

**Response to Gagen McCoy Letter**

The City of Napa received a letter addressed to Planning Commissioner Chair Beth Painter from the law offices of Gagen McCoy, Koss, Markowitz and Fannuci (Gagen McCoy) dated December 3, 2019. The letter was submitted too late to be distributed in the Planning Commission packet, although copies were distributed to the Planning Commission, prior to the meeting. The purpose of this memo is to respond to comments addressed in the letter.

City staff and the City's environmental consultants have reviewed the letter and staff has determined that no new issues have been raised and all comments are adequately addressed either in the Final Environmental Impact Report/Environmental Assessment and/or in the Planning Commission Staff Report.

The following provides responses to the comments.

**Section 1 Introduction & Summary.**

**1. The Project is Fundamentally Incompatible with this Neighborhood.** This paragraph asserts that the Project is experimental, incompatible with the neighborhood and that the neighborhood already supports its fair share of affordable housing.

**Response:** The Project site has a General Plan and zoning designation for high density residential units and is identified in the City's Housing Element as a housing opportunity site for 57 affordable units, to meet the City's Regional Housing Needs Allocation (RHNA). Therefore, the proposed residential Project is compatible with the neighborhood. As indicated in the Staff Report for the December 5, 2019 Planning Commission meeting, a Management Plan and Conditions of Approval provide that the Project including the 33-supportive housing units will be managed by onsite staff on a 24-hour basis, will include security measures, and parking will be by permit.

It is unclear why the commenter asserts that the Project is "experimental". Other similar supportive housing projects have been constructed in the Bay Area. While the title "No Place Like Home" is a newly named funding source, it is similar to predecessor funding sources for affordable housing projects. The construction of affordable housing is not "experimental".

**2. The Project Severely, Negatively Affects a Very constrained Site and its Impacts Have not been Legally Disclosed, Analyzed or Mitigated.**

**Response:** The commenter states the site is too constrained and that the impacts have not been legally disclosed, analyzed or mitigated. As indicated in the December 5, 2019 Staff Report, the Project meets the City's development standards for minimum lot size, density, setbacks, and lot coverage. The EIR adequately discloses and analyzes the impacts of the Project in compliance with the requirements of the California Environmental Quality Act ("CEQA").

**3. The Project Also Fails to Comply With and Thus Violates, Numerous Other Laws.** The Commenter asserts that the Project is inconsistent with the General Plan, and Big Ranch Specific Plan policies, the Project exceeds the allowed number and size of rooms and/or occupants in SRO units, exceeds minimum parking requirements, recorded deed restrictions, restrictions on sewer easements, City setbacks, and prohibitions against expanding non-conforming uses and donations of public parking, among other things.

**Response:** This comment provides specific comments a though i below which are responded to individually as follows:

- a. General Plan and Big Ranch Specific Plan policies, e.g., to preserve and protect creeks, riparian habitat etc.

**Response:** City staff have analyzed the Project for compliance with the General Plan and Big Ranch Specific Plan policies including policies related to preserving and protecting creeks and riparian habitat and found the Project to be consistent. See page 8 of the Planning Commission Staff Report and Attachment 6, Big Ranch Specific Plan Policy Analysis.

- b. The allowed number/size of rooms and/or occupants in SRO units.

**Response:** As stated on Page 22 of the December 5, 2019 Planning Commission staff report, the Project meets the City of Napa development standards regarding the allowed number and size of SRO rooms. Further, State Density Bonus Law (Government Code 65915 (d) allows affordable housing project concessions or incentives as described on page 4 of the Staff Report which would allow eight of the SRO units to be larger to meet Americans with Disabilities Act (ADA) accessible units. Page 170 of the Draft EIR/EA indicates that impacts of buildout of the Project were based on a conservative estimated population of two persons per SRO unit.

- c. Minimum parking requirements for SRO projects and more generally.

**Response:** The Project will provide adequate parking as provided on page 9 of the Planning Commission Staff Report. Under State Density Bonus Law (California Government Code Section 65915(p)), the City cannot require a parking ratio that exceeds 0.5 spaces per bedroom. The Project satisfies such ratio.

- d. Recorded, legally binding deed restrictions and/or Conditions of Approval limiting the Sunrise property's use to senior/affordable housing.

**Response:** A review of the deed restrictions and title documents for the Project Site do not indicate any recorded legally binding deed restrictions that affect the Sunrise building or limit its use to senior housing.

- e. The statutory prohibition against counting toward Density Bonus eligibility the Sunrise building's already senior/affordability-restricted units.

**Response:** There are no recorded deed restrictions associated with the Sunrise building.

- f. Restrictions regarding the site's existing sewer trunk and easement;

**Response:** The City coordinated its review of the Project application with Napa Sanitation District (NapaSan) and confirmed that there are no restrictions that would prohibit the Project.

- g. The city's own required riparian setbacks, e.g., per Muni Code Chapter 17.52.110 and flood protection requirements.

**Response:** The Gagen McCoy letter incorrectly characterizes the use as nonconforming when it is the structure, not the use, that is nonconforming. The Heritage House project would not increase the degree of nonconformity of the nonconforming structure, so its remodeling is permitted under NMC Section 17.52.320(C)(2)(c).

- h. Prohibitions against expanding, intensifying or resurrecting vacant nonconforming uses, including the Sunrise facility's noncompliant setback.

**Response:** As mentioned above, the Gagen McCoy letter incorrectly characterizes the use as nonconforming when it is the structure, not the use, that is nonconforming. The use of the property for supportive and affordable housing is permitted under NMC Section 17.080.020. Therefore, the project would not expand, intensify or resurrect a nonconforming use.

- i. Donating public parking on Valle Verde Drive to the Applicant as 26 "off street" private spaces is a gift of public funds, violates the prohibition against using on street spaces to satisfy mandatory off-street parking requirements and exacerbates longstanding parking problems.

**Response:** As indicated in the staff report and the EIR/EA, adequate parking is being provided to meet the Project. Further, the potential impacts of displaced on-street parking are adequately analyzed in the EIR/EA. In addition, the conveyance of the abandoned street to the Applicant would not constitute a gift of public funds because the Heritage House and Valle Verde projects provide significant public benefits in the form of supportive and affordable housing.

