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Via Electronic Mail

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Re: OPPOSITION To “NOTICE OF INTENT TO ADOPT... ENT25-0033: Initial Study/Mitigated Negative Declaration 25-0033, Tentative Tract Map 25-0033, Major Site Plan Review 25-0033, Administrative Design Review 25-0033 – TTM 17847 Project”

Dear Principal Planner Schwartz, Mayor Slater, Members of the City Council, and Concerned Others:

On the mild summer night of June 25, 2026, just before 7p.m., neighbors from around Orange Park Acres filed into the sanctuary of Salem Lutheran Church for a community meeting. The church sits at the corner of Orange Park Blvd and Santiago Canyon Road, adjacent to the proposed development site of the above-referenced Mitigated Negative Declaration (“MND”). Present were representatives from Milan Capital Management (“Milan”), Landify, and the City of Orange, in the persons of Mayor Dan Slater and City Manager Jarad Hildenbrand.

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THE COMMUNITY MEETING: THE “THREE-LEGGED STOOL” EXPLAINED

The stated purpose of this community meeting was an update from Landify, which is a domestic subsidiary of the European group ETC. After working foreign markets, they now set sights on competing here, specifically in the long-established and protected equestrian enclave of Orange Park Acres (“OPA”). Absent any attachment to this community and its heritage, their professed intention is simple: make money and leave the jurisdiction, untethered to any durable accountability. Their pitch: “restore” the toxic landfill on the property commonly known as Sully-Miller (“Sully-Miller”) owned by Milan, across East Santiago Canyon Road on the north side; then immediately convey title and leave town.

At the same time, we were in the public comment period for the MND. This MND concerns *another* Milan property, immediately adjacent to the church on the south side of East Santiago Canyon Road. As current OPA President Sherry Hart-Panttaja explained:

“This meeting was already scheduled before the 30-home project was presented. So I know people are going to be asking about the 30 homes.”

As would become clear, the projects, and one more by Milan nearby, are linked -- *part and parcel of a larger scheme for the developer’s property in the corridor.*

Landify’s representatives, who were previously in OPA in May 2025, spent nearly an hour touting their work abroad, and now describing the company’s “vision” for the Sully-Miller property. They see themselves as creating a path toward reclamation of the land, on which an equestrian facility might someday appear. This theme was repeated pervasively. It was a presentation to appeal to a gathering of vested horse owners with major assets rooted in land, horses, defending a dedicated equestrian community, where the streets are bordered by bridle paths. And a presentation obfuscating the reality that the European plan means the diminution of OPA’s singularly overarching characteristic. And further, the completion of which is envisioned to be built not by them of course, but by someone else after they have departed for home in other countries. A pitch including equestrian use to induce assent or at least acquiescence.

“I really believe we are on the cusp of something extraordinary for the community,”

Landify’s Steve Brown told the audience.

“We’re in the business of restoring properties by importing inert debris and clean fill to create community solutions.”

In other words, they do landfill and make their money on tipping fees.

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In order for this equestrian facility to materialize, Landify said the City would “take title” to the land and that there would be a

“deed restriction. . . We will hold the property for several years . . . but if the City decided ‘no,’ then we would look for someone else to take over the property . . . We cannot take over a toxic site. We can’t and we won’t.”

The essence of the proposed deal being presented – and the promise of that equestrian arena that might someday be built – isn’t just about one of Milan’s East Santiago Canyon Road projects. It’s about all of them. Take one, take all.

As City Manager Hildenbrand explained, it’s “basically a three-legged stool here,” meaning a plan dependent on three essential factors. Any failure cancels the entire plan. As Hart-Pantaja also affirmed, the goal was

“coming up with a plan to deal with what we’ve got going on *with all these properties* (emphasis added).”

Meaning Milan’s properties on both sides of East Santiago Canyon Road.

It is undisputed that there is common ownership and an overall agreement linking the plans for these parcels. As the 2025 Memorandum Of Understanding between the City and Milan states:

“Developer owns the following real property located in the City and identified as:

(i) TTM 0050-20 property (the “ TTM Property”);

(ii) Sully Miller property (the “ Sully Miller Property”); and

(iii) 6146 E. Santiago Canyon Road (the “ Residential Property”). . .”

“The Parties desire to set forth the terms of an agreement that would address development of the Sully Miller and Residential properties while Milan moves forward with the ministerial development of the TTM Property. The Parties acknowledge that all components of the agreement are necessary for the Developer to move forward, and that absent development of the TTM, Sully Miller, and Residential properties as set forth below, the Developer will pursue the Builder’s Remedy Applications.”

- Memorandum of Understanding, July 22, 2025, p.1. (“MOU”)

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**THE QUID PRO QUO POSED TO THE COMMUNITY:
THE CARROT AND THE STICK AND A “BITE-SIZED PIECE”**

These offices are concerned with the interests in land uses and horse owners who reside in OPA. For many, a dedicated equestrian community is a life-long dream. A dream that is realized after a life of hard work, saving, and planning. For others, it is their treasured and sometimes primary inheritance. The enjoyment and entitlement to an enclave where equestrian activity and lifestyle are cherished and defended. The notion is that the hard fought and won rights in this community dating back to 1928 are considered “first in time, first in right.” Equestrian interests are now by right. But threatened by a foreign enterprise scouring for domestic projects (with a full time employee seeking out opportunities for development). This, as seen by vested interests in OPA, is both an affront to the protection of uses by owners, the erosion of cohesive equestrian use, and an assault on the habitat by destruction, demolition and removal (including a woodland cluster of 48 oak trees) which is plainly in violation of CEQA policy, intent and interpretation. The piece meal plan is CEQA-anomalous *per se*.

Also specifically, the evidence reveals that Milan’s proposed development includes clearance of protected habitat and the development of non-equestrian densely constructed residential properties untethered to any equestrian purpose or use. The use includes thirty two-story homes at “6146 E. Santiago Canyon Road (Assessor’s Parcel Number (APN) 379-451-24) (Located on the southeast corner of E. Santiago Canyon Road and N. Nicky Way)” (“Site” or “site”). We urge the City of Orange to reject the Mitigated Negative Declaration.

An EIR is required. The totality of evidence, from the proponents, community and comments, reveals that here, an Environmental Impact Report (“EIR”) is required by the California Environmental Quality Act (“CEQA”). “The courts are enjoined to construe the statute liberally in light of its beneficent purposes” (*Friends of Mammoth v. Board of Supervisors*, 8 Cal.3d 247, 259.) “The highest priority must be given to environmental considerations in interpreting the statute” (*County of Inyo v. Yorty*, 32 Cal.App.3d 795, 804).

Indeed, an EIR for 6146 E. Santiago Canyon Road is not sufficient. Whether single, tiered or phased, an EIR is now required to cover the entirety of Milan’s proposed project, and the foreseeable, anticipated and widely discussed and acknowledged plan to develop these parcels, which all parties agree includes multiple parcels and is a much larger endeavor whose parts are inextricable from the whole.

“The statute’s requirements cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.” - *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726 [117 Cal Rptr. 96].

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This portion currently under discussion, 6146 Santiago Canyon Road, is across Santiago Canyon Road from the Sully-Miller property, also owned by Milan, where the same company created a toxic waste dump that still plagues Orange. This is where Landify now promises another leg of the stool, which would be the “reclamation” of the toxic site and the possible, eventual equestrian center, maybe someday. No one believes the plan is an endpoint. All acknowledge there is development to come, and there is no evaluation of that. This case cannot be compared to a beach front where development at the mean tide, subject to Coastal Commission jurisdiction, would be barred. Indeed, the lead agency is City of Orange, hungry for revenue, open for business. No one hazards speculation this plan is final. Not even the proponents.

In 2020, Orange County determined that there had been illegal dumping of construction waste on this site. A cease and desist order was issued. Clean-up negotiations for the mountains of readily visible waste have been an ongoing issue and further toxic testing results were awaited as of this writing.

Milan would prefer to expedite this part of their project, and the larger project as a whole, without the legally mandated oversight. Of course, they must have the City of Orange’s cooperation in order to do that. While the City has agreed that it will try to speed Milan’s plans through the permit process, the City may not skirt the requirements of CEQA.

We urge the City of Orange, as is its duty and remit, to require an Environmental Impact Report for the entire Milan project, which includes not only the instant IS/Mitigated Negative Declaration, but also the proposed activities on the Milan properties on the other side of East Santiago Canyon Road. The instant MND neither discloses nor properly and sufficiently analyzes the irreparable harm that would befall the environment, as well as the immediate Orange Park Acres community and greater Orange, should this proposal be allowed to go forward without legally required scrutiny.

As was made evident at the Salem meeting, the reasons for this push are clear. “Milan said, look, City, you’ve got a situation where we have placed two builder’s remedies here,” explained Slater, referring to state laws that allow builders to apply to override local zoning laws.

“One on the . . . site for 118 units, and another one across the street, on the main Sully Miller site . . . And that happened because when I was elected, the City did not have a housing element in place, which was required by the State. So that gave builders an opportunity to, you know, say, hey, well, since you don’t have your act together, then this is why we want to build.”

There is a “stick” being used to coerce the community. Milan seeks to push through its projects without the legally required oversight. In return, the City “. . . commits to *expeditiously*

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review Developer submissions, and Developer commits to expeditiously respond to City application comments.” (emphasis added), MOU, p. 2.

To hear Milan tell it, the only alternative to the current proposal is a worse one, *to wit*, 118 or more units on the arena site and more across the street, as Mayor Slater references. Milan has said that if the City of Orange doesn’t expedite its project, it will switch to a high-density, multi-family plan. They seek to make the current thirty-home proposal look like the “lesser of two evils” so exhausted residents and the cash-strapped City of Orange won’t fight the developer for fear of something worse.

Chris Nicholson, president of Milan, made the pitch and threat explicit.

“For us, now I think this is a great deal for the community. You are getting almost a hundred acres of land, open space, permanent open space with the Landify project. And we are getting some substantial portion of our investment back. We are going to lose money on the deal. But we are willing to do that because we don’t want to fight for three years, we don’t want to be the poster child. We probably win in court.. . . So, you want us to build the 359 homes?”

