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January 22, 2016

**DELIVERED VIA U.S. MAIL and Email**

Peter Eichar  
San Diego County Planning & Development Services  
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**RE: Property specific requests, general plan amendment, and rezone  
Project numbers: PDS2012-3800-12-005; PDS2014-REZ-14-006  
Env. review number: PDS2012-ER-12-00-003; SCH#2015121012**

To San Diego County Planning & Development Services and Mr. Eichar:

This firm represents Frederick and Rebecca Knox, owners of the real property located at 9678 Circle R Drive, Escondido, CA [APN: 129-390-18-00] (the "Knox Property"). I am writing to convey our clients' preliminary questions and concerns about the projects described above, which were mentioned in a Notice of Preparation of an Environmental Impact Report they received in December 2015.

Our clients are concerned that the pond on their property would be adversely affected by the projects, especially if the projects result in increased population density, vehicular traffic, and pollution of the air, water, and soil. The viability of animal and plant life in and around the pond, including nearby orchards of avocado and other vegetation (both endemic and agricultural), is of particular concern. Destruction of the orchards and other flora and fauna will affect the area's aesthetics, reduce property values, and diminish the neighborhood's appeal. Rezoning will inevitably require additional infrastructure to support the people moving into the higher density areas, and our clients are concerned about environmental contamination from installation and maintenance of new sewer lines, electrical wiring, and other utilities. Any sewer lines built on Mountain Ridge Road or Circle R Drive should be explained in detail, and mitigation measures proposed to deal with potential contamination of the Knox Property.

It is concerning that this area overlaps with the Lilac Hills Ranch project. The EIR should address these projects' effect on Lilac Hills, and vice versa. Staff should take care to explain any discrepancies or inconsistencies between the Lilac Hills EIR and the EIR prepared for these projects. If there are not any significant

differences in the impacts caused by the respective projects, the similarities require similar explanation. Given Accretive Investment's acquisition of easements and property using front companies, the community would undoubtedly appreciate an explanation of how many of the original property owners are still requesting that these changes be made. It is probable that some of the original requesters no longer hold full title to their land, having made separate deals with Accretive to support Lilac Hills Ranch. The EIR should enumerate the number of parcels affected by these changes as well as the number whose owners are actually *requesting* these changes.

As with the Lilac Hills Ranch project, third party or government intrusion on the Knox Property is unwarranted and should not be part of any projects. The EIR should include mitigation measures to assuage concerns that building new infrastructure, such as expanding or widening roads, will burden private property owners' land without their permission. Any use of eminent domain should appear in studies and reports like the EIR as soon as staff is aware that it might be necessary for any part of the project. One would hope a rezoning proposal would not involve eminent domain, but as the Lilac Hills Ranch project demonstrated, it never hurts to consider the issue early on. If the staff determines these projects would never require the use of eminent domain for any reason, please describe *why* eminent domain is unnecessary to accomplish the projects' goals or to deal with the likely consequences of the project in the future. The EIR should address the concerns raised in this firm's letter<sup>1</sup> to the Planning Commission in opposition to the Lilac Hills Ranch project, in which we explained that any modifications to the Circle R Drive and Mountain Ridge Road intersection would probably require an illegal use of eminent domain to pave part of the Knox Property. If these projects do not require any widening of Circle R Drive and Mountain Ridge Road or incursions onto the Knox Property, please explain why.

According to the Notice of Preparation, "The proposed project also includes revisions to the Residential Policy 8 of the Valley Center Community Plan; to change the minimum lot sizes allowed in the SR-2 designation, from one-acre to one-half acre and, change the minimum lot size allowed in the SR-4 designation from two-acres to one-acre. The stipulations in the policy for allowing the noted minimum lot sizes are not proposed to change. The full text of the current policy and the proposed revisions can be found on the project web page at: <http://www.sandiegocounty.gov/content/sdc/pds/advance/PSR.html>." However, when our firm contacted your office and spoke with Marcus Bishop, he said that the proposal to change the definitions of SR2 and SR4 had been withdrawn. Please explain in the EIR whether or not the definitions of SR2 and SR4 will remain as they are, or if they will instead be changed. A change from 1-acre to 0.5 acres for SR2 and from 2 acres to 1 acre for SR4, of course, would quadruple the density in the area, rather than merely doubling it, if the parcels are rezoned to SR2. This is a big difference, and must be adequately addressed.

The documents available on the county's website contain widely varying estimates of the number of new dwelling units expected to arise from these proposals. In a single map, for example, the estimates are either 371 dwelling

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<sup>1</sup> A copy of this letter is attached for your convenience.

units (page 1) or “nearly 1000” (page 2)<sup>2</sup>. Another area of the county’s website<sup>3</sup> estimates this will result in an increase of 253 dwelling units. Yet another<sup>4</sup> area estimates 160 dwelling units. When our firm spoke with county staff member Marcus Bishop in early December, we were told the current estimated increase is 250 new units on 230 affected parcels. Please explain the discrepancies in these numbers, and the methodology that underpins the staff’s final estimate.

We appreciate your consideration of these concerns.

Sincerely,

**GALUPPO & BLAKE, APLC**

A handwritten signature in blue ink, appearing to read "Daniel T. Watts", with a stylized flourish at the end.