**Section II This Extremely Controversial, Experimental Project is Mistakenly Proposed on the Most Environmentally Sensitive Site, in the Most Ill-Suited Neighborhood.**

**Response:** Affordable housing, including the 33-units that make up the supportive housing component, are not a new or experimental project. Permanent supportive

housing for persons who are at the risk of homelessness is not an experimental program. Permanent supportive housing models that use a Housing First approach have been proven to be highly effective for ending homelessness. Studies such as HUD's The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness have shown that Housing First permanent supportive housing models result in long-term housing stability, improved physical and behavioral health outcomes, and reduced use of crisis services such as emergency departments, hospitals, and jails. There are numerous existing examples of affordable housing and supportive housing that have been constructed in the City of Napa:

- Whistle Stop-2220 Yajome Street, 8-transitional units for homeless with drug and/or alcohol abuse or domestic violence.
- Hartle Court- 200 Hartle Court- six transitional units for homeless youth and 12-permanent supportive housing units.
- Catholic Charities- 1219 Jefferson Street transitional and supportive housing units.
- 1070 Imola Avenue-8 units of Supportive Housing
- Parkwood House- 1571 Parkwood Street- supportive housing, drug and mental health recovery housing.
- Rohlffs and Concordia Manor – 2400 Fair Drive, 355 units senior supportive housing
- Jefferson Street Senior Housing – 3400 Jefferson St, 78 units senior supportive housing
- Napa Creek Manor – 1300 Jefferson St, 83 units senior supportive housing
- Napa Courtyards- homeless housing units
- Stoddard West-homeless housing units
- Valley View in American Canyon-homeless housing units
- Manzanita-pending construction this spring and will have homeless housing units

Moreover, the EIR concluded that the Project would not result in any significant environmental impacts with the implementation of mitigation measures.

### **Section III DEIR Fails to Comply with CEQA**

#### **A. The DEIR Fails to Satisfy CEQA's Most Basic Informational Mandate**

This first section of the Gagen McCoy letter alleges several deficiencies in the way the EIR describes the Project site and Project components. It alleges the EIR omits crucial aspects of the existing environment and Project, and portrays other Project aspects and issues in inaccurate, contradictory and inconsistent ways. Specifically:

- i) the EIR's description of the Zerba Bridge as part of the project site.

**Response:** Contrary to statements made in the Gagen McCoy letter, Figure 2.7-1 of the Draft EIR clearly depicts the property lines that define

the site boundaries. Figure 2.7-1 shows that in many areas, the eastern property line approaches, but does not extend to the east bank, while in some areas, the property line extends beyond the east bank of Salvador Creek. With regard to the Zerba Bridge, the location of the bridge is shown on Figure 2.7-1, and indicates most, but not all, of the bridge is located within the subject property, with the eastern abutment on the east bank of Salvador Creek on adjacent private property.

- ii) the EIR's description of what the project intends to do with the bridge, claiming the EIR ambiguously describes what is proposed to happen to the bridge.

**Response:** The Draft EIR (page 22) explains the Project Applicant is not voluntarily proposing to modify/remove the existing bridge; bridge removal is not a physical modification of the site the Applicant would otherwise undertake absent a Condition of Approval by the City. The project is an affordable housing Project, and the existing bridge has no utility or functional connection to the Project's objectives.

The bridge is an existing feature that constitutes the baseline condition for the site and surrounding setting. The eastern portion of the bridge is not located on the Project site and is instead located on private property that is not owned or controlled by the Applicant. Removal of the bridge is not a functional necessity to accommodate the affordable housing Project, i.e. the bridge is not currently in the way of the proposed housing nor does it necessarily present a fundamental land use incompatibility were the bridge to remain. The reasons for the bridge to be removed as a Condition of Approval are clearly stated in the Staff Report for the December 5, 2019 Planning Commission meeting.. In its current configuration, it is an impediment to stormwater flow. During flood events it causes some stormwater to back up. The draft resolution includes a Condition of Approval requiring the Applicant to remove a portion of the Zerba Bridge (deck, piers, and western abutment). The Applicant is proposing to enter into an agreement with the Napa County Flood Control and Water Conservation District to fund the partial removal of the bridge and complete restoration work along the Salvador Creek bank as part of the District's ongoing stream maintenance program. With the partial bridge removal, there would be no increase in upstream flooding as a result of the Project, and the Project would be consistent with the Big Ranch Specific Plan policies of no net upstream increase in flood elevations (see PFS-5d).

Final EIR Master Response #6 further addresses and clarifies the extent of the removal of the Zerba Bridge.

As explained in the Draft EIR (page 22), the partial removal of the bridge is potentially a related activity to the affordable housing Project, if made a Condition of Approval. Therefore, the EIR's analysis, in multiple topic sections where relevant, accounts for that physical change to the environment, as required by CEQA.

**The EIR fails to disclose that removal of the full bridge is reasonably foreseeable and disclose the impacts from full bridge removal.**

**Response:** Final EIR Master Response #6 addresses removal of the Zerba Bridge and the stability of the creek, responding to similar comments received on the Draft EIR that the EIR should have evaluated full bridge removal. The Gagen McCoy letter speculates that the eastern abutment must necessarily be removed if the Project undertakes the removal of the bridge decking and western abutment. However, the September 4, 2019 Clearwater Hydrology letter commenting on the Draft EIR cited by Gagen McCoy did not reach this conclusion nor did Gagen McCoy provide other evidence supporting the conclusion.

Condition of Approval No. 45 (c) requires the partial bridge removal to be performed in compliance with all applicable regulatory requirements, including but not limited to requirements of, to the extent applicable, the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service, the California Department of Fish & Wildlife, the Regional Water Quality Control Board, and the NCFWCWD. This condition does not require removal of the eastern abutment. This Condition of Approval ensures no significant adverse impacts to the banks of Salvador Creek in the area where the bridge is located. It should be noted that the Condition of Approval requiring partial bridge removal was adequately covered as an alternative in the EIR/EA (see page 252 of the Draft EIR/EA document).

- iii) the EIR fails to acknowledge the presence of salmon in Salvador Creek.

**Response:** The Final EIR (pages 174, 175, 178, 179) includes revised Table 3.4-2: Potentially Occurring Special Status Wildlife Species and revises the Draft EIR's Biological Resources section regarding the potential presence of chinook salmon in Salvador Creek. Mitigation Measure MM BIO-1.3 that protects steelhead would be equally effective and applicable to any salmon that may also be present, as both are anadromous salmonids. Also see the memorandum prepared by WRA, Inc. dated January 9, 2020 (attached to this memorandum) concerning the potential presence of salmon in Salvador Creek. Chum salmon (*Oncorhynchus keta*) is not currently listed as a Species of Special

Concern by CDFW. All fish Species of Special Concern are listed online, here: <https://www.wildlife.ca.gov/Conservation/SSC/Fishes>. The species on this list are updated from time to time by CDFW. Given that chum salmon is not currently listed as a Species of Special Concern or otherwise protected, it does not require analysis under CEQA or NEPA. Regardless, any measures implemented by the Project to protect protected salmonids would also serve to protect chum salmon.