In truth, fitting even 119 units onto the one 7.44-acre plot under immediate discussion would require high-density apartment blocks or tightly packed townhomes. Building that type of infrastructure requires massive upfront capital, multi-story grading, and major sewer and utility overhauls that Milan’s investors must approve after litigation expense. The City would be required to identify the source of public contributions, and whether or not voters would assent to unpopular use of the general fund to include set asides such as 10 percent for low income housing, in East Orange county.

Along with that “stick,” there is also a “carrot.” At the Salem meeting, Landify and the City explained the *quid pro quo*. If the City and the community allow this project of 30 homes to go forward, then the community will (someday, maybe) get an equestrian facility across the street on the toxic dump site.

Yet there are no contracts, guarantees, or enforcement mechanisms for the chimera of this potential future equestrian facility. Landify stated repeatedly that the City would take title to the parcel (someday) and bring this promised equestrian facility into being. But the City cannot legally make such commitments for its future Mayor and City Council. Once Milan were to get its 30 houses, the mirage of the equestrian facility would vanish into the dust of countless dump trucks like so many other broken promises.

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THE MITIGATED NEGATIVE DECLARATION

ROADS AND TRAFFIC

1. Santiago Canyon Road Is Extremely Dangerous and Will Only Get Worse

Santiago Canyon Road has sometimes been called the "Road of Death" by Orange County locals. The nickname crops up on local news and social media now and then and stems from decades of high-speed crashes and deadly accidents along its narrow, winding, and blind-curve stretches. The route's problems include notorious rush hour (not to mention fire and emergency) gridlock, high speeds, blind corners, and sections with no median barrier.

Santiago Canyon Road connects areas such as East Orange with Trabuco, Modjeska, and Silverado Canyons and beyond. The road acts as a primary bottleneck for commuters moving between the Inland Empire or the 241 Toll Road and central Orange County, leading to aggressive driving and road rage incidents during rush hour and other times.

2. Traffic Impact Assessment is Grossly Insufficient

The Traffic Impact Assessment in the MND does not provide sufficient evidence to support the conclusion that the proposed project will have no significant transportation impacts.

The project's sole access point will be through Nicky Way onto Santiago Canyon Road, a high-speed artery carrying more than 42,000 vehicles per day. The Nicky Way/Santiago Canyon Road intersection currently operates at capacity during the morning peak hour. Santiago Canyon Road experiences substantial congestion and queuing during peak travel periods. Despite these existing deficiencies, the MND reaches the conclusion that no traffic improvements are required.

The analysis is limited to a single intersection and does not evaluate the operational impacts at nearby intersections that residents must use to access the regional roadway network. The report relies primarily on screening thresholds and level-of-service calculations while failing to provide a comprehensive assessment of safety conditions.

Of particular concern is the absence of any collision history analysis. The report does not evaluate accident records from the California Statewide Integrated Traffic Records System (SWITRS), City of Orange records, Orange Police Department reports, or any other source of documented safety data. Without understanding the existing collision history at Nicky Way and Santiago Canyon Road, there is no substantial evidence supporting the conclusion that additional residential traffic will not create or worsen safety hazards.

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Similarly, the MND does not evaluate whether a traffic signal may be warranted now or in the foreseeable future. No traffic signal warrant analysis is provided, nor is there an assessment of whether cumulative growth, existing congestion, and project-generated traffic could justify future signalization or other intersection improvements. The conclusion that no improvements are necessary is therefore unsupported by a complete operational analysis.

The report also lacks a detailed queue analysis, gap acceptance study, and evaluation of resident access under peak-hour conditions. Given the high traffic volumes, posted speeds, and acknowledged congestion on Santiago Canyon Road, these issues are critical to understanding whether project residents can safely enter and exit the site.

Under CEQA, an EIR is required whenever substantial evidence supports a fair argument that a project may have a significant environmental impact. The deficiencies in the traffic analysis—including the lack of collision data, the absence of a traffic signal warrant study, the limited study area, and the failure to fully evaluate safety and operational impacts—constitute substantial evidence that significant transportation impacts may occur. These issues should be thoroughly evaluated through preparation of a full Environmental Impact Report rather than relying on the limited analysis contained in the current Traffic Impact Assessment.

Milan and the City seek to use Caltrans and City of Orange traffic guidelines as a shield to force their preferred layout. According to standard traffic engineering and California's manual on traffic control devices (MUTCD), you generally cannot place two fully signalized intersections within a few hundred feet of each other on a major highway like Santiago Canyon Road. Doing so causes "signal queuing overlaps"—where cars waiting at Nicky Way would back up directly into the intersection of Orange Park Boulevard, causing total gridlock and severe rear-end accidents.

The hazard has not been mitigated. If the city cannot put a signal at Nicky Way due to proximity rules, and Milan's plan forces cars into dangerous, forced U-turn loops at Orange Park Boulevard, then Milan has designed and the City has approved an unmitigated traffic hazard. U-turn logistics at Orange Park Boulevard are ill-advised and dangerous.

The City has a legal obligation to ensure public safety; forcing a dangerous traffic loop next to a horse crossing is a major liability for the City. The City cannot approve a project that creates a significant, unmitigated public safety risk. Surely the City and its Planning Commission do not want to permit a tract map where the design will lead to fatal T-bone or U-turn accidents at Orange Park Boulevard.

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3. Nicky Way Will Become a Problem: Traffic Concerns Have Not Been Mitigated

During the October 2018 review of Milan's previous six-home proposal on the same site, traffic concerns were significant enough that a Planning Commissioner Steve Willits raised the issue of whether Nicky Way should be restricted to right-turn-only movements. At that time, the City's own traffic discussion estimated approximately 57 average daily vehicle trips for only six homes. It was thought unnecessary for six homes. For 30 homes, it is a very different situation.

Using that same calculation:

$57 \text{ daily trips} \div 6 \text{ homes} = 9.5 \text{ trips per home per day}$

$9.5 \text{ trips per home} \times 30 \text{ homes} = 285 \text{ daily trips}$

Therefore, the proposed 30-home project could reasonably be expected to generate approximately 285 average daily vehicle trips, which is five times the traffic associated with the earlier six-home proposal.

If right-turn-only access was being discussed when the project involved only six homes and approximately 57 daily trips, then the traffic safety concerns are substantially greater for a 30-home project generating approximately 285 daily trips. This is especially concerning because Nicky Way exits onto Santiago Canyon Road, where the posted speed limit is 50 mph.

This calculation supports the need for a full Environmental Impact Report that evaluates traffic safety, sight distance, emergency access, neighborhood circulation, equestrian safety, pedestrian and bicycle safety, and impacts to trail users.

WILDFIRE AND DISASTER EVACUATION: REMEMBER THE CANYON 2 FIRE

The experience of the October 9, 2017 Canyon 2 Fire remains clear in local memory.

"On the morning of October 9, 2017, as strong Santa Ana winds whipped up in Orange County, our communities were hit by a fast-moving wild/and fire. When finished, the Canyon 2 Fire was the largest Orange County wild/and fire in nearly a decade, consuming 9,217 acres. The canyon 2 Fire started in the City of Anaheim and the fire front spread rapidly into multiple jurisdictions, including those protected by the OCFA. Despite the severe conditions and rapid progress of the fire, no lives were lost and no major injuries were reported. Sadly however, 14 homes were destroyed, another 44 homes damaged, 1 commercial building damaged, and 21 other outbuildings damaged or destroyed. . .

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Our first responders were stretched to the limit, and they rose to the demanding challenges with which they faced. Although homes were lost and damaged, thousands more were saved by the unwavering efforts of our firefighters. . .

The Canyon 2 Fire struck an area that has a history of being prone to wildfires. Many of the homes that survived this wind driven blaze were spared because of fire prevention measures that were in place, including non-combustible roofs and defensible space.”

– “After Action Report: Orange County Fire Authority, Canyon 2 Fire, October 9, 2017.” Foreward, p.4 (Exhibit 1)

East Santiago Canyon Road is a vital artery, leading to several freeways. It is key road for wildfire and other emergency evacuation. It took residents of Orange Park Acres up to three hours to evacuate their horses using Santiago Canyon Road. Others were forced to lead their horses by hand, going West on Chapman Blvd. In neighboring areas, it took even longer to evacuate, due to blockage on the 91 freeway.

The MND acknowledges that East Santiago Canyon Road is an evacuation corridor.

*“As illustrated in the General Plan Figure PS-7 Generalized Evacuation Corridors, evacuation corridors include portions of Chapman Avenue, Katella Avenue, Glassell Street, Lincoln Avenue, State College Boulevard, and Hewes Street.⁶⁴ The closest evacuation corridor to the project site, Hewes Street, is located 0.78 mile west of the project site. According to the OCFD website, the project site is located within evacuation area ORG 010, where, as shown on the General Plan Figure PS-8 Fire Evacuation Area Map, **evacuation egress is shown to occur westbound along East Santiago Canyon Road.**” (emphasis added) - MND, p.90.*

However, it states the impacts would be less than significant.

*“As the proposed project is consistent with the City of Orange General Plan buildout and adheres to applicable development standards for roadway improvements, it is accounted for in existing emergency planning documents and is not expected to adversely affect emergency response or evacuation plans. Thus, **impacts would be less than significant.**” (emphasis added). - MND, p.90.*

It may be cold comfort to residents who know they must evacuate their families and large animals in a wildfire that the increased traffic and density “is not expected” to be a problem. The tacit assumption here is that because a factor is mentioned in existing documents, it won’t create an adverse impact. However, this has repeatedly proven not to be the case. Anyone who lived through

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the 2017 Canyon Fire 2 evacuation knows differently.

Furthermore, the project is adjacent to a Very High Fire Hazard Severity Zone (VHFHSZ), “directly north of the project site across East Santiago Canyon Road.” MND, p.90. The site is also within a Wildland Urban Interfact (WUI), where “wildland fires are most problematic.” MND, p. 90.

The saying has become commonplace that fire season is year-round in California. As anyone who has tried to purchase homeowner’s insurance in this area knows, it is difficult to obtain and comes at a premium when available, largely due to the area’s risk of wildfires.

However, once again, the tautological conclusion is that because it is mentioned or anticipated, it won’t be a problem. But the General Plan Safety Element on which the MND relies was drafted in 2010. Neither those anticipated elements, nor the fact of their anticipation by said plans, was sufficient to enable the City to avoid the grave problems of the 2017 Canyon Fire 2. A decade later now, we know traffic is worse.

