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Via e-mail

Monterey County Planning Commission
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Re: Paraiso Springs Resort RDEIR
SCH # 2005061016

Dear Members of the Planning Commission:

LandWatch asks that the Planning Commission not approve the Paraiso Springs Resort project (Project). The Project is too large for its remote site in a narrow box canyon, a site which is accessible only by a road that does not meet County or state fire regulations. It is too risky to situate hundreds of guests and employees in a very high fire severity zone without an adequate evacuation plan.

The EIR does not address the fire risk adequately or honestly. The EIR fails to acknowledge that situating the Project in this remote rural location will increase fire incidence. The EIR misrepresents the response time from the Mission-Soledad Fire Protection District station. The EIR claims that a Fire Protection Plan will mitigate fire risks, but it leaves the development of that plan until after the Project is approved. The EIR claims that the Project will not interfere with an evacuation plan, but this claim is based on the fact that there is no evacuation plan for the hundreds of Project employees, guests, and neighbors. The Planning Commission should reject the EIR as an inadequate disclosure and mitigation of fire risks. The Planning Commission should also reject the Project because it cannot make the required findings that the Project is consistent with fire regulations for access and evacuation roads.

If the County is to consider this Project any further, it should reduce its scope by removing the 13 hillside condominium buildings on lots 21 and 22. A smaller Project would reduce the fire risk, which the Planning Commission should find to be significant and unmitigated. All three of the alternatives actually evaluated in the EIR call for reducing the Project size by eliminating the hillside condominiums on lots 21 and 22. The RDEIR found that these alternatives were environmentally better because they would

avoid encroachment on steep slopes, remove development at higher and more visible locations, reduce vegetation removal, reduce light and glare, reduce water supply and water quality impacts, reduce grading on steeper slopes, and lower the potential for erosion hazards and landslides.

A. The analysis and mitigation of wildfire risk is inadequate under CEQA.

The Project site is in a very hire fire severity zone in a box canyon at the end of Paraiso Springs Road. Paraiso Springs Road is a narrow dead-end road that does not meet the minimum standards for fire access and evacuation. Paraiso Springs Road, as the sole emergency access road, exceeds the applicable standards for the length of a dead-end access road. The Project is more than 15 minutes from the nearest fire station, which exceeds the County policy for fire access. The Project itself will increase the risk of wildfires by introducing more people and development to the wildlands.

Thus, the Project would put its hundreds of employees and guests at risk of wildfires without a safe evacuation route. It would also subject its neighbors to heighted risk of wildfires and would impair their safety by crowding the only available evacuation route.

As LandWatch objected in its January 15, 2019 comments, the EIR does not adequately assess and mitigate Project wildfire impacts. Furthermore, the Project as planned fails to comply with the Wildfire Protection Standards in State Responsibility Areas, as mandated by Public Resources Code section 4290 and by Monterey County Code Chapters 18.56 and 18.09. The County chose not to respond to these comments in the Final EIR.

Comments from CAL FIRE, the Mission-Soledad Fire Protection District, and neighbors also object to the inadequate analysis and mitigation of wildfire risks. As discussed below, the final EIR did not provide adequate responses.

Accordingly, LandWatch asked Bob Roper to evaluate the wildfire risks. Mr. Roper was the former Ventura County Fire Chief and Nevada State Forester, with 40 years of experience in the fire service. Mr. Roper's attached letter explains why the EIR has not adequately evaluated wildfire risks. These failures of analysis violate CEQA. (14 CCR, § 15126.2; 15130.)

First, the EIR fails to evaluate the increased risk of wildfires caused by locating more people and more development in a rural site. Mr. Roper explains that people start most fires, and more people means more fires.

Second, the EIR fails to acknowledge and discuss the increased risk to visitors and to Project neighbors caused by non-compliance with applicable regulations mandating the minimum width for fire access roads. (SRA Fire Safe Regulations, § 1273.01; Monterey County Code, § 18.56.060(3) and Chapter 18.09, Appendix O, §

O102.2.) Although the EIR states that the Project may widen "the majority" of Paraiso Springs Road in phases, over time, "as feasible," there is nothing in the proposed mitigation that mandates provision of 20-foot minimum roadway access before the Project is occupied.