**DANIEL T. WATTS, ESQ.**

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<sup>2</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/BOS\\_Jun2012/VC7%2B.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/BOS_Jun2012/VC7%2B.pdf).

<sup>3</sup> <http://www.sandiegocounty.gov/content/sdc/pds/advance/PSR.html> (entry for “Valley Center 7+”).

<sup>4</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/BOS\\_Jun2012/July\\_25\\_PSR\\_GPA\\_BL.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/BOS_Jun2012/July_25_PSR_GPA_BL.pdf) (entry for VC7+).



Carlsbad  
Los Angeles  
Phoenix

August 5, 2015

**Sent via U.S. Mail, Email, and Fax**

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RE: **OBJECTIONS TO DRAFT FINAL ENVIRONMENTAL IMPACT REVIEW**  
Project: Lilac Hills Ranch  
Specific Objection: Proposed Widening of Mountain Ridge Road  
Affected Property: 9678 Circle R Drive, Escondido, CA [APN: 129-390-18-00]

Dear Mr. Slovick, Ms. Fitzpatrick, Mr. Rilling, and Ms. Moore:

I am writing on behalf of Frederick and Rebecca Knox, owners of the real property located at 9678 Circle R Drive, Escondido, CA [APN: 129-390-18-00] (the “**Knox Property**”), to object to the Lilac Hills Ranch Project and urge the Planning Commission not to approve it. Our clients are particularly troubled by the proposed construction at the intersection of Circle R Drive and Mountain Ridge Road. This construction would unnecessarily – and illegally – infringe on the rights of nearby property owners and cause both the public and private landowners to incur unnecessary costs.

The project as a whole violates the General Plan and County policies, including the prohibition on leapfrog development embodied in Policy LU-1.2. In the publicly available Draft Final Environmental Impact Report, appendices, and related documents (“**Report**”), the only responses to the community’s objections consist of conclusory statements, and linguistic somersaults. When those weren’t enough, the Report recommends the County *amend* General Plan to conform to the project, rather than amending the project to conform to the recently enacted General Plan. While the staff produced a well-researched and voluminous Report addressing many issues and providing many pages of useful background information on the scope of the project, the Report seems to dismiss the project’s flaws, such as the lack of legal rights to necessary land. The developer’s lack of easements is dismissed as a “dispute between private parties” with which the County need not concern itself – despite the Report’s simultaneous “acknowledgement” that the County will need to use eminent domain literally dozens of times to seize enough property to build the project. To justify building a project in violation of county policies, the Report redefines leapfrog development, redefines “village,” and cites court decisions for the exact *opposite* of their holdings. Based on the documents made available in the Draft Final Environment Impact Report (“**DFEIR**”)<sup>1</sup> and the county’s publication of comments received from the public,<sup>2</sup> it is clear that Accretive Investments, Inc. (“**Developer**”)’s proposal for the Lilac Hills Ranch project (“**Project**”) must be denied.

Like the Bonsall and Valley Center community groups, whose objections we adopt and incorporate by this reference, the Knoxes believe installing a new village in the middle of a semi-rural/rural area – without any concrete plan for acquiring the multiple easements from private property owners necessary to build it – violates CEQA, the General Plan, and County policies.

**1. By simply moving a small portion of Circle R Road to its proper location along an existing easement, the Circle R/Mountain Ridge Road intersection could be fixed without exercising eminent domain.**

Eminent domain proceedings will fail when a viable alternative exists that would have a lesser impact on property owners. CAL. CIV. CODE §1245.220(c)(1)-(4) (proposed project must be planned “in the manner that will be most compatible with the greatest public good and the least private injury,” and seizure of land must be “necessary”). Eminent domain is an

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<sup>1</sup> The most recent version of the DFEIR is available to the general public at [http://www.sandiegocounty.gov/content/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/draft-FEIR.html](http://www.sandiegocounty.gov/content/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/draft-FEIR.html)

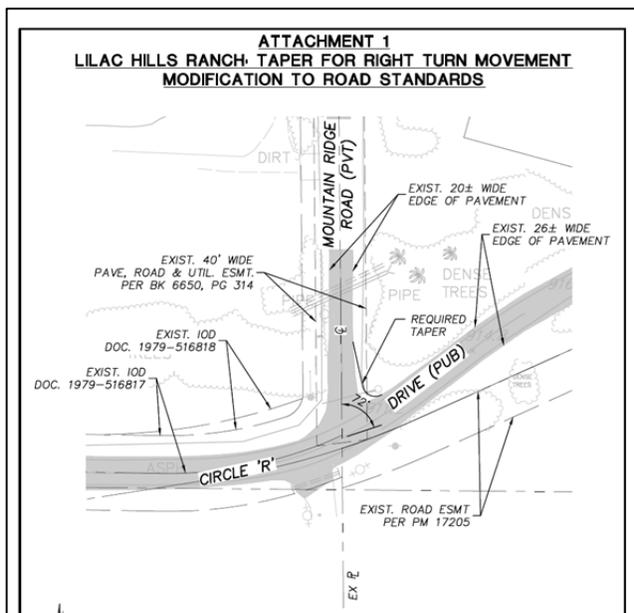
<sup>2</sup> The public’s objections to the project are chronicled at [http://www.sandiegocounty.gov/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/LILAC-HILLS-RANCH.html](http://www.sandiegocounty.gov/pds/regulatory/docs/LILAC_HILLS_RANCH/LILAC-HILLS-RANCH.html) and are hereby incorporated by this reference.

