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*Via Electronic Mail*

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Re: Central El Dorado Hills Specific Plan  
Second Recirculated Draft Environmental Impact Report  
(SCH#2013022044)

Dear Supervisors and Ms. Hamilton:

This office represents Open Space El Dorado Hills, Inc. ("OSEDH") with respect to the above-referenced Specific Plan ("Project" or "CEDHSP") and the Second Recirculated Draft Environmental Impact Report ("SRDEIR"). OSEDH and others have submitted comments on the multiple environmental review documents prepared for the Project over the years, and these comments are meant to supplement, not replace, previous comments by OSEDH, the comments of other members of the public, or of other experts or agencies.

After reviewing the SRDEIR, we have concluded that it falls short of compliance with the California Environmental Quality Act ("CEQA").<sup>1</sup> The concerns raised in comments submitted regarding the previous EIRs have not been adequately responded to, and the environmental review simply fails to meet the requirements of CEQA, particularly with respect to the findings regarding less than significant impacts to land use.

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<sup>1</sup> Public Resources Code § 21000 et seq. and the CEQA Guidelines, California Code of Regulations, title 14, 15000 et seq.

**A. The SRDEIR fails to meet CEQA's requirements, and the Project is inconsistent with applicable land use plans.**

One of the most glaring flaws pointed out in previous comments was the inconsistency with the El Dorado County General Plan ("General Plan"). The El Dorado Hills Area Planning Advisory Committee ("APAC") submitted a comment letter on January 6, 2020, raising "serious concerns regarding the General Plan Consistency Analysis for the Project." The January 2020 letter described in detail the flaws in the analysis and pointed out that the Project is, in fact, inconsistent with the General Plan. The APAC also submitted a letter on June 10, 2021, commenting on the SRDEIR. The June 2021 letter focused on the addition of two alternatives in the SRDEIR, noting that the "Zoning Consistent" and "No-Project" alternatives are more aligned with the desires of the community, and this was based (in part) on the analysis from the APAC's previous letter, concluding that the Project "...does not provide adequate benefits to El Dorado Hills, or El Dorado County, to merit a General Plan Amendment, or to justify a rezone of the old Executive Golf Course property." Of note, the APAC commented that the CEDHSP had not changed in any material respect since the January 2020 APAC letter.

The Project will have significant land use impacts that are overlooked in the environmental documents. The SRDEIR refers the reader back to the 2015 Draft EIR ("DEIR") for the "Land Use Planning and Agricultural Resource" chapter. In that document, the DEIR analyzed Impact LU-2: Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, a general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect, finding the impact "less than significant."

The thin analysis in the DEIR consists of a few paragraphs, noting that determination of consistency with the General Plan "as a whole" would be made by the County at the time of approval, and asserting that only one policy would be violated by the Project. (DEIR, p. 3.9-9.) The County failed to recognize that violation of a mandatory policy (such as a noise threshold) precludes a conclusion that the Project is consistent. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4<sup>th</sup> 777, 782. The letters from the APAC and other members of the community reveal that the Project is inconsistent with the General Plan "as a whole". There is no substantial evidence in the record to support the conclusions in the DEIR or the SRDEIR that the Project is consistent with the applicable land use plans.

In addition to the flaws in the land use section of the CEQA document, the proposed Project continues to be inconsistent with the El Dorado County General Plan in violation of the State Planning and Zoning Law, Govt. Code §§ 65000 et seq.

**B. The Project is illegal under applicable CC&Rs**

In addition to the failure to adequately analyze the significant land use impacts of the Project due to its inconsistency with existing land use plans, the Project will also result in violation of existing CC&Rs, as well as California real estate regulations.

The Project proponent does not have the unilateral right to dissolve 135 Class A Membership units in Serrano Village D1, Lots C and D, and so the Project as proposed will be vulnerable to legal challenge. Sound land use planning and public policy concerns require that the Project proponent provide a satisfactory explanation to the County regarding the legality of the Project prior to seeking County approval.