- iv) the City's riparian setback applies to the existing Heritage House building, and the EIR's portrayal of the top of bank is inaccurate.

**Response:** The existing Heritage House building is a legal, non-conforming structure, therefore the more recently adopted riparian setback regulations do not apply to that structure. Thus, for purposes of CEQA, the existing structure is part of the baseline condition. Should the currently proposed Project not be implemented, the potential re-occupancy of the vacant structure with other uses is also discussed in the Alternatives chapter of the Draft EIR (page 251).

As for the location of the top of bank and mapping of the riparian corridor, biologists from WRA Inc. established the top of bank and riparian corridor boundary based on a field survey, as described in their report included as Draft EIR Appendix C. Therefore, the EIR's portrayal of the top of bank and riparian corridor boundary are accurate and based on substantial evidence in the record for the Project.

- v) the omission of the second 100ft section from the description of the stitch pier wall that is proposed to protect the site from the effects of erosion affecting the western bank of Salvador Creek

**Response:** The Draft EIR (page 22) described the 85ft section of the stitch pier wall, but unintentionally omitted the second section (100ft in length as shown on Figure 2.7-7). This comment ignores the Final EIR (pages 171 and 182), which clarifies the stitch pier wall includes two segments, as shown on Draft EIR Figure 2.7-7. Both sections of the stitch pier wall were fully accounted for in all relevant EIR topic sections and technical reports. The Gagen McCoy comment letter misunderstands and mischaracterizes the nature of the stitch pier wall, claiming that it artificially armors the entire west bank and would be constructed within the creek channel. The stitch pier wall, both sections shown on Figure 2.7-7, would be installed below grade so as to not be visible, and located within the existing pavement, well outside the creek channel. This design is

specifically intended to avoid work within, and impacts to, the creek. This is discussed in Final EIR Master Response # 5, including the efforts by the Applicant to work with the Napa County Flood Control District to stabilize and restore the Salvador Creek western bank along the site, separate from the proposed Project, in an effort to protect existing site improvements.

- vi) Discrepancies in the EIR between the size of the Project site as 2.9 acres and elsewhere as 3.27 acres.

**Response:** The Draft EIR (pages 4 and 8) describes the size of the site as 2.9 acres, based on parcel lines, while the biological resources and impact study evaluated a larger area, termed the “Study Area”, defined in the Draft EIR (page 64 and Table 3.4-1, page 68) and in Final EIR Master Response #7, as the areas on and around the site that could be impacted by Project construction and future occupancy, in recognition of the fact Project impacts would potentially extend beyond the Project site boundary. These offsite improvements include the improvements to the multi-use trail to the west of the Project boundary, and the Zerba bridge. The discrepancy between the Project site area and the Study Area is intentional and clearly explained in the EIR.

- vii) Discrepancies in the amount of parking provided by the Project, 79 spaces described in text versus 85 shown in figures.

**Response:** The Draft EIR text (page 18) indicating the Project provides 79 parking spaces is correct. The figure and Draft EIR text (page 194) indicating 85 spaces reflect an earlier Project design and have been corrected in the Final EIR (page 197).

- A. Failures to Properly Identify, Analyze, and Mitigate Biological Impacts.** This comment references prior comments received from Clearwater Hydrology on the Draft EIR regarding Salvador Creek channel conditions along the Project site and makes reference to a 2013 letter prepared by Dr. Alice Rich, referred to as the “Rich Report” in connection with a prior Project proposed for the subject site, that underwent a separate CEQA analysis.

**Response:** The comments received from Clearwater Hydrology on the Draft EIR were addressed in the Final EIR, both as part of several Master Responses (#5, #6, and #7) as well as individual responses (Final EIR, Letter/Responses ‘O’, pages 54-65).



The Rich Report referenced in this comment, and attached to the Gagen McCoy letter, is a six year old analysis of a prior Project, and provides no specific, substantive analysis of the current proposed Project, nor does it refute the EIR's description of the current baseline, and the Project's effects on that baseline, as documented by WRA's biological impact assessment included as Draft EIR Appendix C.

Also the memorandum prepared by WRA, Inc. dated January 9, 2020 (attached to this memorandum), addresses each of the issues raised in the 2013 Rich Report in connection with the prior Project, six years ago. The Rich Report does not provide any current, specific analysis of the proposed Project, and WRA's current assessment provides substantial evidence for the EIR's discussion of biological impacts.

- B. Failures to Analyze Potentially Significant Traffic & Parking Impacts.** The comment restates prior comments received on the Draft EIR that data had been collected during a holiday weekend, skewing the EIR's presentation of baseline conditions. The comment also points to CEQA case law regarding evaluation of parking in CEQA documents and claims the Draft EIR's discussion of the loss of 22 on-street parking stalls on Valle Verde as part of the Project is flawed.

**Response:** The Final EIR includes Master Response #1 which addresses the time period in which traffic data was collected in conformance with the City's guidelines for preparing traffic reports, to refute the claim that data was collected during a holiday weekend, which it was not.

The Final EIR also includes Master Response #3 which addresses the loss of parking that would result from the Project on Valle Verde Drive. Text was also added to the Final EIR (pages 196-197) modifying Section 3.17-3 of the Draft EIR to further elaborate on the discussion of lost parking associated with the Project. The Final EIR explains why the loss of 22 on-street parking spaces on Valle Verde Drive would not lead to significant secondary environmental effects related to traffic, air quality, or noise from the reduced availability of parking on the streets.

- C. Inadequate Alternatives Analysis.** The comment states the objectives provided by the Applicant were too narrowly defined, and that the EIR did not evaluate alternative locations suggested in prior public comments.

**Response:** As a private application for development of a specific private property, the objectives were necessarily provided by the Applicant to identify what their goals were in utilizing the site for affordable housing. No explanation was given in the comment as to how the objectives were too narrow and have constrained the range of alternatives, thereby precluding

consideration of an alternative that would be meaningful to the decision-making process. The EIR provides a reasonable range of alternatives, taking into account Project objectives and impacts.

As to the consideration of a location alternative, the Draft EIR (pages 249-250) explains why a location alternative is infeasible. The CEQA Guidelines (§15126.6(a)) state an EIR must describe a range of reasonable alternatives to the Project, or to the location of the Project, indicating the Guidelines do not require an EIR to include consideration of a location alternative(s) in every case. Particularly for private development applications, for a site to be feasible, it must be within the control of the Applicant. Final EIR Master Response #10 further explains how the alternatives were selected, and why an alternative location was not among them.

- D. Inadequate Analysis of Cumulative Impacts.** The comment states the EIR did not account for other relevant Projects either proposed, approved, or reasonably foreseeable in the City's development application "pipeline."

