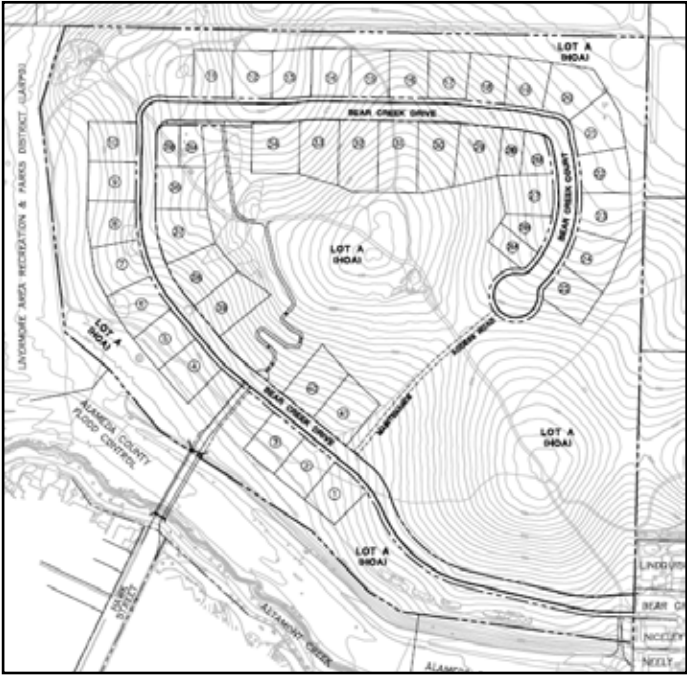


Recirculated Partial Final Environmental Impact Report

SCH No. 2011112045



City of Livermore  
Planning Division  
1052 South Livermore Avenue  
Livermore, CA 94550

November 2024



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## RP Final EIR Introduction

### **PURPOSE OF THE FINAL EIR**

The California Environmental Quality Act and the Guidelines promulgated thereunder (together “CEQA”) require an Environmental Impact Report (EIR) be prepared for any project which may have a significant impact on the environment. An EIR is an informational document, the purposes of which, according to CEQA (Public Resource Code Section 21061, et. seq.) are “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”

This Recirculated Partial Final Environmental Impact Report (RP Final EIR), together with the Recirculated Partial Draft Environmental Impact Report (RP Draft EIR) published in August 2024, as well as the prior EIR documents that include the original Draft EIR (November 2012, SCH#2011112045), Final EIR (June 2014), and Re-Issued Final EIR (August 2018) shall constitute the EIR for the proposed Garaventa Hills Project (“Project”) in Livermore, California. The Project Applicant is Livermore LT Ventures I Group, LLC. The Lead Agency is the City of Livermore.

### **BACKGROUND**

#### **PRIOR EIR CERTIFICATION**

The City of Livermore circulated a Draft EIR for the Project in November 2012 (SCH#2011112045) for public review and comment and public comment was received between November 18, 2012, and December 26, 2012.

The City received public comments on the Draft EIR and prepared a Final EIR that was released to the public in June 2014.

The applicant then revised the Project to be consistent with the Reduced Density Alternative analyzed in the Draft EIR. To document the changes in the Project that reflected the Reduced Density Alternative and to evaluate the impacts of those changes, the City prepared a Re-Issued Final EIR that was released to the public for review in August 2018.

The EIR was certified by the Livermore City Council on April 22, 2019, and the City Council approved the Project as a 44-unit single family subdivision.

#### **LEGAL CHALLENGE AND DECISION**

On May 23, 2019, Save the Hill Group filed a petition for writ of mandate challenging the City's certification of the EIR and approval of the Project. The Superior Court of the County of Alameda denied Save the Hill Group's petition. Save the Hill Group appealed, and the Court of Appeals reversed the

Superior Court's decision with respect to one issue. The appellate court ruled that the EIR was inadequate because the EIR failed to include sufficient information regarding the potential availability of funding for open space acquisition and preservation of the Project site in the no project alternative analysis. The appellate court affirmed the sufficiency of the EIR on all other issues.<sup>1</sup>

In accordance with the appellate court's order, the Livermore City Council rescinded certification of the EIR and approval of the Project on November 28, 2022.

## **RECIRCULATED PARTIAL DRAFT EIR**

As stated in the RP Draft EIR, the applicant has exercised their right to bring the Project back for review by the City, which required revising the EIR to address the inadequacies identified by the Court of Appeal.

Recirculation of an EIR to address a limited issue is not grounds to revisit issues laid to rest in prior analysis upheld by the Court. Therefore, consistent with the Court of Appeal's decision, the RP Draft EIR was limited to recirculation of the discussion of the potential for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. The RP Draft EIR concluded on the basis of substantial evidence that:

“The property owner is not a willing seller. Without a willing seller, the Project site has been determined not to be eligible for funding through the Altamont Landfill Open Space Fund or the Dougherty Valley Settlement Agreement funds.

“Use of eminent domain to acquire the property from an unwilling seller, if it could be defended legally, would be costly (over \$17-25 million) and contrary to the City's past practice. There are other funding sources available for an eminent domain approach, including the Open Space Acquisition and Management Fund, Transferable Development Credits Fund, and/or General Fund allocation (if authorized by voters through ballot initiatives/bond measures); however, these funds are either not eligible to be used for the Project site or are prioritized elsewhere.

“Additionally, the Project site has a long-established residential designation, and is identified in the current Livermore General Plan Housing Element site inventory as a site for residential development. Under the No Net Loss provisions of state housing laws, additional process would be required to remove the Project site from the Housing Element's residential development site inventory, which could add additional cost to the acquisition of the site for open space preservation.

“Alternative A: No Project, No Development represents the possibility that the Project site would be preserved as open space. As discussed above, the potential funding sources for such open space acquisition and preservation have been explored and it has been concluded that the site is either ineligible for use of those funds due to an unwilling seller or would require legally-complicated and cost-prohibitive fair market value eminent domain proceedings and use of funds prioritized elsewhere.

“The analysis and evidence cited above can support a conclusion by the lead agency that Alternative A: No Project, No Development involving site acquisition and preservation as open space is not a

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<sup>1</sup> Save the Hill Group v. City of Livermore (2022) 76 Cal.App.5th 1092, review denied (July 13, 2022). Available at: <https://www.livermoreca.gov/home/showpublisheddocument/10739/638297013821830000>

“feasible” alternative the lead agency is compelled to adopt.<sup>2, 3</sup> The lead agency will take this evidence and analysis into account when making the findings required by CEQA regarding the feasibility of Alternative A: No Project, No Development. “

There were no other changes to the information or conclusions in the prior EIR documents.

## EIR REVIEW PROCESS

### RP DRAFT EIR

The RP Draft EIR was made available for a 45-day public review period, from July 30, 2024, through September 13, 2024. During the review period for the RP Draft EIR, the City received written comments and verbal comments at a hearing on August 20, 2024.

### RP FINAL EIR

This RP Final EIR consists of the following chapters, commencing after Chapter RP4 of the RP Draft EIR:

**Chapter RP5: Introduction to the RP Final EIR.** This chapter outlines the purpose, organization and scope of the RP Final EIR document and important information regarding the public review and approval process.

**Chapter RP6: Response to Comments.** This chapter includes comments received during the RP Draft EIR review period and responses to those comments.

City officials have considered all comments and concluded that there is no “significant new information” under section 15088.5 of the CEQA Guidelines; therefore, no further recirculation of the EIR is required.

The RP Draft EIR focused only on additional discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under Alternative A: No Project, No Development. Pursuant to CEQA Guidelines Section 15088.5(f)(2), the RP Draft EIR and associated notification requested reviewers limit the scope of their comments to portions of the EIR that were revised and recirculated and this RP Final EIR addresses comments on the recirculated portion contained in the RP Draft EIR. All other topics and related comments were addressed in the Final EIR and Re-Issued Final EIR. Nonetheless, City officials have considered all comments.

An EIR does not control the agency’s ultimate discretion on the Project. In accordance with California law, the EIR must be certified before any action on the Project can be taken. However, EIR certification does not constitute Project approval.

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<sup>2</sup> CEQA Guidelines Sections 15126.6(f)(i); 15091(a)(3).

<sup>3</sup> See *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 (assessing alternatives feasibility, “involves a balancing of various ‘economic, environmental, social, and technological factors’”; “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors” [internal citations omitted]).

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## RESPONSE TO COMMENTS

### INTRODUCTION

This chapter contains responses to the comments on the RP Draft EIR pursuant to CEQA Guidelines section 15088.

The City of Livermore received 12 letters/emails from persons or groups commenting on the RP Draft Environmental Impact Report for the Project, in addition to verbal comment at the August 20, 2024, Planning Commission meeting.

Specific comments are organized in chronological order by grouping, as follows:

### LIST OF COMMENTS

#### LETTERS/EMAIL FROM AGENCIES/UTILITIES

Letter A, Plan Review Team, Pacific Gas and Electric Company, 8/1/2024

Letter B, Vince Fazzi, Pacific Gas and Electric Company, 9/11/2024

#### LETTERS/EMAIL FROM PERSONS AND GROUPS

Letter C, Gil Colgate, 8/3/2024

Letter D, Tina Simms, 8/4/2024

Letter E, Julia M., 8/10/2024

Letter F, Janelle Plaskett, 8/19/2024

Letter G, Doug Mann, Citizens for Balanced Growth, 9/12/2024

Letter H, Donna Cabanne, 9/13/2024

Letter I, Wes Eacret and Emma Olenberger, 9/13/2024

Letter J, Alicia Guerra, Lafferty Communities, 9/13/2024

Letter K, Michelle Mitchell and Paul Maciolek, 9/13/2024

Letter L, Bianca Covarelli, 9/14/2024

#### PLANNING COMMISSION HEARING

Comment set PC contains a transcript of the verbal comments on the RP Draft EIR from the City of Livermore Planning Commission hearing held on August 20, 2024.

## **MASTER RESPONSES**

Certain topics were raised in multiple comments. The following Master Responses address these repeated topics and will be referenced as appropriate in response to specific comments.

### **Master Response 1: Non-Environmental Considerations**

Many comments were received that relate to issues that are not considered part of the environmental analysis. Under CEQA, “‘Environment’ means the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.” (CEQA Guidelines, section 21060.5)

This document is part of the Environmental Impact Report for the Project and therefore is limited in focus to issues related to the physical environment. Identification of a comment as being non-environmental is intended to explain why this environmental document is not the appropriate forum for response to that particular comment. Such an indication is not intended to diminish the importance of the comment, as the environmental analysis is only one element for consideration of project approvals by City decision-makers. All of the comments included in this document have been shared with City staff. Staff has analyzed all comments to confirm that none contain “significant new information” requiring recirculation of the EIR. All comments, along with responses from relevant City departments, will be shared with the decision-makers for them to take into account when making decisions regarding the proposed Project.

### **Master Response 2: Scope for Recirculation of an EIR**

A number of comments reference CEQA Guidelines section 15162 (either specifically or by utilizing the criteria contained in that section in their arguments), which lists the conditions under which a Subsequent EIR would need to be prepared following certification of a prior EIR.

In accordance with the appellate court's order, certification of the EIR for the Project was rescinded. The provisions under CEQA Guidelines Section 15088.5, Recirculation of an EIR Prior to Certification apply to the RP EIR because the EIR has not yet been certified; and therefore, the criteria for determining whether a Subsequent EIR should be prepared (CEQA Guidelines section 15162) are procedurally inapplicable at this time.

The proposed Project is the same as previously proposed. No changes or modifications have been proposed. As detailed below, the Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative and the RP EIR was not required to re-open the EIR's other analyses. Although issues beyond the scope of the limited recirculation are not required to be addressed in the RP EIR, references to pertinent information in the Draft EIR, the Final EIR, Re-Issued Final EIR, and RP Draft EIR have been provided in the response to specific comments for informational purposes. All feasible mitigation measures imposed to mitigate environmental impacts in all resource areas have been and will continue to be included and proposed as binding upon the Applicant and the City as part of any recommended decision for reconsideration of the Project.