**1. History of annexation of Serrano Village D1 Lots C and D.**

The Project proponent, Parker Development Company (“Parker”) plans to “[T]ransfer 135 planned dwelling units from Serrano Village D1 Lots C and D to the Serrano Westside Planning Area” ([Parker Development Company website](#)). However, Serrano Village D1 Lot C is the remaining undeveloped balance of the subdivision’s “Initial Property” Parcel 5. Village D1 Lot D is the untouched “Initial Property”, Parcel 6.

The applicable CC&Rs, § 1.02 entitled “The Property” states, “This Master Declaration shall initially apply only to that portion of the Overall Property described in Exhibit A-2...”

1.02. The Property. The term the Property shall mean only the portion of the Overall Property to which this Master Declaration is from time to time applicable. This Master Declaration shall initially apply only to that portion of the Overall Property described in Exhibit A-2 attached hereto and incorporated herein by this reference (the “Initial Property”). It is anticipated that at least some of the lots described in Exhibit A-2 may be the subject of resubdivisions, lot line adjustments and mergers. In the event of any such adjustments and mergers, this Master Declaration shall apply to lots as so adjusted and merged. Other portions of the Overall Property may be made subject to this Master Declaration by annexation in accordance with the terms of Article 14 of this Master Declaration, and there are provisions in that Article for deannexation.

1.03. Anticipated Development. Of the Initial Property, only the Phase 1 Property and certain Common Area is being developed as of the recordation of this

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Exhibit A-2 defines this annexed “Initial Property” as, “[T]he Phase 1 Property plus, to the extent not included in the Phase Property: Lots 1 through 6... shown on the subdivision map of El Dorado Hills Specific Plan, Unit No. 1”

EXHIBIT A-2

DESCRIPTION OF THE INITIAL PROPERTY

(Section 1.02)

The Initial Property is comprised of the Phase 1 Property plus, to the extent not included in the Phase 1 Property: Lots 1 through 6, 8 and 9 shown on the map of El Dorado Hills Specific Plan, Unit No. 1, recorded November 22, 1993, in Book H, Page 78, Official Records of the County of El Dorado, California; and Lots 10, 11, 23 through 34 and LL shown on the map of El Dorado Hills Specific Plan, Unit No. 2, recorded February 25, 1994, in Book H, Page 81, Official Records of the County of El Dorado, California.

**Exhibit D** further defines Parcel 5 and 6 as containing—at the subdivision’s 1995 inception—372 and 32 [assessment] units, respectively... of the then-total 2,229 units. 160 units were “developed” as a part of Phase 1 along with 2,069 undeveloped lots for 2,229 then-total [annexed] units.

D. Parcel 4 – 44/2,069. Parcel 4 is lot 4 shown on the subdivision map of El Dorado Hills Specific Plan, Unit No. 1.

E. Parcel 5 – 372/2,069. Parcel 5 is lot 5 shown on the subdivision map of El Dorado Hills Specific Plan, Unit No. 1.

F. Parcel 6 – 32/2,069. Parcel 6 is lot 6 shown on the subdivision map of El Dorado Hills Specific Plan, Unit No. 1.

CC&R § 1.02 plainly states, “It is anticipated that at least some of the lots described in Exhibit A-2 may be the subject of resubdivisions, lot line adjustments and mergers. In the event of any such adjustments and mergers, this Master Declaration shall apply to lots as so adjusted and merged.

1.02. The Property. The term the Property shall mean only the portion of the Overall Property to which this Master Declaration is from time to time applicable. This Master Declaration shall initially apply only to that portion of the Overall Property described in **Exhibit A-2** attached hereto and incorporated herein by this reference (the “Initial Property”). It is anticipated that at least some of the lots described in **Exhibit A-2** may be the subject of resubdivisions, lot line adjustments and mergers. In the event of any such adjustments and mergers, this Master Declaration shall apply to lots as so adjusted and merged. Other portions of the Overall Property may be made subject to this Master Declaration by annexation in accordance with the terms of Article 14 of this Master Declaration, and there are provisions in that Article for deannexation.

From the plain meaning of the CC&Rs, the Master Declaration continues to apply to Village D1, Lots C and D.