inappropriate remedy when “the public interest and necessity do not require the proposed project” (§ 1250.370(b)), “[t]he proposed project is not planned or located in the manner that will be most compatible with the greatest public good and the least private injury” (§1250.370(c)), or seizure of the property “is not necessary for the proposed project” (§1250.370(d)). See *Council of San Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal.App.4th 473, 486. The seizure of the Knoxes’ property at the intersection of Circle R and Mountain Ridge fails all these tests. In addition, because the proposed seizure of the land is for a private road to service only a portion of the residents of the area – namely, the inhabitants of the southern third of the Lilac Hills complex – the “stated purpose [of the seizure] is not a public use,” making eminent domain proceedings *completely* unavailable. CAL. CIV. CODE § 1250.360(b)). The Planning Commission is aware of this, since Section 4.8.1.8 (Road Design Alternative 8: Mountain Ridge Road at Circle R Road) of the Report clearly states that “**the County cannot condemn for a private road easement and this alternative may be infeasible.**” On all these grounds, but without waiving any other ground provided by law, we object to the project as long as its approval is predicated upon obtaining an easement through the Knoxes’ land. See also CAL. CIV. CODE § 1250.360 (h).

While the project’s violations of the General Plan cannot be reconciled by means other than an ill-considered overhaul of the General Plan, there is a solution to the eminent domain issue at Circle R and Mountain Ridge: Simply re-route a small portion of Circle R Road to its correct location. According to the Tentative Map supplied by the Developer and the Planning Commission’s staff, Circle R is located south of where it’s supposed to be. The easement creating space for Circle R Road is a few yards further north of where Circle R was actually built. The Tentative Map shows the easement still exists, so the Developer would not have to acquire any other rights of way from property owners to move Circle R northward into its proper position. Moving Circle R into the boundaries of its existing easement would mitigate the line-of-sight and turning radius deficiencies discussed in the Report without condemning anyone’s

land. Because this alternative was ignored by the Report but provides a greater public benefit (ensuring the proper placement of the road) while creating the “least private injury,” an eminent domain action to seize the Knoxes’ land may not succeed. Adopting this alternative plan would reduce the cost of time and acquisition and benefit all stakeholders.

→ Moving Circle R to its proper location (“EXIST. ROAD ESMT”) negate need for “required taper.”



Another alternative is to grant the modification requested by the Developer. In a January 31, 2014 document<sup>3</sup>, the developer requested a modification to the tapering requirement on Mountain Ridge Road because “there is virtually no traffic movement that would benefit from this right turn taper.” The Developer itself recognizes that the requested taper serves no practical purpose and should not be part of the project. Nevertheless, the proposal before the Planning Commission inexplicably includes several components requiring the seizure of land by eminent domain at this intersection. Eminent domain will *not* succeed unless it is the option expected to cause the greatest public good and the least private injury; this particular condemnation would create *no* public good and *great* private injury.

**2. Sight distance at Circle R Dr. and Mountain Ridge Road is insufficient, and, without eminent domain, creates an unmitigated “significant impact.”**

Chapter 2.3.2.3 (page 2.3-33) of the DFEIR discusses County sight distance requirements at intersections. The intersection at Circle R Dr. and Mountain Ridge Road must have a line of sight at least 450 feet in length. “The existing maximum line of sight at this intersection is currently 450 feet,” but the DFEIR somehow came to the conclusion that this fails to meet the 450-foot requirement. This might have been a typographical error. Regardless, the DFEIR tries to get around this “flaw” by stating that, “as discussed in Chapter 1.0, and Table 1-3, as part of the project the project proponent would request an off-site Clear Space Easement from the property owners of APN 129-190-44 (0.25 acre) and APN 129-390-18 (0.23 acre) to assure maintenance of the sight distance. If the project proponent is unable to obtain required easements, the project proponent shall be required as part of the County’s standard tentative map conditions, to request the Board of Supervisors to direct County staff to **begin eminent domain proceedings for acquisition of property rights** in accordance with Board Policy J-33.” Only by using the County to take land by force can the Developer claim that “impacts associated with sight distance would be less than significant.” This contingency is emphasized again in section 2.3.4.2, where the Report states, “As part of the project, the project proponent would therefore, request an off-site clear space easement from the property owners. Should an easement not be granted, **the County would acquire the sight distance by condemnation** through funds provided by the project applicant. Likewise a clear space easement would be required at Mountain Ridge Road at Circle R Drive. Thus, **potential transportation hazards** would be less

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<sup>3</sup> “Request for a Modification to a Road Standard and/or to Project Conditions,” Accretive Investments, Inc., *available at* [http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/circulation/8\\_-\\_Taper\\_at\\_Intersection\\_Package.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/circulation/8_-_Taper_at_Intersection_Package.pdf) (Jan. 31, 2014).

than significant.”

