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C. The EIR's Analysis of Numerous Impacts and Mitigation Measures is Deficient.

Many serious problems have been identified by members of FALCON and consultants engaged by them to examine the DEIR. These deficiencies in the DEIR's analysis of various impact areas have been set forth in full detail in comment letters you have received, or will receive, from these members and consultants. These letters identify deficiencies with regard to the EIR's analysis of air quality, traffic, cumulative impacts, land use, hydrology, public services, geology and soils, noise, lighting and glare, and other areas. Each of these comments must be answered so that important issues will not be "swept under the rug." (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841.) Without detracting from the need for the City to fully respond to those comments, we wish to emphasize certain particular points set forth below.

It is particularly important to accurately and completely analyze the Project's impacts and strategies to avoid them because of its sensitive location. The significance of a Project's impacts vary with its setting. (CEQA Guidelines section 15125 (c).) The Project is proposed *entirely* within the Verdugo Mountains SEA, so its massive grading and landform alteration is particularly damaging. As the Conservation Element states: "SEAs are significant habitats identified by Los Angeles County as important for the preservation and maintenance of biodiversity. . . . Each SEA was selected on the basis of existing known habitats of sensitive or endangered species as well as sites containing a diversity of native plant and animal resources." (City of Los Angeles General Plan Conservation Element, p. II-30.)

1. The Visual impacts of Landform Alteration and Grading of Slopes Must be Further Mitigated.

One of the most significant adverse impacts of the proposed Project is the construction of residential development in heretofore protected and pristine environmentally sensitive areas or protected ridgelines and extensive grading required by that construction. The Project is in an environmentally sensitive area because it is entirely located within the Verdugo Mountains SEA No. 40. (DEIR, p. IV.G-28.) As acknowledged by the DEIR, "The most dramatic visual element of the Verdugo Mountains is the open space, which provides highly prized visual relief from the surrounding urban development." (DEIR, p. IV.N-2.)

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The Project will dramatically alter the existing topography. Four and a half million or more cubic yards of grading will affect 240.2 acres of land. (DEIR, IV-N-38.) In some places 80 feet will be cut off the top of ridgelines and used to fill the Project site's canyons. (DEIR, IV-N-14.) The EIR states "... some of the proposed homes in Development Area B would be elevated above La Tuna Canyon Road and visible to passersby. Consequently, the substantial increase in the number of homes in the canyon and their high visibility from La Tuna Canyon Road would substantially impact the rural ambiance of that portion of La Tuna Canyon. For these reasons, the Project could be considered to substantially degrade the existing visual character or quality of the Development Areas and the proposed Project's impact on the visual character and quality of the Project site would therefore be considered significant." (DEIR, p. IV-N-39.)

The Project's significant impacts must be mitigated or an alternative chosen to avoid those impacts. The EIR states "Project impacts with respect to scenic vistas, scenic resources and existing visual character would remain significant following implementation of the recommended mitigation measures." Because these significant impacts remain significant even after mitigation, the City must fully analyze and choose feasible alternatives and mitigation measures. The Supreme Court has noted that alternatives are a form of mitigation and serve the same function: "we note that alternatives and mitigation measures have the same function-- diminishing or avoiding adverse environmental effects. The chief goal of CEQA is mitigation or avoidance of environmental harm." (*Laurel Heights I, supra*, 6 Cal.4th at 403.) In one way or another, the City may not simply accept the Project's significant visual impacts when mitigation of the impacts and alternatives to the Project are feasible.

CEQA establishes that any substantial, negative aesthetic effect is to be considered a significant environmental impact for CEQA purposes. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604.) Thus, "any substantial, negative effect of a project on view and other features of beauty could constitute a 'significant' [aesthetic] environmental impact under CEQA." (*Ibid.*)

As discussed below, the plan for lowering ridgelines impermissibly conflicts with the Community Plan policies and is not mitigated to the maximum extent possible, as CEQA requires. One of the objectives of the City's General Plan is to "protect and reinforce natural and scenic vistas as irreplaceable resources and for the aesthetic

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enjoyment of present and future generations." (Conservation Element, p. II-48.) The Project must be modified to preserve ridgelines as required by the Community Plan and Conservation Element and to reduce visual impacts as required by CEQA.