**2. Remainder of Parcel 5: Village D1 Lot C**

Village D1 Lot C is the unfinished portion of Parcel 5. The following development has occurred on this Parcel to date:

- 1) 142 Units, Phase 2, DRE # 033991 SA-FOO "Village D1, Unit 1"
- 2) 16 Units, Phase 7, DRE # 035248 SA-FOO "Village D1, Unit 3"
- 3) 55 Units, Phase 9, DRE # 035744 SA-FOO "Village D1, Unit 4"
- 4) 67 Units, Phase 13, DRE # 035744 SA-FOO "Village D1, Unit 5"
- 5) 89 Units, Phase 6, DRE # 035110 SA-FOO "Village D1, Lot A"

**369 Units**

Beginning as early as the Homeowners' Association's ("HOA") year 2000 budget, Parker and HOA have been asserting that 434 total units (369 developed and 65 undeveloped) exist and vote on the Initial Property's Parcel 5. Over 20 years later, Parker refers to these units as "development rights" and "planned units", but they are "automatic" Members based on the Master Declaration.

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| <b>Serrano El Dorado Owners' Association</b> |                        |   |                        |
|--|------------------------|---|------------------------|
| <b>2000 Operating Budget</b>                 |                        |   |                        |
| <b>Cost Center 3 - Village D1</b>            |                        |   |                        |
|  | <b>Budget<br/>1999</b> | <b>Projected<br/>1999<br/><small>(actual thru Sept. 99)</small></b> | <b>Budget<br/>2000</b> |
| <b>OPERATING COSTS</b>                       |                        |   |                        |
| Electricity                                  | \$4,000                | \$1,924   | \$2,400                |
| Water  | 2,400                  | 2,284   | 2,800                  |
| Landscaped Parks                             | 20,200                 | 20,943  | 24,000                 |
| Landscaped Entries                           | 12,600                 | 10,977  | 11,600                 |
| Front Yard Landscape                         | 90,800                 | 98,698  | 129,200                |
| Private Streets                              | 3,600                  | 3,558   | 3,600                  |
| Motorized Gates                              | 3,600                  | 6,733   | 6,000                  |
| Intercoms/Telephone                          | 600                    | 431   | 480                    |
| Minor Repairs                                | 3,600                  | 3,802   | 4,800                  |
| <b>Sub Total</b>                             | <b>141,400</b>         | <b>149,350</b>  | <b>184,880</b>         |
| <b>RESERVE CONTRIBUTION</b>                  |                        |   |                        |
| Per Reserve Report                           | 58,800                 | 58,800  | 64,000                 |
| <b>OTHER EXPENSE</b>                         |                        |   |                        |
| Contingency (2%)                             | 4,300                  | 2,400   | 3,600                  |
| <b>TOTAL ALL EXPENSES</b>                    | <b>\$204,500</b>       | <b>\$210,550</b>  | <b>\$252,480</b>       |
| <b>INCOME</b>                                |                        |   |                        |
| Undeveloped Property (65 Units)              | \$37,100               | \$37,103  | \$31,280               |
| Member Assessments (369 Units)               | 167,400                | 173,804   | 221,200                |
| <b>TOTAL ALL INCOME</b>                      | <b>\$204,500</b>       | <b>\$210,907</b>  | <b>\$252,480</b>       |

Pursuant to CC&R § 4.03(A) 62 of the units (over the 372 CC&R-prescribed) converted to Class A Memberships in approximately 2008. The Class A Memberships are the equivalent of homeowner units.

4.03. Termination of Class B and Class C Membership.

A. The Class B membership referred to above shall be converted to Class A membership and shall forever cease to exist on the occurrence of

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whichever of the following is first in time ("Class B Termination Date"):  
(i) when 4,533 Lots have been conveyed to Class A Members; or (ii) upon the twelfth anniversary of the first Close of Escrow to a Class A Member.

**3. CC&R limitations on the "Initial Property."**

Parker's proposal as part of the Project to transfer 135 "planned dwelling units" is really a unilateral "reversion to acreage" of two-decades old, annexed residential Property Membership for which Parker may only unilaterally subdivide or re-subdivide under the CC&R limitations imposed on Initial Property.