The report states that the existing line of sight is 450 feet, which seems to meet the requirements. It is not clear why the Report concludes eminent domain would be necessary or justified. Even if the existing line of sight were insufficient, the Developer’s proposal is contingent upon the acquisition of easements which it *cannot* obtain except through eminent domain. As already discussed above, eminent domain proceedings are inappropriate when used for private benefit or when other alternatives exist. Instead of seizing land, Circle R Drive can be relocated without affecting adjacent property owners or acquiring any new easements. As for the line of sight requirements, the required 450 feet already exists. If the Planning Commission adopts a final Report, it should not include any implied or explicit approval of using eminent domain to seize land, and should instead *bar* the use of eminent domain in order to protect private property owners.

**3. Traffic on Mountain Ridge Rd. will exceed the limits of the private road’s easement, despite the Report’s creative reading of two inapposite court decisions.**

Mountain Ridge Road is a private road designed to service the half-dozen homes adjacent to it. The easement providing for its creation reflects that reality. Because the road services only a few homes, the traffic traversing it amounts to fewer than 75 cars per day in either direction, according to the Report. The Lilac Hills project would build over 1,700 homes nearby, one-third of which would require access via Mountain Ridge Road. Even a couple hundred homes would add an enormous burden to a small private road designed to support fewer than a dozen homes.

The Report, however, claims that “As shown in Table 10.2 of the Traffic Impact Study, from a traffic operation perspective, the project does not cause any significant impact to the intersection at Mountain Ride Road and Circle R Drive (the REIR identified that only 5.5 percent of the project’s total traffic utilizing Mountain Ridge Road). As a result, no traffic mitigation was proposed or is necessary.”<sup>4</sup> This conclusion is based on bad math. Assuming the road indeed bears only 5.5 percent of the project’s total traffic – despite the road serving **30 percent** of the project’s residents – that’s still an order of magnitude increase in the traffic on that road. Right now, Mountain Ridge is a small private road servicing a few homes. The Lilac Hills project, however, will consist of 1,746 homes, some of which will have multiple cars. Five and a half percent of 1,700 to 3,000 cars is a significant increase. The Report’s math is simply wrong.

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4 Lilac Hills Ranch, FEIR Global Response 0 Easements (Covey Lane and Mountain Ridge Roads), at page “Global-7”, available at [http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/dfeir/responsetocomments/2\\_Global%20Response-Easements.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/dfeir/responsetocomments/2_Global%20Response-Easements.pdf).

On the other hand, if the report is correct that the project will not affect traffic at Mountain Ridge and Circle R Road, the Developer's request for a modification should be granted.<sup>5</sup> The Report can't have it both ways: Either the project will significantly increase traffic in excess of the existing easement for Mountain Ridge Road, or it will *not* increase traffic, in which case the taper is unnecessary. No matter which position the Planning Commission adopts, there should be no construction at the intersection of Mountain Ridge Road and Circle R Road.

The Report tries to get around the limitations on the Mountain Ridge easement by misinterpreting a few court decisions. It cites *Jordan v. Worthen*, for example, for the court's supposed holding that "that nearby and ongoing (foreseeable) development is a factor that supports increased use of an easement." The Report states: "Here, it is reasonably foreseeable given the development in Valley Center, that there could be some future subdivision of the benefitted parcels that would result in an increased use of the existing Easement. Indeed, the twenty existing residential properties along the Mountain Ridge Road are part of an earlier subdivision. This factual scenario is similar to *Jordan* wherein at least two defendants had themselves purchased property from an earlier subdivision. *Jordan*, supra, 68 Cal.App.3d at p. 325. Such defendants were later estopped from contesting the impact of additional development to their easement as such changes were foreseeable. *Id.*"

*Jordan v. Worthen*, however, was a case about a **prescriptive** easement, not an easement created by grant deed. The Mountain Ridge Road easement has specific boundaries defined by the terms of the easement, and was created for a specific purpose, unlike a prescriptive easement created by adverse possession. But even in the case of a prescriptive easement, its scope is defined by the use that created it (*O'Banion v. Borba* (1948) 32 Cal.2d 145, 155), and it cannot be changed in a way that unreasonably increases the burden of the easement. *Jordan v. Worthen* (1977) 68 Cal.App.3d 310, 327. This is the holding of *Jordan v. Worthen*, not what the Report says. Under *Jordan v. Worthen*, the test for expanding the use of a prescriptive easement is whether the increased use resulted from "the normal evolution in the use of the **dominant** tenement" and was reasonably foreseeable and consistent with the pattern found by the **prescriptive** use that created the easement. *Applegate v. Ota* (1983) 146 Cal.App.3d 702, 711. The project's proposed use of the Mountain Ridge easement *fails* that test, not least because the Mountain Ridge easement is not a prescriptive easement. Even if it were prescriptive, the dominant tenements are the handful of homes located along Mountain Ridge road, *not* the thousands of future homes built in Lilac Hills Ranch, which was a vacant field at the time the

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5 "Request for a Modification to a Road Standard and/or to Project Conditions," Accretive Investments, Inc., available at [http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/circulation/8\\_-\\_Taper\\_at\\_Intersection\\_Package.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/circulation/8_-_Taper_at_Intersection_Package.pdf) (Jan. 31, 2014).

easement was created. The construction of 1,700 homes in a previously vacant field is not a “normal evolution in the use” of the parcels along Mountain Ridge road. Furthermore, the *Jordan* court did not hold that anyone was “later estopped from contesting the impact of additional development to their easement.” The Report’s interpretation of *Jordan v. Worthen* is legally incorrect.