Under the proposed "phased" road widening plan, the road would not be widened until at least 2027, allowing the Project to operate for years without safe access and egress. The road would not be widened if the final phases of the Project were not constructed, allowing the Project to operate indefinitely without safe access and egress. The road would not be widened where widening is determined not to be feasible. The determination of feasibility would be left to unspecified parties, at some unspecified time, and with reference to unspecified reasons.

Third, the EIR fails to acknowledge and discuss the increased risk to visitors and to Project neighbors caused by the failure of the Project to comply with applicable regulations mandating a maximum length for a dead-end road access. (SRA Fire Safe Regulations, § 1273.09; Monterey County Code, § 18.56.060(11) and Chapter 18.09, Appendix O, § O102.3.) Mr. Roper explains that reliance on dead-end roads for evacuation resulted in lost lives in the 2018 Paradise fire and the 2017 Atlas Peak fire. The EIR states that there is no alternative road location, so it is not clear whether and how the Project could comply with the dead-end road access regulations intended to ensure safe evacuation.

Fourth, the EIR proposes to rely on shuttles for staff and some visitor access to the site. Neither mitigation nor the Project description require that there be sufficient shuttle capacity to evacuate all persons from the Project site immediately without return trips. The need for return trips on a narrow road congested with other emergency traffic that may be smoke-occluded or blocked by burning materials would result in unacceptable risks.

Ironically, despite the Project's potential to congest the narrow dead-end road in emergencies, the RDEIR concludes that there would be no significant impact based on interference with an emergency response plan or emergency evacuation plan because "[a]ccording to the *Monterey County General Plan*, the Project site is not located along an emergency evacuation route and is not anticipated to physically interfere with an adopted emergency response plan or emergency evacuation route. The resort site is located at the end of a dead-end road." (RDEIR, p. 3-215 (emphasis added).) It is clear that the Project would interfere with emergency response to fire emergencies in the Project vicinity and with emergency evacuation of Project neighbors. The fact that the County may not yet have adopted an emergency response plan for this area, even though it would clearly need one, cannot justify the facile conclusion that there is no significant impact. An agency may not apply a threshold of significance based on its General Plan policies so as to foreclose consideration of evidence that an impact is nonetheless significant in the context of the project at issue. (*East Sacramento Partnership for a Livable City vs. City of Sacramento* (2016) 5 Cal.App.5th 281, 300.)

Fifth, contrary to the EIR, the Project is more than 15 minutes from the nearest fire station, the Mission-Soledad Fire Protection District station in Soledad. CAL FIRE, the Mission-Soledad Fire Protection District, Mr. Roper, and LAFCO have all concluded that the response time would be excessive. Mr. Roper and LAFCO have pointed out that reliance on the Soledad station to respond to EMS and fire calls from the Project would compromise the ability of the Mission-Soledad Fire Protection District to serve its existing service area.

Under General Plan Policy 17.3.3, 15 minutes is the maximum permitted response time without on-site fire protection systems approved by the fire jurisdiction. The fire jurisdiction has not approved the on-site fire protection systems and has in fact asked for different arrangements than are proposed: an on-site fire station. The EIR's failure to identify this as an inconsistency with an applicable plan violates CEQA. (14 CCR, § 15125(d).)

Sixth, as Mr. Roper explains, the proposed mitigation measure MM-3.7-6 is not adequate. The EIR concludes that wildfire hazards would be rendered less than significant by proposed mitigation measure MM 3.7-6:

> The applicant shall finalize their proposed preliminary Fire Protection Plan, subject to review by the Mission Soledad Rural Fire Protection District and approval by the RMA Director. The approved plan shall be implemented, prior to issuance of an occupancy permit, and on an on-going basis as described in the plan.

(RDEIR, p. 3-216.) The 2005 preliminary Fire Protection Plan is not in the EIR. A 2005 memorandum captioned "preliminary Fire Protection Plan" available on the County's web site lacks any discussion of emergency access and evacuation, fuel management, or training. Mitigation measure MM-3.7-6 violates CEQA for three reasons:

- CEQA does not permit deferral of mitigation without an adequate explanation of the need for deferral. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 670.) The EIR provides absolutely no discussion or justification for deferring the completion of the final Fire Protection Plan, a plan that is critically needed to address concerns raised in comments.

