March 18, 2013

VIA ELECTRONIC MAIL

Ms. Mindy Fogg
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RE: GPA 12-004; Forest Conservation Initiative (FCI) Lands General Plan Amendment (GPA) – *CEQA Comments*

Dear Ms. Fogg:

The Endangered Habitats League (EHL) appreciates the opportunity to comment on the Draft Supplemental Environmental Impact Report (SEIR) that was prepared for the County's proposed General Plan Amendment on about 75,000 acres of backcountry land previously zoned under the Forest Conservation Initiative (FCI). For your reference, EHL is Southern California's only regional conservation group. For over a dozen years, EHL worked collaboratively with the County and other stakeholders to develop a truly sustainable General Plan that accommodates growth while reducing public infrastructure costs and increasing conservation of San Diego's world-class biodiversity and scenic landscapes.

EHL submits that the proposed Project would create numerous significant adverse impacts that could be substantially lessened or avoided by adoption of the environmentally superior, Modified Project alternative. As is explained in detail below, the California Environmental Quality Act (CEQA) contains a substantive mandate precluding adoption of a Project where feasible alternatives that achieve most project purposes and which avoid or substantially lessen significant environmental impacts exist. Because the environmentally superior Modified Project meets these tests, the County has no substantial evidence that no such alternative exists. It therefore cannot make the necessary findings that are a predicate to approve a Project with significant impacts via a finding of overriding considerations.

Indeed, the SEIR acknowledges that the Modified Project's reduced development intensity results in less modification of the landscape, "thus decreasing environmental impacts in *all* issue areas evaluated." (SEIR at p. S-7, emphasis added.) Moreover, because this alternative *fully* meets all Project objectives and in most cases *better* than the proposed Project—and no substantial evidence exists to support a contrary conclusion—CEQA *requires* its adoption in lieu of the proposed Project.

In the discussion below, we briefly summarize the stated Project objectives, the Project and environmentally superior Modified Project, the comparative impacts, and finally an evaluation of the uncontroverted evidence showing the Modified Project's superior ability to meet the Project objectives as compared with the Proposed Project.

Project Objectives

The Project objectives are the same as those of the County of San Diego General Plan:

- Support a reasonable share of projected regional population growth;
- Promote sustainability by locating new development near existing infrastructure, services, and jobs;
- Reinforce the vitality, local economy, and individual character of existing communities while balancing housing, employment, and recreational opportunities;
- Promote environmental stewardship that protects the range of natural resources and habitats that uniquely define the County's character and ecological importance;
- Ensure that development accounts for physical constraints and the natural hazards of the land;
- Provide and support a multi-modal transportation network that enhances connectivity and supports community development patterns;
- Maintain environmentally sustainable communities and reduce greenhouse gas (GHG) emissions that contribute to climate change
- Preserve agriculture as an integral component of the region's economy, character, and open space network;
- Minimize public costs of infrastructure and services and correlate their timing with new development; and
- Recognize community and stakeholder interests while striving for consensus.

As is explained in detail below, every single one of these objectives is better or equally met by the Modified Project alternative.

The Proposed Project

Nearly 1,110 additional dwelling units over the development quantity assumed in the 2011 General Plan Update would be added by the Project. Virtually all of these units would be spread out over the landscape in remote locations including in the Alpine, Central Mountain, Jamul/Dulzura, North Mountain, and Mountain Empire subregions. All of the affected 75,000 acres are located east of the County Water Authority line, and distant from infrastructure,

services, public safety resources, and jobs. Indeed, a good portion of the FCI lands are in the most rugged, inaccessible areas in the County.