The characterization of *Wall v. Rudolph* is worse. The Report claims that *Wall v. Rudolph* and *Hill v. Allen* hold “development generally is part of the inevitability of change dictated by natural forces and human activities that the servient estate must accommodate,” and the existing Mountain Ridge Road easement will support the additional traffic burden as long as the project’s residents “will use the easement for ingress and egress purposes as intended by the original reservation and grant.”<sup>6</sup> This is an incorrect reading of *Wall v. Rudolph*. The *Wall* court held that excessive or unduly burdensome uses of an existing easement are prohibited, even if the use is of the type for which the easement was created. *Wall v. Rudolph*, 198 Cal. App. 2d 684, 692 (Ct. App. 1961). Whether a use “is excessive [or] unduly burdensome depends primarily upon the terms of each grant construed in the light of circumstances surrounding its execution (CIV. CODE §§ 1066, 1647),” but only where “there is room for doubt as to the proper interpretation” of the easement. *Id.* If the easement’s terms are clear, the permissible uses are clear, and the easement must be enforced according to its terms. The easement must always be used “consistent with the purposes for which the easement was granted.” *City of Pasadena v. California-Michigan etc. Co.*, 17 Cal.2d 576, 582. Here, the easement was created for the benefit of the dominant tenements existing at the time it was created, of which the parcels comprising Lilac Hills Ranch are **not** members. “Use of an appurtenant easement for the benefit of any property other than the dominant tenement is a violation of the easement because it is an excessive use<sup>7</sup>.” *Wall v. Rudolph*, 198 Cal. App. 2d 684, 695 (Ct. App. 1961) (citing *Myers v. Berven*, 166 Cal. 484, 489). Although an easement allowing for general road purposes would include its use for “normal future development within the scope of the basic purpose” of the easement, it would *not* include “an abnormal development” that burdens the servient tenement – such as the 1,700-unit Lilac Hills Ranch project. REST., LAW OF PROPERTY, § 484, illus. 3, p. 3021. As in *Wall v. Rudolph*, the “properties here involved comprised a quiet area devoted to rural pursuits.” *Wall v. Rudolph*, 198 Cal. App. 2d 684, 689 (Ct. App. 1961). Allowing traffic commensurate with a community

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6 The Report concludes by once again arguing “As previously noted, this is a private matter.” As already explained in this letter, the justifications for eminent domain are not a private matter.

7 This rule applies “whether the easement is created by grant, reservation, prescription, or implication.” *Wall v. Rudolph*, 198 Cal. App. 2d 684, 695, 18 Cal. Rptr. 123 (Ct. App. 1961) (citing *Cleve v. Nairin*, 204 Ky. 342).

the size of a 1,700-home **village** is not consistent with the existing use of the road for **rural** traffic. This discrepancy between the easement's purpose and the project's use for it is compounded by the inevitable traffic headed to the commercial buildings inside Lilac Hills Ranch, an eventuality the Report completely failed to address. Traffic aimed at commercial businesses exceeds the terms of an easement granted only for rural and semi-rural residential use.

**4. Cumulative traffic noise and vibrations, which the Developer admits it cannot mitigate, will harm the health and well-being of residents.**

Chapter 4.0 of the DFEIR admits that the plans for Mountain Ridge Road, as well as all proposed alternatives, will have "significant noise/vibration impacts related to traffic, stationary, and construction noise sources." The Reports acknowledges the "cumulative traffic noise impacts" will *not* be mitigated, stating: "As with the project, these cumulatively significant traffic noise impacts would remain significant and unmitigated (see subchapter 2.8.6.4)."

As for the vibration and noise impacts that are supposedly amenable to mitigation, the DFEIR's proposed mitigation measures consist of undefined, vague references to a "blasting and monitoring plan...and, if needed, limitations on heavy equipment." See *DFEIR Chapter 4.0, page 4-148*. Who would perform this "monitoring" and what those "limitations" would look like are not clear. What *is* clear is that "a residence is located within 150 feet of the Mountain Ridge Road/Circle R Drive intersection improvement area" and would be subject to "significant vibration impacts" from this blasting. Though the DFEIR makes the conclusory statement that its unspecified mitigation measures would reduce the vibrations to a "less than significant" level, there is absolutely no evidence in the DFEIR to support such a conclusion.

**5. Whether the County has the authority to use eminent domain on Mountain Ridge Road is not "a legal question between private parties," but a public issue requiring rejection of the project.**

The failure to consider whether the project can be completed without eminent domain will doom this project. The Report repeatedly refers to the necessity of using eminent domain as a "legal question between private parties" or a "private matter" undeserving of public attention. This is not so. The very purpose of eminent domain is to take land from a private landowner for a *public* purpose. The Report's insistence that the Developer's need for eminent domain is a "private matter" implies a lack of attention paid to the interests of the private landowners in the community affected by the project. If the need for eminent domain is a purely "private" matter with no public benefit, then eminent domain should be completely off the table. The project should be evaluated as if eminent domain were *not* an option to acquire the easements necessary to complete the project. Taking at face value the Report's characterization of this as a "private" matter, the Planning Commission must assume eminent domain cannot be used to complete Lilac

Hills Ranch, impelling the conclusion that the project is fatally flawed since it lacks dozens of necessary easements to fulfill its “private” purposes.