- CEQA does not permit deferral of mitigation without performance specifications. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94.) The EIR provides no performance specifications for the Final Fire Protection Plan, e.g., specifications for adequate access and evacuation roads, vegetation management, planting and irrigation, evacuation procedures, staff training, and guest alert systems. Indeed, the proposed mitigation measure MM-3.7-6 does not even identify the <u>topics</u> to be included in an eventual Fire Prevention Plan.

- CEQA does not permit deferral of mitigation without evidence that mitigation is feasible, even if the EIR does provide performance standards. (C*ommunities for a Better Env't, supra,* 184 Cal.App.4th at 94.) Here, compliance with maximum dead-end road requirements for safe access and evacuation is not feasible because the EIR acknowledges that there is no alternate location for a road. Compliance with roadway width requirements for safe access and evacuation is apparently not entirely feasible because the EIR calls for widening only where feasible. Mr. Roper has demonstrated that mitigation of fire risks is not feasible for these reasons, and the EIR provides no evidence to the contrary. Deferral is therefore improper.

We note also that the proposed conditions of approval do not provide any additional information about the proposed mitigation.

In light of the failure of the EIR to assess and disclose significant impacts related to wildfires and to provide an adequate discussion of mitigation, the EIR must be revised and recirculated. (14 CCR, § 15088.5, subd. (a).) Recirculation is required because new information, including comments by Mr. Roper and by the Attorney General's office, discloses that the Project would result in significant and substantially more severe wildfire impacts not acknowledged by the RDEIR; because the applicant may decline to an alternative that would reduce the size of the Project to reduce fire impacts; and because the draft EIR's discussion of wildfire risks and mitigation was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

B. The applicant's last-minute submissions related to fire impact issues are inadequate as a matter of fact and as a matter of law.

Comments on the RDEIR submitted by CAL FIRE, the Mission-Soledad Fire Protection District, LAFCO, and Project neighbors raised concerns about the inadequacy of the fire risk analysis and mitigation, including the inadequate provisions for emergency access and evacuation on the narrow, sole access road. The County did not respond to these comments adequately in the Final EIR. Instead, the County has buried two new technical analyses furnished by the applicant in Exhibit L to the staff report.

Exhibit L is misleadingly captioned "Hotel Asset Managers CHMW Correspondence," a caption that applies to the first letter in Exhibit L but does not inform the public that Exhibit L also contains two letters solicited by the applicant at the last minute to discuss wildfire issues. The two new letters are not referenced in the staff report itself or in the draft findings for the Project.

The new analyses include a March 8, 2019 letter from traffic engineer Keith Higgins and a March 15, 2019 letter from Michael Huff, identified as a "fire protection planner."

Higgins opines that the site could be evacuated "in about 15 minutes" if 269 cars left the site at the rate of one car every 3 seconds, driving at 30 miles per hour on a road that the final EIR admits is "in a mountainous area with steep terrain." (FEIR, p. 2-99 to 2-100.) The roadway improvement plans in Appendix O of the RDEIR's traffic report call for installing signs limiting speeds to 15 mph at several curves and to 20 mph or 25 mph at other locations. Higgins does not explain how a continuous string of vehicles with 3 second headways could average 30 mph if these vehicles all have to slow to 15 mph for curves and narrow sections. Common sense and everyday experience in traffic jams indicates that a continuous string of vehicles can only move a fast as the slowest vehicle.[1]

The FEIR admits that large portions of the roadway are less than 18 feet wide, some as narrow as 14' 2". The FEIR admits that the road will not be widened until later Project phases, and may not be widened at all if found not to be feasible. Higgins' analysis unrealistically assumes calm and orderly evacuation on a standard two-lane road capable of sustaining 2,000 vehicles per hour.

Higgins assumes that the Project population is queued up and waiting to evacuate as soon as a fire is noticed. Higgins' analysis does not take into account the time required to alert and assemble the guests and employees, which could be considerable, especially at night.