ENVIRONMENTAL

1. A Shocking Total of 124 Trees Would be Unnecessarily Removed or Destroyed

*“The project site currently supports a mix of ornamental and native trees associated with the existing equestrian facility and undeveloped hillside areas. According to the Regulated Tree Report prepared for the project site, approximately 150 regulated trees occur on-site, representing 12 species, including 63 native coast live oak (*Quercus agrifolia*) trees concentrated primarily along the eastern and southeastern undeveloped hillside. Additional tree species include Peruvian pepper (*Schinus molle*), blue gum eucalyptus (*Eucalyptus globulus*), olive (*Olea europaea*), ficus (*Ficus sp.*), jacaranda (*Jacaranda mimosifolia*), carrotwood (*Cupaniopsis anacardioides*), and other ornamental trees associated with the developed portions of the site.” -MND, p.2.*

“The proposed project would remove a portion of the existing mature tree resource on-site, including ornamental and native trees associated with the equestrian facility and hillside areas. As shown on the landscape and tree plans (see Figure 11 and Figure 12), 31 existing trees, including 15 coast live oak trees, would be retained, primarily along the eastern and southeastern portions of the project site. In addition, the proposed landscape plan includes installation of new replacement trees throughout the development, including street trees, open space landscaping, and perimeter landscaping areas. Orange Municipal Code Chapters 12.28 and 12.32 regulate the removal of protected and regulated trees and require City review and

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approval of tree removal activities, including replacement planting and other measures, as approved by the Director of Public Works. Tree removal would be mitigated through the required replacement tree planting incorporated into the proposed landscape plan, including within retained and avoided portions of the project site, such as the eastern and southeastern open space areas, or through other City approved replacement measures implemented through the tree removal permit process.” - MND, p.8.

*“The total hardscape square footage would be 65,827 square feet of on-site roads and sidewalks and 19,899 square feet of off-site improvements comprised of pavement, curb and gutter, sidewalk, and cross-gutter improvements, resulting in a combined 85,726 square feet of hardscape for the proposed project. As part of the proposed project, approximately **124 trees would be removed** (see Figure 12).”*
- MND, p. 8.

There is a mature Blue Elder tree at the northeast part of the site, near the upper gate. There is a old growth olive tree hidden among the oak woodland. And there are pecan trees and many other native plants. These are not mentioned specifically in the MND, nor is there any adequate biological survey, which there needs to be. These are potential losses that would not be easily mitigated and are currently being swept under the carpet in the rush to give Milan the approval it seeks.

In essence, the proposed mitigation seeks to be allowed to replace large, native oaks in a woodland that serves as a habitat, wildlife corridor, and irreplaceable visual asset with young trees of a variety of ornamental species. To do this would be to trade a natural oak woodland habitat for conventional landscaping. The tradeoff is hardly equivalent, either aesthetically or biologically. This not the way CEQA mitigation is intended to function and it is not sufficient to warrant the City's approval.

2. 48 Treasured Native Coast Live Oak Trees Would be Removed or Destroyed

“In fact, the return associated with oaks routinely is more cultural than economic. But just because California’s rural oaks don’t routinely produce cash-flow doesn’t mean that they lack enduring value. Instead, it demonstrates that we need to work all the harder at understanding the less apparent significance of oaks on the landscape, and make those numbers known. . . . whether our passions relate to oaks for carbon sequestration, wildlife habitat protection, an oak as yard or landscape ornament, or assigning value to the woodland as part of a system of production that creates more recognizable natural resource-based commodities, oaks have value. . . .” – Starrs, Paul F. “Oaks ‘n Folks,” Volume 18, Issue 1, February 2002. (“Starrs”)

California has long recognized the importance of oak trees. Our literature, folklore, culture,

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and laws reflect this. But the project plan will remove 48 mature live coastal oak trees out of the total 124 trees to be removed.

“...31 existing trees, including 15 coast live oak trees, would be retained...” - MND, p.8.

*“The project site currently supports a mix of ornamental and native trees associated with the existing equestrian facility and undeveloped hillside areas. According to the Regulated Tree Report prepared for the project site, 1 approximately 150 regulated trees occur on-site, representing 12 species, including 63 native coast live oak (*Quercus agrifolia*) trees concentrated primarily along the eastern and southeastern undeveloped hillside. Additional tree species include Peruvian pepper (*Schinus molle*), blue gum eucalyptus (*Eucalyptus globulus*), olive (*Olea europaea*), ficus (*Ficus sp.*), jacaranda (*Jacaranda mimosifolia*), carrotwood (*Cupaniopsis anacardioides*), and other ornamental trees associated with the developed portions of the site.” - MND, p. 2.*

If 15 live coast oak trees would remain, we may deduce that the proposal calls for the removal of 48 coast live oak trees. Loss of mature oaks cannot be mitigated, especially since oaks are threatened countywide by gold spotted oak borer and polyphagous shothole borer. These particular oaks are of large diameter and have historic value to the community.

“The most significant biological impact associated with this project is the proposed removal of 48 of the site's 63 mature heritage coast live oaks. These trees represent far more than landscape features. Coast live oaks are among California's most ecologically important native tree species, providing food, nesting sites, shelter, shade, carbon storage, soil stabilization, and countless other ecosystem services. Mature oaks support extraordinarily diverse communities of native birds, mammals, reptiles, insects, fungi, lichens, and microorganisms that have evolved together over thousands of years. Many of these trees have likely required many decades—and in some cases well over a century—to attain their present size and ecological value.

The removal of nearly three-quarters of the site's mature oaks would represent a permanent and substantial loss of native biological resources.” – Vanderhoff, Ron, Director and Plant Science Chair, Orange County chapter, California Native Plant Society, Letter to Monique Schwartz, City of Orange, 29, June, 2026. (“OCCNPS”)

CEQA triggers protections when oak removal affects larger sensitive habitats or causes major environmental impacts (e.g., severe runoff or slope instability) during new development. At minimum, there should be an arborist report surveying the site, mapping out the health, driplines, and locations of the existing trees (including native protected oaks). The proposed mitigation is

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inadequate under CEQA.

“OCCNPS is particularly concerned that the proposed mitigation does not appear to provide an ecologically equivalent replacement for the biological resources that would be lost.

The applicant proposes to mitigate the removal of 48 mature heritage oaks by planting 79 mostly 15-gallon ornamental trees, including bronze loquat, crape myrtle, Australian willow, Chinese pistache, and a relatively small number of western sycamores. While western sycamore is an appropriate California native species, the overwhelming majority of the proposed replacement trees are non-native ornamental species that require permanent irrigation and ongoing landscape maintenance.

This mitigation appears to substitute landscape value for ecological value. The proposed planting palette resembles an ornamental landscape plan rather than a habitat restoration program. The impact being mitigated is the loss of a mature native oak woodland community—not simply the loss of tree trunks or visual screening. Consequently, mitigation should be evaluated on whether it restores the ecological functions of the lost oak habitat, not merely whether it replaces the number of individual trees.

OCCNPS is concerned that the proposed mitigation may not satisfy CEQA's requirement that mitigation substantially lessen or compensate for significant biological impacts. CEQA mitigation should be capable of reducing impacts to a less-than-significant level where feasible. In this case, replacing mature native oaks with predominantly non-native ornamental trees does not appear to provide an ecologically equivalent replacement for the biological functions that would be permanently lost.” – OCCNPS

The proposed mitigation will also cause ancillary damage to other flora and fauna, and the general climatic health of the area.

“The removal of 48 mature heritage oaks will eliminate many thousands of square feet of existing tree canopy that currently provides wildlife habitat, nesting opportunities, acorn production, shade, carbon sequestration, stormwater interception, soil protection, and important microclimate regulation.

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By comparison, seventy-nine newly planted mostly 15-gallon nursery trees would collectively provide only a tiny fraction of the existing canopy on the day they are planted—likely well under one percent of the canopy being removed. Even with excellent survival and maintenance, it will require many decades before those trees begin to approach the size or unlikely ecological function of the mature oaks they are intended to replace.

More importantly, canopy area alone does not reflect the full ecological loss. Mature coast live oaks support one of the richest wildlife communities of any tree species in California. Their bark, leaves, branches, cavities, acorns, roots, and associated fungi provide habitat that simply cannot be replicated by recently planted ornamental landscape trees.

Coast live oaks function as ecological "keystone" species within Southern California ecosystems. Hundreds of native insect species depend upon native oaks during some portion of their life cycles, and those insects in turn support birds, reptiles, amphibians, bats, and numerous other wildlife. Most of the proposed replacement species—including bronze loquat, crape myrtle, Australian willow, and Chinese pistache—provide comparatively limited habitat value for native wildlife and cannot reasonably be considered ecological substitutes for mature native oaks.

Replacing one of California's most biologically valuable native tree species with predominantly exotic ornamental species fundamentally changes the ecological character of the site. While these plantings may provide visual landscaping, they do not replace the habitat complexity, biodiversity, or ecological resilience that would be lost." – OCCNPS

Nor has the plan provided sufficient mitigation for the mere 15 live coast oaks that will remain but may not survive.

"The approximately fifteen coast live oaks currently proposed for retention will remain immediately adjacent to new residential development and associated grading activities and other impacts. Without comprehensive protection measures, retained oaks frequently experience delayed mortality several years following construction due to root disturbance, altered drainage, soil compaction, and irrigation changes." –OCCPNPS

State Public Resources Code provides for such situations and requires that further efforts be made by the City.

"(a) For purposes of this section, "oak" means a native tree species in the genus

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Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4526, and that is 5 inches or more in diameter at breast height.

(b)As part of the determination made pursuant to Section 21080.1, a county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands:

(1) Conserve oak woodlands, through the use of conservation easements.

(2) (A) Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees.

(B)The requirement to maintain trees pursuant to this paragraph terminates seven years after the trees are planted.

(C)Mitigation pursuant to this paragraph shall not fulfill more than one-half of the mitigation requirement for the project.” – Public Resources Code, Section 21083.4.

The path forward clearly requires a plan for mitigation substantially more credible than what has been offered in the MND.

