

Letter 1



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AUG 29 2019  
CITY OF BRENTWOOD  
COMMUNITY DEVELOPMENT DEPT

August 27, 2019

Community Development Department  
Attn: Erik Nolthenius, Planning Manager  
150 City Park Way  
Brentwood, CA 94513

RE: Vineyards at Deer Creek EIR

The City of Antioch appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Vineyards at Deer Creek project (SCH # 2019049008). Upon review of the DEIR, we have the following comments:

I-1

1. The DEIR does not study the traffic impacts on the intersection of Deer Valley Road and future Sand Creek Road. The DEIR rightfully acknowledges the future construction of Sand Creek Road and studies its intersection with the future extensions of Heidorn Ranch Road and Hillcrest Avenue. As you may be aware, the Kaiser Permanent Antioch Medical Center is located at 4501 Sand Creek Road and is accessible from Deer Valley Road just north of its future intersection with Sand Creek Road. This hospital is a major employer in the region and will likely attract vehicle trips from Deer Valley Road and through this important intersection. We do not believe that the DEIR conclusions regarding traffic impacts can be conclusive if this intersection is not studied. As such, we respectfully request that the traffic analysis be expanded to include the intersection of Deer Valley Road and Sand Creek Road.

I-2

2. The DEIR acknowledges that the project will generate a significant impact (Table 4.14-16: Cumulative Conditions (2040): Intersection Levels of Service) on the intersection of Deer Valley Road and Balfour Road. The traffic study refers to an increase of traffic through this intersection with a marked increase in northbound traffic. The segment of Deer Valley Road from Balfour Road to future Sand Creek Road is considerably underbuilt and is not designed for safe travel under its limited current traffic demands. The addition of a significant number of new trips associated with the project will exacerbate an already unsafe condition. The DEIR identifies this known traffic hazard and recognizes that the project will increase the number of motorists subjected to this hazardous condition. The DEIR identifies this significant impact and assigns a mitigation measure requiring payment of ECCRFA fees. This analysis is flawed and fails to fully mitigate the identified impacts as required by State law.

First, the project suggests that payment of ECCRFA fees will resolve the impact. Although ECCRFA is an important tool for addressing regional traffic issues, it has not committed to the improvement of this segment of Deer Valley Road. Even if it were to participate in the improvement, it would likely require the participation of another entity to partially fund the project. The project proponent is the most qualified and responsible entity to assist with the funding of the project. The DEIR analysis is correct that the timing of securing the remaining funds is unknown. However, the analysis incorrectly assumes that there are not other methods to improve this roadway. The City of Antioch suggests that a mitigation measure be included that requires the actual improvement of the roadway to meet safe traffic standards of a typical 55 mph roadway and pursue

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reimbursement from other parties, agencies and sources for additional funding. This impact is significant, but it is not unavoidable.

1-3

In addition, the payment of ECCRFA fees should not be considered a reliable mitigation measure because the fees are compulsory and are not elective. There is no option under the current ECCRFA obligations where the project would not be subject to these fees. Payment of a mandatory fee should not be considered to mitigate an identified impact, but should be considered in the baseline analysis. Presently, ECCRFA is not committed to construct the improvements on Deer Valley Road and the DEIR incorrectly assumes that payment of such a fee will specifically mitigate project impacts without supporting documentation showing such a commitment from ECCRFA. Simple designation as a "Route of Regional Significance" by CCTA does not imply an outside guarantee that the roadway will be improved.

1-4

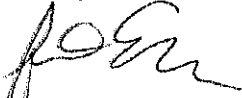
3. The DEIR and traffic study did not integrate into their cumulative traffic analysis the traffic generation from "The Ranch" project located within one mile of the project in the City of Antioch. The Ranch was approved by ballot initiative adopted by the Antioch City Council on July 24, 2018 and includes up to 1,177 single family homes. This project is reasonably foreseeable and will certainly effect the traffic circulation in the region. We do not believe that the DEIR conclusions regarding traffic impacts can be conclusive if The Ranch is not included in the cumulative analysis. As such, we respectfully request that traffic analysis be expanded to include The Ranch project and its anticipated traffic generation. The City of Antioch can assist with traffic studies related to The Ranch.

