determine impacts and mitigation.

Save Oak Savanna reserves the right to supplement further the biological resources analysis in the record in response to the FEIR and any public hearing on this matter. *Bakersfield Citizens v. City of Bakersfield*, 124 Cal.App.4th at 1184.

VI. Land Use and MSPSP Inconsistency Is Inadequately Disclosed and Mitigated

An EIR must identify inconsistency between the project and existing land set forth in the applicable general and specific plans. *Cal. Code Regs.*, 14 § 15125(d). This applies to the local MSPSP. *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145. This project is significantly inconsistent with numerous zoning and land use requirements. The developer seeks more homes than allowed by existing R-1 zoning. (Page III-13.) This inconsistency is significant and unmitigable - any conclusion to the contrary is unsupported by substantial evidence. (Page V, F-43.) Further, the DEIR omits a discussion of the Urban Design Policy No. 5 of the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan. These major variations from the existing and permitted circumstances cannot be dismissed as insignificant.

The DEIR's description of surrounding zoning is flawed because the residences to the west are largely RE-40 zoned with property sizes significantly larger than the proposed unit sizes. There are no homes in the immediate and adjacent areas of the proposed type. The required RD findings under the Municipal Code that the project "protect the interests of and assure development more compatible with the surrounding property" cannot be made. *Los Angeles Municipal Code* § 12.32.G. But this is not disclosed. This is just one of many inaccuracies and failures to disclose land use inconsistency. CEQA properly require analysis and disclosure in a recirculated DEIR of a project that fits the terrain and environment.

The MSPSP discussion in the DEIR is significantly flawed. In general, the DEIR indicates that the developer can comply with MSPSP if given exemptions for encroachment into the scenic parkway viewshed and exceedance of building heights. (Page V, F-8.) But the Report improperly omits a clear discussion of consistency with MSPSP policies and guidelines, particularly a failure to comply with requirements with regard to grading, removal of protected trees, and a host of other issues required by the MSPSP. (Page V, F-13-14.) In fact, the DEIR fails to analyze the MSPSP Guidelines at all. The MSPSP intends “maximum preservation and enhancement” of the Parkway and Section 5.2(a) provides the City “may impose conditions to protect the public interest” and “to assure a project is compatible with adjacent uses.” These mitigation measures, not evaluated with substantial evidence in DEIR, include but are not limited to the following:

- * Pursuant to MSPSP Section 5.2(a), Objective 1.1 and Guidelines 2 and 10, the project must fit the terrain rather than having the terrain graded to fit project. No portion of the project should exceed 25 feet in height. That is not analyzed and disclosed.

- * MSPSP Guideline 6 and 28 are inconsistent with the proposed retaining walls totaling 1,317 in feet and double walls up to 17.6 feet in height.

- * MSPSP Section 5.B.4 and Guideline 12 call for special preservation and protection of as many mature trees on the site as possible. However, the existing design calls for the removal of numerous Live Oaks and Southern California Black Walnuts that can be spared. This inconsistency is not evaluated. The roadway should go around trees and any tree removal can require trees of same size trunk and canopy, and of same species and age. These mitigation measures must be evaluated.

- * Section 5.B(2), Objective 1.3 and Guideline 15 require five specific findings with regard to properties within 100 feet of a stream bank. This is not disclosed and the required findings are not considered.

- * Section 5.B(3), Objective 1.3 and Guideline 16 set forth that consideration must be given to a larger setback from the Girard Reservoir planned for transfer to SMMRCA as open parkland. The DEIR fails to consider with substantial evidence how this proposed parkland should impact the project design.

- * Section 5.D, Objective 2.2 and Guidelines 32-49 provides setback, massing design, roof form and architectural requirements that are not evaluated in the DEIR.

* Section 5.D, Objective 2.3 and Guideline 50 require compatibility with lot size, house size, yard, footprint and height in the existing RE-40 neighborhood. Lot size and setbacks will not be consistent with the prevailing homes adjacent to and within 100 feet of the site. This includes the proposed flag lots, which should be eliminated and more thoroughly analyzed. This DEIR for the project fails to disclose inconsistency in this regard.

In sum, land use and zoning inconsistency is never disclosed or is simply brushed aside as insignificant. These conclusions are unsupported by substantial evidence. *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 405; *Families Unafraid v. County of El Dorado* (1998) 62 Cal.App.4th 1332, 1341 (rejecting land use consistency discussion).

