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Via Email mklein@cityofcalabasas.com

Mr. Michael Klein, Planner
City of Calabasas
100 Civic Center Way
Calabasas, CA 91302

Re: Mitigated Negative Declaration prepared for Rondell Oasis Hotel Project,
File No. 140001318, 26300 Rondell Street

Dear Mr. Klein:

We submit this letter on behalf of the Los Virgenes Homeowner's Federation in connection with the mitigated negative declaration (MND) prepared for the Rondell Oasis Hotel Project ("Project"). As you know, the Federation is an umbrella organization of homeowner associations and groups in the Santa Monica Mountains dedicated to bringing residents, government agencies and stakeholders together to improve the experience of the Santa Monica Mountains. Since 1968, the Federation has sought to protect and preserve the Santa Monica Mountains and its unique communities. The Federation participates in the administrative proceedings for this project in an effort to prevent and reduce the significant environmental impacts that will result if the City permits continued development that is inconsistent with the General Plan.

The Rondell Oasis Hotel Project proposes a new 73,000 square foot hotel with 127 rooms on 4.13 acres of vacant land near the . A development plan permit would be required for the Project's 50-foot height and the construction of retaining walls in excess of 6 feet in height. The Project would also require vacation of a portion of Rondell Street, a conditional use permit, site plan review, lot merger, scenic corridor permit, and an oak tree permit to allow encroachment into the protected zone of two oak trees. The Project site sits within the Las Virgenes Scenic Corridor and the Las Virgenes Gateway Master Plan.

LVHF is concerned that the Project will adversely impact access and views from the historic Juan Bautista de Anza Trail, which runs along the Project site. The rolling, grassy hills of the Santa Monica Mountains will be replaced by views of 50-foot-tall buildings and urban development. Additionally, the Project is inconsistent with a number of policies and designations of the City's General Plan, as well as the Las Virgenes

Gateway Master Plan. Despite these impacts, the MND's only admission that the Project may have significant impacts is limited to impacts on biological resources. (MND p. 21.) The City fails to even consider that the Project may have impacts on other aspects of the environment.

I. An Environmental Impact Report is Required to Comply with CEQA.

The California Environmental Quality Act (CEQA) serves two basic, interrelated functions: ensuring environmental protection and encouraging governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) CEQA requires full disclosure of a project's significant environmental effects so that decision-makers and the public are informed of these consequences before the project is approved, to ensure that government officials are held accountable for these consequences. (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) When substantial evidence supports a fair argument that a project may have a significant impact on the environment, an environmental impact report is required.

A lead agency prepares an initial study in order to determine whether an EIR, a negative declaration, or an MND is the appropriate environmental review document. (14 CCR § 15365, herein "CEQA Guidelines.") "All phases of project planning, implementation, and operation must be considered in the initial study." (CEQA Guidelines § 15063(a)(1).) The initial study must consider whether any aspect of a project, either individually or cumulatively, may cause a significant adverse impact. (CEQA Guidelines § 15063(b)(1).) The purpose of the initial study is to provide the lead agency with adequate information regarding a project to determine the appropriate environmental review document and "documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment." (*Ctr. for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal. App. 4th 1156, 1170, citations omitted.) There must be a basis within the record to support the conclusions reached by the initial study. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1201.) "Where an agency. . . fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate." (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4th 1591, 1597, citations omitted.) Failure to adequately analyze all of a project's potentially significant impacts or provide evidence to support conclusions reached in the initial study is a failure to comply with the law.

When a project may have a significant impact on the environment, it necessitates the preparation and certification of an EIR, not an MND. One of the first steps in the process required by the California Environmental Quality Act ("CEQA") is to determine

whether the project may have a significant effect on the environment. “[S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under the CEQA Guidelines, “‘Substantial evidence’ means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Guidelines § 15384(a), emphasis added; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905.)

The fair argument standard is a “low threshold” test for requiring the preparation of an EIR. (*No Oil, supra*, 13 Cal.3d 68, 84.) Review is de novo, with a “preference for resolving doubts in favor of environmental review.” (*Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1110; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602-1603.)

The City has failed to prepare a legally adequate initial study and MND due to its failure to even consider impacts outside of impacts to biological resources. The City has also failed to disclose, analyze, and mitigate historic, aesthetic, and recreational impacts caused by the Project’s placement along the De Anza Trail, land use impacts related to the Project’s inconsistency with the City’s governing planning documents, and the cumulative impacts of the City’s continued deviation from its planning documents. An EIR is required before the Project may be lawfully approved.

II. The Project Would Have Adverse Historic, Aesthetic, and Recreational Impacts By Changing the Setting of the Juan Bautista De Anza Trail.