The City Council of the City of Livermore certified the EIR (note that the court documents use “RFEIR” to refer to the whole of the EIR documents in the referenced quotes) and approved the Project on April 22, 2019. Save the Hill Group filed a lawsuit alleging that numerous aspects of the EIR failed to comply with CEQA. The Superior Court denied the Save the Hill Group’s petition for writ of mandate in its entirety. The Save the Hill Group appealed the Superior Court’s judgment. On March 30, 2022, the First District Court of Appeal reversed the Superior Court’s judgment only with respect to the EIR’s no project alternative analysis, otherwise affirming the sufficiency of the EIR on all other challenged issues. The Court of Appeal directed the Superior Court to:

“(1) vacate its order denying Save the Hill’s challenge by way of petition for writ of mandate to the RFEIR’s no-project alternative analysis; (2) enter a modified order and a modified judgment consistent with our opinion that Save the Hill’s challenge to the no-project alternative analysis was both preserved and meritorious; and (3) issue a peremptory writ of mandate directing the City to set aside the certification of the RFEIR and approval of the Project.”<sup>1</sup>

On September 26, 2022, the Superior Court ordered the certification of the EIR and the Project’s approval be set aside. The order directed the City, should it choose to consider the project again, to “first prepare an EIR with ‘relevant’ information in the ‘no-project alternative evaluation regarding the feasibility of acquiring Garaventa Hills to conserve it as open space.’”<sup>2</sup> The Superior Court upheld the EIR against all other claims, and issued a writ providing for ongoing jurisdiction subject to Public Resources Code section 21168.9(c).<sup>3</sup>

When a court issues a writ of mandate directing that an EIR be supplemented or corrected, this “does not mean the Agency is required to start the EIR process anew.” *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1112; see also *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 658. “Rather, the Agency need only correct the deficiency in the EIR . . . before considering recertification of the EIR.” *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1112. CEQA is designed specifically to avoid “endless rounds of revision and recirculation of EIR[s].” *Silverado Modjeska Recreation and Park District v. County of Orange* (2011) 197 Cal.App.4th 282, 303 (“*Silverado Modjeska*”). A writ in a CEQA action directs “the public agency take *specific action* as may be necessary to bring the determination, finding, or decision into compliance with [CEQA].” CEQA § 21168.9(a)(3) (emphasis added). The fact that additional environmental assessment is conducted for a limited issue “is not an occasion to revisit environmental concerns laid to rest in the original analysis.” *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949. This principle applies with full force when an EIR has been de-certified and additional environmental assessment has been required for a specific reason. See, e.g., *Silverado Modjeska*, 197 Cal.App.4th at 297; see also *Ione Valley Land, Air, & Water Def. All., LLC v. County of Amador* (2019) 33 Cal.App.5th 165, 170 (citing *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 324-27). Further, the CEQA Guidelines expressly authorizes a lead agency to recirculate only selected portions of an EIR rather than open all topical areas for further recirculation. CEQA Guidelines, §15088.5(c), (f).

<sup>1</sup> *Save the Hill Group v. City of Livermore* (2022) 76 Cal.App.5th 1092, 1118, *review denied* (July 13, 2022).

<sup>2</sup> Superior Court of California, County of Alameda, Case No. RG19020186, Order Vacating Prior Order and Granting Petition for Writ of Mandate, (Sept. 26, 2022), at 2.

<sup>3</sup> Superior Court of California, County of Alameda, Case No. RG19020186, Judgment, (Sept. 26, 2022), at 1; Superior Court of California, County of Alameda, Case No. RG19020186, Peremptory Writ of Mandate, (Sept. 26, 2022), at 2.

The standard for recirculation is whether “significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification.” CEQA Guidelines § 15088.5(a). “[R]ecirculation is not required where the new information added to the EIR ‘merely clarifies or amplifies . . . or makes insignificant modifications in . . . an adequate EIR.’ *Laurel Heights Improvement Assn. v. Regents of University of California* (“*Laurel Heights*”) (1993) 6 Cal.4th 1112, 1129–30, *as modified on denial of reh’g* (Feb. 24, 1994) (citations omitted).

“[R]ecirculation is only required when the information added to the EIR changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible project alternative or mitigation measure that would clearly reduce such an effect and that the project’s proponents have declined to implement.”<sup>4</sup>

Consistent with the Court of Appeal’s order, and with the CEQA Guidelines, the RP Draft EIR recirculated for public comment a version of the alternatives analysis which analyzes the issue of the potential for the acquisition and preservation of the Project site as open space. Adding this analysis was the only thing the court held would be necessary to bring the EIR into compliance with CEQA.

No information added shows any new or substantially increased environmental impact. CEQA Guidelines §§ 15088.5(a)(1), (a)(2). The EIR’s impact conclusions remain unchanged, and the new analysis does not identify mitigation measures that the Project applicant has declined to implement or that result in a new significant environmental impact. CEQA Guidelines §§ 15088.5(a)(1), (a)(3). Further, the Court of Appeal did not conclude that the previously circulated “draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” CEQA Guidelines, §15088.5(a)(4). To the contrary, the court found only a limited error. No commenter has pointed to any reason that the information that has been added to the EIR trigger the standards in CEQA Guidelines §15088.5 that would require further recirculation. As such, the lead agency’s determination not to further recirculate other portions of the EIR is supported by substantial evidence and consistent with CEQA.

As noted above, all comments have been shared with the City’s expert staff, including the City’s Planning Director and City Engineer. Staff have reviewed all comments raised and considered whether any issues raised demonstrate the existence of “significant new information” and concluded that none of the comments show such “significant new information.” Specifically, the City Engineer has reviewed all comments related to flooding and hydrocarbons and confirmed in a memorandum below that no comments demonstrate any new or increased significant impacts beyond those analyzed in the previously circulated EIR. In addition, going beyond the requirements of CEQA, the City’s commissioned expert biologist has independently confirmed in a memorandum below that there are no new listings in the California Natural Diversity Database (CNDDB) regarding endangered species. The biologist’s memorandum confirms that a modest revision to Mitigation Measure Bio-9 can address any impacts on any species whose listing status has changed since the Re-Issued Final EIR. Mitigation Measure Bio-9 is hereby revised as follows:

Bio-9: Conduct a pre-construction surveys for western spadefoot toad and western pond turtle. ~~A s~~ Surveys for western spadefoot toad and western pond turtle shall be conducted by a qualified biologist a maximum of one week prior to construction. The survey should include the potential breeding habitat of both species and an area within 50 feet of that habitat. If a

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<sup>4</sup> Laurel Heights Improvement Assn., 6 Cal.4th at 1120.

western spadefoot toad or a western pond turtle is found, the biologist shall move it to suitable habitat in a safe location outside of the construction zone. In the event that a western spadefoot toad or western pond turtle is observed within an active construction zone, the contractor shall temporarily halt construction activities until a biologist has moved the toad or turtle to a safe location outside the construction zone, within similar habitat. In the event the western spadefoot toad and/or western pond turtle are officially listed by the USFWS the Project applicant shall obtain authorization from USFWS for potential take of these species and implement all measures specified in the authorizations obtained from USFWS. Such measures are expected to be similar to those described for Mitigation Measure Bio-4c.

These memoranda are included as part of this response to comments below.

Comments raising issues or questions with respect to the originally prepared EIR cannot require revisitation of that analysis. See, e.g., *Lone Valley*, 33 Cal.App.5th at 170. To the extent any of the comments raise issues based on facts arising after the Re-Issued Final EIR, these comments also do not present significant new information that warrant revisiting the prior analyses, either under the “recirculation” standard or, to the extent applicable, the standard for preparing a subsequent or supplemental EIR. Pub. Res. Code §§ 21092.1, 21166; CEQA Guidelines §§ 15088.5, 15162, 15163. Specifically, there have been no changes to the project. CEQA Guidelines §§ 15162(a)(1). The proposed project is the same project previously analyzed. There have been no changes to the environmental setting or circumstances that require “major revisions” to the EIR, because there is no evidence of any “new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” CEQA Guidelines § 15162(a)(2). Finally, there is no new information “which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified” showing new or more severe project impacts nor newly feasible alternatives or mitigation measures that the applicant has declined to adopt. CEQA Guidelines, §15162(a)(3). Therefore, the lead agency’s decision not to further recirculate, and not to prepare any further supplemental or subsequent EIR review, is supported by substantial evidence and consistent with CEQA.



## INTEROFFICE MEMORANDUM

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Date: November 5, 2024

To: Stephen Riley, Planning Manager  
Steve Stewart, Special Projects Coordinator

From: Joel Waxdeck, City Engineer *J.W.*

Subject: Review of Public Comments Regarding Flood Risk and Hydrocarbons Related to the Garaventa Hills Project

I have reviewed the comments, particularly those related to flood risk and hydrocarbons, submitted during the public comment period for the Garaventa Hills Recirculated Partial Draft Environmental Impact Report (RP Draft EIR). The information included in the comments is not new information showing any new or increased impacts of the Garaventa Hills Project (Project). The Project includes design features, Mitigation Measures and Conditions of Approval to address potential project impacts related to all impact areas, including flooding and the presence of hydrocarbons.

### Flooding

Flooding is a local concern for the City of Livermore, and it is also a regional issue requiring regional solutions. The following are City and regional plans that are being implemented to reduce the risk of flooding citywide:

#### Regional

- Zone 7 Flood Management Plan  
<https://www.zone7water.com/post/flood-management-plan-1>
- Tri-Valley Local Hazard Mitigation Plan

#### Local

- Stream Maintenance Program
- Capital Improvement Program - storm water improvements
- Tri-Valley Local Hazard Mitigation Plan

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Regionally, the City continues to work with the Zone 7 Water Agency and surrounding cities to develop a Flood Management Plan and perform annual flood conveyance system condition assessments.

Annually, the City completes creek bank repairs and improves flood conveyance. Our Stream Maintenance Program allows streamlined environmental permitting so work can be completed annually. The City is developing a Habitat Conservation Plan which will further streamline this process and facilitate permits in sensitive areas citywide. This year debris and sediment was cleared from the Arroyo Las Positas to improve flood conveyance at Airway Boulevard and repair banks along the Arroyo Mocho. The City just completed the design for two projects with FEMA Flood Mitigation Grant funds that will be constructed in the next two years to mitigate flooding along the Arroyo Las Positas downstream of Airway Blvd and on Collier Canyon Creek.

With respect to flooding in Altamont Creek, the City is implementing multiple bridge repair and replacement projects that help raise bridge elevations to reduce the creek flow restriction. Bridges on Heather Lane crossing the Arroyo Las Positas and Bluebell Blvd. crossing Altamont Creek were included in the City 5-year Capital Improvement Program Budget. Additionally, the City has identified additional flood mitigation sites on the Arroyo Las Positas near Airway Blvd and near Altamont Creek and is submitting applications for FEMA grant funding to complete those projects. Until this important work can be completed, City of Livermore residents qualify for a 20% discount on flood insurance that is above the preferred risk rate.

The City continues to enforce our Storm Water Regulations requiring all new development and redevelopment to incorporate hydromodification into their site improvements so that stormwater flows do not exceed the pre-project conditions. The Garaventa Hills Project includes storm water retention design features that will result in no net increase of runoff after development of the project. Design features include bio-retention units at each lot and a detention basin designed for a 100-year storm. With implementation of these features, development of the project will not result in increased on- or off-site flooding in Altamont Creek, nearby wetlands, or Laughlin Road. City and regional plans are implementing annual flood system condition assessments and annual maintenance to address the risk of flooding citywide.

Information in the comments regarding on- or off- site flooding events within Altamont Creek or the surrounding wetlands does not indicate the potential for new or more severe impacts of the Project because the flooding near the confluence of Altamont Creek and Arroyo Las Positas results from downstream constrictions and flood flows. The flows from the developed project site with the detention basins in place will be

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the same or less than that of the undeveloped site for all storms from small to large storms including the 100-year storm.

### Hydrocarbons

The area has a known history of the presence of hydrocarbons and the Project includes Mitigation Measures and Conditions of Approval in the event hydrocarbons are encountered during construction and in the future.

- The City required additional soil borings for the Project and no evidence of near-surface oil or seepage was found at the Project site.
- Design features have been included in the event hydrocarbons are present to include an oil separator at the storm drain maintenance hole just before water enters the proposed detention basin and material specification for the Storm Drain pipe that form a sealed system designed to minimize the chance of runoff intrusion and/or naturally occurring oil intrusion into the system.

Comments discussed the possibility of oil seepage from the Beer Creek development. The possibility of oil seepage from the Bear Creek Development is not new information as the possibility of seepage from the development, as well as naturally occurring oil, was analyzed in the DEIR and FEIR. Mitigation Haz-2 requires the project to confirm the absence of nearby surface oil or implement over excavation during grading of the site.

More information regarding the City's flood prevention services may be found at the following link: [Creeks and Floods | Livermore, CA](#)



Swaim Biological Incorporated  
4435 First Street PMB #312  
Livermore, CA 94551

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**To:** Steve Sewart, City of Livermore  
**From:** Leslie Koenig  
**Date:** October 31, 2024  
**Re:** Garaventa Hills Project

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As a consulting biologist for the City of Livermore (City), Swaim Biological Incorporated (SBI) has developed the following recommendations regarding the changes in listing status for special status species evaluated in the Environmental Impact Report (EIR) for the Garaventa Hills Project.

SBI conducted an updated records search for the Property evaluating any new records after 2018 in the California Natural Diversity Database (CNDDDB) after the issuance of the previous EIR documents. There are no new special status species occurrences within the boundaries of the Property. SBI biologists documented an adult male western pond turtle (*Actinemys marmorata*) with a GPS monitor on it moving through the portion of Altamont Creek that the pedestrian bridge will go over the Property, however, this record is not yet in the CNDDDB.

The following special status species analyzed in the EIR has undergone a change in the state protected status:

- Western burrowing owl received candidate listing under the California Endangered Species Act (CESA) on October 10, 2024. Until the Fish and Game Commission completes a listing determination, the species is afforded the same protections under CESA as a listed species.

The following special status species analyzed in the EIR have currently proposed changes in their federal protected status. However, these proposed status changes have not been finalized. Candidate and proposed threatened or endangered species are not afforded the same protections as a listed species, therefore, conference on the species does not occur until a listing decision is published in the federal register.

- Western spadefoot is currently listed as *proposed threatened* under the Federal Endangered Species Act (FESA). The Service is working on the final listing determination.
- Western pond turtle is currently listed as *proposed threatened* by FESA. A final listing determination is expected in 2025.

The EIR includes biological mitigation measures for western burrowing owl and western spadefoot. The current mitigation measures for western burrowing owl and western spadefoot toad remain sufficient for addressing CEQA compliance as analyzed in the EIR.

