

Mr. Russell Hildebrand  
City Attorney  
City of Rocklin  
3970 Rocklin Road  
Rocklin, CA 95677

March 6, 2015

**Re: Clover Valley Housing Development Phase I**

Dear Mr. Hildebrand:

My firm represents the Clover Valley Foundation (“CVF”), a nonprofit organization committed to preserving the City of Rocklin’s (the “City”) beautiful Clover Valley for future generations of Placer County. On behalf of the board members of CVF (the “Board”), I respectfully submit the following comments to the City to outline CVF’s concerns with Phase 1 of the Clover Valley housing development project (“Project”) particularly its failure to comply with state and federal laws regarding environmental disclosure and permitting requirements. The Project site is a unique and vital environmental resource to the surrounding communities and CVF continues to work diligently toward its preservation. CVF is actively seeking partners to assist in acquiring the Project site in order to establish long-term stewardship of Clover Valley as a public open space park.

The City must fulfill several state and federal statutory obligations to comply with the California Environmental Quality Act (“CEQA”), the National Historic Preservation Act (“NHPA”), and the Clean Water Act (“CWA”) prior to any development within Clover Valley. Outlined below are CVF’s specific concerns and their legal basis.

**I. As the Lead Agency, the City must Provide Additional Environmental Analysis to Comply with CEQA.**

The City approved the Final Environmental Impact Report (“FEIR” or “EIR”) for the Project on August 27, 2007. Now, nearly seven (7) years later, the information the EIR relied upon is outdated or no longer relevant. The FEIR stated that the Project would be subject to the federal process under Section 106 of the NHPA (“Section 106”) and noted that without approval from the U.S. Army Corps of Engineers and the Office of Historic Preservation, “no permit will be issued and the project will not proceed.”<sup>1</sup> The City will need to do further environmental analysis and possibly a new EIR for the entire Project in order to comply with CEQA for the following reasons:

A. The FEIR references the Historic Properties Management Plan (“HPMP”) several times, including in Master Response 7, as a mitigation measure for the cultural sites within the Project’s entire 622 acre archaeological district. The HPMP was drafted pursuant to Section 106 of the NHPA (“Section 106”). Since approval of the Project, the Section 106 permit application has been withdrawn or expired and the HPMP cited in the FEIR has never been finalized. Because the EIR relied on an HPMP which was not completed, it no longer provides an accurate portrayal of the environmental impacts of the Project and the City must conduct new environmental analysis to comply with CEQA specifically with regard to the Project’s impacts on cultural resources which have been identified at the Project site.

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<sup>1</sup> FEIR, Master Responses 7- Cultural Resources (“Master Response 7”), 3.2-26.

B. The Open Space Management Plan (“OSMP”) relied upon in the FEIR is also no longer up to date or accurate. The EIR based its analysis on the presumption that there would be a conservation easement dedicated on behalf of the Wildlife Heritage Foundation (“WHF”), to ensure protection of the open space and the cultural sites therein.<sup>2</sup> This conservation easement has not been deeded to the WHF and any development of the Project before this conservation easement is dedicated will be out of compliance with the Project’s final mitigation measures and a violation of CEQA.

C. City Ordinance 925 (“Ordinance 925”), adopted September 11, 2007, amended the development agreement between the City and the Project developers. Ordinance 925 amends the development agreement to require the City and Developer to “transfer to the United Auburn Indian Community (the ‘UAIC’), in fee and at no cost, the specific cultural sites of interest identified in the Historic Properties Management Plan.”<sup>3</sup> On August 7, 2008, the City issued a press release, which stated:

“The City of Rocklin, the United Auburn Indian Community and the Clover Valley Partners announced today that the United Auburn Indian Community has contracted to purchase 154 lots of the valley floor area of Clover Valley.”<sup>4</sup>

The FEIR cites the development agreement under Ordinance 925 as a mechanism to “provide for protection and preservation measures to ensure that important Native American archeological sites in the Project area will be protected.”<sup>5</sup>

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<sup>2</sup> City of Rocklin Press Release, August 7, 2008.

<sup>3</sup> First Amendment to the Development Agreement, paragraph 4.