“ . . . OCCNPS recommends that approval of the project include preparation and implementation of a detailed Oak Preservation Plan prepared by a qualified consulting arborist with demonstrated experience managing mature California oaks.

At a minimum, the Oak Preservation Plan should include:

- * Tree Protection Zones established at or beyond the dripline of each retained oak;*
- * Construction fencing maintained throughout grading and construction;*
- * Prohibition of grading, trenching, fill placement, equipment storage, vehicle parking, or material stockpiling within protected root zones;*
- * Air-spade excavation or directional boring where utilities must cross root systems;*
- * Restrictions on cutting structural roots without arborist approval;*
- * Preservation of existing site drainage patterns supporting retained oaks;*
- * Elimination of permanent landscape irrigation within native oak root zones except during establishment where specifically recommended by the project arborist;*

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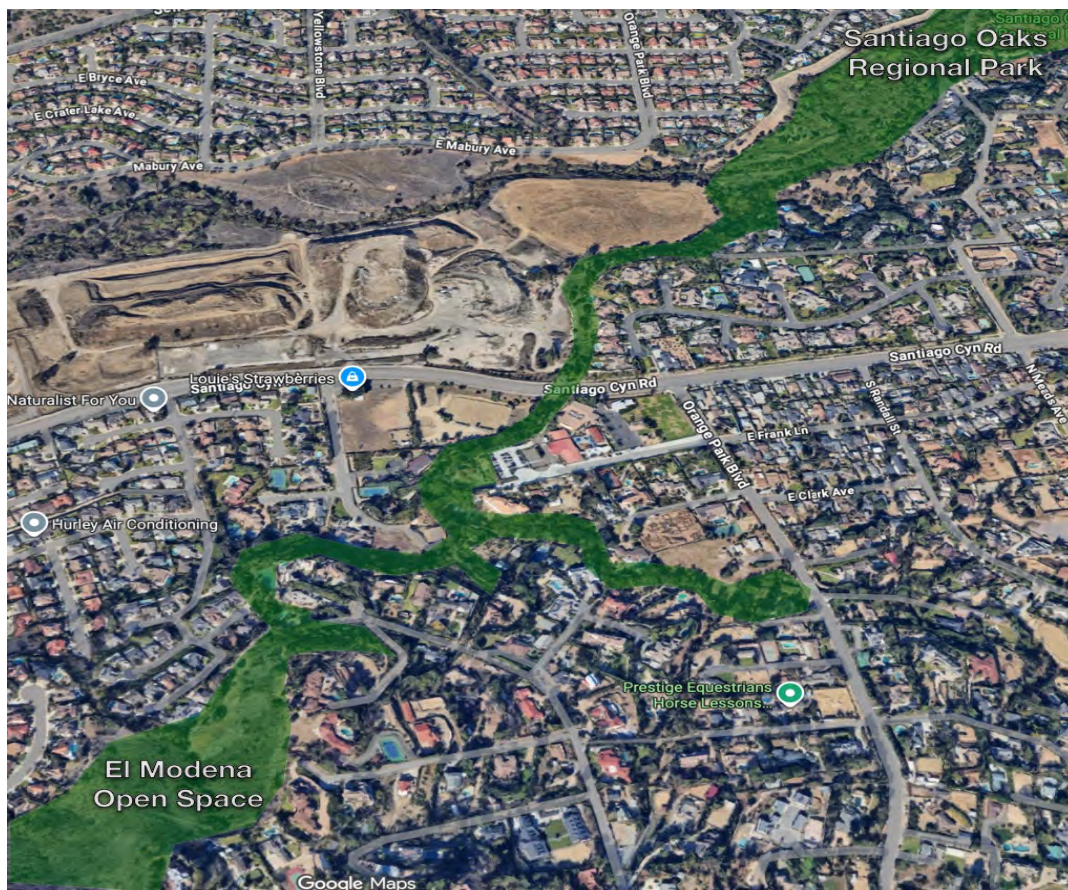
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- * *Strict limitations on canopy pruning using current ANSI arboricultural standards;*
- * *Long-term monitoring of retained trees for a minimum of five years following project completion; and*
- * *Replacement requirements if retained trees experience construction-related decline or mortality.*

3. The Only Intact Wildlife Corridor Will Be Bisected and Destroyed

This proposed project threatens the only intact geographic biological corridor which connects Santiago Oaks to El Modena Open Space (see illustration below). As such, the impact would be severe, and has not been adequately studied.

“This project is located within the Santiago Canyon corridor, one of the last remaining semi-rural landscapes in the City of Orange. The corridor supports remnant native habitats, mature coast live oaks, wildlife movement, and contributes substantially to the scenic and biological character of the area.” – OCCNPS



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Wildlife depend on this vital corridor to travel. Nesting raptors, bobcats, coyote, and many others use this corridor to live and travel. Should their ingress and egress be impeded, they will be forced back into the hills behind the site, into the heart of Orange Park Acres. We know these animals travel this corridor because they are often sighted by residents. The free passage and habitation of these animals is part and parcel of the OPA neighborhood.



The above picture of a coyote and her pups was taken by an OPA resident, in the backyard of her longtime family home on Meads. Her home directly overlooks the wildlife corridor and this proposed site, which can be seen in the background. Traffic has of course increased since this photo was taken – not only vehicular traffic but also the number of species using and relying upon this critical and last remaining wildlife corridor.

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4. BIOLOGICAL RESOURCES. <i>Would the project:</i>		Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
(a)	Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service?	☐	☐	☐	☒
(b)	Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service?	☐	☐	☐	☒
(c)	Have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
(d)	Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of wildlife nursery sites?	☐	☒	☐	☐
(e)	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☒	☐
(f)	Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State Habitat Conservation Plan?	☐	☐	☐	☒

In its “Impact Analysis” of the above graphic with its checked box responses, page 52 of the MND, it is stated as follows:

“The project site is a maintained property and does not contain any suitable habitat for any special-status plant or wildlife species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS). The existing trees on-site may serve as suitable habitat for migratory nesting birds. Construction of the proposed project could potentially impact nesting birds if ground-disturbing or vegetation-removing construction activities are initiated or conducted on and adjacent to the project site during the avian breeding season (February 1 through September 15). Permits to comply with local ordinances will be obtained prior to any tree removal or relocation. The proposed project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or

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special-status species in local or regional plans, policies, or regulations, or by the CDFW or the USFWS. As such, impacts would be less than significant.”
- MND, p. 52-53.

In fact, the MND has not presented evidence that enables it to say whether this project would have an impact on “any species” on site. The threatened woodland is prime roosting and foraging habitat for bats owls, hawks, migratory birds. There are many species which have not been surveyed, including San Diegan legless lizards, and which may also occur on site. In all, invertebrates, birds, reptiles, amphibians and mammals need to be studied and accounted for, before the MND or anyone can say how many will be killed or displaced. Without proper studies, the potentially catastrophic effects of blocking off this wildlife corridor are unknown. To conclude as follows is unsupported:

“Significance Determination: Less Than Significant Impact
Mitigation Measures: None
Significance Determination After Mitigation: Less Than Significant Impact”
- MND, p. 53

Other potential impacts unaddressed include the presumed (but not actual) start date of construction in July, 2026 and its disregard for and conflict with policy regarding nesting season.

“The project site and adjacent lands support trees and structures that provide nesting habitat for migratory bird species covered under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code, including common native species.

The construction of the proposed project could potentially impact migratory nesting birds if ground-disturbing or vegetation-removing construction activities are initiated or conducted on and adjacent to the project site during the migratory bird breeding season (February 1 through September 15). Potential impacts to nesting migratory birds that could result from construction of the proposed project include destruction of eggs or occupied nests, mortality of young, and abandonment of nests with eggs or young birds prior to fledging.”
- MND, p.54

Milan wants to begin this project as soon as possible, essentially now: “The proposed project’s construction is assumed to begin in July 2026” (MND, p.9) and “The proposed project’s construction was assumed to begin in July 2026 and conclude in October 2027.” (MND, p.63).

That is squarely within the frame of “February 1 through September 15” and the required mitigation is as follows:

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“Significance Determination: Potentially Significant Impact

Mitigation Measures:

MM BIO-1a Nesting Bird Pre-construction Surveys

If ground-disturbing or vegetation-removing construction activities or tree removal is proposed during the breeding/nesting season for migratory birds (typically February 1 through September 15), a qualified Biologist shall conduct a pre-construction survey for migratory birds within the construction area, including a 100-foot survey buffer, no more than 7 days prior to the start of grounddisturbing activities in the construction area.

54 MM BIO-1b Avoidance of Active Avian Nests

If an active avian nest is located during the pre-construction survey, a qualified Biologist shall establish and demarcate a 100-foot (for passerine birds) or 200foot (for raptors) avoidance buffer using Environmentally Sensitive Area (ESA) fencing, pin flags, and or yellow caution tape. No construction activities or construction foot traffic is allowed to occur within the avoidance buffer(s). Construction personnel shall be instructed not to enter the ESAs, and the Biologist(s) shall ensure that ESA boundaries are maintained. The ESA buffer zone shall be maintained around the active nest site(s) until the young have fledged and are foraging independently.”

The question is why the City would allow such policies to be ignored. There has been insufficient study of the avian and other species impacted. And yet, this is in keeping with the repeated choice by the City to avoid surveys that will reveal inconvenient facts, such as an arborist’s report and wildlife studies.

Similarly, a paleontologist “shall be retained to prepare a Paleontological Resources Report Mitigation Program (PRIMP),” (MND, p. 76), but of course not until after the City has approved this project. Once again, the analysis needs to be done beforehand, so a properly considered decision may be made by the City. It should not and cannot wait until right before the bulldozers start rolling.

4. Two “Species of Special Concern” and “Sensitive Natural Community” Will Have Their Habitat Destroyed

“The project site is a maintained property that is surrounded by urban development and only contains ruderal/bare and developed areas. The project site does not have any riparian habitat, nor does it have any sensitive natural communities as defined by the California Natural Diversity Database (CNDDB). In addition, the USFWS National Wetlands Mapper has no occurrences of riparian habitat²⁰ or other locally or regionally designated sensitive natural communities mapped on or adjacent to the project site and no riparian habitat was observed on the site during field survey

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conducted for the proposed project. As such, the proposed project will have no impact on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFW or USFWS.” (emphasis added). - MND, p. 53.