While declaring acquisition of easements a “private” matter, the Report explicitly admits that the project cannot be completed without use of eminent domain:

**1) Mountain Ridge Road Access Rights**

Issue: Lack of easement rights (access) and issues pertaining to the “overburdening” of the Mountain Ridge Road private road easement.

Background: Mountain Ridge Road is an existing two-lane private road that provides access from Circle R Drive to several existing parcels that are located within the southern portion of Phase 5. A Title Report was submitted to PDS that identified an existing 40-foot private road easement over Mountain Ridge Road that was granted to parcels located within the southern portion of Phase 5. The project proposes gated access to the southern portion of Phase 5, so that only the institutional use and proposed residents located within the southern portion of Phase 5 could use Mountain Ridge Road as primary access.

Staff Determination: **The use of private road easements is a private matter outside of the County’s land use authority.** Therefore, **the question of overburdening Mountain Ridge Road is a legal question between private parties.** The environmental effects of constructing Mountain Ridge Road and the project’s impact on the roadway were analyzed pursuant to CEQA. See Attachment G for the Environmental Findings and Attachment H for the Environmental Documentation.

The report also admits that the County cannot condemn land for a private purpose, including the land necessary for this project. The construction at Mountain Ride Road and Circle R Road is contingent upon the *illegal* use of eminent domain to seize land for a private road:

***4.8.1.8 Road Design Alternative 8: Mountain Ridge Road at Circle R Road – Taper***

The project’s proposed road design for this road segment corresponds to Road Exception Request #8, as submitted to the County. ... “This road design alternative would construct the required taper to County standards, which involves acquiring 0.03 acre of additional right-of-way on an off-site parcel as well as the extension of an existing culvert, and power pole relocation. It is noted that **the County cannot**

**condemn for a private road easement and this alternative may be infeasible.”<sup>8</sup>**

If the County cannot condemn for a private road easement, and the proposed easement at Mountain Ridge and Circle R would be a private road easement, then the County cannot use eminent domain at that intersection. This admission dooms any future attempt at using eminent domain, and therefore dooms the project, insofar as the project is predicated upon the assumption that the Developer will succeed in acquiring easements from unwilling property owners through the illegal use of eminent domain.

**6. Whether the phrase “LEED-ND” is trademarked is irrelevant to the project’s ability to comply with LEED-ND standards.**

County Policy LU-1.2 requires projects to be designed to meet the LEED-Neighborhood Development Certification or an equivalent. This project, quite plainly, does not. Why not? The Report suggests that the project is exempt from complying with LEED-ND standards because “As a trademark [sic] program, LEED®-ND cannot be explicitly duplicated by any other program.”

That’s not how trademarks work. A registered trademark gives its owner the exclusive right to use the name to sell goods and services. It does *not* prevent local governments from requiring projects to adhere to environmental requirements. A local government may indeed require developers to adhere to LEED standards despite the word “LEED” being trademarked, just as the Superior Court requires litigants to upload documents using “Microsoft Internet Explorer” or to submit briefs in “Adobe PDF” format, or to use “WestLaw” citations rather than “LexisNexis.” There is nothing in trademark law preventing the developer from using a LEED-ND checklist to evaluate whether the project complies with LEED-ND requirements; to the contrary, LEED’s creators *encourage* such a use of the LEED-ND standards:

For projects that do not (or cannot) pursue LEED-ND certification, another approach is to perform your own internal LEED-ND audit using the checklist in this Citizen’s Guide to evaluate some or all of the categories and standards in the system.<sup>9</sup>

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8 Draft Environmental Impact Report, Chapter 4.8.1.8, Project Alternatives, available at [http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/Recirculation/GPA12001-REIR-Chap4-061214.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/Recirculation/GPA12001-REIR-Chap4-061214.pdf)

9 A Citizen’s Guide to LEED for Neighborhood Development, page 17, available at [https://www.nrdc.org/cities/smartgrowth/files/citizens\\_guide\\_LEED-ND.pdf](https://www.nrdc.org/cities/smartgrowth/files/citizens_guide_LEED-ND.pdf)

The report justifies its refusal to require LEED standards in other problematic ways: “Staff analysis concluded that: ...the interpretation that a new village could only be found to comply with Policy LU-1.2 if it qualified or was certified as LEED®-ND would render the term ‘equivalent’ meaningless and; an interpretation that an equivalent program means it must be identical to LEED®-ND would also render the term ‘equivalent’ meaningless.” The report continues:

... Staff analysis also concluded that, Policy LU-1.2 does not demand rigid conformance to the LEED®-ND program, but rather uses the term ‘equivalent.’ The word equivalent is not defined in Policy LU-1.2 or in the General Plan, and a number of questions have been raised as to its meaning. The ordinary meaning of the word equivalent is described by the dictionary as something that is ‘corresponding or practically equal in effect.’ (Webster’s II New College Dictionary, Third Edition, 2005.)