Higgins admits that 100 persons might be dependent on a shuttle for evacuation and states that the shuttle could accommodate 35 or 40 people. Although this indicates that three shuttle vehicles would be needed for immediate evacuation, Higgins does not state that the Project would in fact retain three shuttle busses on site at all times to accommodate all of the shuttle-dependent evacuees. Nor does Higgins account for the need for multiple shuttle trips.

Higgins's analysis is not consistent with the analysis provided by Mr. Roper, which is based on real-world evidence that dead-end roads result in fatalities under real-world wildfire conditions. Nor does Higgins' analysis take into account that drivers may be subject to panic and the road may be smoke-occluded and crowded by wide incoming emergency vehicles. Higgins' analysis does not recognize, and is inconsistent with, the rationale behind the minimum road width and maximum dead-end road length regulations.

Huff cites Higgins to conclude that there would be adequate road capacity for evacuation in "17 minutes travel time," unrealistically adding only 2 minutes to Higgins' 15 minute estimate to account for the time needed to assemble the guests. Huff admits that the road improvements are "very important for meeting the intent of the applicable fire codes" and says that the road "must be widened to 18 feet or provided appropriate

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[1] See also How Traffic Actually Works, Jason Liszka, Oct. 1, 2013, available at https://jliszka.github.io/2013/10/01/how-traffic-actually-works.html. Liszka explains that traffic cannot move any faster than the bottleneck speed.

measures to facilitate safe traffic during an evacuation." Huff claims incorrectly that the existing road is at least 16 feet wide, when in fact Appendix O pf the RDEIR traffic report shows that portions of the road are as narrow as 14' 2." Huff does not explain how there could be a safe evacuation route the day the Project opens in light of the proposal that roads not be widened until later phases of the Project or not be widened at all where widening is not determined to be "feasible." Huff suggests some other "appropriate measures to facilitate safe traffic during an evacuation" if the proposed widening does not occur. However, Huff does not identify any such measures.

Huff admits that the intent of the regulation limiting the length of dead-end roads is based on the very conditions that exist on the first mile of Paraiso Springs Road: available fuels mixed with scattered homes and buildings. Huff claims that the Project "intends to comply with PRC 4290 if applicable, achieving the same practical effect through the various recommendations /measures discussed herein." Huff does not explain how an alternative evacuation route can be provided so that the Project would practically comply with the intent in the regulations that the public not be stranded at the end of a long dead-end road that prevents evacuation. Again, although Huff states that "appropriate measures" are requited "to facilitate safe traffic during an evacuation," he does not identify any alternative to providing code-compliant evacuation roads that could facilitate safe evacuation.

Huff discusses emergency response time, and proposes some on-site EMS capability. However, Huff does not demonstrate that the Project would or could comply with the County's minimum 15 minute response time standard for fire emergencies.

Huff makes 16 recommendations related to fire safety. None of these recommendations were included in the EIR as proposed mitigation and none are identified as conditions of approval.

Huff concludes that the Fire Authority could make findings that the Project somehow provides the same practical effect for the dead-end road length/lack of secondary access. However, no exception can be made to the road width and dead-end length regulations unless an alternative approach has the Same Practical Effect. i.e., is equally efficacious to meet the stated intent, and unless the exception is approved by the Director of the Board of Forestry and Fire Protection after written application. That application must include substantial evidence that there are no other site or design alternatives for the specific parcel of land. (Monterey County Code, § 18.56.050.) Such findings have not been made by the Fire Authority and have not been approved by the Director of the Board of Forestry and Fire Protection. Such findings could not even be *considered* at this point because there is no Fire Protection Plan or specific proposal for an alternative to the sole evacuation route. As a practical matter, there is no apparent alternative approach that would met the intent of ensuring that people are not reliant on a single long dead-end road for evacuation.

Finally, neither Huff's nor Higgins' analyses are included in the EIR. The public has had no opportunity to evaluate, comment, and receive a response to comments on this last minute material. This violates CEQA. If the Planning Commission intends to consider or rely on either of the last-minute letters from Huff or Higgins solicited by the applicant, the County must recirculate the EIR.