Significance Determination: No Impact

Mitigation Measures: None

Significance Determination After Mitigation: No Impact”

The MND claims there will be “No Impact” on any “sensitive natural community.” Yet the pallid bat is a “Species of Special Concern” under California law. Governor Gavin Newsom declared the pallid bat a “designated” mammal on January 1, 2024, thus adding an extra layer of state protection for this species.

A Species of Special Concern is defined as follows:

“A Species of Special Concern (SSC) is a species, subspecies, or distinct population of an animal* native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria**:

*is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;

*is listed as Federally-, but not State-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed;

*is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status;

*has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status.

*for the purposes of this discussion, "animal" means fish, amphibian, reptile, bird and mammal”

<https://wildlife.ca.gov/Conservation/SSC>, State of California, Department of Fish and Wildlife. Last visited June 30, 2026.

These bats are classified as “nongame mammals” under Cal. Fish and Game Code, Sec. 4150 and make their homes in coastal oak trees. As such, if a developer destroys many of these trees as is proposed, they will destroy the habitat of the pallid bat. Chopping down an oak while bats are roosting in it presents a threat to these creatures and violates the so-called ‘harassment prohibition.’ (Cal Code of Regs (CCR), Title 14, Sec. 251.1.)

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To comply with California code, developers cannot make loud noises, smoke, lights, or use chemical deterrents to disrupt a roost or force a colony to abandon coastal oak trees. They must have an exclusion plan in place.

CEQA includes a section with criteria for species to be treated as rare, threatened, or endangered during environmental reviews. Because the pallid bat – and the Western Red Bat – are both likely present on the site and meet these criteria, this would constitute a significant effect on the environment, triggering the EIR requirement.

Without a plan in an EIR for how the developer intends to address how cutting down these oaks will effect these bats, the project cannot move forward.

ORANGE PARK ACRES -- HISTORIC, EQUESTRIAN, SEMI-RURAL

1. The Community Character of OPA Is Threatened By the Proposed Plan

Established in 1928, OPA is a unique equestrian community in Orange County.

“Orange Park Acres is an unincorporated community and census designated place (CDP) surrounded by the city of Orange in Orange County, California. Orange Park Acres is bounded loosely by the tops of the hills as seen from the valley to the west (toward the City of Orange), Santiago Creek to the north, the holding basin behind the dam, the cemetery and Irvine Park to the east, and the top of the hills across Chapman as seen from the valley to the south. It comprises approximately 5,500 residents and is about 1.4 square miles (3.6 km²) in size. Almost all the homes in this county island are set on lots of 20,000 square feet (2,000 m²), a minimum requirement for this sector of Orange County. . .”

https://en.wikipedia.org/wiki/Orange_Park_Acres,_California, last visited June 28, 2026.

From the Orange Park Association website:

“In 1928, Frank Mead Jr and Monnette formed the Orange Park Acres Corporation to develop 640 acres of what is today called Orange Park Acres. One acre of land could be purchased for less than \$1,000 – or you could buy 8 acres of less desirable land for \$800. That same year the land company drilled wells and formed the Orange Park Acres Mutual Water Company. The area saw little population growth until after World War II, and consisted primarily of orange, lemon and avocado groves as well as egg ranches.

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"...Wildfires were many over the years and the area was rife with bobcats, mountain lions, coyotes, raccoons, rattlesnakes, possums, mule deer, tarantulas and bats. In the 40s and 50s the hills were covered in citrus and avocado groves. In 1953, the Orange Park Property Owners Association was formed to meet the threat of annexation into the City of Orange. Residents felt more comfortable being part of the more rural County of Orange designation. In 1960, the present Orange Park Association group was formed. Approximately 150 families lived in the area at that time."

"... Herman Lenz built and owned the Lazy "B" Golf Course – a rugged nine-hole course. His son-in-law, Norman Brock, built the present clubhouse and subdivided the lots on Ridgeline Ranch Road. Brock also bought Acre Place for a song and subdivided the parcel into one-acre lots. The Younger brothers brought a lot of "move-ons" from the building of the Garden Grove Freeway, sometimes putting two or three together to make one house."

The 1970s also brought the beginning of development in Orange Park Acres. In 1972, Grovewood was developed- adding 35 more homes, and Deerfield-adding 80 homes. In 1974, The Wilderness gated community was built with horse facilities and adding 100 more homes. 1975 brought Saddlehill with 36 one-acre equestrian home-sites. 1976 was a big development year with the addition of Broadmoor, which added 202 homes with equestrian facilities and a lake, Pheasant Run with horse facilities and 48 more residences, and Ridgeline with 38 one-acre equestrian sites. 1978 saw the development of Lazy Creek adding 35 more 1-acre equestrian estates, the Kennymead Merkel Development adding 24 half acre equestrian homes and, Orange Hill adding 83 homes. In 1979 High Horse Trails added 140 more homes and an equestrian facility. During this time period, the new developments were annexed into the City of Orange, resulting in today's mixture of County and City jurisdictions."

24 half acre equestrian homes and, Orange Hill adding 83 homes. In 1979 High Horse Trails added 140 more homes and an equestrian facility. During this time period, the new developments were annexed into the City of Orange, resulting in today's mixture of County and City jurisdictions."

In 1983 Bob & Jean's Cafe was torn down to make room for the first commercial development in Orange Park Acres. A year later, the Orange Canyon Center opened in the early part of the year bringing OPA its own specialty market, restaurants and shops. The late 1980 s saw the last gated community built in Orange Park Acres with the development of one-half acre lots in the gated community of The Reserve. Today

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you have to look long and hard to find an empty lot in Orange Park Acres. The same acre you could have purchased for \$1,000 in 1928 would now cost \$500,000 to \$750,000, depending on the view – and house not included!

Now that Orange Park Acres has become so attractive because of its large lots and close proximity to the parks and open spaces that surround it, many of the “move-ons” are moving out and being replaced by larger estate homes. Even with all this modernization, Orange Park Acres still strives to retain its rural atmosphere with miles of trails, few streetlights or sidewalks, millions of stars visible at night and actual moon shadows.

Today, Orange Park Acres has one of the finest multi-purpose trail systems in the State of California. It is used by residents and visitors on a daily basis. Handy Creek meanders through OPA alongside trails, through and between various resident's properties, and is home to ducks, egrets, crayfish and frogs galore. Domestic animals abound in our area, reflecting the heavy emphasis on the rural lifestyle that is the community's most distinguishing feature and its most effective unifying force. On any given day, you can see equestrians, bicyclists, joggers, runners, walkers with dogs, goats, a calf or even a lady with a duck in a wagon, enjoying the tranquil atmosphere of Orange Park Acres.”

- <https://www.orangeparkacres.org/>, last visited June 27, 2026

Milan's proposed project would drastically alter the semi-rural character of Orange Park Acres, obliterate equestrian infrastructure, and introduce dangerous traffic conflict points where the re-routed twelve-foot perimeter trail meets dense suburban infrastructure. Perhaps most alarmingly, the project requires an unprecedented level of earthwork and grading that threatens the fundamental safety and water quality of our local environment.

Homes are proposed only ten feet from an established equestrian and recreational trail, fundamentally changing the rural character of Orange Park Acres. Also, any trail connection between the Santiago Oaks and El Modena Open Space would be impacted. This adds significantly to the cumulative impact on the semi-rural and equestrian character that has distinguished Orange Park Acres for almost one hundred years.

The project is not compatible with the rest of OPA and is not suitable as the Western entrance to this neighborhood.

“ The project site is zoned for R-1-40 (single-family residential) zoning classification, which is a residential zoning classification that permits agricultural and horticultural uses related to the growing of vegetation for food or ornamental

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landscaping.

The proposed project would not conflict with existing zoning for agricultural use or with a Williamson Act Contract.

As such, no impact would occur. (emphasis added)”

- MND, p.44

A project cannot profess to permit agriculture and, by its design, make that a practical impossibility, due to space restrictions. Such is the case here. No large-animal keeping, a hallmark of Orange Park Acres, will be possible. Nor will agriculture. To say there will be no impact is disingenuous.

In short, the demolition of natural resources and the failure of proposed mitigation will combine to destroy the area’s rural character.

“The proposed mitigation also fails to preserve the distinctive rural character of the

Santiago Canyon corridor. Mature coast live oaks are among the defining visual and ecological features of this landscape. Replacing them with a managed, irrigated ornamental landscape would significantly alter the character of the site and further erode the natural setting that distinguishes this portion from more urbanized areas of the city.” – OCCNPS

2. The Project Blatantly Ignores and Controvers the OPA Plan

*“The project site is designated Estate Low Density Residential (ESTR) under the 2010 City of Orange General Plan (Figure 3). The ESTR designation allows a development density of between 1 to 2 dwelling units per acre (du/acre) and is intended for large-lot, single-family residential development in a rural or semi-rural setting with accompanying private, noncommercial equestrian and agricultural uses. The project site is adjacent to the East Orange General Plan of 1975, which has been prioritized by the 2010 General Plan for integrating developing residential lands with more established commercial and industrial uses to the west. fn 2,3 **It is also located within the Orange Park Acres (OPA) Specific Plan area.**” - MND, p 3.*

The Orange Park Acres Specific Plan, dated September 1973, was adopted by City Council Resolution No. 3915 on December 26, 1973. It was later incorporated into the general plan for the land use element. This plan intended to keep OPA from turning into a suburban tract. Its repeated theme is the preservation of rural life, open space, equestrian use, trails, natural features, low-level rural lighting, rural roads, preservation of trees, hillsides, and scenic corridors.

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Here, the MND claims to be in compliance with the OPA Plan and is not, as explained in interstitial comments in blue ink below.

“Orange Park Acres Specific Plan

The proposed project would be consistent with several OPA Plan Goals and Objectives and Policies.

The proposed project is contrary to the majority of OPA Plan goals and objectives.

OPA Plan Goals and Objectives

The OPA Plan includes four key goals and a series of objectives, with which the proposed project would provide the following consistency:

1. Establish a Distinctive Community Theme.

Project compliance: The proposed project would maintain the rural atmosphere and lifestyle by fostering compatible development with surrounding land use, in addition to providing an equestrian trail and a row of trees (on the northeastern, eastern, and western boundaries) to shield the development.