1-5

4. The DEIR does not adequately address the formation of an unincorporated "island" that would result from the annexation of the project site into the City of Brentwood. Though this island is currently located within the Antioch Urban Limit Line, the City of Antioch does not have any immediate plans to annex the property. Further, any future development of this site within the City of Antioch would be responsible to address the physical condition of Deer Valley Road and would be unduly burdened with its improvements. This burden may exceed the development value of the property, leaving an unimprovable segment of Deer Valley Road. The DEIR does not fully describe the proposed conflict with the current policies of the Local Agency Formation Commission (LAFCO) regarding the formation of unincorporated islands or its implications. We request that this topic be explored.

Thank you again for the opportunity to respond to the DEIR for the Vineyards at Deer Creek project. We welcome any discussion regarding the above comments and look forward to a formal response.

Sincerely,



Kenneth Elbs

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City of Antioch

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**LETTER 1: FOREST EBBS, CITY OF ANTIOCH**

**Response to Comment 1-1**

In response to the comment, Fehr & Peers conducted an evaluation of the intersection of Deer Valley Road at Sand Creek Road under the Existing, Near-Term, and Cumulative scenarios. Traffic counts were collected at the intersection, and Near-Term and Cumulative Without Project forecasts were developed using the same methodology as described in the Draft EIR. Project trips were then added and level of service (LOS) was calculated, as presented in Table 1 below.

<b>Table 1 Peak Hour Intersection LOS – Sand Creek Road at Deer Valley Road</b>							
Intersection	Peak Hour	Existing (delay/LOS)		Near-Term (delay/LOS)		Cumulative (delay/LOS)	
		Without Project	Plus Project	Without Project	Plus Project	Without Project	Plus Project
21. Sand Creek Road at Deer Valley Road	AM	9/A	9/A	9/A	9/A	17/B	17/B
	PM	7/B	9/B	7/A	10/A	13/B	14/B

*Source: Fehr & Peers, September 20, 2019.*

As shown in the table, the intersection of Deer Valley Road at Sand Creek Road would operate within the LOS standards presented on page 4.14-17 of the Draft EIR and used for the analysis within the Transportation and Circulation section of the Draft EIR under all scenarios. Accordingly, the addition of project traffic would not result in deficient intersection operations. Therefore, consideration of the intersection of Deer Valley Road at Sand Creek Road within the analysis would not modify the conclusions presented in the Draft EIR.

**Response to Comment 1-2**

The comment refers to the significant impact identified under Impact TR-8 related to safety hazards due to increased traffic on Deer Valley Road. Under Impact TR-8, page 4.14-49 states the following:

**Deer Valley Road**

The Project would add traffic to Deer Valley Road, a rural roadway that does not currently provide shoulders or meet County or City of Antioch design standards. Per the trip distribution estimates for the project, it can be anticipated that around 600 Project vehicles will use Deer Valley Road to travel north on a daily basis. This increase in traffic along Deer Valley Road as a result of the Project could substantially increase hazards on a roadway with known safety issues. The Project could thus result in safety hazards due to increased traffic on Deer Valley Road. Deer Valley Road is under the jurisdiction of the City of Antioch and Contra Costa County; thus, the timing and nature of improvements to Deer Valley Road are not within the City of Brentwood’s control. Moreover, while MM TR-19 requires the Project to pay a fair share contribution toward improving this roadway, the timing for securing the remaining funds is unknown. As a result, this impact is conservatively determined to be significant and unavoidable.