According to the SEIR, the Project would produce numerous significant unavoidable impacts. These include on Visual Character or Quality, Light or Glare, Direct Conversion of Agricultural Resources, Indirect Conversion of Agricultural Resources, Direct and Indirect Loss or Conversion of Forestry Resources, Air Quality Violations, Non-Attainment Criteria Pollutants, Sensitive Receptors, Special Status Species, Riparian Habitat and Other Sensitive Natural Communities, Wildlife Movement Corridors and Nursery Sites, Wildland Fires, Water Quality Standards and Requirements, Groundwater Supplies and Recharge, Mineral Resources Recovery Sites, Permanent Increase in Ambient Noise Level, Public Services, Schools and Libraries, Traffic and LOS Standards, Rural Road Safety, and Sufficient Landfill Capacity. Only if no feasible alternatives meeting most Project objectives exist may the Project be approved consistent with CEQA.

Notable among the changes in the Alpine sub-region is an expansion of the village at urban densities around the Viejas reservation. This change is profound because it will involve the expansion of urban infrastructure further into the backcountry. The draft amended Community Plan for Alpine states:

> "Expansions of imported water and sanitary sewer services are necessary to accommodate the increased land use intensities identified on the Alpine General Plan land use map. More specifically, both imported water and sewer services are necessary to fully realize the land use intensities allowed by the Village Core Mixed Use designated areas along Willows Road east of Viejas and imported water are necessary to realize the increased residential densities south of Alpine Boulevard between the West and East Willows Road interchanges with Interstate 8." (FCI Appendix A at p. 9.)

It is noteworthy that the growth inducing service expansions in Alpine in the proposed Project have not been analyzed in the SEIR in violation of CEQA. (See (CEQA Guidelines Section 15126.2[d].) Rather, the SIER states that "potential growth inducing effects for development on these [FCI] lands were previously evaluated in the General Plan Update Program EIR. The findings of the growth induction analysis in the General Plan Update remain applicable to the proposed Project." (SEIR at p. 3-2.) The SEIR overlooks the fact that the new village and associated water and sewer infrastructure extensions were not a part of the Project in the Update PEIR, and therefore were not analyzed in that document. The County therefore cannot rely on its analysis of growth-inducing impact. (See *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337-1338 [construction of sewer generates indirect impacts by providing a catalyst for further development in the immediate area that must be analyzed in an EIR].)

In addition, much the rugged former FCI lands would go from lower to higher density rural and various semi-rural densities. There are some locations where the semi-rural designations make sense due to existing parcelization. In other areas, however, intact parcels of 40 and 80 acres and larger are being designated at higher rural and even semi-rural densities (for example in Alpine). In comments on the NOP for the Project, EHL articulated several examples of such density increases:

> **Alpine:** The area of 1:10 south of Abrams Ridge should change to 1:20. South of the Commercial district and south of Old Ranch are three large blocks of unparcelized land that should be 1:40 or 1:80 rather than 1:10. In the area of Fusco, Burdoaks, Old Ranch and Granite Vista there should be a 1:20 density rather than 1:10. Note: This last area may be in Descanso. Note: There are two "Old Ranch" roads in different parts of the map.
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> **Lake Moreno/Campo:** The "square" immediately south of the town center, labeled SR-10, should be RL-20.
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> **Descanso:** The area around Verna Road should be 1:20 rather than 1:10. The area around Old Ranch, South Forty, Campbell Ranch, and Granite Vista should be 1:20 rather than 1:10. South of the Commercial district and south of Old Ranch are three large blocks of unparcelized land that should be 1:40 or 1:80. (Note: This last area may be in Alpine.)
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> **North Mountain:** On the inset map, lands northeast of the village should be RL-20 or RL-40 rather than SR-10.

Notably, neither the SEIR nor draft FCI Plan (Appendix A) articulates *any* planning rationale or rationale based on the Guiding Principles for these shifts to semi-rural in the backcountry.