<sup>4</sup> Available at: [http://www.rocklin.ca.us/depts/citymanager/press\\_releases.asp](http://www.rocklin.ca.us/depts/citymanager/press_releases.asp)

<sup>5</sup> Resolution No. 2007-244, August 2008, 2007, Exhibit A, 5 and 79.

The “deeding” of these sites to the UAIC never happened and the “preservation measures to ensure that important Native American archeological sites in the Project area” be protected has not happened as required by the FEIR.<sup>6</sup> The promise made in the City’s August 2008 press release is unfulfilled. The over 7,000 year old Native American history and the important history of Clover Valley to the City and the region are at risk. The City’s failure to ensure the preservation of these sites is out of compliance with the FEIR and, therefore a CEQA violation.

D. Based on Office of Historic Preservation standards, a new cultural survey for Clover Valley is required. According to a senior archaeologist at the Office of Historic Preservation a new report is needed after five (5) years. *The Determination of Eligibility and Effect on Cultural Resources with the Clover Valley Lakes Project Area*, Peak (2002) report is over 13 years old. In addition, two independent sources – State Historic Preservation Office and Pacific Legacy, a well-respected consulting firm specializing in Section 106 compliance, have concluded *The Determination of Eligibility and Effect on Cultural Resources with the Clover Valley Lakes Project Area*, Peak (2002) is inadequate and does not meet the Secretary of Interior’s Standards for Archeology and Historic Preservation. Because the cultural survey is outdated and insufficient, there is significant new information about the Project site that must be analyzed before development can move forward. A new cultural survey is required to comply with CEQA.

E. In the Superior Court case of *Clover Valley Foundation v. City of Rocklin*, Judge Connelly deferred to the preservation requirements under Section 106 as the solution for numerous issues related to historical and cultural resources threatened by the Project.<sup>7</sup> Judge Connelly considered the entire Project as a whole unit and based his ruling on the assumption that Section 106 requirements would mitigate the significant impacts associated with the Project as a whole. Because the Section 106

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<sup>6</sup> Id.

<sup>7</sup> *Clover Valley Foundation v. City of Rocklin* (Super. Ct. Sacramento County, 2007, No. 34-2007-00002871-CU-WM-GDS), page 5.

process is no longer active and has been withdrawn, the associated HPMP, Historical Preservation Treatment Plan (“HPTP”) and OSMP, which were relied upon by both Judge Connelly in his ruling and the FEIR in its findings, are null and void. As such, new environmental analysis is required under CEQA for the entire Project to analyze the impacts of the Project on the environment, now that the promised mitigation measures have been abandoned. Previously, the City claimed that “... the federal process was much more stringent than the CEQA process and would develop the best possible preservation and mitigation measures for the cultural sites.”<sup>8</sup> Because the Superior Court decision and the certification of the EIR both relied upon the City’s assurance that the Section 106 process would provide a more stringent mechanism for preserving historical and cultural resources before the Project developed, the Project cannot move forward unless the environmental impacts of the Project are reassessed now that these measures have been abandoned.

F. The addition of a detention basin to phase one of the Project (“Phase I”) requires additional environmental analysis under CEQA and may require improvements to the Park Drive sewer main. It is our understanding that the developer is proposing a detention basin as part of Phase I. This is a modification of the drainage system originally proposed for the Project and therefore the impacts of such a basin were never analyzed in the EIR. CEQA Guidelines Section 15088.5 requires that the City prepare and circulate a subsequent environmental document for new significant impacts that were not disclosed in prior EIRs. While we recognize properly designed detention basins can provide water quality and flood control benefits, they also can generate nuisance conditions and public health concerns as sources of breeding areas for mosquitos. This addition raises several questions. Will this Phase I detention basin be designed with the same drainage standards as that in the master drainage plan (to “drain within a 72 hour period 4.10 MM-6(b)” as described in Resolution 246, 7.), or will other drainage design standards be required? Will the detention basin be below all the other units in Phase I for gravity flow? Will the detention basin be graded and

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<sup>8</sup> *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App. 4<sup>th</sup> 200, 215.

constructed on Mehrten Formation? And if so, how will drainage be accomplished? Who will monitor, and how will access to the detention basin be achieved (graded road)?