**Response:** This comment ignores the Cumulative Impacts discussion present in the Draft EIR. Table 3.0-1 of the Draft EIR (pages 31-32) provides a list of projects considered as part of the cumulative impact analysis. Table 3.0-2 of the Draft EIR (page 33) explains the geographic scope of the cumulative impact analysis for each environmental impact topic addressed in the EIR. Further, each respective impact section of the Draft EIR (*Section 3.1 Aesthetics* through *Section 3.20 Wildfire*) includes a discussion of the cumulative setting for that environmental topic and the Project's contribution, if any, to anticipated cumulative impacts. In most instances, the discussion of cumulative impacts relied on the list approach toward evaluating cumulative impacts, however, in certain circumstances where the list of known, foreseeable projects would not comprehensively account for future conditions, future projections for growth and change as identified in adopted plans were used. For example, the traffic analysis evaluated cumulative traffic conditions based on 2040 General Plan buildout conditions, rather than a list of projects generated in 2019.

Attachment: WRA Environmental Consultants memo to Natalie Noyes dated January 9, 2020 Review Dr. Allice Rich Memorandum" Review of City of Napa Revised IS/MND for Napa Creed Apartments Project.



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**Re: Comments re Valle Verde & Heritage House Continuum of Housing Project  
Planning Commission Meeting of December 5, 2019  
Agenda Item # 7.A (File No. PL17-0114)**

Dear Chairperson Painter, Planning Commissioners, and Planning Staff:

This office represents the unincorporated neighborhood association known as *Neighborhood Coalition to Preserve Salvador Creek* (a.k.a., *Neighborhood Coalition to Protect Salvador Creek*, or "NCPSC"), whose members include dozens of residents adjacent to, and thus directly affected by, the proposed Valle Verde & Heritage House Continuum of Housing Project ("Project").

This letter summarizes our clients' concerns regarding the Project, and hereby incorporates by this reference (1) all of the other public and agency comments submitted to the City regarding the Project; (2) the attached **Exhibit "A"** addressing the Staff Report for the Planning Commission's December 5, 2019 meeting; and (3) all relevant documents and information regarding NCPSC's prior, successful lawsuit challenging BRIDGE Housing's similarly misguided project proposed several years ago at the same site ("BRIDGE



Project”), including without limitation the items listed in attached **Exhibit “B”**.<sup>1</sup> We respectfully request that this Comment Letter, and all of the above-listed, incorporated information, be included in the administrative record, or record of proceedings, for this matter.

## **I. Introduction & Summary**

First, we respectfully request the Planning Commission briefly postpone any consideration of this matter until we have received from the City and have had ample time to review all documents responsive to our formal Public Records Act (“PRA”) request. Second, while our clients wholeheartedly support the City’s and applicant’s laudable efforts to provide much-needed affordable housing, support services, and treatment for homeless, mentally-ill, and economically-challenged individuals and families, they respectfully request that *this particular Project, at this location*, be denied, for the following reasons:

1. **The Project is Fundamentally Incompatible with this Neighborhood.** This “experimental” Project is proposed in *the worst location possible* - i.e., a residential neighborhood full of families, young children, and seniors, adjacent to public parks and schools, yet far from transit, jobs, and social services. However well-meaning the new *No Place Like Home* (“NPLH”) program may be, locating dozens of unsupervised, extremely high-risk, severely mentally-ill and/or addicted persons *in this quiet residential neighborhood* is predictably disastrous. Given the 102-unit Silverado Creek Apartments, this neighborhood has already done more than its “fair share” toward meeting the City’s affordable housing goals.
2. **The Project Severely, Negatively Affects a Very Constrained Site, and its Impacts Have Not Been Legally Disclosed, Analyzed, or Mitigated.** The Project’s dense 90-unit count is excessive for such a small, physically-constrained, environmentally-sensitive riparian site, sitting directly atop the bank and including the channel of Salvador Creek - which is known habitat for endangered species - thus causing many significant environmental impacts, worse than the “too-dense”, yet much smaller, 57-unit BRIDGE Project. Unfortunately, the draft Environmental Impact Report (“DEIR”) fails to properly disclose, analyze, or mitigate the Project’s impacts, including as follows:
  - a. The DEIR’s inconsistent, inaccurate, and misleading descriptions of the Project fail to satisfy the law’s most basic *informational* functions;

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<sup>1</sup> Due to the latter’s volume, we intend to separately forward electronic and/or hard copies of same ahead of any final Project-related public hearings. However, given their identification in Exhibit “B”, and the City’s direct involvement in the prior lawsuit, we reasonably assume the City can itself, directly locate or obtain them in the interim.

- b. The DEIR fails to sufficiently disclose, analyze, and feasibly mitigate the proposed Project's many potentially significant impacts – including on Biological Resources, Traffic, Parking, etc.; much of the analysis is refuted by substantial evidence including still-relevant studies for the BRIDGE Project; and
  - c. The analyses of Project Alternatives and Cumulative Impacts are insufficient.
3. **The Project Also Fails to Comply With, and Thus Violates, Numerous Other Laws.** The laws, regulations, and requirements the Project violates include:
- a. General Plan and Big Ranch Specific Plan policies, e.g., to preserve and protect creeks, riparian habitat, etc.
  - b. The allowed number/size of rooms and/or occupants in SRO units.
  - c. Minimum parking requirements for SRO projects, and more generally.
  - d. Recorded, legally binding deed restrictions and/or conditions of approval limiting the Sunrise property's use to senior/affordable housing.
  - e. The statutory prohibition against counting toward Density Bonus eligibility the Sunrise building's already senior/affordability-restricted units.
  - f. Restrictions regarding the site's existing sewer trunk and easement.
  - g. The City's own, required riparian setbacks, e.g., per Muni Code Chapter 17.52.110, and flood protection requirements.
  - h. Prohibitions against expanding, intensifying, or resurrecting vacant nonconforming uses, including the Sunrise facility's noncompliant setbacks.
  - i. Donating *public* parking on Valle Verde Dr. to the applicant as 26 "off-street" *private* spaces is a gift of public funds, violates the prohibition against using on-street spaces to satisfy mandatory off-street parking requirements, and exacerbates longstanding parking problems.<sup>2</sup>

Thus, as so many citizens have noted, what is sorely needed here is a *well-thought-out, scaled-back residential project that truly fits this predominantly family/senior-oriented neighborhood and severely-constrained creekside site.*

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<sup>2</sup> Since under CEQA a project's noncompliance with land use/environmental laws, regulations, policies, or programs is treated as a potentially significant impact, the DEIR's failures to disclose (much less analyze/mitigate) the above-listed examples of noncompliance constitute yet additional fatal CEQA flaws.