The project will not maintain a rural atmosphere and lifestyle. It will not afford large-animal keeping, which is a hallmark of the OPA Plan. It may be “providing” a row of trees, but it is demolishing and removing 124 trees. By the MND’s own admission, this is in reality what the proposed project would bring:

“The total hardscape square footage would be 65,827 square feet of on-site roads and sidewalks and 19,899 square feet of off-site improvements comprised of pavement, curb and gutter, sidewalk, and cross-gutter improvements, resulting in a combined 85,726 square feet of hardscape for the proposed project. As part of the proposed project, approximately 124 trees would be removed (see Figure 12).” - MND, p. 8.

2. Preserve and Enhance Natural Features.

Project compliance: There are no geological features on or near the project site and the site is flat such that there would not be impact to hillsides. Project compliance: Landscaping would include planting of trees to enhance the beauty of the area and natural setting of the proposed project.

See above: “...approximately 124 trees would be removed (see Figure 12),” Ibid.

3. Provide Economic Viability.

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Project compliance: Development of housing would increase the value of the land over time. Project compliance: Affordable units offered at the proposed project would provide housing for a variety of income levels, in addition to providing a project that is economically viable overall.

A maximum of six “below market” priced houses that are approximately 3000 square feet will be included. The City does not have the infrastructure or local private enterprise that would be needed. It’s 1.25 miles to the nearest post office. It is miles to an affordable grocery store. There are myriad social amenities unavailable or missing from this location, which is not suited to this particular development plan.

4. Promote the Safety, Health, and Welfare of People.

Project compliance: The proposed project would be designed to include elements furthering this goal such as safe, low-trafficked roads that discourage through traffic, efficient stormwater treatment and drainage, water for fire protection, and safe trails.” - MND, p. 103.

Potential accidents and fatalities will increase as residents are forced to seek egress via Santiago Canyon Road, which is the main artery. And when it comes to fire evacuation, the experience of the Canyon Fire 2 in 2017 indicates that Santiago Canyon Road will be in gridlock, effectively impassable for evacuation.

The OPA Specific Plan calls for a semi-rural and open atmosphere where sidewalks, block walls, and street lighting are discouraged. Not only will its fundamental tenets be ignored, but its specific policies will also be directly controverted.

As the MND states:

“OPA Plan Policies

The OPA Plan provide a series of relevant policies with which the proposed project would be consistent and/or not in conflict with, as identified below.

Policy 3

Encourage the use of natural exteriors for the structures including wood and warm, earth colors.

- The proposed project’s color palette would include natural colors such as stone, sage, chestnut, and more.*

Policy 8

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Provide for continuous trail linkages throughout OPA connecting to County proposed trails, major land use elements and natural features such as Santiago Creek and Handy Creek.

- *The proposed project would include an equestrian trail along the northern and western boundaries of the project site that would connect to existing trails.” - MND, p. 104.*

The proposed project will destroy equestrian use and related businesses, along with 124 trees 48 of which are coastal oaks, woodland, open space, and the critical and last intact wildlife corridor, as discussed supra.

“Policy 9

Retain a positive view to the hills, preserving the undeveloped hillsides of OPA. Provide a landscaped screen for all housing in those areas and incorporate sensitive grading criteria throughout.

- *The proposed project would match the visual character of residential uses to the west (across North Nicky Way) and would not affect views of hillsides.*
- *The proposed project would be screened by a landscaped row of trees along the northeast, east, and west project site boundaries.*

Policy 10

Preserve Santiago Creek as a balanced ecological system and riparian area, maintaining the diversity of plant and vertebrate species while allowing for light recreational use such as equestrian and hiking trails. Specifically support the Santiago Creek Greenbelt Proposal by the County of Orange.

- *The project site is over 1,000 feet south of and across East Santiago Canyon Road from Santiago Creek and would therefore not affect its ecological system and riparian area.*

Policy 17

Provide for landscape, greenbelt or open space buffer between differing housing types.

- *The proposed project would include two open space areas totaling 0.57 acre, as well as a tree buffer around the development and private yards.*

Policy 22

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Adopt proposed trails as shown on Exhibit #33 as the main trail system to serve OPA and promote future grade separated crossings at arterial road crossings. (Fn94)

- *The proposed project would include an equestrian trail that would connect to existing trails. (fn94) The exhibit referenced in this Policy is part of the Orange Park Acres Specific Plan (OPA Plan) and is not included in this Initial Study/Mitigated Negative Declaration (IS/MND).*

Policy 28

Preserve the steep slopes along the hillsides maintaining a constant band of open space and trails along these areas.

- *The project site is flat and would not affect the hillsides and its associated open space and trails.*

Thus, impacts would be less than significant.

Significance Determination: Less Than Significant Impact

Mitigation Measures: None

Significance Determination After Mitigation: Less Than Significant Impact” - MND, p. 105.

Had the MND considered the OPA Plan in its entirety, the conclusions would likely have been different. There are only a relatively few OPA Plan Policies even mentioned, and these are dismissed with facit or no explanation. What’s more glaring is that there is no mention of the following OPA Plan Policies: 1, 2, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16,18, 19, 20, 21, 23, 24, 25, 26, 27. These Plan Policies are not mentioned because they are being violated and the analysis proffered is thus woefully incomplete.

As an example, consider the retaining walls proposed. The proposed seven- and nine-foot walls are not allowed by the Orange Park Acres Specific Plan.

“The proposed project would construct a retaining wall of varying heights, including a 4-foot retaining wall to the south; a 9-foot retaining wall to the east and southeast; and a 7-foot retaining wall to the north along the project’s boundary with the proposed equestrian trail and East Santiago Canyon Road (see Figure 6). The retaining wall would be constructed according to City standards, specifically Municipal Code Section 17.12.070 Fences and Walls, by conforming with California Building Standards Code (CBC) design standards.” - MND, p.4.

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Similarly, lighting will be inconsistent with the semi-rural low-fixture rate required by the OPA Specific Plan:

“Lighting for the new residential development would consist of building-mounted light fixtures and interior roadway lighting. Improvements along North Nicky Way would consist of the construction of one streetlight near the proposed sidewalk on the eastern side of the roadway.” - MND, p.8

The concerns have not been adequately studied. Until there is an EIR, any proposed mitigation remains insufficient.

3. The Project Will Destroy Local Business, Institutions, 4H

Orange Park Acres was established nearly one hundred years ago as a semi-rural equestrian community, and its identity remains closely tied to that heritage. The City should carefully evaluate whether approving developments that eliminate and preclude large-animal keeping opportunities and reduce the opportunities for residents to continue to pursue this lifestyle, is consistent with the goals and character of the community.

The loss of large-animal keeping opportunities is more than a change in land use; it represents a dramatic and sudden degradation of the character, economy, and traditions that have defined Orange Park Acres for generations.

Orange Park Acres supports numerous local businesses that depend upon horse ownership and equestrian activities. These businesses include boarding facilities, feed stores, veterinarians, farriers, riding instructors, horse trainers, tack suppliers, trailer repair services, fencing contractors, and other equine-related enterprises. For example, the property in question currently supports a (closed) equestrian arena, a beloved fruit stand, and hay storage. Every property that is removed from the equestrian community reduces the number of equestrians and thus the customer base that supports these local businesses.

The cumulative effect of converting equestrian properties into conventional suburban tract residential developments threatens the long-term viability of these businesses. As horse ownership opportunities decline, demand for equestrian services declines as well, potentially resulting in business closures and the loss of local jobs.

Equally important is the impact on youth agricultural programs such as 4-H and similar organizations, which are all the more important in today's challenging world and should be treasured and protected accordingly. Children in Orange Park Acres and surrounding communities participate in programs that teach responsibility, leadership, animal husbandry, and agricultural education through the raising and care of livestock and large animals.

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These programs provide significant educational and personal-development benefits, including:

Responsibility and work ethic through daily animal care; Leadership and community involvement; Agricultural education and practical life skills; Opportunities for competition, scholarship, and career development; and Preservation of Orange Park Acres' rural heritage.

When new developments prohibit or discourage large-animal keeping, opportunities for local youth to participate in these programs are lost. Over time, the cumulative loss of animal-keeping properties diminishes the ability of families to remain active in 4-H and other valuable and character-teaching agricultural youth organizations.

4. The Project Would Negatively Impact Livability

The proposed new houses would be fundamentally incompatible with the character of the OPA neighborhood, which is based in part on large animal keeping. These houses would also be insufficiently served by infrastructure, as discussed supra. The site is too far from basic services that will be required for the presumed new residents.

“Public Transit

The Orange County Transportation Authority (OCTA) currently provides public transit within the neighborhood surrounding the project site. The closest transit stop, the Chapman-Orange Park stop, is located 1.26 miles south of the project site, on East Chapman Avenue. Additionally, seven other transit stops are located on or adjacent to East Chapman Avenue, at approximately the same distance from the project site, providing regional connections throughout the County.” - MND, p.4

The nearest bus stop is over a mile and a quarter away. Other transit stops are at “approximately the same distance,” meaning also more than a mile and a quarter away. There is no affordable grocery store in the area, and such stores would require miles of travel. The nearest post office is more than two miles away. The list goes on.

5. The Project Has Not Proposed Adequate Mitigation for Hazardous Emissions or Waste Next Door to a School

The MND asks if the project will:

“Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?”

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A project-related significant adverse effect may occur if the project site is located within 0.25 mile of an existing or proposed school site and would potentially release toxic emissions which would pose a health hazard beyond regulatory thresholds.

The only school within 0.25 mile (1,320 feet) of the project site is Salem Lutheran School, serving preschool through eighth grade, whose buildings reside approximately 93 feet east of the project site. Other schools in the area include Linda Vista Elementary School, 0.6 mile to the southwest (2100 North Cannon Street), and Oakridge Private School, 1 mile to the southwest (19111 Villa Park Road).

While Salem Lutheran School is located adjacent to the project site, the proposed project would not emit hazardous emissions or handle large quantities of hazardous materials. Spills or releases of hazardous materials on the project site would remain localized and would follow federal, State, and local guidelines for cleanup. As such, potential spills or release of hazardous materials would be localized and would not affect Salem Lutheran School. Thus, impacts would be less than significant.” - MND, pp.87-88.