Second, detention basins can also pose significant public safety risks to young children and /or pets that maybe attracted to the area and yepossiblyyepossibly become an attractive nuisance with drowning accidents if not properly planned and designed. The detention basin was not included in the 2006 Recirculated Draft EIR and the design details of this basin need to be reviewed from a health and public safety perspective. CVF requests the City to disclose the environmental impacts of the construction and operations of this new facility to support planned development. We recommend the City analyze the potential environmental impacts of this new facility and disclose the new potential significant impacts in a subsequent CEQA document.

Third, under CEQA Findings of Fact and Statement of Overriding Considerations (“Findings”), it states, “Mitigation Measure 4.11 MM-1(c) requires that the construction of two crossings (at nature Trail Way and Valley Clover Way) that are intended to help ensure that peak flows do not increase to be completed **during the first phase of Project construction.** [bold added].<sup>9</sup> How will Phase I construction meet this requirement?

How will the required funding mechanism to ensure an adequate revenue stream via the forming/joining a Community Facilities District (for maintenance and monitoring in perpetuity) be assured with the new proposed detention basin?<sup>10</sup>

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<sup>9</sup> Resolution 244, Exhibit A, 56.

<sup>10</sup> EIR Mitigation Measures, MM 4.11 MM-5 (e)

**II. Compliance with the Clean Water Act is required prior to commencement of Phase I of the Project.**

As you are aware, the City committed to the installation of state-of-the-art stormwater treatment systems within the drainage system for urban runoff from the Project to protect fisheries and water quality in Clover Valley Creek. The developer is required to prepare a Storm Water Management Plan consistent with the City's municipal storm water permit (MS4). We are unaware if such a plan has been prepared by the new developer for review by the City or the Regional Water Board with this revised basin plan program.

**III. Moving forward with Phase I without engaging the Section 106 process is a violation of the National Historic Preservation Act.**

Attempting to build the Clover Valley development in phases without Section 106 consultation is a violation of Section 110(k) of the National Historic Preservation Act.<sup>11</sup> We understand that Granite Bay Communities has submitted engineering plans and specifications for the Phase I lots adjacent to Park Drive for final approval. Knowingly segmenting an "Undertaking" is a violation of Section 110(k) of the NHPA which would result in foreclosure of the Advisory Council on Historic Preservation's opportunity to comment due to anticipatory demolition. By piecemealing the Project, the City and Phase 1 developers will be permitted to chip away at the historically significant resources in the area. By the time the Section 106 process is engaged, the historical and cultural value of the area may be severely damaged.

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<sup>11</sup> 16 U.S.C §470.

#### **IV. The Phase I sewer line option was never analyzed in the EIR.**

Phase I sewer service is assumed to be via a South Placer Municipal Utility District (“SPMUD”) line located along Park Drive. However, this raises several issues including: (1) the remaining hook-up capacity of the Park Drive sewer line is unknown by SPMUD; a CVF request for that information awaiting approval for release; (2) assuming there is capacity for Phase I’s fifty-one (51) units to hook up, it is unclear how sewage from units located below the elevation of the Park Drive line access the line. If units below Park Drive are required to pump sewage uphill to reach the line, the cost, effort and impact of these connections may be far greater than anticipated. This raises issues of who will be responsible for monitoring the pump system, what back-up power measures will be implemented in the event of a power outage, what safety measures will be established for instances where the pump becomes inoperative, and potential environmental impacts for occasions where system failure could cause raw sewage to run downhill into the Clover Valley Creek watershed. All of these issues should be addressed and analyzed before Phase I moves forward.

#### **V. Phasing of the Project violates Resolution 246.**

A. The City adopted Resolution 2007-246 on August 28, . Item 18, *Phasing*, on the Resolution 246 page 29, states, “a. The Large Lot Tentative Subdivision Map for Clover Valley (SD-98-05) must be recorded prior to or concurrent with the Small Lot Tentative Subdivision Map for Clover Valley (SD-2004—3. ENG).” Subpart b. of Item 18 notes that the installation of all on- and off-site required improvements can be delayed to specific, applicable phases. However, the recordation of the Large Lot Tentative Subdivision Map cannot be delayed. The Project cannot move forward with the Small Lot Tentative Subdivision Map until the Large Lot Tentative Subdivision Map is approved. Further, once the Large Tentative Subdivision Map is recorded, the conservation easement must be dedicated within six (6) months according to the development agreement between the City and the developers, pursuant to Ordinance 925. The approval of the Project was conditioned upon the understanding that all maps would be recorded and all conservation easements would be dedicated before any ground is broken.