Further mitigation of the Project's visual impacts is possible. Visual Simulation #8 shows homes that are developed well below ridgelines and that do not have as adverse of a visual impact as do the homes depicted in Visual Simulations #1-7. (DEIR, Figs. IV.N-13 to IV.N-20.) Because it is entirely possible to site homes so that they do not intrude upon views of prominent ridgelines as shown by Visual Simulation # 8, the Project must be redesigned to the extent it allows any homes to intrude upon such views.

Lastly, on December 19, 2003, the Los Angeles City Council adopted the San Gabriel/ Verdugo Mountains Scenic Preservation Specific Plan. This Plan prohibits development of prominent ridgelines and has measures to further protect oak trees. The DEIR states "Since the Draft Specific Plan has not been formally adopted yet, it currently has no legal force or effect and does not have to be considered in this Draft EIR." (DEIR, p. IV.G-6.) However, the DEIR discussed the plan's principal components "for informational purposes." (*Ibid.*) Now that the Specific Plan has been adopted, the DEIR must be revised to evaluate the plan's compliance with the provisions of the Specific Plan.

2. Biological Resources/ Oak Tree Impacts.

a. The Analysis of Biological Resources is Deficient Because of Miscounts and Species That Are Present But Not Identified in the DEIR.

CEQA requires that an EIR must adequately describe a project's existing environment. (CEQA Guidelines section 15125 (a).) However, the DEIR fails to accurately report existing biological resources. The DEIR's tree inventories are inadequate because FALCON's members found willow and oak trees that would be impacted that were not identified in the EIR's tree survey. Willow trees were not even mentioned in the EIR's tree survey. Some of the omitted oak trees are part of Southern Coast Oak Riparian habitat which is missing from Figures IV.D-3 and D-5. This habitat would be lost when the development is completed but the impact of this loss has not been considered by the EIR.

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The DEIR also includes misinformation about Humboldt Lilies. Figure IV.D-2 shows only 5 Humboldt Lilies in Drainage 4 and its tributaries. Other evidence indicates there are at least 60 Humboldt Lilies in these areas. This is a sensitive species and the impacts to all of the Humboldt Lilies must be considered in the EIR.

The field surveys found no evidence of bobcats, mule deer, mountain lions, western toads or peregrine falcons that are likely to occur on this site. However, many of these species have been spotted by local residents. Several species of special concern, such as Cooper's hawks, 2-striped garter snakes and silvery legless lizard, were not found on the property according to the field study, but residents of the area have reported seeing these species frequently. The DEIR's failure to reveal their existence shows its preparers violated the principle that an EIR must conduct a "thorough investigation." (CEQA Guidelines section 15145.)

b. The Mitigation for Biological Resource Impacts that the DEIR Discusses is Inadequate.

Without an adequate analysis of impacts to biological resources, it is not possible for the DEIR to address the adequacy of mitigation measures for those impacts. The mitigation measures proposed for displaced oak and sycamore trees are especially inadequate. The Project will cause a loss of 232 live coast oak trees and 27 western sycamore trees. Mitigation for these lost trees is proposed in the form of replacement trees. While these lost trees are being replaced at a ratio greater than that required by the Los Angeles Municipal Code, the placement chosen for these trees makes them inadequate as a mitigation measure. The largest of the replacement oak trees are being placed in areas such as entryways, common areas, and road right-of-ways. Planting trees in areas such as these that are frequently disturbed by human activity does not replace the full ecosystem support that makes wild oaks and their understory so valuable. If this mitigation measures is to be valid, the EIR must discuss how the plants, especially the seedlings will be protected from recreational disturbances.