An agency must recirculate an EIR if new information shows that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (14 CCR, § 15088.5(a)(4).) The purpose of recirculation is to provide the public the same opportunity to evaluate the new information and the validity of the EIR's conclusions as it had for information in the draft EIR. (*Sutter Sensible Planning v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822; *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1132; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 131, 133-134.)

Recirculation of a draft EIR for public comment and response is required where the record shows that a potentially significant impact, or the efficacy of mitigation, was not evaluated in the draft EIR. (*Vineyard, supra,* 40 Cal.4th at 447-448 [potential impact to salmon]; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120 [water supply mitigation not described].)

Reliance on new technical analysis not included in the draft EIR, such as the new reports offered here by the applicant, requires recirculation. (*Spring Valley Lake Association v. City of Victorville* (2016) 248 Cal. App. 4th 91, 108 [new hydrology report].) Information and analysis required by CEQA must be in the EIR itself. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 ["To the extent the County, in certifying the FEIR as complete, relied on information not actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA.]; *San Joaquin Raptor/Wildlife Rescue Ctr. v. Cty. of Stanislaus* (1994) 27 Cal.App.4th 713, 727 [post-EIR testimony cannot make up for an inadequate EIR because "[w]hatever is required to be considered in an EIR must be in the report itself. Oral reports cannot supply what is lacking."]; *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal. App. 4th 70, 88 [rejecting post-EIR testimony to cure a deficient EIR]; *Sierra Club v. Tahoe Regional Planning Agency* (2013) 916 F.Supp.2d 1098, 1139 [adequacy of mitigation measures must be reviewed *solely on the basis of information in the EIR* because "[a]dditional documentation in the record, however, does not make up for the lack of analysis in the EIR."].)

C. The Planning Commission cannot make findings required to approve the Project under the County Code, the Planning and Zone law, and the Subdivision Map Act.

Independent of CEQA, under the Planning and Zoning law and the Subdivision Map Act, the Planning Commission must disapprove the Project, including the proposed

subdivision map, because it would fail to comply with the state regulations and local ordinances mandating minimum access road width and maximum dead-end road access. (Government Code, § 66473.)

Because the Project does not comply with either the State or the County regulations for minimum road width and maximum dead-end road access in a very high fire severity zone, the County cannot make the findings required by Monterey County Code, § 18.56.040(C) ("Based on incorporated SRA Fire Conditions, all discretionary permits must include a finding that the project as conditioned, will ensure standardized basic emergency access and fire protection pursuant to Section 4290 of the Public Resources Code").

The Planning Commission cannot make the specifically required findings under the Subdivision Map Act that the proposed subdivision is "consistent with regulations adopted by the State Board of Forestry and Fire Protection pursuant to Sections 4290 and 4291 of the Public Resources Code or consistent with local ordinances certified by the State Board of Forestry and Fire Protection as meeting or exceeding the state regulations." (Government Code, § 66474.02, subd. (a)(1).) **The Project is simply not consistent with these regulations.**

Mr. Huff's opinion that the Fire Authority *might* eventually make findings that the Project provides the Same Practical Effect for the dead-end road length/lack of secondary access is not sufficient. Any exception must actually be approved by the Director of the Board of Forestry and Fire Protection after written application, which must include substantial evidence that there are no other site or design alternatives for the specific parcel of land. (Monterey County Code, § 18.56.050.) Until there is an application and approval, the Planning Commission cannot find the Project consistent with the regulations. Indeed, the draft resolution indicates that additional conditions of approval "may be needed to clarify how that code would apply to the project, such as when alternative methods of compliance may be used as allowed by the code." (Staff Report, Exhibit C, p. 35.)

Finally, in light of the Project's inconsistency with General Plan Policy 17.3.3 mandating a 15 minute response time, the Planning Commission cannot act to approve the Project entitlements, including a subdivision map, because it cannot make credible findings that the Project is consistent with the General Plan. (Government Code, § 66473.5.) Where response time exceeds 15 minutes, the fire jurisdiction must approve on-site fire protection systems. The fire jurisdiction has not approved proposed systems and has in fact asked for an on-site fire station. In light of this inconsistency and the Project's impact on fire safety, the Planning Commission must find that the Project is inconsistent with the General Plan, that the site is not suitable for the type and density of development, and that the Project is likely to cause serious public health problems. (Government Code, § 66474.)