B. Page one (1) of Attachment 2 to Resolution 246, “Grading Permit Conditions and Required Notes” states (underlined with some language also bolded for emphasis) that the twenty-six (26) listed items must be completed prior to approval of a Grading Permit for on- and off-site improvements, other than the off-site sewer. Item 17 requires a pre-construction special-status migratory bird survey if construction is proposed during the breeding season (February to August). Prior to taking action on Phase I, the City must complete a pre-construction special-status migratory bird survey. CVF is unaware of any such survey being completed for the Project.

#### **VI. Mitigation Measures of the Project EIR are not being complied with.**

The Findings, as adopted by the City through Resolution 244, states that mitigation measures described and adopted will reduce wildland fire risks to less than significant level by ensuring adequate provision for emergency response (e.g., providing for additional fire station construction, and identifying funding sources).<sup>12</sup> In addition to these measures, the EIR mitigation measures require “...that land for a fire station is dedicated and ongoing operational funding is provided...”.<sup>13</sup>

Throughout the DEIR, FEIR, and Resolution 246 (on page 25), references are made to a Home Owners Association (“HOA”) or other entity’s assignment of a conservancy responsibility, monitoring, maintenance, and multiple functions, including establishment of a fund to ensure compliance with the Project’s conditions of approval. The approval of the Project was conditioned on the assumption that it would be managed by an HOA. As such, Phase I of the Project should have an HOA in place to perform those functions. Otherwise there will be none of the promised oversight and management.<sup>14</sup>

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<sup>12</sup> Findings, page 54, Impact 4.10 I-5(c) *Findings*.

<sup>13</sup> Mitigation Measures 4.10MM-5(a) through (c).

<sup>14</sup> Original Development Agreement, Ordinance 773, Section 5.3 states that the HOA “...will be formed as part of the Project.”

## **VII. General Questions of the CVF Board for the City.**

In addition to the concerns raised above, CVF requests that the City respond to the Project-related questions stated below:

A. Has the developer paid the City \$1,000,000 for the construction of a new fire station, as it was required to do under the amended development agreement “not later than July 15, 2010, in partial consideration for City’s entering into the “Agreement”?”<sup>15</sup>

B. The original development agreement, as adopted by Ordinance 773, states in Section 5.3, Oak Tree and Open Space Trail System (“OTOSTS”), that, “The preliminary location and design of the OTOSTS shall be submitted for approval in phases as part of tentative map applications; final location and design plans shall be submitted with final map applications. Improvement of the trail and grant of the easements shall be a condition of approval of tentative maps...” Is there an OTOSTS plan for the Phase I tentative and final map application? If so, when will the public be able to review and comment on the plan?

C. How will the City’s dedicated park acreage requirement be met with Phase I’s units?

## **VIII. Concluding Remarks.**

Finally, if the City persists without a new EIR addressing the issues described above, the CVF Board may consider taking any appropriate action to protect the City’s cultural and historical resources to ensure the City and developer strictly follow the applicable law. CVF believes that the City made numerous mitigation commitments during the CEQA process, which relied upon the resource management and protection

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<sup>15</sup> Ordinance 925, Exhibit A, 3.

under the Section 106 process before development commenced. Because the Section 106 documents are now outdated and invalid, they can no longer serve their purpose of ensuring protection of the City's resources. Accurate, thorough and current environmental analysis, resource protection planning, and disclosure processes should be implemented and finalized prior to any land development in Clover Valley. We appreciate your due consideration of our concerns and look forward to your timely response. Please do not hesitate to contact me with any questions. The CVF Board is willing to meet with City staff to discuss the various violations outlined in this letter.

Kind regards,

Churchwell White LLP

A handwritten signature in cursive script that reads "Barbara A. Brenner For:". The signature is written in black ink and is positioned above the typed name.

Barbara A. Brenner  
BAB/ems  
Attorney on Behalf of CVF Board

cc: City of Rocklin Planning Director, City of Rocklin City Manager, ACOE, SHPO, ACHP, CWQCB, CA DFW, Placer County DA