Therefore, it is reasonable to interpret the word ‘equivalent’ to mean that a village may be designed to meet a program that is corresponding to the LEED®-ND Certification program or **designed in accordance with the underlying principles of LEED®-ND**. In other words, a project may be approved if found to have been designed in a manner that is corresponding to or practically equal in effect in performance or outcome with LEED®-ND.”<sup>10</sup>

The “underlying principles” of LEED-ND certification are to build communities in an environmentally friendly way. Those “underlying principles” are shared by nearly everyone on the planet. Indeed, “When used for formal certification, LEED-ND is rigorous and complex, but the principles behind the system are much simpler.”<sup>11</sup> But because those principles are so universal, they are impossible to enforce, which is why the term “LEED-ND” was used in the County policy. Interpreting “LEED-ND’s equivalent” to mean “in accordance with its underlying

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10 Lilac Hills Ranch, FEIR Global Responses, Project Consistency With General Plan Policy LU-1.2, page 44, available at [http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/dfeir/responsetocomments/8\\_Global%20Response-LU-1.2.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/dfeir/responsetocomments/8_Global%20Response-LU-1.2.pdf)

11 A Citizen’s Guide to LEED for Neighborhood Development, available at [https://www.nrdc.org/cities/smartgrowth/files/citizens\\_guide\\_LEED-ND.pdf](https://www.nrdc.org/cities/smartgrowth/files/citizens_guide_LEED-ND.pdf)

principles” neuters the Policy by allowing any half-hearted attempt at environmentalism to suffice. This is not the intent of Policy LU-1.2, and the Planning Commission should not adopt this unsupportable interpretation of it.

The Report admits that the project does not adhere to LEED-ND standards, nor any to any similarly strict standards, but is merely designed with LEED’s unspecified “underlying principles” in mind. The project therefore violates County Policy LU-1.2.

**7. The DFEIR is unclear on whether the project requires a new regional category in the Community Development Model.**

The wording in the Report leaves the public without a clear understanding of whether the project requires an extensive overhaul of the Community Development Model. At the very least, this project requires a revised designation of the Lilac Hills area, transforming it from semi-rural/rural into a “village”. At worst, it requires revising the very definition of “Village” in the General Plan’s Community Development Model:

“The Project complies with the CDM because **it proposes a new “Village” Regional Category** that is surrounded by Semi-Rural Regional Category lands, which transition to Rural Regional Category areas.”<sup>12</sup>

The Report does not explain how this “new” village category differs from the existing village category, though it is implied that the revised definition of a “village” would allow for standalone villages in the middle of semi-rural land. The existing definition of a “village” does *not* allow standalone villages because they would violate the prohibition on leapfrog development in County Policy LU-1.2. The Report must be revised to explain the difference between the new and existing “village” categories, or else explicitly state that the project requires a reclassification of the Lilac Hills area, not the creation of an entirely “new village regional category.”

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12 Planning Commission Hearing Report, page 42, available at [http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/dfeir/responsetocomments/Staff%20Report.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/dfeir/responsetocomments/Staff%20Report.pdf)

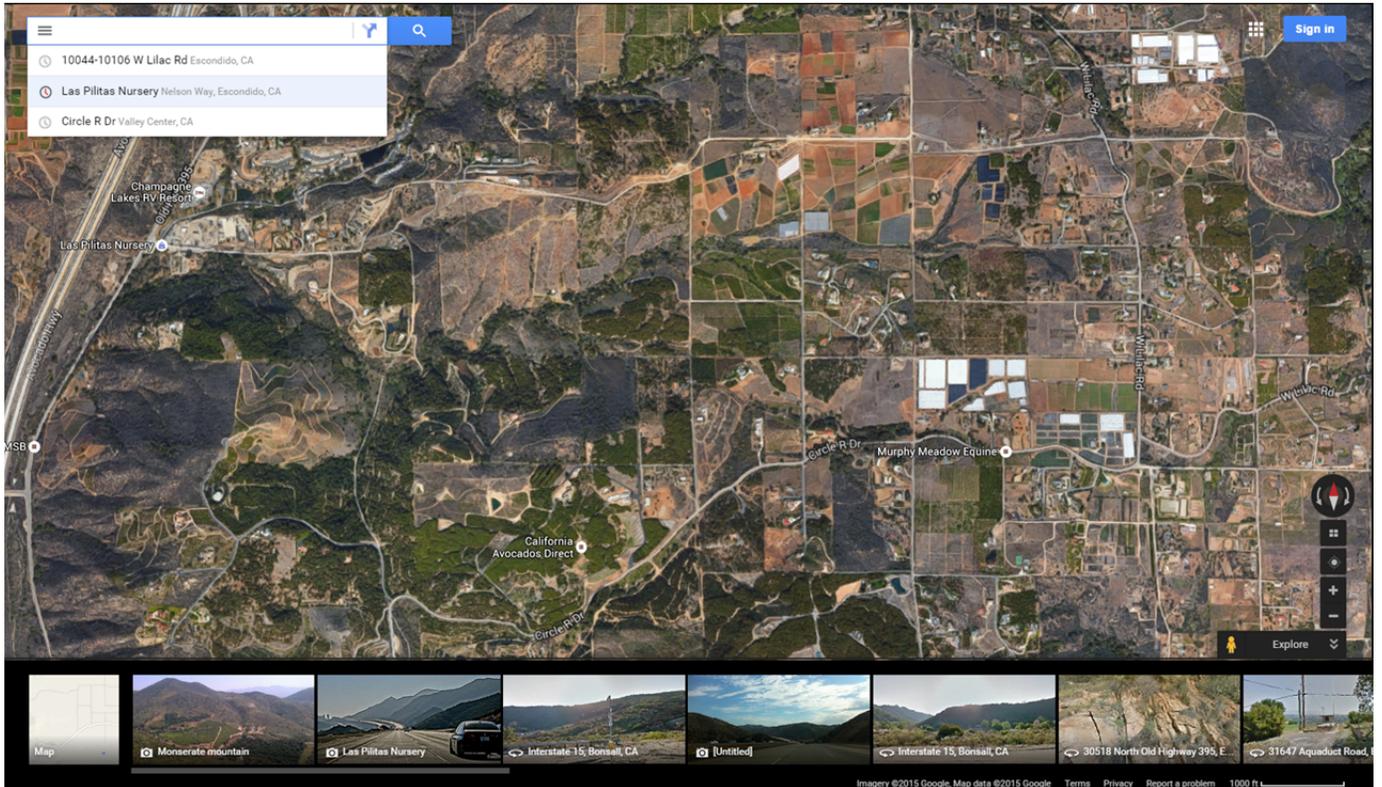
**8. The project violates the prohibition on Leapfrog Development enshrined in Policy LU-1.2 because it located away from established villages.**