Public Resources Code section 21084.1 mandates that “[a] project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” A substantial adverse change in the significance of an historical resource includes “physical demolition, destruction, relocation, or alteration of the resource *or its immediate surroundings.*” (CEQA Guidelines § 15064.5(b)(1).) The Juan Bautista De Anza National Historic Trail was designated by Congress in 1990 and recognized in 2000 by the White House as one of 16 Millennium Trails in the country. (MND pp. 57-58.) In the area of the Project site, the De Anza Trail is known as the Calabasas Historic Trail, which runs 1.4 miles from the east end of Calabasas Road, west to Las Virgenes Road, through meandering hills. (MND p. 57.) Currently, trailhead access exists 140 feet east of the Project site, and users of the trail park on Rondell Street. (MND p. 58.) The Project would block access to this historic trail, requiring relocation of the trailhead. (MND p. 87.)

Although the Project would provide new trailhead access, the MND fails to disclose that this new trailhead access is required because the Project would block the existing access. (MND p. 87, pp. 57-58.) The omission of this significant adverse impact violates the public disclosure policies of CEQA. If the provision of new trailhead access and improvements near the trail are mitigation for this impact, they must be disclosed as such in an EIR.

Without a doubt, the Project would adversely affect public views from the trail. CEQA requires consideration of impacts to public views. (*Ocean View Estates Homeowners Ass'n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396.) Existing views from and of the De Anza Trail are of grassy hills. (MND Fig. 5d and 5e.) The MND admits that the Project would replace these views with urban development and 50-foot-tall buildings. (MND Fig. 5e, Photos 17-18 [Proposed hotel and parking would be in view], Photo 19 [Top of proposed hotel would begin to be visible from 900 feet away].) The Project would be visible for 900 feet of the Trail's 1.4-mile length (12 percent). (MND p. 58.) The MND acknowledges that "the proposed project would alter the southwestern view from the trail" and "increase the developed nature of the view from the trail." (*Ibid.*) This is a significant adverse impact on the environment that is required to be either fully mitigated in the MND or analyzed, disclosed, and mitigated in the EIR. Instead, the MND claims that the view from the Trail already includes commercial and residential development, so no impact will occur. (MND p. 58.) Regardless of whether any part of the Trail had existing views of commercial development, this section previously did not have views of development to the degree proposed. This significant adverse impact must be disclosed and mitigated in an EIR.

In addition to diminishing the De Anza Trail's historic nature and public views from the trail, the Project would adversely impact the Trail's recreational value. Users of this portion of the De Anza Trail in the Santa Monica Mountains seek views of nature, solitude, and tranquility that will not be maintained after Project construction. Additionally, the Project's vacation of Rondell Street will remove a Park and Ride that is currently accessible to De Anza Trail hikers. The five parking spaces provided may not be sufficient, especially with the limited parking provided by the Project for hotel visitors. The MND fails to acknowledge or mitigate these impacts to this important recreational facility.

These impacts to the De Anza Trail are significant impacts to historic resources, aesthetic resources, and recreation that must either be eliminated or disclosed, analyzed, and fully mitigated in an environmental impact report.

III. The Project Would Have Adverse Aesthetic Impacts.

The MND admits that the Project is surrounded by Las Virgenes Road, identified

by the 2030 General Plan as a scenic corridor and the 101 Freeway, a locally-designated scenic highway in the 2030 General Plan. (MND p. 23.) The MND also states that the Project would be located between Las Virgenes Road, the 101 Freeway, and a City-designated significant ridgeline. (*Ibid.*) Despite this, the MND indicates that the Project's landscaping and a 140-foot setback from Las Virgenes Road would be sufficient to avoid significant adverse impacts on views of the natural topography and significant ridgeline. (MND p. 24.) This is untrue. Although views of the top of the significant ridgeline might not be blocked by the development, views of the rolling topography would be. The MND further relies on the Project's similarity to nearby development to avoid a determination of adverse impact. (*Ibid.*) However, the MND admits in the same paragraph that the Project would be 1-3 stories taller than other nearby development. (*Ibid.*) Thus, the Project would likely have greater aesthetic impacts than existing development. Additionally, while the MND claims that the Project is designed to conform to the City's 2030 General Plan, the Project specifically requires a development plan permit to build to a height that is not otherwise allowed in the Commercial zone. The MND's conclusion that the Project will not have adverse aesthetic impacts lacks substantial evidence.

