

December 23, 2019

Via E-Mail

City of San Luis Obispo
Community Development Department
Attn: Shawna Scott, Senior Planner
919 Palm Street
San Luis Obispo, CA 93401-3218
sscott@slocity.org

Re: Comments on Draft Environmental Impact Report for the Froom Ranch Specific Pan (State Clearinghouse # 2017071033)

Dear Ms. Scott:

Please accept the following comments on the Draft EIR for the Froom Ranch Specific Plan referenced above (“Project”), submitted on behalf of Preserve the SLO Life and Los Verdes Park Unit One Homeowners Association. Preserve the SLO Life is an unincorporated association of San Luis Obispo City and County residents and business owners. Los Verdes Park Unit One Homeowners Association, Inc. is a California non-profit corporation operating as the homeowners association for the Los Verdes Park Unit One subdivision in San Luis Obispo. Members of both entities live and/or own property in the Project vicinity and will be directly affected by any adverse environmental impacts the Project may foreseeably cause. Our comments and concerns follow, organized by impact category.

I. Biological Resources

The Draft EIR identifies several potentially significant impacts to biological resources from construction and operation of the Project. These include permanent loss of sensitive riparian, wetland, and native grassland habitats, as well as direct impacts to special-status species. In nearly all instances, the Draft EIR identifies as mitigation a requirement that the applicant submit a “Biological Mitigation and Monitoring Plan” to the City for review and approval before grading permits are issued and the final vesting tentative map is recorded. The Plan is meant to incorporate “additional measures or requirements” recommended by the California Department of Fish & Game, the U.S. Fish & Wildlife Service, the Regional Water Quality Control Board, and NOAA Fisheries (aka NMFS), an “specify all mitigation site locations, timing of surveys and activities, species composition, habitat

compensation, species avoidance measures, and other required information, including identification of appropriate onsite construction staging locations.” The Plan is to be reviewed by “a qualified Environmental Coordinator/qualified biologist.” Likewise, for impacts stemming from the realignment of Froom Creek, the applicant is to submit a “Froom Creek restoration plan that identifies measures for securing the proposed low-flow channel berm along the stretch of Froom Creek proposed adjacent to the Calle Joaquin wetlands to protect the bank from erosion and prevent migration of the Froom Creek channel into these wetlands.” The Draft EIR concludes that notwithstanding these requirements for pre-construction plan submittals, impacts to biological resources will be significant and unavoidable.¹

The Draft EIR has improperly deferred meaningful analysis and mitigation of biological resource impacts in contravention of CEQA. Under Section 15126.4 of the CEQA Guidelines, formulation of mitigation measures for impacts identified in an EIR ordinarily may not be deferred. Only if the EIR identifies specific, objective performance standards that can be feasibly accomplished in more than one way may mitigation specifics be deferred to a future time. Even then, CEQA requires mitigation to be demonstrably feasible, incorporated into the design of the project, and legally enforceable. In the current case, the Biological Mitigation Monitoring Plan and Froom Creek Restoration Plan do not meet the requisite requirements for specificity, demonstrated feasibility and enforceability to warrant the proposed deferral of formulation of precise mitigation measures. It is impossible, for example, to gauge whether “additional measures or requirements” recommended by state and federal resource agencies will be feasible, whether they can be incorporated into the Project’s design, or be enforceable. There likewise will be no opportunity for the public, sister agencies, or anyone other than City staff to review the Plans for adequacy before they are approved by an amorphously “qualified” biologist before grading permits are issued and habitat is irretrievably lost.

To the extent the deferral of formulation of precise mitigation measures is due to a lack of sufficient detail in the applicant’s construction plans, as the Draft EIR acknowledges is the case for wetland impacts, the City should require the applicant to provide new plans that contain enough information to allow the City, with input from the resource agencies and the public, to formulate actual mitigation measures that will be feasible, effective, and legally enforceable. Please note that the Draft EIR’s conclusion that these biological resource impacts are significant and unavoidable has no bearing on the City’s duty under CEQA to thoroughly evaluate

¹ Notably, with respect to wetlands, the Draft EIR states that “[d]ue to the lack of detailed plans and setbacks for these minor drainages at this stage in the process, these wetlands could be directly impacted through culvert-headwall installation and sedimentation from grading and development, and the ability to reestablish and maintain rare plant species present within these areas is unknown.”

and mitigate those impacts. An agency may not simply label an impact unavoidably significant in order to dispense with analysis. *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371. The City should circulate a revised Draft EIR containing these measures after they are formulated.