## **II. This Extremely Controversial, Experimental Project is Mistakenly Proposed on The Most Environmentally-Sensitive Site, in The Most Ill-Suited Neighborhood**

Because it is proposed on the most incompatible site, in the most incompatible neighborhood, this Project – especially its *No Place Like Home* (“NPLH”) component - is a land use planning disaster.

While operational information about the Project’s extremely controversial, experimental NPLH component is spotty, what we’ve learned to date is extremely disturbing. For example:

The state’s NPLH program is entirely new, and thus experimental: “On July 1, 2016, Governor Brown signed landmark legislation enacting the No Place Like Home program to dedicate up to \$2 billion in bond proceeds to invest in the development of permanent supportive housing **for persons who are in need of mental health services** and are experiencing homelessness, chronic homelessness, or who are at risk of chronic homelessness. The bonds are repaid by funding from the Mental Health Services Act (MHSA). In November 2018 voters approved Proposition 2, authorizing the sale of up to \$2 billion of revenue bonds and the use of a portion of Proposition 63 taxes for the NPLH program.” (Emph. added; California Department of Housing and Community Development (“HCD”) website, accessed 11/8/19: <https://www.hcd.ca.gov/grants-funding/active-funding/nplh.shtml#background>)

To that end, the program’s stated purpose is “To acquire, design, construct, rehabilitate, or preserve permanent supportive housing for persons who are experiencing homelessness, chronic homelessness or who are at risk of chronic homelessness, and **who are in need of mental health services.**” (Id.) More specifically, the “Population to be Served” is defined as: “Adults with **serious mental illness**, or children with **severe emotional disorders** and their families and **persons who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality or violence** and who are homeless, chronically homeless, or at risk of chronic homelessness.” (Emph. added; Id.) HCD’s website further explains that the term “‘At risk of chronic homelessness’ includes persons who are at high risk of long-term or intermittent homelessness, including **persons with mental illness exiting institutionalized settings with a history of homelessness prior to institutionalization**, and transition age youth experiencing homelessness or with significant barriers to housing stability.” (Emph. added; Id.)

However, after so clearly articulating that the persons to be served must “need... mental health services” and “require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention” due to “mental disorder[s] with symptoms of psychosis, suicidality, or violence”, the program rather shockingly requires a



“hands off” approach to managing, supervising, and treating such admittedly high-risk individuals: “Key features of the program include:... Funding for permanent supportive housing **must utilize low barrier tenant selection practices** that prioritize **vulnerable populations** and **offer flexible, voluntary,** and individualized **supportive services.**” (Emph. added; Id.) According to a HCD-sponsored webinar presented November 6, 2019, NPLH “case managers” need not be on-site, and can conduct periodic site visits. While HCD’s website claims “Counties must commit to provide mental health services and help coordinate access to other community-based supportive services” (Id.), to date we’ve seen zero information about what, if any, legally required “commitments” Napa County has made. Furthermore, any such commitments would be meaningless anyway, since NPLH residents cannot legally be required to use any services. They also apparently cannot be turned away, or later evicted, for misconduct. **The very notion of housing, without any requirement to ever treat, such high-risk individuals is simply an untenable, unacceptable recipe for disaster. Doing so in this quiet, family/senior-oriented neighborhood, adjacent to public schools and parks, yet relatively far from transit, job centers, and social services, is a fundamental planning mistake.**

Given the dearth of City- or applicant-provided information about such extremely troubling issues, our firm has had to file California Public Records Act (“PRA”) requests with the City and HCD seeking, for example, the applicant’s “supportive services plan” (e.g., describing the services proposed for the NPLH residents, whether they’re required or merely encouraged, how they’re to be provided/delivered, etc.); the applicant’s past history of relevant experience, if any, including implementation of proposed services; the types, levels and/or degrees of County mental health or other service commitments, if any; how far, near, or convenient the supposedly offered/available off-site supportive services are, *vis a vis* the site, etc. While we are still reviewing the thousands of pages provided by HCD, we have yet to receive any PRA-responsive documents from the City. **Thus, as noted above, we are respectfully asking that the Planning Commission postpone its hearings, and refrain from any consideration of this matter, until we’ve received and had ample time to review all the City’s PRA-responsive information.**

### **III. The DEIR Fails to Comply with CEQA**

The DEIR fails to comply with the California Environmental Quality Act (“CEQA”) (Pub. Res. Code § 21000 *et seq.*) and its implementing regulations, called the “CEQA Guidelines” (14 Cal. Code Regs, § 15000 *et seq.*).

The DEIR vaguely admits “As described in CEQA Guidelines section 15121(a), an EIR is an informational document that assesses potential environmental impacts of a proposed project, as well as identifies mitigation measures and alternatives to the proposed Project that could reduce or avoid adverse environmental impacts... The basic requirements for an EIR include discussions of the environmental setting, environmental impacts, mitigation



measures, cumulative impacts, alternatives, and growth-inducing impacts.” (DEIR, p. 1.) What the above conveniently omits, however, is how seriously California courts take CEQA compliance. The California Supreme Court has held that “Preparation of an EIR and consideration of comments on it from the public and other agencies enables the agencies that will consider the project to have the information necessary to weigh competing policies and interests” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576); and an EIR serves “to demonstrate to an apprehensive citizenry that the agency has ... analyzed and considered the ecological implications of its action.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.)

#### **A. The DEIR Fails to Satisfy CEQA’s Most Basic *Informational* Mandate**

As noted, CEQA’s first and foremost purpose is *to provide concerned citizens and decision-makers with a complete, accurate, stable, and static Project Description* - to thereby fully, fairly *inform* everyone exactly what is proposed, and how and to what extent it would affect the environment. (See, e.g., CEQA Guidelines, §15124.) An EIR must likewise include a description of the existing environment in the vicinity of the project from both a local and a regional perspective. (Id., §15125(a).) The EIR must discuss the project’s regional setting and must emphasize discussion of any affected environmental resources that are rare or unique to the region (Id., §15125(c)), and such discussion should also include an evaluation of any inconsistencies between the proposed project and applicable general, specific, or regional plans (Id., §15125(d)). Only then can CEQA’s key mandate of disclosing, analyzing, and mitigating impacts be met.