The analysis in the EIR (Appendix C of the draft EIR) determined there were 37 occurrences of western pond turtle within the nine-quad area surrounding the Property and that roughly half of those had occurred in the last 10 years. The EIR determined that despite these occurrences and the potential to occur on the Property, the western pond turtle was considered unlikely to occur due to lack of suitable habitat.

However, to the extent the proposed federal listing of western spadefoot toad and western pond turtle under the FESA may change the applicable regulatory requirements, the following revision to Mitigation Measure Bio-9 is recommended to address the potential future change in listing status of western

spadefoot toad and western pond turtle and the potential future requirement for consultation with the USFWS. With implementation of this revised measure there would not be a new or worsened environmental impact.

**Bio-9: Conduct ~~a~~ pre-construction surveys for western spadefoot toad and western pond turtle.** ~~A~~ Surveys for western spadefoot toad and western pond turtle shall be conducted by a qualified biologist a maximum of one week prior to construction. The surveys should include the potential breeding habitat of both species and an area within 50 feet of that habitat. If a western spadefoot toad or a western pond turtle is found, the biologist shall move it to suitable habitat in a safe location outside of the construction zone. In the event that a western spadefoot toad or western pond turtle is observed within an active construction zone, the contractor shall temporarily halt construction activities until a biologist has moved the toad or turtle to a safe location outside the construction zone, within similar habitat. In the event the western spadefoot toad and/or western pond turtle are officially listed by the USFWS the Project applicant shall obtain authorization from USFWS for potential take of these species and implement all measures specified in the authorizations obtained from USFWS. Such measures are expected to be similar to those described for Mitigation Measure 4c.

Please contact me if you have any questions regarding these recommendations.

Sincerely,



Leslie Koenig, Principal Biologist  
Swaim Biological, Incorporated

### **Master Response 3: “Available” Funds**

A number of commenters indicate that they believe funds are available for purchase and preservation of the Project site. Although funds do generally exist for that purpose, the potential availability of such funds for use in acquisition of the Project site was the focus of the RP Draft EIR and the issue was analyzed in detail. As summarized on pages RP3-15 and RP3-16 of the RP Draft EIR:

“The property owner is not a willing seller. Without a willing seller, the Project site has been determined not to be eligible for funding through the Altamont Landfill Open Space Fund or the Dougherty Valley Settlement Agreement funds.

“Use of eminent domain to acquire the property from an unwilling seller, if it could be defended legally, would be costly (over \$17-25 million) and contrary to the City’s past practice. There are other funding sources available for an eminent domain approach, including the Open Space Acquisition and Management Fund, Transferable Development Credits Fund, and/or General Fund allocation (if authorized by voters through ballot initiatives/bond measures); however, these funds are either not eligible to be used for the Project site or are prioritized elsewhere.

“Additionally, the Project site has a long-established residential designation, and is identified in the current Livermore General Plan Housing Element site inventory as a site for residential development. Under the No Net Loss provisions of state housing laws, additional process would be required to remove the Project site from the Housing Element’s residential development site inventory, which could add additional cost to the acquisition of the site for open space preservation.

“Alternative A: No Project, No Development represents the possibility that the Project site would be preserved as open space. As discussed above, the potential funding sources for such open space acquisition and preservation have been explored and it has been concluded that the site is either ineligible for use of those funds due to an unwilling seller or would require legally-complicated and cost prohibitive fair market value eminent domain proceedings and use of funds prioritized elsewhere.

“The analysis and evidence cited above can support a conclusion by the lead agency that Alternative A: No Project, No Development involving site acquisition and preservation as open space is not a ‘feasible’ alternative the lead agency is compelled to adopt. The lead agency will take this evidence and analysis into account when making the findings required by CEQA regarding the feasibility of Alternative A: No Project, No Development.”

An alternative that does not meet the basic project objectives is not a legally feasible alternative that the City is required to adopt (CEQA Guidelines § 15126.6(c)).

### **Master Response 4: Willing Seller and Purchase Price**

A number of commenters questioned whether there was a willing seller and what the purchase price would be.

Grant funding usually includes criteria that the owner is willing to sell the property for the funding purpose at an agreed upon price because without a willing seller, purchase of the property would require eminent domain proceedings (discussed on pages RP3-13 to RP3-14). The determination that there was not a willing seller was addressed on pages RP3-4 to RP3-5 of the RP Draft EIR. The series of

letters between the City and the owner's representative referenced below were included in full in Appendix RP-A of the RP Draft EIR.

The "selling price" of \$3.5 million referenced in several comments was not presented as a price at which the owners would sell the property to the City. Commenters seem to have calculated the price by multiplying the City's offer amount and the seller's indication in a letter from the owners' representative (dated February 5, 2024) that they are in contract to sell the property for "400%" of that amount. The February 5 letter clearly states that the seller has "zero interest" in accepting the City's offer and that they believe doing so would be a breach of their existing contract to sell the property to Lafferty.

As explained in the RP Draft EIR pages RP3-8 to RP3-9, an offer of approximately \$1.7 million was made upon direction from the Altamont Landfill Open Space Committee to match a higher price per acre consistent with a recollected previous grant request for another property within the Livermore Urban Growth Boundary. In response to this offer, the owners' representative further clarifies the owners' position: "The owners are not interested in selling this property to the City of Livermore for reasons largely explained in response to your prior February 8, 2024 inquiry. The owners are in a contract to sell the property to Lafferty Communities. They don't want to break that contract. They like the Lafferty development plan for their property. The owners would like to see the Lafferty project approved by the City. The owners do not want to receive any more purchase offers from the City as they are not in a position to sell their property to the City. Moreover as was previously pointed out, even if the owners wanted to sell to the City (they do not), this could not be legally done."

The circumstance under which the City would be legally required to offer a fair market value for the property would be if the sale were forced through eminent domain proceedings. As discussed on pages RP3-13 to RP3-14 of the RP Draft EIR, fair market value would be established through appraisal of the site, which has an existing residential zoning, and would be expected to be valued at between \$17-35 million.

## **RESPONSES TO SPECIFIC COMMENTS**

The following pages contain comments on the RP Draft EIR. Each comment is numbered and responses to these comments are provided following each comment letter or set.

### **Letter A – Pacific Gas & Electric Company, Plan Review Team**

**Comment A-1** Thank you for submitting the Garaventa Hills Project plans. The PG&E Plan Review Team is currently reviewing the information provided. Should this project have the potential to interfere with PG&E's facilities, we intend to respond to you with project specific comments. Attached is some general information when working near PG&E facilities that must be adhered to when working near PG&E's facilities and land rights.

This email and attachment does not constitute PG&E's consent to use any portion of PG&E's land rights for any purpose not previously conveyed. If there are subsequent modifications made to your design, we ask that you resubmit the plans to the email address listed below.

If you have any questions regarding our response, please contact the PG&E Plan Review Team at [pgeplanreview@pge.com](mailto:pgeplanreview@pge.com).

[Content of the attachment follows]

Thank you for submitting the Garaventa Hills Project plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: <https://www.pge.com/en/account/service-requests/building-and-renovation.html>.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

#### Attachment 1 – Gas Facilities

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: <https://www.usanorth811.org/images/pdfs/CA-LAW-2018.pdf>

1. Standby Inspection: A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.

2. Access: At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

3. Wheel Loads: To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. Grading: PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.

5. Excavating: Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 24 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches  $[24/2 + 24 + 36/2 = 54]$  away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 24 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible ( $90^{\circ} \pm 15^{\circ}$ ). All utility lines crossing the gas pipeline must have a minimum of 24 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.

11. Cathodic Protection: PG&E pipelines are protected from corrosion with an "Impressed Current" cathodic protection system. Any proposed facilities, such as

metal conduit, pipes, service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

#### Attachment 2 – Electric Facilities

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as "RESTRICTED USE AREA – NO BUILDING."
2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.
3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&E's facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.
4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 10 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.

5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.
6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.
7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.
8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.
9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.
10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.
11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.
12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (<https://www.dir.ca.gov/Title8/sb5g2.html>), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 ([http://www.cpuc.ca.gov/gos/GO95/go\\_95\\_startup\\_page.html](http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html)) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

Response A-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. This comment summarizes general information regarding PG&E's process related to development and utility installation.

**Letter B – Pacific Gas & Electric Company, Vince Fazzi**

Comment B-1

Attached is our response to the request to review the Garaventa Hills project.

Please let me know if you have any questions.

[Content of the attachment follows]

Thank you for providing PG&E the opportunity to review the subject plans. The proposed Garaventa Hills Project do not appear to directly interfere with existing PG&E facilities or impact our easement rights.

PG&E has no comment on the adequacy of the Recirculated Partial Draft Environmental Impact Report.

If the project requires PG&E gas or electrical service in the future, please continue to work with PG&E's Service Planning department: <https://www.pge.com/cco/>.

As a reminder, before any digging or excavation occurs, please contact Underground Service Alert (USA) by dialing 811 a minimum of 2 working days prior to commencing any work. This free and independent service will ensure that all existing underground utilities are identified and marked on-site.

PG&E recommends the following language be expressly stated for any offer to dedicate Public Utility Easements (PUE):

I/We the undersigned, as Owner(s) of the land shown hereon, do hereby state that I/we am/are the only person(s) whose consent is necessary to pass clear title to said land and do hereby consent to the preparation and recordation of this map and offer for dedication and do hereby dedicate for public uses the Public Utility Easements (PUE's) shown on this map for public utility purposes including electric, gas, communication facilities and all other public utility purposes; together with any and all appurtenances thereto, including the right from time to time to trim and to cut down and clear away or otherwise control any trees or brush. The PUE's hereby

offered for dedication are to be kept open and free of buildings, structures and wells of any kind.

If you have any questions regarding our response, please contact the PG&E Plan Review Team at Vincent.Fazzi@pge.com.

Response B-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. This letter provides information regarding utility procedures and confirms that PG&E has no comments on the RP Draft EIR.

**Letter C – Gil Colgate**

Comment C-1

As a property owner in the area I have been concerned about the classification of much of Livermore as a high fire risk zone.

My question is, will the Garaventa Hills Project alleviate fire risk, increase fire risk, or have a no effect on fire risk?

Thank you I hope you can find the time to answer my question.

Response C-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment mentions topics outside the scope of the RP Draft EIR. Please see Master Response 2.

The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. A full discussion of the Project's impacts related to wildfire was included in the EIR and the RP EIR was not required to re-open the EIR's analyses. The following information is provided to indicate where and how this topic was addressed in the EIR.

Wildfire was addressed on pages 11-7 to 11-8 of the Draft EIR with minor revisions on pages 26-39 to 26-40 of the Re-Issued Final EIR. The EIR concludes that the project is not in a high-risk wildfire area (what would be called a Very High Fire Hazard Safety Zone or VHFHSZ by the California Department of Forestry and Fire Protection or "Cal Fire"), and would comply with the City's Wildland-Urban Interface Code requiring the defensible space and fire-retardant materials. Therefore, the impact related to wildfire would be less than significant.

**Letter D – Tina Simms**

Comment D-1

My family and I have lived in Livermore for over 14 years, and we recently moved from Rose Gate Common to the Altamont Creek neighborhood, closer to our favorite park, Brushy Peak. Part of what attracts us to this area is the abundance of open space. We are avid hikers, conservationists, and outdoor enthusiasts. During nature walks around Garaventa Hills, we admire the diversity of vegetation, birds,

insects, and other wildlife that inhabit the area. The landscape is heavenly, and we hope to preserve the site as open space. Please kindly accept our vote in support of Alternative A: No Project, No Development.

Response D-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. The comment presents general support for preserving the site as open space. Please see Master Response 1 regarding non-environmental comments.

**Letter E – Julia M**

Comment E-1

I live near the area of the Garaventa Hills project and I know how important it is for many residents to maintain the area's wildlife. It would be very upsetting for the wildlife to be disturbed by construction. This area is an integral part of our community and it holds many fond memories and everyday activities for local residents. It will also disturb our view of Brushy Peak, which is important to my family and many other residents. Many residents (including my family) were promised that this area would remain open land when sold their houses, we would like the city to uphold these promises. It would be a shame for this area to be disturbed by residential construction. I and many other residents do not want any of the construction mentioned in the project done in our neighborhood.

Response E-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. This comment mentions topics outside the scope of the RP Draft EIR. Please see Master Response 2. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. A full discussion of the Project's impacts related to biological resources and aesthetics was included in the EIR and the RP EIR was not required to re-open the EIR's analyses. The following information is provided to indicate where and how these topics were addressed in the EIR.

Biological resources were addressed in the Draft EIR in Chapter 7, with minor updates in the Re-Issued Final EIR Chapter 26 (pp. 26-13 to 26-28). The EIR states that the currently undeveloped site consists primarily of non-native annual grasslands, which while common throughout the region, can be used by various special-status species. The Project would also include construction of a pedestrian and emergency access bridge across a creek channel. The EIR concludes that the potentially significant impacts from development of the project on biological resources would be less than significant with mitigation. Impacts from potential construction-period disturbance and the permanent change of the site to residential development would be reduced through required pre-construction surveys to assess for sensitive species closer to construction activities, protections to avoid direct or indirect construction impacts as feasible depending on habitat or species, coordination with

regulatory agencies as appropriate (US Fish and Wildlife Service and/or California Department of Fish and Wildlife), and offsite compensatory habitat.

Views were addressed in the Draft EIR (4-3 to 4-11), with minor updates in the Re-Issued Final EIR Chapter 26 (p. 26-7). The EIR concludes that the Project would not substantially alter views of identified scenic resources from identified scenic vistas or nearby public areas. Therefore, the Project's impact on scenic vistas and scenic corridors would be less than significant.