Finally, the DEIR fails to mitigate impacts to wildlife movement sufficiently. The proposed Canyon Hills development Project is located within the Rim of the Valley Trail Corridor portion of the Santa Monica Mountains. The EIR incorrectly claims the regional wildlife movement corridor will not be impacted. This is incorrect because the southern portion of the development would cut off an important access from the eastern Verdugo Mountains to the San Gabriel Mountains by the development footprint for Area B. Area

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B needs to be preserved by adoption of additional mitigation or development of another alternative in order to protect the wildlife movement corridor. Also, a functional wildlife corridor of at least 500 feet needs to be provided through Area A in order to prevent the isolation of the open space in the northwestern half of Area A.

III. The City's Oak Tree Ordinance Prohibits Unnecessary Removal of Oak Trees.

Absent a showing of the necessity for their removal, the City's Oak Tree Ordinance does not allow removal of any of the 232 oak trees proposed for removal by the Project, even if their loss were effectively mitigated. A permit for the trees' removal may only be granted if their removal "will not result in an undesirable, irreversible soil erosion or increased flow of surface waters" and "their continued existence . . . prevents the reasonable development of the subject property" or the trees show a "substantial decline from a condition of normal health and vigor." (Los Angeles Municipal Code section 46.02 (b).) The DEIR fails to address the effect the trees' removal will have on soil erosion or surface waters. The DEIR reports that many trees "are not accessible due to difficult terrain and dense vegetation." (DEIR, p. IV.D-114.) Many of the trees are located in clusters that could be avoided: for example trees 312 to 351 are "Impacted" (DEIR IV.D-100), but they are located in ways that allow development around them without their removal. (DEIR, Fig. IV.D-14.) Because the EIR fails to demonstrate that it is infeasible to develop the property without removing the oak trees, a permit for their removal may not be granted.

IV. The EIR Fails To Consider Reasonable Alternatives.

A. CEQA Requires a Full Analysis of Alternatives.

The DEIR's discussion of Project alternatives is too constricted to provide a basis for meaningful public discussion or evaluation by decision makers because the feasible alternative of both reducing the footprint and reducing the number of units in the Project is not addressed. Discussion of project alternatives and mitigation measures has been described by the California Supreme Court as the "core" of an EIR. (*Citizens for Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The EIR must describe a range of reasonable alternatives to the Project, as well as mitigation measures that would minimize the adverse impacts of the Project as it is proposed. As stated in the guidelines:

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Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are *capable of avoiding or substantially lessening any significant effects of the project*, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(CEQA Guidelines, section 15126.6 (b), emphasis added.)

In fact, "One of [an EIR's] major functions...is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by responsible officials." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197, emphasis added.) The EIR must "produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned." (*San Bernadino Valley Audubon Society, Inc. v. County of San Bernadino* (1984) 155 Cal.App.3d 738, 750-751.)

The EIR analyzes the Project, a no project alternative and four other alternatives. Alternative B is development of Area A only with 280 lots; Alternative C is development with access through Duke property; Alternative D is development under current land use designation with 87 homes; and Alternative E is reduced density of 210 homes sited on Development Areas A and B. However, the DEIR fails to analyze an alternative that both reduces the size and density of the proposal.

The EIR should analyze a clustered equestrian estate development that does not include homes placed on or near ridgelines. Such an alternative would be lower density, as Alternative D is, and would avoid impacts in a large portion of the Project site, as Alternative B would. However, it would have fewer impacts than Alternative D because it is clustered and fewer impacts than Alternative B because it has fewer units. Therefore, it is possible to lessen or avoid the Project's significant impacts by redesigning the Project to be in a smaller area with fewer units. None of the alternatives analyzes a project in which both the size and number of units are reduced in comparison with the proposed Project. It is imperative that the DEIR analyze such a feasible alternative.

The DEIR states a reduced footprint alternative was analyzed but that it would "substantially increase traffic in a residential neighborhood north of the project site, and would not be financially viable." (DEIR, p. VI-4.) This explanation is insufficient for rejecting analysis of a reduced footprint alternative. In *Village Laguna of Laguna Beach*,

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Inc., v. Board of Supervisors (1982) 134 Cal.App.3d 1022, 1034, the court found a county's rejection of an alternative as economically infeasible was insufficient because it "... did not explain *why* it found the alternative economically infeasible." Similarly, if the number of units were reduced as well as reducing the footprint of the Project, there is no reason it would increase traffic in residential neighborhoods to the north of the Project site.