D. Steep slope development is not permissible for the Project.

Policy 3.2.4 (CSV) from the 1982 Monterey County General Plan Central Salinas Area Plan limits building sites based on slope. Policy 3.2.3 does not permit any building sites on "portions of parcels with a cross-slope of 30 percent or greater." The RDEIR fails to discuss or assess consistency with this policy. The FEIR argues that it applies only to residential buildings. The proposed condominium units are clearly residential buildings. Since the policy bans building sites on slopes over 30 percent, the condominium units proposed on such slopes should not be included.

In addition, 1982 General Plan Policy 26.1.10 bars development on slopes of 30 percent or greater unless the County can make one of two findings based on substantial evidence. To grant an exception, the County would have to find either that

- "[t]here is no alternative which would allow development to occur on slopes of less than 30 percent;" or

- the "proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan, accompanying Area Plans and Land Use Plans, and all applicable master plans."

(RDEIR, p. 3-9.) The RDEIR acknowledges that unless these findings could be made, the portion of the Project on slopes of 30 percent or steeper would not be permitted. (RDEIR, p. 3-264.)

The County clearly could not make the first finding under General Plan Policy 26.1.10 because there are alternatives to development on steep slopes: the RDEIR identified Alternatives 2, 3, and 4 that would not require development on slopes of 30 percent or greater. (RDEIR, pp. 5-11 to 5-37.)

The express benefits of these alternatives is that they would avoid encroachment on steep slopes, remove development at higher and more visible locations, reduce vegetation removal, reduce light and glare, reduce water supply and water quality impacts, reduce grading on steeper slopes, and lower the potential for erosion hazards and landslides. (RDEIR, pp. 5-11, 5-13, 5-19, 5-20, 5-29.) These benefits implicate a number of important policies of the 1982 General Plan, which is the General Plan applicable to the Project assessment. In light of these resource-protecting benefits associated with the alternatives to steep slope development, the County could not find that steep slope development better achieves the resource protection objectives and policies contained in the Monterey County General Plan.

The staff report acknowledges that there is no justification for steep slope development in lot 23 west of the hotel and recommends eliminating it. The same rationale should apply to lots 21 and 22.

The staff report's claim (page 17) that the hillside condos in lots 21 and 22 somehow differ from the hillside condos in lot 23 because they are clustered and will therefore be closer to infrastructure and fire evacuation and have fewer biological impacts is a makeweight argument. The proposed condos on lot 23 recommended for elimination were also clustered. Infrastructure is being provided by the developer for the entire Project, so there is no County resource policy served related to development infrastructure. The fire analysis does not acknowledge any difference in hazards to lots 22 and 21 versus lot 23. Nor does the biological resource analysis acknowledge any difference in impacts. The main difference in the three cluster of condos is that there would be visual impacts from condos in lots 21 and 22 versus lot 23. (See RDEIR, Appendix C, p. 7 [visual impact alternative removes "condominiums from the hillside along the northern edge of the site'].) Indeed, the reduction of visual impacts was precisely why the RDEIR recommended elimination of the hillside condos in lots 22 and 21 in all three of the reduced development alternatives. (RDEIR, pp. 5-11, 5-19, 5-29.) The staff recommendation simply ignores the EIR's analysis.

E. The EIR's analysis and mitigation of visual impacts is inadequate.

As LandWatch and lighting expert James Benya explained in RDEIR comments, the RDEIR fails to provide an adequate description of the Project or the environmental setting with respect to impacts from lighting. In response, the Final EIR purports to provide this information. However, the belated provision of this information violates CEQA because it must be provided in the *draft* EIR to permit public comment and response on the analysis on which the agency relies. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052 [declining to review amended analysis not circulated for public review and comment because the failure to recirculate it was error]; *Spring Valley Lake Association v. City of Victorville* (2016) 248 Cal. App. 4th 91, 108 [requiring recirculation where the agency amended its analysis to rely on new technical reports]; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 131, 133-134 [requiring recirculation where the draft EIR omitted setting information].)