Any promise made by an unspecified entity that the Project site would remain open space is outside the scope of the RP EIR. Please see Master Response 2. The Final EIR responded to a similar comment by explaining that "the Project site has had residential land use designations for over 25 years... The site is currently within the City limits and North Livermore Urban Growth Boundary and remains identified as a site for residential development in the City's General Plan." Please see response to Comment I-1 on p. 24-46 of the Final EIR. The RP Draft EIR further specified on page RP3-14 that, "The Project site has been designated for residential uses since at least the 1976 Livermore General Plan, including in the Maralisa plan."

This comment also presents opposition to the project. Please see Master Response 1 regarding non-environmental comments.

#### **Letter F – Janelle Plaskett**

##### **Comment F-1**

My name is Janelle Plaskett. I'm a homeowner of a property that borders the Garaventa Hills, and a parent of a student at Altamont Creek Elementary.

I'm writing to voice my support for a no build option as I feel it's best for the wildlife, traffic, school overcrowding, and recreation of our community.

It's my understanding that the city has conservation funds available to purchase the land. I believe keeping Garaventa Hills as open space is the best option for our community and our kids.

Thank you for your consideration.

##### **Response F-1**

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. This comment mentions topics outside the scope of the RP Draft EIR. Please see Master Response 2. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. A full discussion of the Project's impacts related to biological resources, transportation, and public services and recreation was included in the EIR and the RP EIR was not required to re-open the EIR's analyses. The following information is provided to indicate where and how these topics were addressed in the EIR.

Biological resources were addressed in Chapter 7 of the Draft EIR with minor revisions on pages 26-13 to 26-28 of the Re-Issued Final EIR. The EIR states that the currently undeveloped site consists primarily of non-native annual grasslands, which while common throughout the region, can be used by various special-status species. The Project would also include construction of a pedestrian and emergency access bridge across a creek channel. The EIR concludes that the potentially significant impacts from development of the project on biological resources would be less than significant with mitigation. Impacts from potential construction-period disturbance and the permanent change of the site to residential development would be reduced through required pre-construction surveys to assess for sensitive species closer to construction activities, protections to avoid direct or indirect construction impacts as feasible depending on habitat or species, coordination with regulatory agencies as appropriate (US Fish and Wildlife Service and/or California Department of Fish and Wildlife), and offsite compensatory habitat.

Traffic was discussed in Chapter 16 and associated Appendix H of the Draft EIR with minor revisions on pages 26-49 to 26-59 of the Re-Issued Final EIR. The EIR concluded that with appropriate traffic safety measures, emergency access, and intersection improvements, and with implementation of a construction as identified in the EIR, the impact of the Project would be less than significant.

Schools and recreation were addressed in Chapter 15 of the Draft EIR with minor revisions on pages 26-48 of the Re-Issued Final EIR. With respect to schools, the EIR utilized student yield rates of the local school district (LVJUSD) and concluded that new facilities would not be required for this Project alone and that payment of required school mitigation fees would mitigate the Project's contributions to cumulative facility needs consistent with State law. With respect to recreation, the EIR indicated that the Project site is located in an area with existing neighborhood parks and would develop less than half of the site, with the knolls proposed to remain undeveloped and include public-access trails for hiking and vista views. With any additional payment of park in-lieu fees per Chapter 12.60 of the Livermore Municipal Code, the Project's impact with respect to parks and recreation was determined to be less than significant.

This comment also mentions funds for the purchase of the site and expresses support for open space at the site. Please see Master Response 3 regarding available funds and Master Response 1 regarding non-environmental comments and opinions.

### **Letter G – Doug Mann, Citizens for Balanced Growth**

#### **Comment G-1**

In advance of the stated September 13th deadline, please incorporate the attached comments appropriately into the Garaventa Hill environmental review process. See you at the next event.

[Content of the attachment follows]

In accordance with California Regulation Title 14 § 15162 (Subsequent EIRs and Negative Declarations), Citizens for Balanced Growth ("Citizens") have determined

that the availability of certain new information meets the requirements to trigger further CEQA review for the proposed Garaventa Hill housing development project.

With this communiqué, we will mention the most relevant reasons for why the additional review must take place.

#### 1. Flood Risk new information

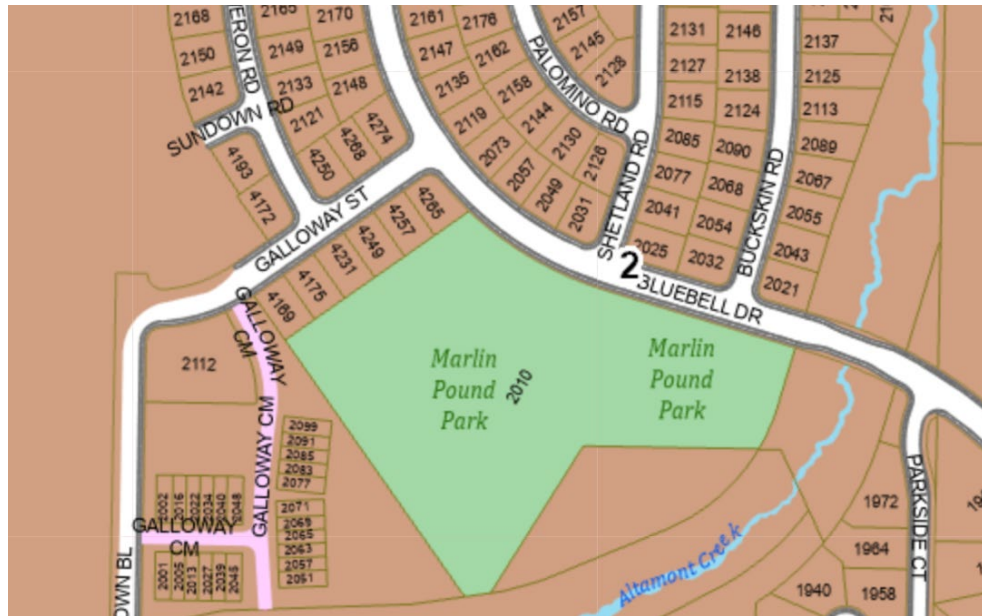
The applicable statute is CA Title 14 § 15162, 3 A and B (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR

On January 16 2023, a rain storm caused Altamont Creek to flood. At least four homes downstream from Garaventa Hill experienced substantial flood damage (<https://www.kron4.com/news/bay-area/livermore-homeowner-managesthrough-flood-damage>). Some residents used paddle boards for transportation.





City Policy states, as referenced in the DEIR; “POLICY PS-2.1.P3. The City shall require new development and significant redevelopment projects to prepare drainage studies to assess storm runoff impacts on the local and regional storm drain and flood control system, and to develop recommended detention and drainage facilities to ensure that **increased risks of flooding do not result from development**. The drainage study shall include an analysis and recommended mitigations for projects that would increase peak runoff flows and increase runoff volume and for all projects where such increased flow and/or volume is likely to cause increased erosion of creek beds and banks, silt pollutant generation, or other impacts to beneficial uses.”

We are unaware of any substantial follow-up by the City to the newly existing floodplain in Springtown, which contains houses. We do know that improper functioning of the local hydrologic systems was not a factor, such as clogged storm drains. The topologic and geologic conditions were simply overwhelmed, and there is ample evidence to suggest that the event will repeat with regularity. On its own merit, downstream residents are entitled to understand what the City intends to do about future flood threats, if indeed anything can be done. Combining the Garaventa Hill impact on those plans needs to be considered in combination.

WRECO’s 2012 analysis states “The downstream limit of the hydraulic model is approximately 150 ft downstream of the existing North Vasco Road bridge over Altamont Creek.” The downstream flooded area extended at least 7,100 feet beyond that point. The DEIR erroneously expresses that there would be no impact in other areas of flood risk.

This project poses a flooding risk much further downstream than might have been possible to reasonably consider in the 2012 WRECO report. Nearly 12 acres of upstream land described as pervious in the DEIR will be transformed to become impervious, creating unavoidable and unmitigable increases in runoff into Altamont Creek. We now know that downstream properties experience flooding events which

never flooded in the past, even without the additional water flows caused by a Garaventa Hill upstream development. Any additional water will exacerbate the inevitable flood threats, which themselves will likely increase due to global warming's effect on the intensity of storms. Put another way, there is no "less than significant" rise in a flooding event. During a property damaging flood, any additional water flow is significant. It will not be possible to technologically retain all of the excess water created by the stated land coverage, thus additional water flow will contribute to higher water levels downstream from Garaventa Hill.

The final EIR MUST determine without any doubt that the project will not contribute any degree of additional floodwater during extreme weather events. The final project approval could do so by specifying extraordinarily impractical mitigation measures, such as requiring the developer to preemptively buy up every downstream property that could experience future flooding, prior to developing the Hill. In other words, the flooding risk alone should be enough to render this project impossible to responsibly construct.

The City must order that a new hydrologic report be produced, paid for by the City, properly noticed for three bids, with the winning consultant chosen through the open public process.

## 2. Hydrocarbon impacts new information

The applicable statute is CA Title 14 § 15162, 3 A and B

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR

The original reports say that no hydrocarbon events were observed. They also correctly point out that there were no identified hydrocarbons and no seepage in the Bear Creek development until several years after the property had houses on it. At the time of that planning, there was no alarm about oil risk. Garaventa Hill may face a similar threat scenario and needs to be studied more completely to eliminate all risk of oil seepage into surrounding areas.

Not mentioned in the DEIR was that the Bear Creek oil leaks happened twice, and we don't know which agencies were involved in the necessary repairs. The final report should most thoroughly address the costs associated with those repairs to help inform on the monetary impact of similar events under Garaventa.

The EIR relies on reports from ENGEO, which were commissioned and funded directly by RL Communities. Such an arrangement is not only improper, it may have

rendered the completeness of the reports to be deficient. For example, a consultant employed by the City through Lamphier-Gregory might have been able to more seamlessly leverage the information channels involving the details of the Bear Creek repairs, number of barrels spilled, costs, etc., to provide more adequate insight and more thoroughly address a wider variety of threats from hydrocarbons.

The geologic expert should be working for and on behalf of the residents of Livermore, in service to environmental protection, not the developer with a profit motive. The existing reports and Lamphier-Gregory's summary of them cannot be the final word for this component of the EIR. With such a devastating environmental risk at stake, the City should not simply rely on Lamphier-Gregory to hire a consultant to create the report, but must instead engage a geotechnical firm which demonstrates at the outset, a healthy skepticism and attention to the task of examining all possible environmental hazards as a high priority. The City must order that a new geologic report be produced, paid for by the City, properly noticed for three bids, with the winning consultant chosen through the open public process.

### 3. Endangered Species new information

The applicable statute is CA Title 14 § 15162, 3 A and B

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR

The data you have is old, and incomplete. Since 2019, we have had several exchanges with experts in biological impacts that convince us that protected species in protected areas at lower elevations are dependent in part on the natural runoff and habitat support that are in force due to the property's existence in its current state. Producing the scientific reports that can fully articulate these impacts is the job of experts. The City must not expect the public to take the steps necessary to hire the appropriate consultants at their private expense.

#### Response G-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment mentions topics outside the scope of the RP Draft EIR. Please see Master Response 2. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. A full discussion of the Project's impacts related to hydrology, hazards, and biological resources were included in the EIR and the RP EIR was not required to re-open the EIR's analyses. The following information is provided to indicate where and how this topic was addressed in the EIR.

Flooding was addressed in Chapter 12 and associated Appendix G of the Draft EIR with minor revisions on pages 26-41 to 26-42 of the Re-Issued Final EIR. The EIR indicated that existing site soils are relatively impervious and precipitation falling on the site currently drains quickly in the form of surface flows, largely to the adjacent Altamont Creek. Hydrological analysis and design acknowledges and is intended to address even uncommon flooding conditions (“100 year” events), as detailed on pages 12-9 and 12-10 of the Draft EIR and page 9 of Appendix G. Proposed on-site stormwater treatment and collection elements include bio-retention on each lot and a detention basin at the southeast corner of the site. As indicated on page 12-9 of the Draft EIR, plan-level stormwater calculations demonstrated that the Project with proposed stormwater elements would not increase runoff from the site, and that detailed design-level hydraulic computations are required to confirm this as a standard construction permit requirement. The full hydrological assessment in the EIR (Appendix G) determined that the Project would not have a significant impact on the ability of the creek to contain flood waters and Project revisions further reduced the proposed development footprint (page 26-42 of the Re-Issued Final EIR). With the Project as proposed including stormwater treatment and collection elements, the impact with respect to flooding was determined to be less than significant. To the extent the comment raises issues related to flooding after the Re-Issued Final EIR, the City Engineer has reviewed the comment and determined that the comment is not substantial new information. Please see the memorandum from the City Engineer included in Master Response 2 addressing the Project’s flood risk.