Alternative B is determined to be the environmentally superior alternative. (DEIR, p. VI-73.) Alternative B "would eliminate all impacts on the portion of the project site south of Interstate 210." (*Ibid.*) However, the DEIR states Alternative B would not satisfy all of the Project objectives because it would result in development of a substantially denser residential community. (DEIR, p. VI-27.) In light of Alternative B's superiority to the proposed Project and its avoidance or reduction of various significant impacts, its failure to attain every project objective does not make it infeasible. Furthermore, it highlights the fact that the EIR lacks an alternative that has *both* fewer units and a reduced footprint. The failure to provide an analysis of such an alternative violates the rule of reason that an EIR must present a reasonable range of alternatives.

V. Conflicts with the Community Plan Require Redesign of the Project.

By seeking to amend the general plan to suit its development, the applicant asks the City to go about the land use planning process backwards. A general plan is the "constitution for future development ... located at the top of 'the hierarchy of local government law regulating land use'..." (*DeVita v. Napa* (1995) 9 Cal.4th 763, 773, internal citations omitted.) A general plan is more than an "exhortation" -- it is a "commandment." (*Debottari v. City of Norco*, (1985) 171 Cal.App.3d 1204, 1211.) The proposed Project must be consistent with the Community Plan. (Govt. Code section 66473.5.) Whereas the City has the ability under certain circumstances to override significant, unmitigated impacts pursuant to CEQA, the Government Code does not provide for any such overriding of inconsistencies. (*San Bernadino Valley Audubon Society, Inc. v. County of San Bernadino* (1984) 155 Cal.App.3d 738, 753.) Therefore, the Project must be redesigned to eliminate the inconsistencies between it and the Community Plan.

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A. The Community Plan Requires Minimization of Grading and Preservation of Ridgelines and Scenic Views.

The Project conflicts with the Community Plan's clearly expressed mandates to minimize grading in hillside areas and to preserve ridgelines. The Community Plan sets forth objective 1-6: "To limit residential density and minimize grading in hillside areas." (Community Plan, p. III-5.) Objective 1-6.3 is "Require that grading be minimized to reduce the effects on environmentally sensitive areas." (*Ibid.*) Footnote 7 of the Community Plan Map states that subdivisions in hillside areas "shall be designed in a such a way as to preserve the ridgelines and the steeper slopes as open space, limit the amount of grading required, and to protect the natural hillside views. The total density allowed over the entire ownership shall be clustered in the more naturally level portions of the ownership." Map Footnote 9 states "There shall be no grading of principal ridgelines within the Plan boundaries." Principal ridgelines, as well as "prominent" ridgelines are thus protected.

The Community Plan also sets a policy to "Preserve existing views of hillside and mountainous areas." (Community Plan, 1-3.3.) The Project's proposed grading of ridgelines discussed above as they affected visual values violate these specific, mandatory Community Plan requirements. As such, the grading and placement of houses on or near ridgelines must be significantly reduced before the Project can be approved.

B. The Community Plan Requires the Preservation of Horsekeeping.

The Community Plan may not be amended so it is internally inconsistent by encouraging the preservation of horsekeeping in one set of policies, but eliminating the possibility of horsekeeping from a large area of the Project site. The Community Plan supports the preservation of this equestrian lifestyle and cautions "against possible precedent setting actions including zone variance, conditional use, or subdivision that might endanger the preservation of horsekeeping uses." (Community Plan, I-8.)

Changing the general plan designation for this single area is a clear example of "piecemeal adjustment" . . . in response to development pressures" which is disfavored by courts. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 790.) Where a general plan is changed frequently to make room for new development, it does not serve as an effective curb on "haphazard community growth." (*Selby Realty Co. v. City of San Buenaventura*