The RDEIR failed to assess the impact of interior lighting from hillside condominiums. This lighting impact would not be screened from view from public viewing areas in the Valley because, as the EIR acknowledges, the windows in these hillside units would not be screened by vegetation. If the hillside units are designed to provide views, then their lighting will be visible at night. The FEIR offers a new technical report by Michael Baker International that purports to address the nighttime impact from interior lighting of hillside condominiums. The report dismisses nighttime lighting impacts from hillside condominium that are visible from the Valley, arguing that that this impact will be avoided because occupants will always close the curtains for privacy at night. (Michael Baker International, memo to Planning Department, February 13, 2019, page 8.) The report also argues inconsistently that the guests will eventually turn off the lights and go to bed, which would not matter if they were in fact closing the curtains for privacy as suggested. Nothing in the Project description, and no proposed

mitigation, requires that curtains be drawn at night or even assures that light-blocking curtains be provided. It is simply unreasonable to assume that resort visitors in the hillside condominiums will be so concerned with privacy that they will always draw the curtains before turning on lights at night. Indeed, no one without a telescope would be able to see them in the hillside units, because these units are located above the rest of the Project site.

The EIR must acknowledge that the interior lighting in the hillside condominiums, which will be visible from the Valley, would be a significant new impact in this otherwise pristine western range. The obvious and essential mitigation is not to develop on the steep the hillsides.

The Final EIR does not provide adequate responses to LandWatch's comments regarding either daytime of nighttime visual impacts. It is clear that situating 13 two-story condominium buildings in lots 21 and 22 on a steep hillside clearly visible from the Valley and from local roads would be a substantial visual intrusion.

The RDEIR relies on screening from vegetation to conclude that visual impacts would not be significant, but it also admits that these condominium units will at best be partially screened, because the Project wants to ensure that the guests have views.

The screening is supposed to be attained by planting the native oak seedlings required for biological resource impacts, but, as LandWatch documented in RDEIR comments, these will not mature to the height of the condominiums for 30 or more years. The FEIR responds that the "fact that the vegetation will not be fully grown in the early years of the resort is not a county standard requirement." (FEIR, p. 2-74.) Perhaps the County does not require this, but CEQA requires that the proposed mitigation be effective when the Project commences or that the EIR disclose that there will be significant impact. (*POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 740 ["mitigation itself cannot be deferred past the start of the project activity that causes the adverse environmental impact"].)

The defensible space requirements to mitigate wildfire impacts will also prevent any effective screening. As CAL FIRE explained, vegetation within 100 feet of the structures must have both vertical and horizontal separation. LandWatch pointed out that CAL FIRE regulations for development on slopes from 20 to 40 percent require spacing tree canopies at least 20 feet apart, which would require spacing oak trees, with their 35 foot canopies, at least 55 feet apart. In effect, there could be at most one oak tree for each condominium unit. The FEIR does not acknowledge this problem. Instead, it claims that shrubs may be used in addition to trees. (FEIR, p. 2-74.) Even if shrubs could screen a two-story building, this claim is inconsistent with the proposed planting plan, which shows only trees are to be planted for screening lots 21 and 22. (RDEIR, Figure 2.12.)

The FEIR claims that vegetation adjacent to structures will not be cleared for fuel management areas. (FEIR, p. 2-74.) This claim is inconsistent with the RDEIR. The

RDEIR shows complete removal of all of the oak woodlands on the southern side of the hill on which the lot 21 and 22 condominiums are located as part of the "defensible space vegetation loss." (Compare RDEIR, Figures 3.3-1 [existing vegetation] to 3.3-3 [defensible space vegetation loss].)

In sum, the need to protect the hillside condominiums from fire is inconsistent with the claim that these two-story buildings will be effectively screened or broken up.

F. If any version of the Project is eventually approved, it should be smaller and should not include hillside condominiums.

One of an EIR's "major functions…is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official." (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 400 (1988).) Alternatives should feasibly attain most, but need not meet all, of the project objectives. (*Mira Mar Mobile Cmty. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (2004).