II. Air Quality/Health Risks

The Draft EIR correctly notes that the California Supreme Court has held that with limited exceptions CEQA does not require an EIR to analyze impacts of the existing environment on a proposed project. However, when a project includes both residential and commercial components, as is the case with Froom Ranch, the EIR must disclose, evaluate, and mitigate any impacts that the commercial component may impose on the residential component. Specifically, if long-term operation of commercial retail uses will result in the delivery truck traffic, then an assessment of health risks from long-term exposure to the particulate component of diesel exhaust (“DPM”) is necessary to gauge whether senior citizens or other sensitive receptors occupying the site will be exposed to undue health risks in excess of applicable significance thresholds. Likewise, if construction activities are to occur on site after the senior housing is occupied, then construction emissions must be factored into a risk assessment. Regardless, the City should update the Draft EIR to disclose the number of diesel-fueled truck deliveries expected to occur at the Project site on a weekly basis during both construction and operational periods, and model any health risks to on-site receptors due to long-term exposure to DPM or other toxic air contaminants.

The Draft EIR does not adequately assess potential cumulative air quality impacts/health risks to off-site receptors living near the Project site and LOVR and/or U.S. 101, which is less than 1,000 feet away. These thoroughfares, and the commercial uses operating along them, likely generate DPM emissions that already bring an elevated health risk to residents, and any additional DPM emissions generated by Project construction and operation could be a cumulatively considerable contribution to an already significant cumulative impact. A cumulative risk assessment should be performed and circulated for public review and comment.

III. Noise

As with air quality/health risks, the Draft EIR should evaluate the impacts to sensitive noise receptors in the senior housing component of the Project from noise generated by delivery, loading, and unloading activities associated with the Project’s commercial component. Depending on the number, frequency, and time of day of heavy truck deliveries, and whether those trucks carry top-mounted refrigeration units,

impacts to nearby on-site receptors could easily exceed the City's residential noise standards. If that is the case, mitigation or avoidance measures will be required.

IV. Traffic

The Draft EIR's analysis of traffic impacts is highly complex, and does not meet CEQA's standards of readability to the general public. Nearly all EIRs this office has reviewed for similarly scaled development projects have included tables that plainly disclose a project's share of projected future impacts to nearby roadway segments and intersections. This Draft EIR lacks tables comparing, for example, "Existing Without Project" conditions to "Existing With Project," or "Future (2025) Without Project" to "Future With project," or similar tables documenting the differences between Scenario 1 and Scenario 2 in the year 2025 analysis. This forces the reader to print out multiple tables from the EIR and appendices and then try to create their own tables in order to reveal the differences. Absent such table, the Draft EIR does not meet CEQA's standards for disclosure and analysis and hence fails as an informational document.

In addition, there are two major development projects nearby, Avila Ranch and San Luis Ranch, that include major additions to transportation infrastructure as part of their plans. The Draft EIR's analysis, claiming conservatism, analyzes the Scenario 2 condition as the Near Term 2025 Condition baseline, a scenario that lacks the fundamental Prado Road westerly extension and interchange revision, which would mitigate the effects of these three major projects and cumulative regional growth. This is contrary to CEQA's requirement that the environmental baseline for evaluating impact significance should be conditions as they exist at the time a notice of preparation of the EIR is issued. The Draft EIR contains an existing conditions analysis but not an existing plus Project analysis. It likewise does not disclose impacts or mitigation measures in its Existing Plus Project analysis, leaving it to the 2025 Near Term analysis.

The 2025 Near Term analysis includes the San Luis Ranch and Avila Ranch projects and significant transportation improvements required for their development, but omits details of funding, environmental clearance and, where appropriate, Caltrans or County approvals necessary for each of the improvements assumed in either of the two Scenarios. Often, where several development projects are contributing fair share funds to a roadway improvement that does not return the condition to an acceptable level, but is arguably sufficient to mitigate a particular project's incremental contribution to the condition, several projects claim the whole of the incremental mitigation even though they are only contributing a fair share to the cost of the improvement. In this case, where the Draft EIR finds that traffic impacts are significant and unavoidable, but also identifies some level of mitigation, it

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impossible to determine whether this Project is overclaiming mitigation. The City should revise the traffic analysis to cure the foregoing informational defects and recirculate for further public review and comment.

Thank you for your consideration of these comments.

Yours sincerely,

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



Mark R. Wolfe
on behalf of Preserve the SLO Life and
Los Verdes Park Unit One Homeowners
Association

MRW:sa