For example, the subdivision's CC&R § 1.04 entitled "Future Changes" plainly states: "Nothing contained herein shall obligate Declarant to refrain from the further subdivision or resubdivision of the Initial Property and Declarant shall be free to so further subdivide or resubdivide. Nothing contained herein shall obligate Declarant to refrain from the further subdivision resubdivision or reversion to acreage of portions of the Overall Property not theretofore annexed and Declarant shall be free to so further subdivide or resubdivide or revert."

Thus, Parker's unilateral right to "revert to acreage" is limited to "not theretofore annexed" Property or *yet* to be annexed. Parcel 5 and 6 are unquestionably annexed.

Pursuant to CC&R §14.06, the Declarant has some amendment, removal or recession rights with regard to unilateral changes to Supplemental Declarations if/when: "(i) no Lot in that Phase has been conveyed to an Owner and (ii) assessments have not commenced for any Lot in the annexed property." Of course, "assessments have commenced for Lots in the annexed property" for both Parcels 5 and 6. Parcel 5 has 369 homes. Serrano's Phase 2 filing states, "The initial Property within Cost Center No. 3 includes the Phase 2 Property plus, to the extent not included in the Phase 2 Property, Lot 5 shown on the map of El Dorado Hills Specific Plan, Unit No. 1". In other words, these 65 undeveloped units located on unfinished Parcel 5... or those that have been identified in the budget, as early as, the year 2000 budget have indisputably been

assessed along with Lots having been transferred to homeowners (See budget excerpt above).

The CC&Rs do not give Parker the unilateral right to “revert to acreage”

**4. The CC&Rs require a two-thirds non-declarant vote.**

The “density transfer” described as part of the Project does not serve to avoid the requirements of CC&R § 14.12 that that “at least two-thirds of the voting power of the Members other than the Declarant to approve by vote or written consent to the deannexation” The only unilateral right of action held by Parker is subdividing or re-subdividing of the Initial Property.

**14.12. Deannexation.**

A. In addition to deannexations pursuant to Section 14.06, portions of the Property may be deleted from the coverage of this Master Declaration and the jurisdiction of the Master Association so long as:  
(i) Declarant approves the deannexation; (ii) a Notice of Deletion of Territory

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is Recorded; (iii) the deannexed portion's Assessment obligations to the Master Association are otherwise provided for by a written, Recorded instrument approved by the Board; and (iv) at least two-thirds of the voting power of the Members other than Declarant approve by vote or written consent the deannexation. To deannex a portion of the Property, the Declarant (and the Owner thereof if not the Declarant) shall execute, acknowledge and Record a Notice of Deletion of Territory, containing a legal description of the portion and recitals attesting to satisfaction of the requirements of this subparagraph A.

Parker has asserted that as part of the Project it may “irrevocably dedicate the property to a public agency” citing CC&R § 14.12(B). This section is not applicable, as the Development Agreement reveals that all public parks had been identified within the development upon expiration of that agreement in 2008.

Parker has also asserted that it has the unilateral right to revert Parcel 5 Property, for example, to “open space” pursuant to CC&R §§ 2.15(C), 2.45(B), 13.02, 13.06 and 1.04. There is no unilateral right to revert this area to open space (as set forth above, the only unilateral right is to subdivide or resubdivide).

Analysis of the CC&Rs makes clear that the Project proponent will violate the CC&Rs if the Project were approved and implemented as proposed. The CC&Rs should not be subject to a tortured reading to the detriment of the existing homeowners. The California Department of Real Estate (“DRE”) reviewed the CC&Rs for the subdivision in connection with the Public Report and approved the CC&Rs as being consistent with California regulations. The

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Gina Hamilton, Project Planner  
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County should refrain from considering a Project that appears will result in a violation of the CC&Rs and the potential undermining of DRE oversight.

**C. Conclusion**

Because of the issues raised above, we believe that the SRDEIR fails to meet the requirements of the California Environmental Quality Act and that the Project is inconsistent with applicable planning documents. We also believe that implementation of the Project would violate the existing CC&Rs. For these reasons, we believe the proposal should be denied, pending proof of consistency with governing CC&Rs (and DRE approval), appropriate environmental review, and a revised Project and EIR.

Sincerely,

A handwritten signature in black ink, appearing to read "Marsha A. Burch".

Marsha A. Burch  
Attorney

cc: Open Space El Dorado Hills, Inc.