As noted, the EIR acknowledges a number of environmental benefits from the two alternatives that would reduce the size of the proposed Project. Alternatives 2, 3, and 4 would avoid encroachment on steep slopes, remove development at higher and more visible locations, reduce vegetation removal, reduce light and glare, reduce water supply and water quality impacts, reduce grading on steeper slopes, and lower the potential for erosion hazards and landslides. (RDEIR, pp. 5-11, 5-13, 5-19, 5-20, 5-29.) Thus, the EIR acknowledges that Alternative 4 is the environmentally superior alternative.

Comments by Mr. Roper regarding fire hazards indicate that the Project would cause significant and unmitigated impacts in the form of wildfire risks and by impeding the sole evacuation route. Mr. Roper indicates that the magnitude of this impact is related to the size of the Project. The more persons introduced into a rural setting, the greater the risk that persons will cause fires. And Mr. Roper explains that the more persons at the Project site, the greater the congestion of the emergency evacuation and access route. In light of the increased fire risk from additional igniters, the infeasibility of providing a second access and evacuation route, and the infeasibility and untimeliness of the proposed widening of the available route to meet minimum standards, the County should reduce the scope of the Project.

Reduction of the size of the Project should include elimination of the proposed condominium development on the steep hillsides for a number of reasons. As noted, this development is inconsistent with General Plan Policy 26.1.10 and Policy 3.2.4 (CSV). This development will result in visual impacts due to the visible glare, visual trespass, and sky glow contribution from the <u>interior</u> light sources from hillside development.

The proposed findings claim that <u>all</u> of the alternatives evaluated in the RDEIR are infeasible. If that were really the case, then the EIR is inadequate because it fails to

evaluate a reasonable range of alternatives. What is the point of an alternatives analysis that includes only infeasible alternatives?

Furthermore, any finding that all of the alternatives evaluated in the EIR are economically infeasible is unsupported by the evidence. The findings do not reject the alternative proposed by staff as infeasible even though it would eliminate seven 2-unit condominium buildings and potentially reduce the unit count by 14 units. Alternative # 3, evaluated in the RDEIR would have reduced the unit count from 180 to 168 by relocating the hillside condominiums to the villas site, a reduction of only 12 units, yet the findings reject this alternative as economically infeasible based on the letter from hotel consultant Thomas Morone, CHMWarnick, dated February 20, 2019. (RDEIR, p. 5-19 [Alternative 3]; see Staff Report, Exhibit 12, pp. 55, 57-58.) It is absurd to claim that a 12 unit reduction in time-share condominium units is economically infeasible but a 14 unit reduction in time-share condominium units is not.

The staff alternative would permit the applicant to reduce his unit loss to as few as 7 units by replacing one-unit villas with two-unit condominium. Under this scenario, the staff alternative would result in a reduction of as few as 7 units compared to the reduction of 12 units under the RDEIR's Alternative 3, a maximum difference of 5 units. Nothing in the evidence cited by the findings supports the conclusion that these 5 units represent the difference between an economically viable and an economically non-viable project. The hotel consultant's letter is a purely qualitative discussion with no cost or revenue data that would support a conclusion that a 173-unit project is viable but a 168-unit project is not.

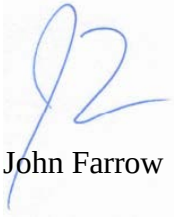
There is no evidence that Alternative 3 would fail to meet the same objectives that the staff alternative meets. And even if Alternative 3 did result in 5 fewer units, courts have rejected the notion that an EIR can lawfully reject an otherwise feasible alternative of reduced scope or size simply for impeding or failing to attain or one or more agency-identified project objectives. (See, e.g., *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1304 [limited-water alternative "could not be eliminated from consideration solely because it would impede to some extent the attainment of the project's objectives"]; *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087-88 (2010) [reduced development project alternative could not be avoided based on not fully satisfying two of twelve asserted objectives, as it is "virtually a given" that alternatives will not attain all objectives]; *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts,* 17 Cal.App.5th 413, 433 (2017) [prejudicial error from failing to analyze alternative which could significantly reduce total vehicle miles traveled].)

G. Conclusion

Based on the issues identified in these comments and comments by LandWatch, neighbors, and public agencies, LandWatch asks that the Planning Commission decline to certify the EIR or to approve the Project.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs
Attachment

Attachment: letter from Bob Roper, Roper Consulting, to John Farrow, March 22, 2019