Hydrocarbon (oil) seepage was discussed on pages 11-2, 11-3, 11-6, 11-7 and 12-8 and associated Appendix F of the Draft EIR with minor revisions on pages 26-38, 26-39 and 26-41 of the Re-Issued Final EIR. The history of near-surface hydrocarbons and oil seeps in the vicinity was identified as a known concern in the Draft EIR (pages 11-1 to 11-3) believed to be related to the interaction between the movement of the naturally-occurring oil deposits in the geologic strata (oil-bearing Greenville Sands) and the seasonally-fluctuating groundwater table beneath the Bear Creek site where an oil seep is located. As indicated in the Draft EIR (page 11-3), “the geologic structure is not continuous from the Bear Creek site oil seep to the Project site and that therefore, it is unlikely that there are oil bearing Greenville Sands near-surface at the Project site. Supporting this conclusion, no evidence of near-surface oil or seepage was found at the Project site through site reconnaissance, surface borings, or deeper borings (down to 62 feet) performed at the Project site by ENGEO. However, oil seeps did not become apparent until five years after construction of the Bear Creek Development. Therefore, oil seeps may be expected to move laterally within one mile of the identified location or to rise to the surface within the next 5-10 years.” While not found or considered likely at the Project site, the possibility of future oil seepage was acknowledged as a potential impact and the EIR concluded that the impact could be reduced to less than significant levels with implementation of the identified mitigation requiring additional field confirmation during grading with measures requiring design of underground utility and stormwater elements to prevent oil intrusion, additional measures to reduce potential seepage events if any oil is encountered (overexcavation,

visqueen lining, and an oil/water separator), and funding for additional remedies should oil seepage occur in the future (Draft EIR pages 11-6 to 11-7). To the extent the comment raises hydrocarbon related incidents after the Re-Issued Final EIR, the City Engineer reviewed the comment and determined that the comment is not substantial new information because the area has a known history of the presence of hydrocarbons and the Project includes mitigation measures and conditions of approval in the event hydrocarbons are encountered during construction and in the future. Please the memorandum from the City Engineer included in Master Response 2.

Biological resources were addressed in Chapter 7 of the Draft EIR with minor revisions on pages 26-13 to 26-28 of the Re-Issued Final EIR. The EIR states that the currently undeveloped site consists primarily of non-native annual grasslands, which while common throughout the region, can be used by various special-status species. The Project would also include construction of a pedestrian and emergency access bridge across a creek channel. The EIR concludes that the potentially significant impacts from development of the Project on biological resources would be less than significant with mitigation. Impacts from potential construction-period disturbance and the permanent change of the site to residential development would be reduced through required pre-construction surveys to assess for sensitive species closer to construction activities, protections to avoid direct or indirect construction impacts as feasible depending on habitat or species, coordination with regulatory agencies as appropriate (US Fish and Wildlife Service and/or California Department of Fish and Wildlife), and offsite compensatory habitat.

The comment does not identify or otherwise provide evidence of specific species of concern though the comment indicates a connection between habitat and runoff as a concern. Evaluation of potential hydrological impacts to off-site wetlands and associated species was included in the EIR (Appendix G, Appendix J) and as summarized on page 24-12, “the Garaventa Wetlands Preserve receives flows from nearly 645 acres of tributary watershed and that “...the minor changes to onsite drainage patterns proposed with the project will not result in significant impacts to the hydrology of the Garaventa Wetlands [Preserve].” To the extent the comment raises issues related to flooding after the Re-Issued Final EIR, the City Engineer has reviewed the comment and determined that the comment is not substantial new information. Please see the memorandum from the City Engineer included in Master Response 2 addressing the Project’s flooding risk and impacts from runoff. To the extent the comment raises issues related to biological resources after the Re-Issued Final EIR, the City’s commissioned expert biologist has independently confirmed in a memorandum included in Master Response 2 that there are no new listings in the CNDDDB regarding endangered species and that changed or pending changes to listing status since the Re-Issued Final EIR are either already adequately addressed or can be addressed by a modest revision to Mitigation Measure Bio-9, which would not be considered substantial new information because it would not result in a new or worsened significant impact. Please see the memorandum from the biologist included in Master Response 2 and revised Mitigation Measure Bio-9 described in Master Response 2.

Comment G-2

## 4. Inadequacy of NPA in the "RP Draft EIR"

Livermore continues, in defiance of the Court, to prove it is unserious about pursuing the identified environmentally superior alternative of the NPA. Nothing demonstrates this better than certain actions earlier this year.

February 2nd, Livermore presented an offer to Lisa Quisito for \$868 thousand. Quisito identifies herself as the trustee for the actual owners, the validity of which we have not been able to verify but will tentatively accept for now, for the purpose of discussion. Quisito's February 5th reply refused the offer, but also clearly defines their selling price as \$3.5 million.

**Their selling price is \$3,500,000.**

It is negligent for the RP Draft EIR to fail to call attention to this new fact - one that is pivotal and has been the subject of intense speculation, research, and the inability to break through the stonewalling by the seller's real estate representative (Mary Ann Rozsa) for more than a decade. Staff paradoxically followed up February 29th with an offer for 1.74 million. There is no plausible conclusion, other than this offer was designed to fail. Other than to mock, aggravate, and waste the owner's time, what possible purpose did it serve? We don't know how many other insults Quisito may have endured over the years, but one might wonder if this sort of thing explains the accelerating tone of resentment in Quisito's letters. Rather than exhausting the possibilities for acquisition, the City continues to find ways to make the NPA most difficult to attain.

As if this weren't enough, Ms. Quisito, the developer Mark Lafferty, and David Ragland attended the August 20 planning commission meeting, seated prominently in the room. It is customary in public meetings to call attention to such attendees, especially when high profile matters are at hand. Rather than take this opportunity to invite these most senior stakeholders to the discussion, they were completely ignored. It would be impossible to believe Staff and Rebecca Auld (a long term vendor of Lafferty and also the EIR consultant employed by the City) was unaware of their presence. Commissioners themselves may not have recognized them, which provides yet another example Staff's complacency or overt obstruction of the NPA for failing to alert the members of the appointed body of them attending. To have this group in attendance at a public meeting on the NPA and not take advantage of the opportunity to engage directly is further evidence that Staff continues to soft-pedal the NPA.

A genuine proposal to purchase the Hill for the asking price must be explored for viability and if so, presented in a cooperative manner.

Response G-2

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment mentions funds and the price for the purchase of the site. Please see Master Response 3 regarding the available funds and Master Response 4 regarding a willing seller and purchase price.

This comment also mentions applicant team attendance at the hearing. This comment does not state a specific concern related to the adequacy of the RP EIR

and does not require a detailed response. Please see Master Response 1 regarding non-environmental comments.

The CEQA Guidelines expressly permit the common practice of an applicant or applicant-commissioned consultants preparing material used in CEQA documents. See, e.g., CEQA Guidelines, §§ 15063(a)(4), 15063(e), 15063(g), 15084(d), 15070(b). CEQA is satisfied as long as the ultimate conclusions reflect “the agency’s own review and analysis” and “reflect the independent judgment of the Lead Agency.” CEQA Guidelines, § 15084(e). Here, public officials have independently and objectively reviewed all material in the administrative record prepared for inclusion in the EIR, and the EIR reflects the City’s independent judgment.

Comment G-3

5. City is Responsible Party

Over the past several years, Citizens have considered engaging the appropriate experts to draft opinions and deliver the substantial details necessary to lay out the scientific reasons why Garaventa Hill cannot be urbanized. On reflection, we don't believe this would have been the best course of action. The California environmental quality act was drafted in order to guide agencies for the purpose of the public well being, in preserving the environment to the greatest extent possible and practical in a society that must balance the needs of development with appropriate environmental protection. It is not the responsibility of residents or NPOs to do this work for the lead agency.

As the Lead Agency of this project, it is also the responsibility of Livermore to not simply confine the new EIR to the issues we have proposed here, or that others may have proposed, but to engage all necessary proactive due diligence to discover any other shortcomings and omissions which may exist or become known in order that a thorough examination of any new impacts be laid bare and included in the EIR for consideration of the administrative body responsible for certification.

As we have observed many times before, an unfortunate standard practice in California exists for agencies in dealing with the expenses associated with project EIRs.

CEQA requires the lead agency to fully explore the environmental impacts of projects. The accepted normal course of action to accomplish this due diligence by way of hiring a private professional consultant to produce an EIR/EIS. The Agency is the customer of the consultant. This is because the Agency should be looking out for the best interests of the residents, and the primary allegiance of the EIR company should be to the Agency and residents. However, producing the report costs money and agencies typically try to avoid dipping into their general funds to pay the consultant if there is another alternative.

It is nearly universal that the agency will demand a side deal with the developer where the Agency will not be liable for the costs of the report – the developer pays the agency in advance of the Agency passing through that payment to the consultant.

Everybody can recognize the reality on the ground. The REAL customer of the consultant is the developer.

In this case, Lamphier-Gregory had a preexisting vendor relationship with Lafferty. Livermore, at Lafferty's request, hired Lamphier-Gregory. We consider this a prickly decision, questionably ethical at least or more likely a pure conflict of interest. One could easily argue that it is far too cozy comfort and not undertaken with the primary concern of environmental protection at the forefront. It may even bump up against aspects of self dealing. If one were to seek out a particularly ideal example in order to mount a court challenge to what has unfortunately become standard practice with these way-too-convenient insider based relationships, this may be it. The safest decision in relation to exposure regarding the consultant at this juncture would be to utilize a different firm for any new environmental work (not Lamphier-Gregory) in an open bidding process.

The Court has ordered that the Council City "to set aside the certification of the RFEIR and approval of the Project", thus there are no elements of the DEIR, Final DEIR or Reissued Final DEIR in force. That Livermore chooses to limit the current application process to the portion of the report involving the NPA is curious at minimum. There can be no valid EIR that doesn't include opening up the entire report to scrutiny and comment in the normal manner with full public review. This partial recirculation of the NPA is by no means the majority of the work left to be done.

Response G-3

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment mentions topics outside the scope of the RP Draft EIR. Please see Master Response 2. With respect to comments related to the Lead Agency's responsibility to conduct the environmental analysis of a proposed project, the court upheld the EIR on all challenged technical environmental analysis, finding the only inadequacy to be related to potential availability of funding for open space acquisition and preservation of the Project site in the no project alternative analysis.

For a Lead Agency to utilize an environmental consultant for preparation of an EIR is common practice explicitly allowed by CEQA Guidelines section 15084, and not a sign of impropriety. The CEQA Guidelines expressly permit the common practice of an applicant or applicant-commissioned consultants preparing material used in CEQA documents. See, e.g., CEQA Guidelines, §§ 15063(a)(4), 15063(e), 15063(g), 15084(d), 15070(b). CEQA is satisfied as long as the ultimate conclusions reflects "the agency's own review and analysis" and "reflect[s] the independent judgment of the Lead Agency." CEQA Guidelines, § 15084(e). Here, public officials have independently and objectively reviewed all material in the administrative record prepared for inclusion in the EIR, and the EIR reflects the City's independent judgment.

As an environmental consultant, Lamphier-Gregory has over 40 years of experience in the Bay Area and in that time has of course contracted with numerous cities, counties, agencies, and developers. The fact of a discrete past contract with a given entity would not in itself be considered a conflict of interest on future contracts that may involve that entity so long as there are no ongoing financial, business, or

personal interests reasonably linked to the current contract. As an environmental consultant, Lamphier-Gregory does not contract with clients in such a way that payment is dependent on the outcome, and neither had nor currently has a conflict of interest for environmental consultation on this Project.

Lamphier-Gregory has performed all work on the EIR under contract with, under the direction of, and with payment from the City of Livermore. As a standard practice, Developmental and Planning Fees are charged by the City to a project applicant to recoup the costs of processing of applications for development, including costs for preparation of an EIR. These fees are included on the City's adopted Master Fee Schedule.<sup>5</sup> That the City collects the costs of EIR preparation from the applicant is standard practice for project applications and is not an indication of impropriety.

### **Letter H – Donna Cabanne**

#### **Comment H-1**

Further CEQA evaluation is warranted because of new information of substantial importance that was not known at the time the previous EIR was certified.

The Tri-Valley is a non-attainment air basin. Grading and construction periods for the proposed project have the potential to produce significant and unavoidable impacts relating to fine particulate matter PM 2.5 and other TACs. Following best practices for grading and construction activities is not sufficient mitigation for TACs in a non-attainment air basin.

Additionally, the adjacent neighborhoods and the community could be at risk from hydrocarbons and flooding. Impacts in these areas were not sufficiently known before; therefore, mitigations could be inadequate. In light of new information, biological resources must also be reanalyzed as the proposed project would curtail natural run-off necessary for endangered species and special status species, their habitat and habitat corridors within and in close proximity to the development site.

Because of new information and new regulations, the City should reopen the Final DEIR or the Reissued Final DEIR in the areas of air quality, hydrology, flooding, and biological resources to comply with CEQA regulations. To limit the CEQA process to the No Project Alternative is disallowing adequate public review and participation; and does not comply with CEQA and State Statues.

Please re-open the Final DEIR or the Reissued Final DEIR with full public review as mandated by CEQA. Please confirm receipt of this email.

#### **Response H-1**

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment mentions topics outside the scope of the RP Draft EIR. Please see Master Response 2. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. A full discussion of the Project's impacts

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<sup>5</sup> The City's Fee Schedule can be found at this link: <https://www.livermoreca.gov/departments/administrative-services/finance/fee-schedule>.

related to air quality, hazards, and biological resources were included in the EIR and the RP EIR was not required to re-open the EIR's analyses. The following information is provided to indicate where and how these topics were addressed in the EIR.

Project-specific analysis of air quality was included in Chapter 6 and Appendix B of the Draft EIR, including construction-period TACs on page 6-13 with minor revisions on pages 26-10 through 26-13 of the Re-Issued Final EIR. The non-attainment status of the air district was reported on pages 6-6 to 6-8 of the Draft EIR. Detailed project-specific modeling of the construction emissions and health risk (related to particulate matter and TACs or Toxic Air Contaminants) demonstrated these to be below significance thresholds established by the non-attainment air district, as summarized on Table 6.4 (page 6-10) and page 6-13 of the Draft EIR.