IV. The Project's Encroachment Into Protected Zones of Oak Trees Is Not Permitted.

The Project would require root pruning that would encroach into the protected zones of three oak trees. (MND p. 53.) For this reason, the Project seeks an Oak Tree Permit, which requires "the preservation of all healthy oak trees unless reasonable and conforming use of the property justifies the removal, cutting, pruning, and/or encroachment into the Protected Zone of an oak tree." (MND p. 53.) While the Project's use may conform to the Commercial zone, its height and density do not, necessitating a development plan permit and other entitlements. Issuance of an Oak Tree Permit is inappropriate under the circumstances.

Additionally, the MND's description of the encroachment makes it seem as if the three oak trees that would be affected by the Project would be preserved. If that is the case, there is no reason that the Project could not be redesigned to avoid the encroachment altogether.

V. The Project Would Cause Adverse Land Use Impacts.

All projects approved in the City of Calabasas must be consistent with its general plan and its elements. "The general plan is atop the hierarchy of local government law regulating land use." (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.) For this reason, the General Plan has been described "the constitution for future development." (*DeVita v. Napa* (1995) 9 Cal.4th 763, 773,

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internal citations omitted.) The Rondell Oasis Hotel Project is inconsistent with several policies of the City's Land Use Element and cannot be approved as proposed.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable land use plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).)

The Project, as proposed, conflicts with the City's governing land use documents. For example, the vacation of Rondell Street would remove 84 out of 90 spaces from an unofficial Park and Ride in the City. Not only would this potentially affect transit, traffic, and congestion in ways that have not been studied in the MND, but the removal of this Park and Ride is inconsistent with the Las Virgenes Gateway Plan's designation of the site as a Park and Ride. This is a significant impact on land use that must either be eliminated or analyzed in an EIR.

The Gateway Master Plan limits the intensity of development at the Project site to a floor to area ratio of 0.2 or 40,000 square feet, whichever is less. (Gateway Master Plan pp. 4:8-4:9.) Instead, the Project proposes 73,000 square feet, nearly twice the development that would otherwise be allowed. The Commercial Retail zoning of the site limits development to 35 feet in height. The Proposed Project is 50 feet tall.

The Project is also inconsistent with objectives in the Gateway Master Plan that provide for a hiking and riding trail to connect the Agoura Road/Las Virgenes Road intersection to the Conservancy open space lands and a pedestrian connection between this trail and one along Las Virgenes Creek. The Project's 50-foot-tall tower and intense development will also prevent the City from meeting policies that call for maintaining the area's unique views.

Despite these inconsistencies, the MND finds that the Project would have "no impact" on land use. (MND p. 73.) This conclusion lacks the required substantial evidence. On the contrary, a fair argument exists that the Project would have significant

impacts on land use, and an EIR is required.

VI. The MND Does Not Adequately Address Cumulative Impacts and Spot-Zoning.

An EIR is required to analyze the Project's potential for cumulative impacts related to land use planning in Calabasas. As defined by CEQA, "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines § 15355(b).) The cumulative impacts analysis exists to prevent cities from considering projects in a vacuum and to avoid a piecemeal approach to project decision-making. The Court of Appeal has stated that an improper cumulative impact analysis "avoids analyzing the severity of the problem and allows approval of projects which, when taken in isolation, appear insignificant but when viewed together, appear startling." (*Kings County Farm Bureau, supra* 221 Cal.App.3d at pp. 739-740).

Cumulative impact analysis is important because "One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.) While the City has included a list of cumulative projects in the MND, this list is limited to those that are foreseeable under the current zoning and General Plan. This analysis omits any discussion of the precedent-setting nature of this Project, which would permit use of a development plan permit to evade height and other limitations that would otherwise apply to the Project site.

In *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, the Court of Appeal found that, absent meaningful cumulative analysis, there would never be any awareness or control over the speed and manner of development in downtown San Francisco. In that case, the court found the city's refusal to take into account other similar development projects to be a violation of CEQA. (*Id.* at 634.) "Without that control, 'piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment.'" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.) Similarly, without adequate cumulative analysis of the City's disregard for existing height and other limitations in Calabasas, the City will lose control over future development.

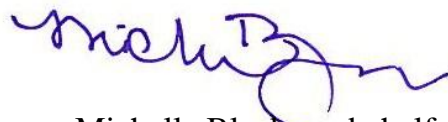
This Project is yet another project in the City of Calabasas that requires development permits or other exceptions from the General Plan. An EIR is required to analyze the impacts of the City's policy of permitting exceptions, variances, and other deviations from the General Plan.

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Conclusion

Thank you for your consideration of these comments. The Las Virgenes Homeowner's Federation looks forward to the City's revision of this MND or the preparation of an EIR that accurately reflects the significant environmental impacts of the Rondell Oasis Hotel Project.

Sincerely,



Michelle Black, on behalf of
The Las Virgenes Homeowner's
Federation

cc: Mr. Scott Howard, City Attorney, showard@chwlaw.us