The Planning Commission acknowledges receiving many objections to the project based on its violation of Policy LU-1.2, the ban on leapfrog development. The Report's response to the violation of policy and the Community Development Model fails to acknowledge that the proposed development would fall outside established villages.

Leapfrog development "is defined as Village densities located away from established Villages or outside established water and sewer service boundaries."<sup>13</sup> This project is both outside established villages *and* outside established water and sewer service boundaries. The Planning Commission received numerous letters from residents objecting to this leapfrog development. The Report's response was that "The Project complies with the CDM because it proposes a new 'Village' Regional Category that is surrounded by Semi-Rural Regional Category lands, which transition to Rural Regional Category areas." This is a non-sequitur, not a substantive answer; a village surrounded by semi-rural lands still violates the prohibition on building villages away from existing villages. Putting aside the fact that proposing the possible creation of a "new" regional category does *not* comply with the CDM (as discussed above), this response is inadequate because it does not acknowledge that building a village in the middle of a semi-rural area *far away from existing villages* is, by definition, impermissible "leapfrog development." One need only look at a map to see how far away the project is from existing villages. The Lilac Hills Ranch village will be built literally in the middle of fruit orchards:

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<sup>13</sup> General Plan, page 3-23, Policy LU-1.2, available at <http://www.sandiegocounty.gov/pds/gpupdate/docs/LUE.pdf>.



The patchworks of color on this map are rural agricultural parcels far away from existing villages. The Developer plans to build Lilac Hills Ranch in the center of this map, several miles away from the nearest existing village. The DFEIR apparently argues either (a) building a village “located away from established Villages” does not violate a ban on building villages “located away from established Villages,” or (b) revising the General Plan’s definition of “village” does not violate the existing policy’s ban on building villages away from established villages. Either option is untenable. The Planning Commission should not adopt a DFEIR containing either unsupportable position.

**9. The project contravenes the General Plan, violates principles of smart growth, and is universally opposed by the community.**

Every document analyzing this project is replete with references to the General Plan and how this project violates it. Rather than asking the Developer to revise its project to comply with the General Plan, the Report takes the unusual approach of asking the County to revise the General Plan to conform to the Lilac Hills Ranch project:

“Land Use Planning

The land uses included in the Mountain Ridge Road Design Alternative would be the same as the project. Implementation of **either the project or this alternative would involve GPAs [General Plan Amendments] and Rezones** that would be consistent with applicable land use plans as detailed in subchapter 3.1.4. Thus, the land use impacts of this alternative would be similar to the project, and would be less than significant.”<sup>14</sup>

Although the DFEIR claims elsewhere that the project complies with the General Plan, it admits in Section 3.1.4.4 that the only way it can comply with the General Plan is by *altering* the General Plan:

“Because **the project is not consistent with the existing General Plan designations and zoning for the project site**, a GPA and Rezone are required as part of the project’s approvals in order to reconcile the inconsistency.”<sup>15</sup>

It is primarily for this reason that the Bonsall Community and the Valley Center Community both oppose the project. On the same grounds and the others stated in this letter, the Knoxes oppose it as well. On their behalf, we respectfully request the Planning Commission deny this proposal.

Sincerely,

**GALUPPO & BLAKE**



DANIEL WATTS, ESQ.

cc: Fred Knox (via e-mail)

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- 14 DFEIR, Chapter 4.0, Project Alternatives, *available at*  
[http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/Re  
circulation/GPA12001-REIR-Chap4-061214.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/Re%20circulation/GPA12001-REIR-Chap4-061214.pdf)
- 15 DFEIR, Chapter 3.1.4.4, Environmental Effects Found Not to be Significant,  
[http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/dfe  
ir/DFEIR%20-%20Chapter%203.1.4%20Land%20Use.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/dfe%20ir/DFEIR%20-%20Chapter%203.1.4%20Land%20Use.pdf)