Nor is there any response in the SEIR to the compelling planning rationales EHL articulated in its comments on the NOP for maintaining low rural densities in these remote, rugged areas. For this reason, EHL repeats it here:

> "Forest inholdings are generally remote locations, removed from urban services and urban infrastructure, with high ecological integrity and high fire risk, Therefore, intensities of use (as reflected in assigned densities) should be at the *lowest* levels the Land Use Element allows, consistent with underlying parcelization. In other words, the number of potential new parcels should rarely increase above the baseline number of parcels, and then only in locations already substantially committed to such parcelization, so as to avoid "spot zoning." Mere adjacency to areas of existing higher density, or proximity to a roadway, is *not* sufficient rationale for up-planning. The needs to reduce fire hazard, preserve the environmental, and reduce service costs remain paramount. The current General Plan's limits of estate, semi-rural, and village development should be

> respected. Absent a demonstrable objective need to increase the housing capacity of the General Plan, there should be *no* expansion of Village or Semi-Rural densities into the former FCI lands. A density of 1:40 or less dense should be the default *unless unique circumstances compel otherwise*." (EHL NOP Comments, Appendix B at p. 36.)

No "unique circumstances" grounded in the Guiding Principles have been articulated in the Project or the accompanying SEIR to justify these departures. To the contrary, they *undermine* the Guiding Principles' emphasis on reducing the amount of far-flung development in biologically sensitive high-fire risk areas distant from infrastructure, jobs and services.

The Environmentally Superior Modified Project Alternative

The Modified Project alternative is less intensive than the proposed Project and would result in less environmental impacts. This alternative would support build-out of approximately 4,817 residential dwelling units, or approximately 382 less than the proposed Project. When compared to the proposed Project, this alternative would primarily involve the re-designation of semi-rural lands (SR-10) and rural lands (SR-20) to the lowest density rural land use designations allowed by the General Plan (SR-40 and SR-80), thereby increasing the amount of rural lands by 4,282.03 acres as compared to the proposed Project.

However, as spelled out in further detail in EHL's concurrently submitted comments on specific map issues, there are elements of the Modified Alternative that need further modification, including inappropriate SR-2 in Alpine as well as locations in Central Mountain and North Mountain.

CEQA's Substantive Mandate

CEQA outright prohibits the City from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can "avoid or substantially lessen" those effects. (Pub. Resources Code § 21002.) This substantive mandate operates through a series of required findings that *must* be made and supported with credible, substantial evidence.

Specifically, before the County may approve a project with significant environmental impacts, a lead agency must make two sets of findings under CEQA. The first must address how the agency responds to significant effects identified in the environmental review process, either by finding that these effects will be mitigated, or that "[s]pecific economic, legal, technological, or other considerations . . . make *infeasible* the mitigation measures *or project alternatives* identified in the final EIR." (CEQA Guidelines § 15091, subd. (a)(3).) The second set concerns any statement of overriding considerations, permitting an agency to approve a project despite the existence of significant environmental impacts. (CEQA Guidelines, § 15093.)

Because the findings requirements implement CEQA's substantive mandate that public agencies refrain from approving projects with significant environmental impacts when there are feasible alternatives or mitigation measures that can lessen or avoid these impacts, an agency is prohibited from reaching the second set until it has properly addressed the first. (See CEQA Guidelines, § 15091, subd. (f), subd. (c); *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal. 4th 105, 134.)1

These findings must be supported by substantial evidence in the record. (Pub. Res. Code § 21081.5; CEQA Guidelines, § 15091, subd. (b).) Any finding that an alternative is infeasible must not only reflect a reasoned analysis, but must be based on specific and concrete evidence. For example, in *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, the court rejected a finding of infeasibility of alternatives based on conclusory assertions of unacceptable cost, noting that:

> "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is *evidence* that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." (Id. at p. 1181.)

Only if this finding of infeasibility can properly be made may a lead agency rely on a statement of overriding considerations.

Here, as explained below, the Modified Project outperforms or is equal to the proposed Project or any of the other project alternatives considered in meeting every stated project objective, and no substantial evidence exists to support a finding of its infeasibility. Pub. Res. Code §21082.2(c) (Substantial evidence excludes "[a]rgument, speculation, unsubstantiated opinion or narrative, [and] evidence which is clearly inaccurate or erroneous…"); *see also Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17 ("[C]onclusory statements do not fit the CEQA bill.").