Hydrocarbon (oil) seepage was discussed on pages 11-2, 11-3, 11-6, 11-7 and 12-8 and associated Appendix F of the Draft EIR with minor revisions on pages 26-38, 26-39 and 26-41 of the Re-Issued Final EIR. The history of near-surface hydrocarbons and oil seeps in the vicinity was identified as a known concern in the Draft EIR (pages 11-1 to 11-3) believed to be related to the interaction between the movement of the naturally-occurring oil deposits in the geologic strata (oil-bearing Greenville Sands) and the seasonally-fluctuating groundwater table beneath the Bear Creek site where an oil seep is located. As indicated in the Draft EIR (page 11-3), "the geologic structure is not continuous from the Bear Creek site oil seep to the Project site and that therefore, it is unlikely that there are oil bearing Greenville Sands near-surface at the Project site. Supporting this conclusion, no evidence of near-surface oil or seepage was found at the Project site through site reconnaissance, surface borings, or deeper borings (down to 62 feet) performed at the Project site by ENGEO. However, oil seeps did not become apparent until five years after construction of the Bear Creek Development. Therefore, oil seeps may be expected to move laterally within one mile of the identified location or to rise to the surface within the next 5-10 years." While not found or considered likely at the Project site, the possibility of future oil seepage was acknowledged as a potential impact and the EIR concluded that the impact could be reduced to less than significant levels with implementation of the identified mitigation requiring additional field confirmation during grading with measures requiring design of underground utility and stormwater elements to prevent oil intrusion, additional measures to reduce potential seepage events if any oil is encountered (overexcavation, visqueen lining, and an oil/water separator), and funding for additional remedies should oil seepage occur in the future (Draft EIR pages 11-6 to 11-7). To the extent the comment raises hydrocarbon related incidents after the Re-Issued Final EIR, the City Engineer reviewed the comment and determined that the comment is not new information because the area has a known history of the presence of hydrocarbons and the Project includes mitigation measures and conditions of approval in the event hydrocarbons are encountered during construction and in the future. Please see the memorandum from the City Engineer included in Master Response 2 .

Flooding was addressed in Chapter 12 and associated Appendix G of the Draft EIR with minor revisions on pages 26-41 to 26-42 of the Re-Issued Final EIR. The EIR indicated that existing site soils are relatively impervious and precipitation falling on the site currently drains quickly in the form of surface flows, largely to the adjacent Altamont Creek. Hydrological analysis and design acknowledges and is intended to address even uncommon flooding conditions (“100 year” events), as detailed on pages 12-9 and 12-10 of the Draft EIR and page 9 of Appendix G. Proposed on-site stormwater treatment and collection elements include bio-retention on each lot and a detention basin at the southeast corner of the site. As indicated on page 12-9 of the Draft EIR, plan-level stormwater calculations demonstrated that the Project with proposed stormwater elements would not increase runoff from the site, and that detailed design-level hydraulic computations are required to confirm this as a standard construction permit requirement. The full hydrological assessment in the EIR (Appendix G) determined that the Project would not have a significant impact on the ability of the creek to contain flood waters and Project revisions further reduced the proposed development footprint (page 26-42 of the Re-Issued Final EIR). With the Project as proposed including stormwater treatment and collection elements, the impact with respect to flooding was determined to be less than significant. To the extent the comment raises issues related to flooding after the Re-Issued Final EIR, the City Engineer has reviewed the comment and determined that the comment is not new information. Please see the memorandum from the City Engineer included in Master Response 2 addressing the Project’s flood risk.

Biological resources were addressed in Chapter 7 of the Draft EIR with minor revisions on pages 23-2 to 23-5 of the Final EIR, and pages 26-13 to 26-28 of the Re-Issued Final EIR. Related discussion of site hydrology was addressed in Chapter 12 and Appendix G of the Draft EIR, pages 23-5 to 23-6 and Appendix J of the Final EIR, and pages 26-40 to 26-42 of the Re-Issued Final EIR. The EIR states that the currently undeveloped site consists primarily of non-native annual grasslands, which while common throughout the region, can be used by various special-status species. The Project would also include construction of a pedestrian and emergency access bridge across a creek channel. The EIR concludes that the potentially significant impacts from development of the Project on biological resources would be less than significant with mitigation. Impacts from potential construction-period disturbance and the permanent change of the site to residential development would be reduced through required pre-construction surveys to assess for sensitive species closer to construction activities, protections to avoid direct or indirect construction impacts as feasible depending on habitat or species, coordination with regulatory agencies as appropriate (US Fish and Wildlife Service and/or California Department of Fish and Wildlife), and offsite compensatory habitat.

The comment does not identify or otherwise provide evidence of specific species of concern though the comment indicates a connection between habitat and runoff as a concern. Evaluation of potential hydrological impacts to off-site wetlands and associated species was included in the EIR (Appendix G, Appendix J) and as summarized on page 24-12, “the Garaventa Wetlands Preserve

receives flows from nearly 645 acres of tributary watershed and that “...the minor changes to onsite drainage patterns proposed with the project will not result in significant impacts to the hydrology of the Garaventa Wetlands [Preserve].”. To the extent the comment raises issues related to flooding after the Re-Issued Final EIR, the City Engineer has reviewed the comment and determined that the comment is not substantial new information. Please see the memorandum from the City Engineer included in Master Response 2 addressing the Project’s flooding risk and impacts from runoff. To the extent the comment raises issues related to biological resources after the Re-Issued Final EIR, the City’s commissioned expert biologist has independently confirmed in a memorandum included in Master Response 2 that there are no new listings in the CNDDDB regarding endangered species and that changed or pending changes to listing status since the Re-Issued Final EIR are either already adequately addressed or can be addressed by a modest revision to Mitigation Measure Bio-9, which would not be considered substantial new information because it would not result in a new or worsened significant impact. Please see the memorandum from the biologist included in Master Response 2 and revised Mitigation Measure Bio-9 described in Master Response 2.

### **Letter I – Wes Eacret ad Emma Olenberger**

#### **Comment I-1**

My partner bought our house on Knoll Ct. 9 years ago. The sale and development of Garaventa Hills was disclosed at that time. However, as you know, the plans have changed. One significant change was the removal of the vehicle bridge and the ingress/egress point onto Hawk Street along Altamont Creek Elementary School. This is the one item we would like to petition to have re-instated into the plans. The bridge was contested by immediate neighbors as being a traffic problem and removed from the plans. For the reasons outlined below, we would like to have it added back into the plans.

The landscape of the entire neighborhood has changed. In just the past two winters, we have seen firsthand how close flood waters (less than 1 foot) have come to cresting over the bridge at Laughlin and Altamont Creek thereby isolating everyone to the north. Climate change is getting worse and storms are getting stronger. An operational vehicle bridge (not one with bollards) at Hawk Street will serve as an additional exit route during times of disaster, whether flooding or fire.

Commute traffic has increased exponentially through the neighborhood. Altamont Creek Drive (which is a narrow and winding road) has taken on the extra burden of commuters using it as a cut-through and racing to and from Vasco Road and Laughlin Road. The traffic will continue to increase as more homes are built out in Tracy and to the North of us. We already feel like we are an island neighborhood and experience difficulty getting home. Do you really want to force the residents of Garaventa Hills to use those same roads instead of providing a bridge and more direct route to their homes? What about the future development of the bull pen at Northfront, Herman and Scenic Drive? Once that plot of land is developed, Northfront and Laughlin Roads will be highly impacted. Please help out our neighborhood by providing two points of access to Garaventa Hills.

Another pressure point I would like to point out for Altamont Creek Drive is during sporting season. As already mentioned, the road is curvy and narrow. During sports practice and games, the road becomes even more narrow with parked vehicles along the edges and children darting in and out between the vehicles. It is a serious safety issue.

Then there is the neighborhood of Bear Creek Drive. As residents on Knoll Court, we are concerned for not only the increased traffic on the road but also the speed at which vehicles will be traveling at coming from out of Garaventa Hills. Will there be any consideration for traffic calming efforts such as speed bumps or an added stop sign? We regularly observe children playing in the street on Bear Creek Drive and the surrounding courts. What consideration has been given to their safety?

We appreciate the opportunity to provide these insights and requests. Please strongly consider adding the vehicle bridge at Hawk Street back into the plan. While we understand this is private property and they have a right to develop, we would like to have our concerns voiced and taken seriously.

Response I-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment expresses support for a vehicle bridge at Hawk Street. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response.. Please see Master Response 1 regarding non-environmental comments and Master Response 2.

The project does not propose changes to the previously analyzed project. Environmental analysis of a vehicle bridge as part of the Project was included in the Draft EIR. Consideration of impacts without a vehicle bridge was included in Alternative B in the Draft EIR (Chapter 19), Chapter 22 of the Final EIR (no bridge at all), and Chapter 26 of the Re-Issued Final EIR (a pedestrian and emergency vehicle access bridge).

**Letter J – Alicia Guerra, Lafferty Communities**

Comment J-1

Please see attached comment letter.

Sent on behalf of Alicia Guerra.

[Content of the attachment follows]

Buchalter, a Professional Corporation, represents Lafferty Communities (“Lafferty”) with respect to its plans to develop the Garaventa Hills project in the City of Livermore (the “City”). The Garaventa Hills development project consists of 44 single-family homes on an internal looped circulation system with a pedestrian-only bridge across Altamont Creek (the “Project”). The Project today is the same Project the City previously evaluated and approved in 2019 and that has been the subject of litigation since then.

By way of background, Lafferty submitted its existing, deemed complete development project application dated September 8, 2017 for the Project, and the City determined that it was complete by June 27, 2018. After various rounds of

environmental review, the Livermore City Council certified the Garaventa Hills Project Environmental Impact Report (“EIR”) and approved the Project on April 22, 2019. For the next three years, the EIR was challenged in court. In its July 2022 decision in *Save the Hill Group v. City of Livermore* (2022) (76 Cal.App.5th 1092) concerning the adequacy of the Project EIR, the First District Court of Appeal (“Court”) upheld the adequacy of the Project EIR in all but one respect. The Court directed the City to revise the Project EIR to include information regarding the potential availability of funding for possible open space acquisition and preservation of the Project site in the EIR’s No Project alternative analysis.

We appreciate the City’s thorough analysis of this alternative in the recirculated Partial Draft EIR for the same Project (the “RPDEIR”) so that the EIR includes information for the public’s understanding about potential funding available for possibly acquiring the Project site as open space under Alternative A: the No Project/No Development Alternative. On behalf of our client we are submitting this comment letter regarding the RPDEIR analysis for the City’s consideration to reiterate our client’s position that Alternative A: No Project, No Development Alternative remains infeasible from the developer/applicant’s perspective because, just as before, our client’s residential Project would never be developed on the Project site under this alternative.

**The RPDEIR satisfies the Court’s direction to explain why the No Project, No Development Alternative was infeasible based on funding considerations.**

When preparing an EIR, CEQA “requires the public agency to consider feasible alternatives to the project which would lessen any significant adverse environmental impact. (§§ 21002, 21081; [citation].) One alternative is “no project.” (See Guidelines, § 15126, subd. (d)(2) [“no project” alternative to be considered along with proposed project’s environmental impact]; [citation].)’ [Citation.]” (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911 (*Planning & Conservation League*)). The responsibility to formulate alternatives lies with the lead agency, not with project critics. (*Laurel Heights*, supra, 47 Cal.3d at 406-07.) The City’s range of project alternatives are subject to the “rule of reason.” (CEQA Guidelines, § 15126.6, subd. (f).) An EIR need not consider an alternative...whose implementation is remote and speculative.” (14 CCR 15126.6(f)(3).)

We reviewed the RPDEIR’s additional information addressing Alternative A: No Project, No Development Alternative, and concur with the RPDEIR’s analysis and conclusions that this alternative is infeasible due to an unwilling seller, the unavailability of funds to purchase the Project site even if there was a willing seller, the additional costs associated with an eminent domain process in the absence of a willing seller and the costs of addressing the State Housing Law “no net loss” policy requirements if the Project is rejected.

**CEQA requires a “no project alternative” analysis to discuss what would be reasonably expected to occur in the foreseeable future if the Project were not approved.**

CEQA Guidelines Section 15126.6(e) requires that the lead agency evaluate a “no project alternative.” The City did that in the Project EIR. In its decision, the Court explained that the information provided in an EIR must “reflect the analytic route the agency traveled from evidence to action.” (*Save the Hill Group v. City of Livermore* (2022) 76 Cal.App.5th 1092, 1108.) The Court found the EIR should have included a discussion of the potential for funding a City acquisition of the Project site. (*Id.* at p. 1112-13.)

Consistent with the Court order, the RPDEIR Alternative A: No Project, No Development alternative analysis provides more detail about why funding is not available for the City to acquire and preserve the Project site as open space. We agree with the RPDEIR’s exhaustive discussion of the possible sources of funding to acquire the Project site under the No Project Alternative just as the Court requested. This includes: use of the Altamont Landfill Open Space Fund, the Dougherty Valley Settlement Agreement, and other open space funding sources, including a Transferable Development Credits Fund, Open Space Acquisition and Management Fund, and General Funds using a ballot initiative. (RPDEIR, pp. RP3-5—13.) None of these sources, if they could be applied to the Project site (which they can’t), are sufficient to fund the very sizable cost of acquisition of the Project site as open space. The RPDEIR’s analysis here reflects the analytic route that the City took in rejecting the No Project Alternative, including why the eminent domain and rezoning process rendered conservation of the Project site infeasible.