Unfortunately, the DEIR *fails to meet even this most basic, informational mandate*. Its main, fatal informational flaws include inexplicably omitting crucial aspects of the existing environment and proposed Project, and portraying other Project aspects and issues in inaccurate, contradictory, and inconsistent ways. All such problems cause uncertainty and confusion. Some even seem intentional. For example and without limitation:

The section entitled “Description of the Proposed Project” (starting at DEIR, p. 8) erroneously states that the existing, inactive bridge over Salvador Creek (“Zerba Bridge”) is “located *to the east of the Project site*” (Emph. added; DEIR, p. 22) – as if it’s outside, not within, the site itself, thus suggesting it’s “someone else’s property, and problem”. This errant notion is reiterated by statements like: “The... Applicant is not proposing removal of the existing private... bridge...” (Emph. added; Id.). While the DEIR vaguely notes “as part of any approval, the City might nevertheless require the bridge’s partial removal”, one gets the distinct, erroneous impression Zerba Bridge isn’t within the Project site, and removing any portions of it is not the applicant’s responsibility or goal. However, **as the DEIR authors either know or should have known, since the Project parcels’ eastern boundaries extend to the centerline of Salvador Creek, the bulk of Zerba Bridge is within, and thus part of, the site itself.**



Such misleading statements about whether the site includes the Bridge, whether any portions might be removed, etc., are not only repeated over and over at pages 79, 87, etc., but also taint related discussions, such as “what if any portions of the Bridge might be removed?”, and most importantly any such activities’ resulting impacts. It not only inaccurately suggests the Project may actually proceed *sans* any bridge-removal<sup>3</sup>, but also seems an ill-advised excuse for only tentatively, lightly disclosing (much less seriously analyzing or mitigating) the impacts of such “merely potential” or “hypothetical” removal. Under CEQA, such misleading ambiguity is fatal.

In actuality, however, all the relevant, substantial evidence refutes any notion the Project may, might, or could proceed without removing *all* of Zerba Bridge. For example:

As noted in so many public comments (and further below, re Biological Impacts), Zerba Bridge’s eastern and western abutments, decking, and vertical piers serve as a “bottleneck” in the creek channel, that significantly impedes heavy storm flows, thereby causing “overtopping” of the upstream creek banks and flooding of upstream properties. As such, the City would be remiss - and presumably violate its own and other flood control/management laws/requirements - if it imprudently approved this Project on a site that includes at least half this flood-causing Bridge, without its removal.

As suggested above, equally misleading are the DEIR’s claims that “if for some reason the City were to require the Project to include some bridge-removal, then it’d only be partial”, meaning the western abutment, decking, and upper portions of the piers. As the DEIR authors should know (and the substantial evidence confirms), over time the piers’ foundations (originally lodged in the creek bed) have been undercut and exposed by forceful streamflow erosion, leaving the piers essentially hanging, suspended from the decking. (See p. 2, and Photo 1 on p. 9, of Clearwater Hydrology’s below-referenced 2014 report re “hydraulic and geomorphic analysis of channel and bank stability”, included at Tab #2 of Exhibit “B”.) Since the piers’ foundations no longer (or barely) contact the creek bed, removing the decking and/or the piers’ vaguely described “upper portions” will cause the remainder of the piers to fall into the channel.

Likewise, as discussed further below (re Biological Impacts) and noted in both CH’s initial 2014 report (re the BRIDGE Project), and recent 2019 report (updated for this Project)<sup>4</sup>, Zerba Bridge’s eastern support-wall, below and apparently part of its eastern abutment, is severely cracked. (See p. 2 of CH 2014 report, and Photo 1 at p. 9 of both CH’s 2014 and 2019 reports.) Indeed, during the period between CH’s first and second

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<sup>3</sup> While our clients and their current counsel were directly involved throughout the failed BRIDGE Project, none of us recalls ever hearing it could (or even might) proceed or be approved *sans* bridge-removal.

<sup>4</sup> The 2014 CH report is included in Exhibit “B” at Tab #2; the 2019 CH report was submitted to the City on September 5, 2019, by NCPSC’s Bill McGuire.



reports, a large portion of the cracked eastern support-wall failed, and is now gone. (See, e.g., Photos #1, 2, and 4, taken October 5, 2019, in Tab #4 of Exhibit “B”.) Consequently, the CH 2019 report opines that the resulting bare, exposed portions of the creek’s eastern bank will suffer continuous, further erosion from ongoing flows, exacerbated by the resulting uneven channel surface, all of which will hasten the remaining portions’ failure and loss, jeopardizing the eastern abutment itself, leading not only to wholesale structural failure, but further, deleterious erosion and related potentially significant riparian, species, and habitat impacts. (See, e.g., 2019 CH report “Conclusions”, at pp. 6-8.)

In sum, all of the above refutes any notion the Project would or will ever be approved without requiring the removal of Zerba Bridge, *in toto*. **Indeed, that’s exactly what the Staff Report for the Planning Commission’s December 5<sup>th</sup> meeting belatedly admits.** (See, Exhibit “A”.)

All of the above shows that the DEIR is fundamentally, fatally misleading and informationally bereft, because (A) it repeatedly, falsely suggests the Project may not actually involve any bridge-removal, (B) it misrepresents the extent of the purportedly “unlikely” bridge-removal, and (C) most importantly, it fails to disclose, acknowledge, analyze, or mitigate the resulting, entire bridge removal’s impacts. Such failures not only thwart CEQA’s key *informational* goals, but also its impact-analysis and mitigation mandates.

In addition, as discussed further below (re Biological Impacts), the DEIR’s misleading claims that “any bridge-removal impacts won’t likely occur”, and “in the off-chance they do, they won’t be potentially significant anyway” are refuted by the relevant substantial evidence, including the detailed analysis prepared by NCPSC’s fisheries expert, Dr. Alice A. Rich (“Rich Report”, see Exhibit “B”, at Tab #1) submitted to the City in June 2013 just before the Council voted to re-approve the ill-fated BRIDGE Project.

In conclusion, for all of the above reasons, the DEIR’s vague, hedgy, boilerplate analysis of - and proffered mitigations for - the foreseeable entire bridge-removal’s impacts are even weaker and less adequate than those deemed *legally inadequate* several years ago by the Napa County Superior Court. As noted in the Rich Report, this is partly because Salvador Creek is known to be inhabited by and serve as critical habitat for state- and federally-listed species, including Chinook salmon, Coho salmon, steelhead, etc. (See further discussion below re Biological Impacts.)

This brings us to yet another key, *informational* flaw – i.e., that, despite the City’s prior consultants’ clear acknowledgements that endangered salmon inhabit Salvador Creek (see LSA’s “Biological Resources Report” prepared in 2013 for the BRIDGE Project) - the City’s current consultant for this Project at the very same site, WRA, somehow



omitted any such crucial, known, salmon-related information. The only “Formally-Listed Species” WRA claims “reportedly present” is steelhead - not salmon. (See, WRA’s Biological Resources Technical Report, dated May 2019, revised July 2019, found at DEIR Appendix C, pp. 15-18, incl. Table 4 - Potential Special Status Wildlife.) The only mention of salmon is in a sentence buried in a seemingly irrelevant, inconsequential section entitled Species Unlikely to Occur (Emph. added; Id., starting on p. 19), which cryptically states: “Essential Fish Habitat The Study Area contains general Essential Fish Habitat for Salmonids, specifically Chinook (*Oncorhynchus tshawytscha*) and Coho salmon (*O. kisutch*).” (Id., p. 21.) That’s it. Nothing further.