MM TR-19 is as follows, as presented on page 4.14-52 of the Draft EIR:

**MM TR-19** *The Project shall contribute its fair share to roadway improvements on Deer Valley Road along the Project frontage that result in the roadway meeting current design standards through payment of impact fees to the East Contra Costa Regional Fee and Financing Authority (ECCRFFA).*

As stated in the excerpt above, the Draft EIR does not suggest that payment of East Contra Costa Regional Fee and Financing Authority (ECCRFFA) fees would resolve the impact, as the impact is identified as significant and unavoidable, even with implementation of MM TR-19. Further, the Draft EIR does not imply that the ECCRFFA fees would fully fund the improvements to the roadway, but rather acknowledges that remaining funds would be necessary and that the timing for securing such funds is unknown.

It is important to note that the safety issues on Deer Valley Road represent an existing deficiency. The proposed project would contribute to an increase in traffic along the currently deficient roadway.

According to CEQA Guidelines Section 15364, the term “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. Because Deer Valley Road is outside of the city’s jurisdiction, the City of Brentwood, as lead agency, cannot legally impose mitigation measures on the Project Proponent to improve the roadway. Consistent with *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, contribution of mitigation funds is not required for impacts where the city does not have full jurisdiction nor a plan in place to ensure implementation of necessary improvements.

### **Response to Comment 1-3**

Please see Response to Comment 1-2. As discussed above, the Draft EIR concludes that impacts related to Deer Valley Road would remain significant and unavoidable, even with implementation of MM TR-19, as the necessary improvements are outside of the city’s jurisdiction. As such, the City of Brentwood, as lead agency, cannot legally impose mitigation measures to improve the roadway. In addition, in accordance with CEQA, a requirement that a project comply with specific laws or regulations may also serve as adequate mitigation of environmental impacts in an appropriate situation. According to *Oakland Heritage Alliance v. City of Oakland* (2011) 195 CA4th 884, 906, “a condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance.” Based on the aforementioned CEQA case law, inclusion of the Project’s payment of ECCRFFA fees as a mitigation measure in the Draft EIR is appropriate.

### **Response to Comment 1-4**

Page 4.14-33 of the Draft EIR states the following:

**Forecasts** for the cumulative scenario are based on traffic growth trends, as described in the City of Antioch General Plan EIR and the City of Brentwood 2014 General Plan EIR, and supplemented by traffic forecasts for the traffic study area in the most recent CCTA Countywide travel demand model, considering the recently adopted Priority Area One Specific Plan, as well as completion of The Ranch project in Antioch. [...]

In addition, page 52 of the Transportation Impact Analysis prepared for the proposed project, which is included as Appendix G to the Draft EIR, states the following:

The future conditions analysis considers development within the City of Brentwood as described in the Brentwood General Plan EIR, and supplemented by a check of traffic forecasts for the study area in the 2040 Contra Costa Countywide travel demand model. This scenario considers buildout of Priority Area One consistent with the Specific Plan, as well as completion of the Ranch in Antioch. Vehicle trips generated from the project site under current zoning were subtracted from the base forecasts to develop the without project traffic forecasts.

Thus, vehicle trip generation associated with The Ranch project is incorporated into the cumulative traffic analysis presented in the Draft EIR.

#### **Response to Comment 1-5**

This comment suggests that the Project conflicts with LAFCo policies regarding formation of unincorporated islands and that the Draft EIR does not address that conflict. Whether the Project creates an unincorporated island is not a CEQA issue; CEQA does not require the EIR to address island formation. Further, while LAFCo policies and governing statutes may discourage formation of unincorporated islands, Government Code Section 56744 only prohibits annexation of territory that will result in an unincorporated area completely surrounded by the City or by the City and the Pacific Ocean. That is not the case here, as the territory that is not proposed for annexation will border both the City of Brentwood and the City of Antioch. Finally, see Response to Comment 1-2 and Response to Comment 1-3 regarding the commenter's suggestion that the City of Antioch would be responsible for Deer Valley Road improvements.