Hoping, however optimistically, that “Spills or releases of hazardous materials on the project site would remain localized and would follow federal, State, and local guidelines for cleanup” is not a mitigation strategy. It’s not any kind of strategy at all. But the MND provides no glimpse into how it will ensure that hazardous materials stay localized or contained and do not reach the school or its children. The proximity to the religious school should be of grave concern to the many community members who are affiliated or come to the Salem Lutheran Church facility from time to time for community meetings and other events.

AN ENVIRONMENTAL IMPACT REPORT IS REQUIRED BY CEQA

1. CEQA Affords Full Protection

The foremost principle under the California Environmental Quality Act is that the Legislature intended the Act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. Cal. Pub. Res. Code § 21000 et seq. *Tsakopoulos Investments, LLC v. County of Sacramento*, 95 Cal. App. 5th 280, 313 Cal. Rptr. 3d 300 (3d Dist. 2023).

Under CEQA guidelines, a lead agency must prepare a full Environmental Impact Report if there is a "fair argument" that a project “may have a significant effect on the environment.” (Pub. Resources Code, § 21151(a).) A “significant effect” under CEQA is “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project,” CEQA Guidelines, § 15382; Pub. Resources Code, § 21060.5, 21151(b).

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Where substantial evidence in the record supports a “fair argument” the project may have a significant environmental effect, an EIR is required even if other substantial evidence indicates there will not be such an effect. *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316; CEQA Guidelines, § 15065.

CEQA was enacted for the state to “take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state” and to “[e]nsure that the long-term protection of the environment . . . shall be the guiding criterion in public decisions.” (Pub. Res. Code § 21001.) The CEQA Guidelines state that “CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language,” and that “[t]he purpose of CEQA is . . . to compel government at all levels to make decisions with environmental consequences in mind.” (CEQA Guidelines §15003.)

CEQA’s purpose is to provide information and “requires full environmental disclosure.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89.) Only when “there is no substantial evidence in light of the whole record before the public agency that the project . . . may have a significant effect on the environment” may an agency prepare a negative declaration or mitigated negative declaration instead of an EIR. (Pub. Res. Code § 21064.5; see also *Id.* §§ 21064, 21080(c).)

A mitigated negative declaration, in particular, is prepared “when the initial study has identified potentially significant effects on the environment, but . . . revisions in the project plans or proposals . . . would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur,” and there is no substantial evidence the project may have a significant effect on the environment. (*Id.* § 21064.5.) If there is substantial evidence that a project may have a significant effect on the environment, an agency must prepare an EIR. (*Id.* § 21080(d).)

2. The “fair argument” Standard for an EIR Has Been Met

There is a low threshold for requiring an EIR. (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332 [quoting *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 84].) If an agency is presented with so much as “a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR[.]” (CEQA Guidelines § 15064(f)(1); see also *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 75.)

The “fair argument test” reflects a preference for resolving doubts in favor of preparing an environmental impact report. (*Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1034.)

Under the fair argument standard, an EIR must be prepared “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact, even

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if there is substantial evidence to the contrary.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332.) Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Guidelines §15384(a).)

The fair argument standard does not include a weighing process. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 935.) The court does not weigh substantial evidence against other substantial evidence to determine who has the better argument. (Id.) “If substantial evidence establishes a reasonable possibility of a significant environmental impact, then the existence of contrary evidence in the administrative record is not adequate to support a decision to dispense with an EIR.” (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.)

In *Pocket Protectors v. City of Sacramento*, **the court held that opinions of area residents familiar with the site constituted substantial evidence supporting a fair argument that the project could have a significant non-mitigable effect on the environment, as defined in Cal. Pub. Res. Code § 21068, thus making an EIR necessary** under Cal. Pub. Res. Code §§ 21100, 21151, subd. (a), 21080, 21082.2, and California Environmental Quality Act Guidelines, Cal. Code Regs. tit. 14, § 15064(f)(1), (2). Although the mitigated negative declaration and the city council's findings of fact found otherwise, the court stated that those findings were devoid of reasoning and evidence. Because the land use policies were adopted at least in part to avoid or mitigate environmental effects, the court applied the fair argument test with no presumption in favor of the city. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 904 [21 Cal.Rptr.3d 791].

We live in Orange Park Acres and our firm’s office is in Old Towne Orange. In addition to ourselves, many other residents also familiar with the site are able to testify to the harm that would befall the community if the City of Orange were to approve the MND without proper scrutiny. Lay percipient witness testimony is sufficient to create a fair argument. As further evidence of the salience of “opinions of area residents,” we refer the City to the public comment it has already received.. Further, please note the well-attended Salem meeting, a petition (Exhibit 2) and documentation of heightened discussion on the topic on social media (Exhibit 3).

The sheer scope of this project—bypassing local R-1-40 zoning via state density bonus laws to pack 30 suburban homes onto a sensitive 7.44-acre parcel—introduces severe, unmitigated impacts that cannot be brushed aside with a standard checklist. The City of Orange cannot legally treat the 30-unit clustered proposal as a minor, low-impact development. While Milan is utilizing the State Density Bonus Law and Senate Bill 330 to bypass local R-1-40 acreage zoning restrictions, these housing laws do not exempt the project from CEQA compliance. State housing overrides do not grant a developer the right to bypass environmental or public safety

3. CEQA Requires Analysis of Cumulative Impacts

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CEQA also requires consideration of cumulative impacts. An EIR is required “if the cumulative impact may be significant and the project’s incremental effect, though individually limited, is cumulatively considerable . . . when viewed in connection with the effects of past projects, the effects of other current project, and the effects of probable future projects.” This is particularly true because the project addressed by the MND is actually part of a larger project involving multiple properties and plans. (Guidelines § 15064(h)(1).) Cumulatively considerable environmental effects require a mandatory finding of significance. (Id. § 15065(a)(3).)

CEQA also has a substantive mandate and requires effective mitigation. “[P]ublic agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Pub. Res. Code § 21002.) CEQA requires mitigation measures to be “fully enforceable through permit conditions, agreements, or other measures.” (See id. §21081.6(b); CEQA Guidelines § 15126.4(a)(2).) “Formulation of mitigation measures should not be deferred until some future time.” (CEQA Guidelines § 15126.4(a)(1)(B).)

The proposed 7-to-9-foot structural retaining walls, the dramatic influx of impervious concrete surfaces, the demolition of 124 trees including 48 coastal oaks, the hazardous squeezing of the historic trail network, and the impaction of the Santiago Canyon Road corridor impeding both traffic and wildfire emergency egress, the deterioration of the Orange Park Acres neighborhood, the violation of the Orange Park Acres Specific Plan, inter alia, represent severe, landscape-altering impacts. The mitigation measures currently proposed in the IS/MND are entirely insufficient to guarantee the long-term protection of the environment and the local residents, equestrians, and users of the Santiago Canyon Road corridor.

A PHASED ENVIRONMENTAL IMPACT REPORT IS REQUIRED

Earth Movement Is Just The Beginning.

The city staff has submitted a MND for comment, consideration and adoption by the City as lead agency. With all respect, submission of this proposal is fraught with irregularity in conflict with both text, spirit and intent of the relevant statutes and regulations. Utilizing a negative declaration, which in effect provides that there are no environmental consequences to the proposed action, tests the limits of credulity.

It is only appropriate to utilize a negative declaration when there is no substantial evidence, in light of the whole record, that the proposed action may have a significant effect on the environment. *Pub. Res. Code* § 21080(c); 14 Cal. Code Reg. §§15064(f), 15070; *Pub. Res. Code* § 21080(c)(1); 14 Cal. Code Reg. §15070(a). Negative declarations are within the contemplation of binding statutory mandate when there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant environmental effect *Pub. Res. Code* §

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21080(c); 14 Cal. Code Reg. §§15064(f), 15070; *Pub. Res. Code* § 21080(c)(1); 14 Cal. Code Reg. §15070(a).

Further, the MND is never appropriate unless there is no substantial evidence in light of the whole record before the lead agency that the project, as had been previously revised, may have a significant environmental effect. *Pub. Res. Code* § 21080(c)(2); 14 Cal. Code Reg. §15070(b). *Pub. Res. Code* §21064.5; 14 Cal. Code Reg. §15369.5.

After the holding in *Sundstrom v. County of Mendocino* (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 248 Cal. Rptr. 352), moreover, when a negative declaration is considered, the insertion of subsequent revisions, to avoid or mitigate the project's environmental effects so as to make an Environmental Impact Report (EIR) unnecessary, must be made before the negative declaration is adopted. In other words, a city may not avoid an environmental impact report based on a condition that the city, developer, or other development proponent adopt revisions that are to be specified at some future date.

“The lead agency's decision on whether a project may have a significant environmental effect must be based on substantial evidence in light of the whole record before the lead agency. If there is substantial evidence in light of the whole record before the lead agency that a project may have a significant environmental effect, then an EIR, rather than a negative declaration, must be prepared.” 9 California Real Estate Law & Practice § 303.23 (2026), siding *Pub. Res. Code* §21082.2(d).

This closely resembles the present situation in which approval of massive earthmoving is sought, (dust, noise, traffic congestion) with all parties recognizing that future development if not imminent, *is inevitable and certain*.

It is the effort to draw the curtain on the ultimate use which is being kept from the public so that potentially profound environmental consequences need not be scrutinized prior to consideration of all the surrounding circumstances.

“Stated differently, if the lead agency is presented with a fair argument that the project may have a significant environmental effect, it must prepare an EIR even if it has other substantial evidence that the project will not have a significant environmental effect.”

Friends of "B" Street v. City of Hayward (1980) 106 Cal. App. 3d 988, 1002-1003, 165 Cal. Rptr. 514; see *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1603, 35 Cal. Rptr. 2d 470, in which the Fourth Appellate District adopted the fair argument standard, reversing its earlier decision to adopt a substantial evidence standard in *Uhler v. City of Encinitas* (1991) 227 Cal. App. 3d 795, 278 Cal. Rptr. 157; see also *Silveria v. Las*

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Gallinas Valley Sanitation Dist. (1997) 54 Cal. App. 4th 980, 993-994, 63 Cal. Rptr. 2d 244 (record was devoid of any substantial evidence of significant impacts); 9 California Real Estate Law & Practice § 303.23 (2026).