As is demonstrated below, the only alternative for which these required findings may be made is the environmentally superior, Modified Project alternative.

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1 While the purpose of an EIR is an analysis of environmental effects, the EIR must study a range of potentially feasible alternatives that will foster "informed decision making and public participation." (Pub. Res. Code §15126.6(a).) "Feasible" is defined as "capable of being accomplished in a successful technological factors." (Pub. Res. Code §21061.1, emphasis added.) Since the lead agency further has the responsibility to "find out and disclose all it reasonably can" (14 Cal. Code Regs. section 15144), including "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project" (14 Cal Code Regs. section 15126.6(d)).

The Modified Project Alternative Would Better or Equally Meet Every Stated Project Objective and Cause Substantially Less Impacts in All Issue Areas Evaluated.

The County in the SEIR has already acknowledged that the Modified Alternative would "decreas[e] environmental impacts in *all* issue areas evaluated." (SEIR at p. S-7, emphasis added.) It therefore cannot be subject to reasonable dispute that adoption of the Modified Project alternative would "substantially lessen" those impacts within the meaning of CEQA's substantive mandate. (See Pub. Resources Code § 21002; Guidelines §§ 15021(a)(2), 15126.6(b); (*City of Marina v. Bd. of Trustees of the California State Univ.* (2006) 39 Cal. 4th 341, 350.)

The Modified Project alternative would also more fully meet every stated Project objective and therefore more faithfully implement the adopted General Plan's Guiding Principles. The following discussion addresses each objective:

Support a reasonable share of projected regional population growth

The Proposed project would add approximately 1,110 units, accommodating approximately 3,000 additional residents. The Modified Project may add approximately 700 units. The reality is, however, that *none* of this growth is needed to accommodate regional population growth, because the previous Draft Map, which contains significantly less growth than the adopted general plan, *already* accommodates anticipated regional growth. Adding growth on top of this actually *undermines* General Plan objectives. EHL made this point persuasively in its comments on the PEIR for the Update.2 For this reason, the Modified Project actually outperforms the Project on this objective.

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2 "In a DPLU staff analysis of the ability of the Draft and Referral Maps to meet Plan Update objectives, planners concluded that the Draft Map fully met regional growth objectives, coming in slightly over the target population. (See *Land Use Scenario Comparison,* May 2004.) Maps significantly exceeding the population target, i.e., by 2 to 3%, were deemed inferior, since the additional growth in unincorporated areas was inconsistent with other planning objectives: "Scenarios within 2 to 3 percent of the County's target population are evaluated as "meeting" [the population] objective. Higher populations were not because additional capacity increases costs for both infrastructure and essential services." (See *Land Use Scenario Comparison,* May 2004, p. G-2, footnote.)

According to County staff, "All Board Referrals scenarios [i.e., the proposed project] add unnecessary population capacity" and thus do *not* meet the goal of accommodating a *reasonable share* of growth**.** (See *Land Use Scenario Comparison,* May 2004, p. G-3.) For this reason, staff concluded in a May 2004 analysis that the "April 2004 Working Copy Map [precursor to the Draft Map] best meets GP2020 [Update] project objectives and the Board-endorsed planning concepts, Land Use Framework, and Draft Goals and Policies." (See *Land Use Scenario Comparison,* May 2004, p. G-3) **S**taff further noted that:

> "[a]ll Board referrals scenarios contain some residential designations that do not fit the proposed GP2020 planning principles. Including these exceptions could jeopardize the

Promote sustainability by locating new development near existing infrastructure, services, and jobs

The SEIR acknowledges that by increasing densities (relative to the Modified Project) in remote forest in-holdings, the Project undermines this objective relative to the Modified Project.