The RPDEIR’s analysis of the information further explains to the public why funding is not available to acquire the Project site as open space, and why this No Project, No Development Alternative would not be considered potentially feasible based on economic considerations. The RPDEIR demonstrates in a manner consistent with CEQA’s requirements and the Court’s decision the reasons why acquisition of the Project site as open space remains infeasible.

**Alternative A: No Project, No Development Alternative is Still Infeasible based on a balancing of CEQA’s feasibility factors.**

An EIR alternatives analysis must be “guided by the doctrine of feasibility.” (*Citizens of Goleta Valley v Board of Supervisors* (1990) 52 Cal.3d 553, 565.) CEQA requires alternatives evaluated in an EIR to “feasibly” attain the basic project objectives. (CEQA Guidelines § 15126.6(a).) “Feasible” is defined as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors,” as well as legal factors. (Pub. Res. Code, § 21061.1; CEQA Guidelines, § 15364.) Factors to take into account when evaluating feasibility include “site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries . . . , and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site.” (CEQA Guidelines, § 15126.6(f)(1).) Alternatives must be evaluated based on their feasibility and should be rejected if determined to be infeasible based on any of the aforementioned factors. (See *Marin Mun. Water Dist. v. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1665-66 (demonstrating the analysis sufficient for rejecting infeasible alternatives1).)

We note that the City's task under CEQA was to identify a range of alternatives that will satisfy basic project objectives while reducing significant impacts. Alternatives that are not at least "potentially feasible" typically are excluded at this initial stage because there is no point in studying alternatives that cannot be implemented or that will not succeed. (See §15126.6(a); see also *South County Citizens for Smart Growth v County of Nevada* (2013) 221 Cal.App.4th 316, 327; *Mount Shasta Bioregional Ecology Ctr. v County of Siskiyou* (2012) 210 Cal.App.4th 184; *Sierra Club v County of Napa* (2004) 121 Cal.App.4th 1490, 1504 n5; *Mira Mar Mobile Community v City of Oceanside* (2004) 119 Cal. App.4th 477, 489.)

From Lafferty's perspective, even if funding were available for this alternative, the No Project, No Development Alternative is infeasible based on a balancing of the very factors CEQA requires be considered when determining the feasibility of an alternative in an EIR (see e.g., CEQA Guidelines §15364; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App. 4th 957, 1001). First, even before considering environmental, social, technological and legal considerations, acquiring the Project site to preserve it as open space does not meet our client's most basic project objective to develop housing on the Project site.

Secondly, with respect to the social and legal considerations regarding the determination of feasibility, the City is required legally to fulfill its obligations to develop 44 homes on the Project site in accordance with the Livermore General Plan and Zoning Ordinance long since in effect in order to comply with its obligation under State Housing Laws. Simply put, preserving the Project site as open space does not comply with the State Housing Accountability Act and the 2019 Housing Crisis Act. This is not a cost issue; it is a legal issue.

Finally, even if the Project site were acquired and preserved for open space purposes, the RPDEIR explains on page 3-7 and 3-8 that the City's review and analysis concluded in the RPDEIR that the Project site was not within the top 100 parcels for land conservation prioritization. Using funds for this site would deprive the City of the ability to use those monies for properties the City has deemed much more worthy of preservation. Thus from an environmental perspective, preserving this site as open space may not accomplish City goals such as the preservation of open space habitat of significance. And if the City were to proceed with acquisition of the Project site, the available open space funds would be exhausted, such that funds would need to be raised or the City would need to rely on the City's General Fund in order to maintain and manage the Project site after acquisition (See RP p. 3-12).

For these reasons, we respectfully request that the City confirm in its CEQA findings and Project approval findings that Alternative A: No Project, No Development Alternative was infeasible before and it remains an infeasible option with respect to the future of the Project site. As the RPDEIR demonstrates, even if Alternative A: No Project, No Development Alternative were viable because the City had enough money to acquire the Project site as open space (which there is not according to the available information in the RPDEIR and the administrative record), this alternative is infeasible. The purpose of the Project is not to preserve the Project site as open

space, but to build much needed housing consistent with the City's General Plan and Zoning and State Housing Laws.

We look forward to the Planning Commission and City Council's deliberations concerning the RPDEIR and the Project approvals for the development of the Garaventa Hills Project site in the very near future. Thank you for considering our comments.

Response J-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment presents the applicant team's opinions on the Project and EIR. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. Please see Master Response 1 regarding non-environmental comments.

**Letter K – Michelle Mitchell and Paul Maciolek**

Comment K-1

This email is to serve as our comments on the RP Draft EIR for the Garaventa Hills project.

For over thirteen years, the community surrounding the Garaventa Hills project has been outspoken in the opposition to this project and continue to contest the project's approval. Below are our specific issues.

- The City has not made any serious attempts to the no-project alternative
- We were told when we bought our house, the Hill would not be developed
- The EIR for the project is 10 years old. This must legally be addressed with updated reports and on-site analysis.

Thank you for your time, and for keeping us informed on the progress. We look forward to working with you and the City regarding this project.

Response K-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment expresses opposition to the Project. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. Please see Master Response 1 regarding non-environmental comments.

The comment also addresses topics outside the scope of the RP Draft EIR. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. Please see Master Response 2.

Any promise made by an unspecified entity that the Project site would remain open space is outside the scope of the RP EIR. Please see Master Response 2. The Final EIR responded to a similar comment by explaining that "the Project site has had residential land use designations for over 25 years... The site is currently within the City limits and North Livermore Urban Growth Boundary and remains identified as a

site for residential development in the City's General Plan." Please see response to Comment I-1 on p. 24-46 of the Final EIR. The RP Draft EIR further specified on page RP3-14 that, "The Project site has been designated for residential uses since at least the 1976 Livermore General Plan, including in the Maralisa plan."

### **Letter L – Bianca Covarelli**

#### **Comment L-1**

The Court ordered the City Council set aside the RFEIR and the approval of the project therefore there are no elements of the DEIR or the FEIR or Reissued Final DEIR in force. They were tossed out and a new EIR is required. There is new information since the 2014 EIR. The approved 2019 RFEIR is now outdated and new information is required to be analyzed. There is no valid EIR and the report and updated surveys and updated comments in the matter with full public review is in order based on new information.

#### **New Information:**

1. Recent Flooding Within the Last two Years caused heavy, high flow of the Altamont Creek resulting in flooded homes downstream and Springtown causing significant environmental impacts that require new hydrological studies. (I have video of these events.)
2. Should any alteration of the Hill cause non-pervious surfaces, additional flow risk into Altamont Creek and surrounding Garaventa Wetland areas causing serious flood and environmental impacts.
3. WRECOs 2012 analysis states hydro model approximately 150 feet downstream of the existing N. Vasco Road bridge over Altamont Creek. The downstream flooded area extended 7100 feet beyond that point. The previous DEIR is inaccurate that there would be no impacts in other areas of flood risk.
4. The final EIR must determine without a doubt no flood risk during extreme weather events
5. Climate change is causing significant weather events and we've seen flooding on Laughlin Road from Altamont Creek rise onto the bike path and over Laughlin Road heavy water flow and flooding.
6. Significant Oil Seepage within and on Bear Creek that was not included in the previous EIR. Those oil leak events happened twice at the base of the Garaventa Hill. That information should be included in the EIR for this project; current analysis and past events should be included. These events indicate severe environmental impacts. I have met with an expert hydrogeologist who has pertinent new information regarding the geohydrology in the area. Said current, updated onsite surveys and reports should be conducted by reputable, non-biased environmental consultants.
7. New information regarding Endangered Species. The information on the old EIR is dated 2014. There is significant information about the loss of Burrowing Owls, for example, in the area and if the only Burrowing Owls exist on the Garaventa Hill,

then permits would not be issued to take. There's no onsite surveys and they are required by law. I have had several communications with an environmental wildlife biologist and ecologist who have PhDs in their field of expertise and know the Garaventa Hill and surrounding area extremely well. I request these experts be allowed to provide current surveys and reports to accurately report the presence of the Burrowing Owls, the San Joaquin Kit Fox, the CTS, the red-legged frogs, the VPFs, the Livermore Tarplant, and a project's environmental impacts on the hydrology and its effects on the alkali sink, vernal pools and the Altamont Creek.

8. The No Project Alternative requirements by CEQA indicate that communications with the Landowners offering a market value rate for conservation is required prior to communication with a developer. The City is required to make a fair market value offer. The Representative for the landowners, Lisa Quisito, stated their selling price was \$3.5 million. There are conservation trust funds available to cover that purchase price. May I add, the City has representatives who vote on the access and use of those funds. It may be a conflict of interest when the City reps prefer to build rather than conserve. The landowners are willing sellers with a respectable offer.

9. New Information on California Wildfires. Since 2019 when the City approved the project and finalized the previous EIR, the State of California has undergone extreme wildfires. All of California is under extreme fire danger. CEQA requirements require thorough analysis of these conditions and locations.

10. I spoke with an environmental botanist from the area. The onsite surveys for protected flora and special status flora is very specific per CEQA. Five onsite surveys are required and that was not done in the previous EIR. The Livermore Tarplant and several other very critical species live on and around the base of the hill and their presence and onsite surveys are required by CEQA

There's a plethora of items on the list that would lead a reasonable Civic Body to reject this project. In addition, the lengthy list previously mentioned per CEQA requires a retrigger of an EIR.

I would request the environmental wildlife biologist, ecologist, Botanist and hydrogeologist I have previously mentioned be contracted with the City to provide accurate and current surveys to be included in the Lamphier-Gregory EIR.

Response L-1

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment mentions topics outside the scope of the RP Draft EIR. Please see Master Response 2. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. A full discussion of the Project's impacts related to hydrology, hazards, biological resources, and wildfire were included in the EIR and the RP EIR was not required to re-open the EIR's analyses. The following information is provided to indicate where and how these topics were addressed in the EIR.

Flooding was addressed in Chapter 12 and associated Appendix G of the Draft EIR with minor revisions on pages 26-41 to 26-42 of the Re-Issued Final EIR. The

EIR indicated that existing site soils are relatively impervious and precipitation falling on the site currently drains quickly in the form of surface flows, largely to the adjacent Altamont Creek. Hydrological analysis and design acknowledges and is intended to address even uncommon flooding conditions (“100 year” events), as detailed on pages 12-9 and 12-10 of the Draft EIR and page 9 of Appendix G. Proposed on-site stormwater treatment and collection elements include bio-retention on each lot and a detention basin at the southeast corner of the site. As indicated on page 12-9 of the Draft EIR, plan-level stormwater calculations demonstrated that the Project with proposed stormwater elements would not increase runoff from the site, and that detailed design-level hydraulic computations are required to confirm this as a standard construction permit requirement. The full hydrological assessment in the EIR (Appendix G) determined that the Project would not have a significant impact on the ability of the creek to contain flood waters and Project revisions further reduced the proposed development footprint (page 26-42 of the Re-Issued Final EIR). With the Project as proposed including stormwater treatment and collection elements, the impact with respect to flooding was determined to be less than significant. To the extent the comment raises issues related to flooding after the Re-Issued Final EIR, the City Engineer has reviewed the comment and determined that the comment is not new information. Please see the memorandum from the City Engineer included in Master Response 2 addressing the Project’s flood risk.

Hydrocarbon (oil) seepage was discussed on pages 11-2, 11-3, 11-6, 11-7 and 12-8 and associated Appendix F of the Draft EIR with minor revisions on pages 26-38, 26-39 and 26-41 of the Re-Issued Final EIR. The history of near-surface hydrocarbons and oil seeps in the vicinity was identified as a known concern in the Draft EIR (pages 11-1 to 11-3) believed to be related to the interaction between the movement of the naturally-occurring oil deposits in the geologic strata (oil-bearing Greenville Sands) and the seasonally-fluctuating groundwater table beneath the Bear Creek site where an oil seep is located. As indicated in the Draft EIR (page 11-3), “the geologic structure is not continuous from the Bear Creek site oil seep to the Project site and that therefore, it is unlikely that there are oil bearing Greenville Sands near-surface at the Project site. Supporting this conclusion, no evidence of near-surface oil or seepage was found at the Project site through site reconnaissance, surface borings, or deeper borings (down to 62 feet) performed at the Project site by ENGEO. However, oil seeps did not become apparent until five years after construction of the Bear Creek Development. Therefore, oil seeps may be expected to move laterally within one mile of the identified location or to rise to the surface within the next 5-10 years.” While not found or considered likely at the Project site, the possibility of future oil seepage was acknowledged as a potential impact and the EIR concluded that the impact could be reduced to less than significant levels with implementation of the identified mitigation requiring additional field confirmation during grading with measures requiring design of underground utility and stormwater elements to prevent oil intrusion, additional measures to reduce potential seepage events if any oil is encountered (overexcavation, visqueen lining, and an oil/water separator), and funding for additional remedies should oil seepage occur in the future (Draft EIR pages 11-6 to 11-7).

To the extent the comment raises hydrocarbon related incidents after the Re-Issued Final EIR, the City Engineer reviewed the comment and determined that the comment is not substantial new information because the area has a known history of the presence of hydrocarbons and the Project includes mitigation measures and conditions of approval in the event hydrocarbons are encountered during construction and in the future. Please see the memorandum from the City Engineer included in Master Response 2.