The requirements are well-established for determining that an MND is insufficient. A project may have a significant effect on the environment occurs based upon:

- (1) the opinions of an agency's own staff;
- (2) comment letters from state resource management agencies; and
- (3) a project applicant's refusal to mitigate a particular significant impact. *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 152-159, 39 Cal. Rptr. 2d 54 (staff opinions, comments from the air pollution control district and the state Department of Conservation, and the applicant's refusal to mitigate were all considered substantial evidence of a significant adverse growth-inducing impact on the development of a golf course). See, 9 California Real Estate Law & Practice § 303.23 (2026)

Accordingly, consider these examples:

A negative declaration for a street-widening project was improper when the initial study indicated that the project's short-term environmental effects included dust, noise, and erosion, and the long-term effects included increased traffic, removal of a number of trees, demolition of stores and residences, a change in the character of the neighborhood, and adverse aesthetic effects. *Friends of "B" Street v. City of Hayward* (1980) 106 Cal. App. 3d 988, 1003, 165 Cal. Rptr. 514.

A negative declaration for a general plan amendment was proper when the amendment provided that later specific developments under the plan would have to mitigate the plan's traffic effects. *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal. App. 3d 612, 625-626, 263 Cal. Rptr. 813.

A mitigated negative declaration for a mitigation banking project was improper because (1) there was a fair argument that the project would have significant environmental effects as to every aspect of the project; (2) the mitigated negative declaration did not ensure a direct correlation between impacts and mitigation measures; and (3) the mitigation measures were inadequate to compensate for the take of endangered species. *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal. App. 4th 382, 400-401, 83 Cal. Rptr. 2d 836.

An environmental impact report was required for a project to cover a four-acre reservoir with an aluminum roof. There was substantial evidence to support a fair

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argument that the mitigation measures contained in the mitigated negative declaration for the project might have a significant environmental impact. *Estates Homeowners Assn. v. Montecito Water Dist.* (2004) 116 Cal. App. 4th 396, 400-401, 10 Cal. Rptr. 3d 451.

In one case, the plaintiffs challenged the county's approval of a project to build a health care facility on property next to an ecological preserve, on the basis that the project would harm two rare plants. In this case, the showing reveals protected California oaks. The developer had paid a mitigation fee for the project pursuant to the county's Ecological Preserve Fee Ordinance and the county board adopted a mitigated negative declaration. The court of appeal held that the payment of a mitigation fee did not entitle the developer to a negative mitigated declaration, and that the county was required to prepare an EIR for the project. The fee program had never undergone CEQA review, and the county could not simply declare that the fee would "fully" mitigate the environmental effects of all future discretionary projects absent some environmental analysis. For an in lieu fee system to satisfy the duty to mitigate, either that system must be evaluated under CEQA (with a two tier approval for later, more specific, projects) or the in lieu fees or other mitigation must be evaluated on a project specific basis. *California Native Plant Society v. County of El Dorado* (2009) 170 Cal. App. 4th 1026, 1055, 88 Cal. Rptr. 3d 530; as reported in 9 California Real Estate Law & Practice § 303.23 (2026).

1. Piecemeal Analysis Assumed in the MND

The importation of tons and the proposed earth movement entails the expectation for later, subsequent and comprehensive plan development. No effort has been made in order to analyze the surrounding circumstances and contemplated uses quite frequently referred to and discussed as inducements for approval, to wit, lack of objection, for the environmental impacts which are quite obviously to occur upon even normative impacts of current planning. What lies before us is, in plain fact, a piecemeal disclosure of the prelude to comprehensive use from several options to be later finalized.

This is an improper effort to "tier" the proposal into balkanized packages. Deferral of detailed cumulative impact analyses and other reasonably foreseeable project effects to future project-specific EIRs is inconsistent with the policy basis for tiering, that is, covering broad issues within first-tier EIRs. However, in this case, the decision to forgo the EIR is substituted with the MND. Such is a fracture in a logically continuous outcome to a finalized usage. But tiering cannot be used to defer to second-tier documents analysis of impacts that are relevant to the current decision to approve a proposed project. 14 Cal. Code Reg. §15152(b).

For example, on this basis, a first-tier EIR for a specific plan for a 25,000-acre resort and residential community was held to be inadequate due to its failure to analyze the effects of providing water supplies for the project. Here, we have wildlife nested within California oaks on a woodland

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that has existed for decades on the affected parcel, all to be lost without any study of environmental impact whatsoever.

2. No Comments on Ultimate Land Uses

This development as represented contemplates several phases of development, beginning with earth movement. It is actually several individual projects yet to be fully revealed, although discussed by all parties at considerable length. The individual projects involve several phases of development, or several individual projects, which together constitute a project with a significant effect on the environment.

For these reasons, the City as lead agency for such a phased project or multiple projects must prepare a single program EIR for the ultimate project. 14 Cal. Code Reg. §15165; 9 California Real Estate Law & Practice § 303.24 (2026). Similarly, when an individual project is a necessary precedent for action on a larger project with significant environmental effects, or commits the lead agency to such a larger project, the EIR must address itself to the scope of the larger project. In this regard, the importation of massive earthen infill in one parcel and the removal of woodland in another are merely precursors; a prelude to a continuum consisting of a larger undertaking or a larger project. In such circumstances, the law provides that the lead agency may prepare a single EIR, not an MND, for all the work in aggregate form. Or, a separate EIR for each project. In either case, it must address the cumulative effect of the several projects in the EIR or EIRs. No effort at this cumulative evaluation has been undertaken. 14 Cal. Code Reg. §15165; 9 California Real Estate Law & Practice § 303.24 (2026).

A deep-seated concern harkens to the fact that the evident contemplation of all the parties falls upon phased and multiple projects. The ostensible underpinning for such a strategy seems to be clearly aimed at preventing scrutiny of the effort to identify economic motivations for the avoidance of CEQA's EIR requirements by chopping projects into "bite-sized pieces" that themselves purportedly have no arguable significant environmental effects when viewed alone but may have significant effects when viewed cumulatively. See, *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 283-284, 118 Cal. Rptr. 249, 529 P.2d 1017; *Whitman v. Board of Supervisors* (1979) 88 Cal. App. 3d 397, 406-407, 151 Cal. Rptr. 866; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 716, 270 Cal. Rptr. 650;; see also Pub. Res. Code §21083(b); 14 Cal. Code Reg. §15130(a).

This proposal is clearly comprised of several phases of development not fully identified, which together constitute a project with a significant effect on the environment. Effects on the environment include loss of oak trees, wildlife, and birdlife as set forth herein. In such cases, the City, as lead agency, must write an EIR, exploring all the immediately identified potential alternatives widely discussed in public forums. 14 Cal. Code Reg. §15165.

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Similarly, when an individual project, such as the clearance and restoration of a large parcel involving the importation of significant earthen volume, is a necessary precedent for action on a larger project with significant environmental effects, or commits the lead agency to consideration of such a larger project, the EIR must be prepared to address itself to the scope of the larger anticipated uses, as discussed and used as inducements for the public to coalesce in the direction of assent to the plan proposals.

Whether or not the lead agency chooses to prepare a single EIR for all the projects or a separate EIR for each project, the city must address the cumulative effect of the several projects in the EIR or EIRs. *Id.*

CONCLUSION

We appreciate the opportunity to submit comments on the MND for Milan's proposed project. We urge the City to undertake and complete a phased EIR in compliance with CEQA and all applicable law.

We call on the City to honor its history even as it looks to the future. While recognizing that housing is needed and development is perhaps inevitable, this moment in the collective community life of Orange calls for caution and reflection, not hurried action. It merits a more circumspect analysis before irrevocable actions that will cause permanent destruction of natural resources are taken.

The project site presents the opportunity to design an extension of the rural lifestyle and amenities of Orange Park Acres rather than a reduction of them. There is no reason why agriculture and large-animal keeping could not be made available to a smaller number of potential new homes, with, for example, the additional amenity of a community barn. Such a barn is featured in several developments in the great Orange Park Acres area now and has been a welcome feature for residents for decades. But the current design precludes these opportunities and needs to be revisited.

Helpful suggestions for mitigation of environmental impacts have already been provided to the City from OCCNPS:

"In addition to the impacts on heritage oaks, OCCNPS recommends that the City carefully evaluate:

- * The adequacy and seasonal timing of botanical surveys for special-status plant species.
- * Potential impacts to wildlife movement through the Santiago Canyon corridor.
- * Long-term impacts associated with fuel modification zones.
- * Construction impacts within oak root protection zones.
- * Cumulative loss of native habitat resulting from continued residential development in eastern Orange.

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*Long-term maintenance activities that may further degrade remaining native vegetation."

In addition, it is our hope that the City will turn to additional experts for guidance in the various other areas where this project would cause irreparable harm. Given the possibility that we or others may be required to pursue legal remedies in order to ensure that the City complies with its legal obligations including those arising under CEQA, we would like to remind the City of its statutory duty to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. (§21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 762.)

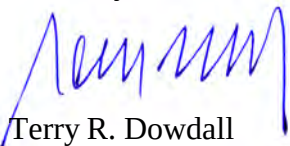
The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project, and includes "pretty much everything that ever came near a proposed [project] or [] the agency's compliance with CEQA . . ." (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City's representatives or employees, that relate to the project, including any correspondence, emails, and text messages sent between the City's representatives or employees and the applicant's representatives or employees.

Maintenance and preservation of the administrative record requires that, inter alia, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made. Please add these offices to your notice list for all future updates to the project and do not hesitate to contact the undersigned with any questions.

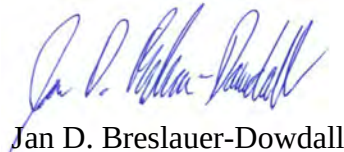
It is our hope that the City of Orange will take all evidence and testimony into consideration and not allow Milan to run roughshod over the rights of Orange citizens and our environment. All rights are reserved at this time.

Thank you for your attention to this matter.

Sincerely,



Terry R. Dowdall



Jan D. Breslauer-Dowdall

For

DOWDALL LAW OFFICES, A.P.C.

Please note: This letter shall not be construed as accepting or admitting any of the statements in correspondence or documents to which this letter responds which are not specifically addressed here.

Cc: Clients

EXHIBIT "1"