Reinforce the vitality, local economy, and individual character of existing communities while balancing housing, employment, and recreational opportunities

Both the Project and the Modified Project will increase the number of local residents who use local businesses. However, by adding too much Village residential development in the community of Alpine, the Project will create mobility issues and thereby adversely impact the character and vitality of this local community. While the Modified Alternative that EHL supports does not have the expanded Village Residential and Commercial component of the Project, there is no showing that this addition will provide a net benefit to the existing community of Alpine. Even if it did, less impactful alternatives that would impede attainment of project objectives to some degree should not be rejected as infeasible. (Guidelines § 15126.6(b).)

Promote environmental stewardship that protects the range of natural resources and habitats that uniquely define the County's character and ecological importance

The SEIR acknowledges that the Project will further fragment and degrade the high habitat values of these remote and biologically intact in-holdings. The designations denser than 1:40 du/acre are particularly fragmenting, and the Project contains much higher proportion of these land use designations in sensitive, remote areas relative to the Modified Project.

Ensure that development accounts for physical constraints and the natural hazards of the land

The critical natural hazard in the FCI areas is fire risk. By increasing the densities and number of units in these remote and rugged high-fuel areas relative to the Modified Project, the Project strongly undermines this goal on a relative basis.

Provide and support a multi-modal transportation network that enhances connectivity and supports community development patterns

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planning principles used to develop the GP2020 maps." (See *Land Use Scenario Comparison,* May 2004, p. G-2, footnote.)

While neither the Project nor the Modified Project provide land use configurations that support multi-modal transportation, the lower unit count of the Modified Project reduces the overall number of units in locations inaccessible to transit relative to the Project.

Maintain environmentally sustainable communities and reduce greenhouse gas (GHG) emissions that contribute to climate change

Neither the Project nor the Modified Project provides land use configurations that reduce automobile trips. Both permit additional housing in far-flung locations distant from jobs and services. However, the lower unit count of the Modified Project compared to the Project reduces the overall number of units in locations that would generate long commutes and trip to distant services, thereby causing less GHG emissions on a relative basis.

Preserve agriculture as an integral component of the region's economy, character, and open space network

The former FCI lands contain little agricultural activity. To the extent that it does, however, the lower overall densities of the Modified Project relative to the Project will better preserve existing and future agricultural development opportunities.

Minimize public costs of infrastructure and services and correlate their timing with new development

Both the Project and the Modified Project would designate development in highly remote locations that are highly expensive to provide with infrastructure and emergency and other public services. However, the lower unit count of the Modified Project compared to the Project reduces the overall number of units requiring service and infrastructure in remote locations.

Recognize community and stakeholder interests while striving for consensus

The FCI GPA process is a continuation of the extensive public outreach process that resulted in the Update. While there are elements of the community and stakeholders in support of all the alternatives, it is important to remember that key stakeholders (including EHL and the Forest Service) as well as members of the community throughout the County firmly believe in the Project objectives incorporated in the General Plan and wish to see them followed.

While it is impossible to say definitively what the relevant community is, much less poll its feelings on the various alternatives, neither local landholders nor even a specific local community can conclusively represent the broader county public interest that should guide the County-wide General Plan process. The community and stakeholders are best served by even-handed and objective application of the General Plan Guiding Principles to specific areas and problems presented. For this reason, and because the Modified Alternative most closely adheres

to the vast majority of these Principles, the Modified Alternative is the best expression of community and stakeholder interests considered as a whole.

Conclusion

The above discussion demonstrates that the Modified Alternative not only substantially lessens virtually all the significant impacts of the Project and it better satisfies the overwhelming majority of Project objectives. It is well settled that "[i]f there are feasible alternatives or feasible mitigation measures that would accomplish *most* of the objectives of a project and substantially lessen the significant environmental effects of a project subject to CEQA, ***the project may not be approved without incorporating those measures***." (*Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1371 fn 19, emphasis added, [citation to Pub. Resources Code §§ 21000(g), 21002, Guidelines § 15091].) For this reason, CEQA requires adoption of the Modified alternative or something very closely resembling it.

Thank you for your attention to EHL's concerns and we look forward to continuing to work with the County on a sustainable and legally defensible General Plan.

Very truly yours,

Dan Silver, MD
Executive Director