Biological resources were addressed in Chapter 7 of the Draft EIR with minor revisions on pages 23-2 to 23-5 of the Final EIR, and pages 26-13 to 26-28 of the Re-Issued Final EIR. The EIR states that the currently undeveloped site consists primarily of non-native annual grasslands, which while common throughout the region, can be used by various special-status species. The Project would also include construction of a pedestrian and emergency access bridge across a creek channel. The EIR concludes that the potentially significant impacts from development of the Project on biological resources would be less than significant with mitigation. Impacts from potential construction-period disturbance and the permanent change of the site to residential development would be reduced through required pre-construction surveys to assess for sensitive species closer to construction activities, protections to avoid direct or indirect construction impacts as feasible depending on habitat or species, coordination with regulatory agencies as appropriate (US Fish and Wildlife Service and/or California Department of Fish and Wildlife), and offsite compensatory habitat.

The comment does not identify or otherwise provide evidence of specific species of concern. Evaluation of potential hydrological impacts to off-site wetlands and associated species was included in the EIR (Appendix G, Appendix J) and as summarized on page 24-12, “the Garaventa Wetlands Preserve receives flows from nearly 645 acres of tributary watershed and that “...the minor changes to onsite drainage patterns proposed with the project will not result in significant impacts to the hydrology of the Garaventa Wetlands [Preserve].” To the extent the comment raises issues related to flooding after the Re-Issued Final EIR, the City Engineer has reviewed the comment and determined that the comment is not substantial new information. Please see the memorandum from the City Engineer included in Master Response 2 addressing the Project’s flooding risk and impacts from runoff. To the extent the comment raises issues related to biological resources after the Re-Issued Final EIR, the City’s commissioned expert biologist has independently confirmed in a memorandum included in Master Response 2 that there are no new listings in the CNDDDB regarding endangered species and that changed or pending changes to listing status since the Re-Issued Final EIR are either already adequately addressed or can be addressed by a modest revision to Mitigation Measure Bio-9, which would not be considered substantial new information because it would not result in a new or worsened significant impact. Please see the memorandum from the biologist included in Master Response 2 and revised Mitigation Measure Bio-9 described in Master Response 2.

Wildfire was addressed on pages 11-7 to 11-8 of the Draft EIR with minor revisions on pages 26-39 to 26-40 of the Re-Issued Final EIR. The EIR concludes that the project is not in a high-risk wildfire area (what would be called a Very High Fire Hazard Safety Zone or VHFHSZ by Cal Fire) and would comply with the City's Wildland-Urban Interface Code requiring the defensible space and fire-retardant materials. Therefore, the impact related to wildfire would be less than significant. Under current CEQA Standards (CEQA Guidelines Appendix G, Section XX), a project is considered to have a potentially significant impact under CEQA requiring more detailed analysis if the project site is classified as a VHFHSZ. According to current mapping,<sup>6</sup> it remains the case that the Project is not located in or near VHFHSZ areas, the closest of which are over 4 miles away to the northwest or southwest. .

This comment also addresses purchasing the site. Please see Master Response 3 regarding available funds and Master Response 4 regarding a willing seller and purchase price.

### **Planning Commission Hearing Verbal Comments**

#### **Comment PC-1**

**[Doug Mann]** I am Secretary for Citizens for Balanced Growth. CEQA has provisions to retrigger an EIR when certain new information is obtained about an environmentally damaging project. So, we'll be starting all over again, and continuing for as many years as it takes, extending far beyond the NDA. Although the result of tonight's meeting will just contribute to a reverse loop on the CEQA flow chart, receiving comments might still do some good.

Let's concentrate on the weirdest part of this whole thing, which is the interaction with the trustee, Lisa Quisito. The staff report claims that Quisito is not a willing seller. We put this expression into the DBSA when we settled the lawsuit to prohibit eminent domain purchases. Quisito is a willing seller and actively engaged in the process of selling this asset under self-imposed restrictive terms. Her preferred buyer, Lafferty, has refused to buy for 13 years. Quisito claims they are restricted by contract to sell only to Lafferty. What she doesn't say is it's an option contract. Lafferty paid them to not sell to anyone else. But it's also not perpetual, but one that renews on a regular basis. In the renewal periods, she can sell to anyone. February 2nd, Livermore offered \$868,000. Quisito's February 5 reply defines their selling price as \$3.5 million. Staff paradoxically followed up February 29th with an offer for \$1.74 million. This offer was designed to fail. Other than to mock, aggravate and waste the owner's time, what possible purpose did that serve? They could've responded if the City offered \$3.5 million, if you were not under another contract, would you consider it, for example. We don't know how many other insults Quisito may have endured over the years but one might wonder if this sort of thing explains the accelerated tone of resentment in her letters.

Here's where you can help. Although you're not required to take any action, you do have the option to help cut through the fog. Ask your staff to engage a professional

<sup>6</sup> Cal Fire, Fire Hazard Severity Zone Viewer, displaying adopted Fire Hazard Severity Zones effective April 1, 2024. Available at <https://experience.arcgis.com/experience/03beab8511814e79a0e4eabf0d3e7247/>

mediator, a neutral party who may be able to find solutions to the fractured relationship between the City and the seller. As an EIR expense, the developer will even pay for it. You could also request your staff talk to an actual real estate agent to represent the City. It costs nothing and there's no better way to consummate a real estate deal than to give marching orders to a motivated professional. Both of these activities can occur in parallel. Again, you are not required, but if you do nothing tonight except passively receive comments, (buzzer), I'm done. One has to wonder, what you as public servants are actually doing to help.

The RP Draft EIR remains inadequate.

Response PC-1

Thank you for your comment. This commenter also submitted written comments identified as Letter G. These comments are noted and will be considered by City decisionmakers. Please see Response G-1.

This comment mentions "starting over" with the environmental analysis. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. Please see Master Response 2.

This comment also addresses the purchase of the site. Please see Master Response 4 regarding a willing seller and purchase price.

Comment PC-2

**[Bianca Covarelli]** Good evening. I'm sorry I can't stand. I literally had knee surgery four days ago, but this is a very important topic to me. My name is Bianca Covarelli and I say (inaudible). I appreciate your time this evening and very much for your dedication and hard work for all of your planning for our beautiful town of Livermore. It's very special to me.

Initially, I'd like to state for the record and remind City staff that we do have a right to make comments tonight on the Draft EIR and to direct it to limit comments to strictly funding is misinformation and this is why, I argue that significant new conditions and new information have come up over the last few years that will retrigger the requirements that amend the EIR and recirculate. The City's project page has 2014 Final EIR and 2018 reissued Final EIR. Most of the reports are from 2014. The only difference between the two projects was density of the development, no new studies. The reports in the Final EIR are quite old. The City lost a prejudicial legal judgement that required the City to set aside certification of the RFEIR and the approval of the project.

What they didn't mention is that they hand wrote a letter to the California Supreme Court in association with other building communities. And the California Supreme Court came back and said after the City of Livermore requested that the ruling be tossed out from the Appellate Court ruling, and the California Supreme Court said this, 'Not only are we upholding this precedential ruling, but you are no longer allowed to appeal this ruling'. So, that says a lot. And maybe there are issues about this that didn't come out in the courts because this other issue is so important. So, I'd just like you to consider that.

Over the last few years I have been diligent in research and committed to consulting with experts on the pertinent issues, new information and conditions regarding this special hearing. There are many, many studies by those experts being prepared now. The process isn't quite complete as to what will be in the record yet but comment submissions will be made prior to the September 13 deadline. The environmental consultant may be overwhelmed with the plethora of new information and additional work that may be required to be performed.

Regarding the funding issue, we can all agree the second courts precedential ruling wherein they vacated EIR and the project, we can agree that the valuation of the land declined significantly. The comment made about the current valuation of the hill being \$18 to \$20 million is beyond erroneous. Misinformation and a possible attempt at hindering informed decision making and public perception.

The question is the City in good faith honoring the Court's decision that on a piece of land is so environmentally sensitive and rare, it's a very new diversity and there's nothing like it anywhere else in our state. Conservation should be considered and that's what the Court said. I was at the hearing when they said it.

The property was listed at various times since 2017. The listing price in 2017 was \$4.9 million. The City's recent offer of over \$800,000 and then \$1.7, it wasn't a fair market value offer. No wonder the land owners rejected it. That's why they're being considered an unwilling seller. They're clearly a willing seller. The City contends the landowners are not willing to sell. I feel that if a bonifide fair market value offer was offered, they're a reasonable seller, they would consider it.

This gloss by the City and the courts was an exit to that option that Lafferty's holdings on this property. Do the land owners know that? Do they know that there's funding available to purchase? I request tonight that you, the Planning Commission, take to heart the magnitude and the time spent on this proposed project. It's been over 12 years and I can personally attest to that, I've been involved. I could recommend that you send this back to staff and demand preparation of an accurate, proper, updated and current EIR. Thank you so much for your attention.

Response PC-2

Thank you for your comment. This commenter also submitted written comments identified as Letter L. These comments are noted and will be considered by City decisionmakers. Please see Response L-1.

This comment mentions analysis outside the scope of the RP Draft EIR. The Court of Appeal upheld the adequacy of the EIR on all issues other than the No Project Alternative. Please see Master Response 2.

This comment mentions funds and price for the purchase of the site. Please see Master Response 3 regarding the available funds and Master Response 4 regarding a willing seller and purchase price.

Comment PC-3

**[Vladimir]** I'm going to sit too since you guys are all comfortable. For one, I think you should have let her speak all the way through because she underwent surgery as she said four days ago and she is Save the Hill and I think what she has to say is

pretty important. I don't think there is any reason to be concerned over the one minute that she takes. I just had to say, you know I drove her here myself and she is clearly committed. The other thing I'd like to say is hello to my old friend Steve Stewart. I remember when we were at the Garaventa meeting together a few months ago. My impression was that you were dreading that meeting and I don't blame you because it was very long and drawn out and I'm surprised to see you're back. I think what that says is that everybody's got a price. Right? And in this case it was worth it for you to come back talking.

On the topic of that, the main, your whole argument seems to rest on the idea that the land owner is not a willing seller and as Doug and Bianca pointed out earlier, it's bogus because they're trying to build as many homes as possible on this land for ten years now and working with the developer. These people are trying to make money. The reason they are not a willing seller to the City is because you ridiculed them with \$800,000.

The other thing that I found interesting actually in the reports, since we're discussing a no project alternative, I thought you should mention how much the land is worth. Do you know how much it's worth? I know they said it earlier but do you know? At this point, as the City because a few months ago you told me it was \$15-20 million. As Bianca said, there's some text in CEQA that I was reading earlier but something about informed decision making and public participation. And I think that what you lie about how much the land is worth even though you have letters from the landowner, I mean this data is easy to find. And you get this \$15-20 million number and people believe you because you have the power of authority, I think you're misusing it. So anyway, this no willing seller argument is false because hypothetically speaking if you throw \$100 million at them I bet they would change their tune, right. So it's just a matter of money. If you make a fair offer, then they will sell it. They're probably as tired of this as anybody else, of this masquerade that's been going on. I guess that's it. I'm trying to practice not writing any notes so that I get better at public speaking but I might have forgotten a few things. That's okay.

Response PC-3

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment presents support for another commenter and opinions related to City staff. These comments do not state a specific concern related to the adequacy of the RP EIR and do not require a detailed response. Please see Master Response 1 regarding non-environmental comments.

This comment mentions analysis outside the scope of the RP Draft EIR. The Court of Appeal upheld the adequacy of the EIR on all issues other than the discussion of the potential funding sources available for the acquisition and preservation of the Project site as open space under the No Project, No Development Alternative. Please see Master Response 2.

This comment addresses the purchase of the site. Please see Master Response 4 regarding a willing seller and purchase price.

Comment PC-4

**[Connie Kopps]** Hi. I'm here about 5.1 and it's not clear in the beginning but it will be clear as I read on. On public hearing Item 5.1, 13-005. Our City is unclear with its general planning for all of Livermore and lands it's preserving. There is an opportunity \_\_\_ to all living in this area as the boundaries of who is responsible for what with land owners and shell companies, makes getting clear maps and any questions answered with honesty impossible. It is my firm belief that a General Plan with Zoning should be clear and concise so that all districts together can view it in its entirety as all are affected by what you do and what you approve. It's impossible to get honest input without that, without that, without the big picture.

I do think also that this land, because it's got a B after it, the parcel number is like 99B, that it is entitled to something. When I called the County about, I think it was that parcel, they couldn't tell me for some reason who owned it prior to them. They said that wasn't public record. So, I don't know why and I might have messed up something too. But I really do think it's important to go over with your whole community the past history and why things were preserved and again update your planning to include modern day thoughts. Even when like Public Works is coming to my HOA in the other part of Spring Town when Darrell Greenwood was telling everybody in my HOA that the City owned our property and the golf course was still going, so the dynamics around it have also changed and there's an opportunity cost for those other people who also might want to propose some kind of building to you. So try to be fair. I say, take your districts, divide your housing allocation by the number of districts and at least try to balance it out. I don't think that Midtown, we've gotten onto another subject here so I'll stop. Thank you for taking what I said into consideration. I really appreciate it. Thank you.

Response PC-4

Thank you for your comment. This comment is noted and will be considered by City decisionmakers. This comment addresses a desire for clarity with General Plan and Zoning of a site. This comment does not state a specific concern related to the adequacy of the RP EIR and does not require a detailed response. Please see Master Response 1 regarding non-environmental comments.