Yet further, fatal *informational* flaws include the DEIR’s false claims that (A) since the depth of the Salvador Creek channel is *less than 8 feet*, the City-required riparian setback (from top of bank) is merely 20 feet, and (B) the City’s currently-required riparian setback only applies to the Project’s “Valle Verde Apartments” component (involving new construction), not the “Heritage House” component (involving renovating the existing, long-vacant Sunrise Assisted Living building). (See, e.g., DEIR pp. 85-87, including Figure 3.4-3.) Both statements are dead wrong.

First, per the City’s own Municipal Code: “Top of bank means the highest elevation of land which confines flowing waters to their channel”, and “Where the average depth of the bank is eight feet or greater, the required setback from the toe of the stream bank shall be two times the depth of the bank plus 20 feet...” (Emph. added; Napa Muni. Code Chapter 17.52.110 B.1.) Here, as shown in the cross-section and photos in both the 2014 and 2019 CH reports, the depth of Salvador Creek’s channel far exceeds 8 feet. Indeed, the depth of most of the western bank that runs right through the Project site is at least 13 feet. (See, 2019 CH report’s “Conclusions” at p. 7; and 2014 CH report’s Figure 2, creek channel Cross-Section in Technical Appendix, and Photo 5 on p. 11.) Thus, the *actual* City-required riparian setback (from the toe of the stream bank) is two times the depth of the channel plus twenty feet. Even if one conservatively assumes the channel’s average depth (or stream bank’s average height) is only 10 feet, the *actual* City-required riparian setback for this Project is at least 40 or 50 feet - i.e., twice what the DEIR erroneously claims.

Second, the fact that the Heritage House component (renovating the vacant Sunrise building) must *also* comply with the City’s current 40-50-foot plus riparian setback is found in the City’s own “nonconforming use” ordinance. (Napa Muni. Code Chapter 17.52.320.) Specifically, any “grandfathered” or “legal nonconforming” status the Sunrise building may have held is either already lost due to the facility’s longstanding vacancy and non-use, or will disappear given the Project’s expansion and/or intensification of previously low-impact “senior assisted living” use.



Also misleading and inaccurate is Figure 3.4-3 itself (DEIR, p. 86), which among other things erroneously, inaccurately portrays (too far eastward) the location of Salvador Creek's "top of bank", which conveniently dictates and thus errantly portrays the supposed riparian setback (which as noted above, is wrong, in any case). Even with such glaring errors, however, Figure 3.4-3 still shows that (i) the Sunrise facility's rear paved area wholly violates current setbacks, and (ii) the easternmost portions of both the Sunrise building, and proposed Valle Verde apartment building, fall within and thus violate floodplain restrictions.

Another inconsistency is found in the DEIR's description of the so-called "stitch pier retaining structure", aimed to prevent further, severe stream flows from eroding and undermining the Sunrise facility's rear paved parking/vehicular travel areas. Notably, while the DEIR repeatedly states the stitch pier retaining structure will be 85 feet long (DEIR, pp. 22, 85-87), the recently-issued Staff Report (for the Planning Commission's December 5<sup>th</sup> hearing) describes it as a whopping 185 feet long. (See 12/5/19 PC Staff Report, p. 4; Exhibit "A", p. 2.) Again, such discrepancies are particularly problematic given both Salvador Creek's value as riparian, protected species habitat, as well as the DEIR's abject failures to disclose the presence of, and analyze potential impacts to, endangered Coho and Chinook salmon. A similar, glaring error of omission is that the "potential for impacts... during construction activities as a result of sedimentation, material spills, and erosion" mentions only steelhead, not salmon. Similarly errant are the DEIR's rather broad claims that "the Project would result in an improvement of existing conditions by restoring Salvador Creek to a more natural condition..." (see, e.g., DEIR, p. 79). While this might be true if or when Zerba Bridge is fully removed, such key Project activities will also cause potentially significant impacts, and this claim is patently false as to the artificial armoring of Salvador Creek's entire western bank, via the proposed (now) 185-foot long, very deep, stitch pier retaining structure. Given the extent to which erosion has undermined the rear, paved areas of the Sunrise facility (see Photos #17-18 in Tab 4 of Exhibit "B"), the DEIR's claim that such an extensive stitch pier retaining structure - intended to curb further erosion of the creek's entire western bank - "would be constructed outside of the creek channel" (DEIR, p. 22) is simply not credible.

Further, fatal confusion is found in the differing descriptions of the "site" allegedly analyzed. While the DEIR repeatedly describes the Project site as 2.9 acres, elsewhere it (as well as WRA) claims the analysis covers some 3.27 acres, which vaguely, purportedly includes "the proposed limits of work for the Project and additional areas along the Salvador Creek." (DEIR, p. 64.)

The DEIR also contains conflicting, inconsistent descriptions of the proposed Project's total parking spaces. While the *text* claims the total is 79 (DEIR p. 18), Figures 2.7-1 and 2.7-2 on pages 9 and 10, respectively, show 85 spaces. Like the many above problems regarding bridge-removal, endangered salmon, the miraculously increased stitch pier



length, etc., these mishandled parking-related facts taint the purported “analysis” and “mitigation” of parking-related impacts.

In conclusion, each of the above examples of the DEIR’s *informational* defects, standing alone, is a distinct CEQA violation, and taken together they deprive concerned citizens and decision-makers of the legally adequate, accurate, static, finite Project Description – rendering it impossible to properly disclose, analyze, and mitigate resulting impacts.

### **B. Failures to Properly Identify, Analyze, and Mitigate Biological Impacts**

As suggested above, while the Project site clearly has very significant riparian attributes and habitat values, the DEIR’s effort to disclose, analyze, and mitigate the Project’s impacts to such key resources is wholly wanting.

First, as noted in their 2019 report, CH was first retained by NCPSC in 2014 to complete a comprehensive, detailed “hydraulic and geomorphic analysis of channel and bank stability for the reach of Salvador [Creek’s] channel adjacent to the then-proposed [BRIDGE] project...”. (2019 CH report, p. 1.) In their prior 2014 report, CH concluded the BRIDGE Project would likely cause myriad, potentially significant, negative impacts to Salvador Creek and its environs. (2014 CH report, Tab 2 of Exhibit “B”.) For this similar yet much larger proposed Project, CH was again retained by NCPSC, analyzed the differences between the prior and current projects, re-inspected the subject reach of Salvador Creek, and updated its 2014 report. Specifically, on September 3, 2019, CH’s principal William Vandivere, P.E., conducted a follow-up inspection of the channel’s current hydrologic and geomorphic conditions. Based upon its detailed analyses in both 2014 and 2019, CH concluded the proposed Project is both contrary to currently accepted riparian and creek-protection standards and practices, and would cause myriad, significant, negative effects. (CH 2019 Report, pp. 6-7.)