VII. The Discussion and Mitigation of Traffic Impacts Is Incomplete

Several traffic impacts and mitigation measures are not disclosed or studied in the DEIR. (Page V, H-1 et seq.) The DEIR should analyze and study elimination of the ingress/egress on San Feliciano Drive. Also, there is no bona fide discussion the environmental benefits of a gated entrance at the property. This measure is identified in the governing MSPSP Section 7. Also, with regard to traffic impacts and planning, the DEIR does not clearly disclose the planned width and design of interior streets and sidewalks for the project. Further, the DEIR identifies only (17) visitor parking spaces. This indicates that cars will have to park on San Feliciano Drive, particularly on Red Flag fire days. Yet, this impact is not disclosed or discussed in the DEIR. The recirculated DEIR should analyze and address this parking issue. Save Oak Savanna reserves the right to supplement the traffic study analysis in the record in response to the FEIR and any public hearing on this matter. *Bakersfield Citizens v. City of Bakersfield*, 124 Cal.App.4th at 1184.

VIII. Construction Impacts Can be Better Mitigated

Construction impacts of the project can be better mitigated. (Page II-36-40.) Prohibition of hauling along San Feliciano Drive should be analyzed. Additional mitigation provisions limiting the time duration of construction, vector control including fencing (that extends below grade) around the entire property and an ongoing contract with an exterminator who can be called by affected neighbors for immediate extermination. Finally, the developer should provide a list of contact names and phone numbers for neighbor's complaints and assurance that complaints will be addressed and resolved promptly. These feasible mitigation measures must be disclosed and implemented. *Cal. Pub. Res. Code* §§ 21002, 21002.1(b).

IX. The Alternatives Analysis Violates CEQA

The California Supreme Court has described the alternatives and mitigation sections as "the core" of an EIR. *Citizens of Goleta Valley v. Board of Supervisors* (1994), 52 Cal.3d 553, 564. The requirement to set forth project alternatives in the EIR "is crucial to CEQA's substantive mandate that avoidable significant environmental damage be substantially lessened or avoided where feasible." The CEQA guidelines provide that "[a]n EIR shall describe a range of reasonable alternatives to the proposed project, or to the location of the project, that could feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." *Cal. Code Regs.*, 14, § 15126(a). The EIR is required to ensure that all reasonable alternatives to a project are thoroughly assessed. *Friends of Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872. The EIR must analyze feasible alternatives capable of eliminating any significant adverse environmental effects, even if these alternatives would impede to some degree the attainment of project objectives. *Cal. Code Regs.*, 14 § 15126. This discussion must be "meaningful" and "contain analysis sufficient to allow informed decisionmaking." *Laurel Heights*, 47 Cal.3d at 403-404.

Here, the DEIR contains incomplete analysis of the smaller, environmentally-preferred Alternative No. 2. (Page VII-7 et seq.) This alternative improperly analyzes a 29 single-family alternative calculated by subdividing the site by the 5,000 square foot R-1 minimum. (Page VII-7.) This alternative is a poor comparison that does not pass muster as a satisfactory CEQA alternative because it fails to account for existing site conditions. This studied alternative is not feasible and violates CEQA. It fails to consider the host of MSPSP requirements with regard to setbacks, height and grading requirements. It fails to consider the existence of the blue stream. The design of Alternative No. 2 appears to arbitrarily call for the removal of nine (9) Southern California Black Walnuts that could "possibly" be spared in violation of the MSPSP. It ignores the larger setback from the Girard Reservoir planned for transfer to SMMRCA, the existing flood control easement and the grade of the existing land (27.5% of terrain over 15% grade).

Thus, a smaller, environmentally-preferred alternative less than 29 houses must be analyzed and studied for feasibility. The current Alternative No. 2 is infeasible given site conditions that require fewer units. This is not adequately disclosed and evaluated in the DEIR. The “analysis of the reduced-size alternative meant that the public and the City Council were not properly informed of the requisite facts that would permit them to evaluate the feasibility of this alternative.” Preservation Action Council v. City of San Jose (2006) 141 Cal.App.4th 1336.

In conclusion, we respectfully request that the City recirculate the DEIR as set forth in this letter. Save Oak Savanna by this reference hereby incorporates the comments of all other agency and public commentators for the project.

Yours very truly,

LUNA & GLUSHON

ROBERT L. GLUSHON