Second, as noted above, if the City’s prior biological consultant LSA (for the BRIDGE Project) admitted that protected salmon are present in Salvador Creek, how can the City’s current biological consultant (for this even denser Project at the very same site) somehow “forget” such important endangered species-related facts?

Third, the above and related problems – including those noted in the Rich Report - render useless the DEIR’s purported disclosure, analysis, and mitigation of biological impacts.

### **C. Failures to Analyze Potentially Significant Traffic & Parking Impacts**

If it’s true, as many commenters noted, the DEIR’s purported analysis of potential traffic impacts (e.g., the supposed baseline or background traffic counts taken at purportedly “affected intersections”), is based on data collected during a holiday weekend, all of the resulting impact disclosures/analyses are fundamentally unreliable, and fatally flawed.



In *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 697, while the court held that the inconvenience resulting from a parking shortage is a social impact, traffic and air quality impacts that may result from a parking deficit are environmental impacts that must be evaluated in CEQA documents. However, in *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1050, the court held that all physical environmental impacts that could result from a parking shortfall must be evaluated. Here, as noted, the DEIR's analysis of potential parking impacts (shortages) suffers from crucial errors, including the above-noted inconsistent descriptions of the proposed Project's total parking spaces, inadequate discussion of current baseline parking conditions, the effects on traffic, air quality, etc. from removing 22-plus existing, public parking spaces (within the to-be-abandoned-and-gifted-to-the-applicant Valle Verde ROW), the proposed Project's failures to comply with or satisfy SRO parking requirements, etc.

#### **D. Inadequate Alternatives Analysis**

An EIR must describe a range of reasonable alternatives to the project or to its location, but need not discuss every alternative to the project. Instead, an EIR should present "a reasonable range of potentially feasible alternatives." (CEQA Guidelines, §15126.6(a).) For purposes of CEQA, the DEIR's extremely skewed, self-serving Project "objectives" - admittedly taken straight from the applicant itself - are far too narrowly, specifically defined, thus leading to the intended, pre-ordained, legally errant conclusion that "only *this particular Project*, at *this particular site* can meet them". (DEIR, pp. 24-26, 248-249.) While alternatives must be able to satisfy most of the *basic* project objectives, a project sponsor may not limit its ability to implement the project in a way that precludes it from implementing reasonable alternatives to the project. (See, e.g., *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736 [alternatives may not be artificially limited by applicant's prior contractual commitments that would prevent sponsor from implementing reasonable alternative].) Here, the fact that the extremely long, detailed, narrow list of the Project's supposed objectives was taken directly from the applicant, combined with the fact it already purchased the Project site, and applied for (and apparently received assurances of) NPLH and other Project-specific funding, demonstrate that the DEIR's myopic "alternatives analysis" fails CEQA's "reasonable range" requirement. (See also, *San Bernardino Valley Audubon Society v. Board of Supervisors* (1984) 155 Cal.App.3d 738.)

Second, the DEIR likewise fails to sufficiently identify or analyze other, possibly feasible alternative sites. While potential alternative sites were mentioned in public comments (for example: "...Roberts Nursing on Browns Valley Rd. has been vacant for many years. It could be a possible alternative for No Place Like Home" (Comment from Sue Hepple, 3526 Shelter Creek Dr.)), the DEIR essentially ignores them all.



#### **E. Inadequate Analysis of Cumulative Impacts**

The DEIR's purported analysis of the Project's potentially significant Cumulative Impacts is fatally flawed, as well. Among other things, it fails to account for or include various, other relevant projects either proposed, approved, or in the proverbial "pipeline". (See, e.g., CEQA Guidelines, §15130(a).)

#### **IV. THE PROJECT VIOLATES MYRIAD OTHER LEGAL REQUIREMENTS**

In addition to the above-noted CEQA defects, many aspects of the proposed Project also fail to comply with, and thus violate, other governing laws, regulations, development standards, and recorded instruments, as well. Examples include:

- Various General Plan and Big Ranch Specific Plan policies, e.g., to preserve and protect creeks, riparian habitat, etc.
- The allowable number/size of rooms and/or occupants in SRO units.
- Minimum parking requirements for SRO projects, and more generally.
- Recorded and/or otherwise legally binding deed restrictions or conditions of approval limiting the Sunrise property's use to senior/affordable housing.
- The statutory prohibition against counting for Density Bonus eligibility the Sunrise building's already senior/affordability-restricted units.
- Restrictions relating to the site's existing, large sewer pipe/easement.
- The City's own riparian setbacks, e.g., per Napa Municipal Code Chapter 17.52.110, and related flood protection requirements.
- The City's own prohibitions against expanding, intensifying, or resurrecting vacant "nonconforming uses", e.g., per Napa Municipal Code Chapter 17.52.320, including without limitation the Sunrise facility's nonconforming setback from Salvador Creek, etc.
- Finally, that this *too-dense* Project is being shoe-horned into a *too-small* site is further demonstrated by the proposal to vacate the *public* Valle Verde ROW. Donating *public* spaces to the applicant for 26 purportedly "on-site/off-street" *private* spaces is an improper gift of public funds, violates the Density Bonus Law's prohibition against using on-street spaces to satisfy mandatory off-street parking, and exacerbates longstanding problems in this parking-challenged neighborhood.

V. CONCLUSION

NCPSC respectfully requests that this Project, as currently proposed, be denied because: (1) it is absolutely ill-suited for this quiet, residential neighborhood - full of families, young children, and seniors, near parks and schools, but far from transit, jobs, and social services; the NPLH component is far too experimental, unprogrammed, and unmanaged given the mandated, high-risk clientele - and *in this neighborhood* will likely backfire with disastrous consequences; and this neighborhood has already done far more than its "fair share" in meeting the City's affordable housing goals; (2) the EIR fails to comply with CEQA's stringent requirements to both clearly describe the Project, then fully disclose, analyze, and mitigate all potentially significant impacts; and (3) the Project violates myriad other legal requirements, as well. As noted in the bulk of public comments, what is sorely needed is a well-thought-out project that both complements this predominantly family/senior-oriented neighborhood, and fits within this severely-constrained creekside site.

Very truly yours,  
GAGEN McCOY, et al.



Daniel A. Muller

Enclosures: Exhibit "A"  
Exhibit "B" [Tabs 1-4]

c: William McGuire - NCPSC