



*via email and first-class mail*

July 28, 2014

Mark Slovick  
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**RE: Comments on Lilac Hills Ranch Project Revised Draft Environmental Impact Report**

Dear Mr. Slovick:

These comments are submitted on behalf of the Center for Biological Diversity (the Center), on the revised Draft Environmental Impact Report (DEIR) for the proposed Lilac Hills Ranch housing development (the project). The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has 775,000 members and e-activists, throughout California and the United States, including San Diego County.

The project contemplates the development of a massive mixed use housing development on 608 acres of land in the semi-rural, largely agricultural, unincorporated areas of northern San Diego County (County). The project proposes 90,000 square feet of commercial, office, and retail space; 1746 residential units; a K-8 school; a recycling plant; a water reclamation facility; a fire department; and open space areas and manufactured slopes totaling 174.6 acres.<sup>1</sup> The project will support an anticipated population of over 4,470 people. In essence, the project contemplates the development of a new sprawl style development adjacent to wildlife corridors and pre-approved mitigation areas—in a largely rural area with no major job centers.

It must be noted that the County, California Department of Fish and Wildlife, and other local agencies are in the process of finalizing a Multiple Species Conservation Program (MSCP) for the unincorporated areas of northern San Diego County (North County MSCP).<sup>2</sup> The project site is located within the proposed North County MSCP

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<sup>1</sup> DEIR, at 1-18.

<sup>2</sup> DEIR, at 1-39.

Subarea Plan Area, and is within four hundred feet of pre-approved mitigation areas (PAMAs) located in the north (Keys Canyon) and west (I-15 corridor).<sup>3</sup> The goal of the MSCP is to maintain and enhance biological diversity in the region and maintain viable populations of endangered, threatened, and key sensitive species and their habitats while promoting regional economic viability through streamlining the land use permit process. Accommodating a development of this massive scale and scope prior to completion of the North County MSCP embodies poor land-use planning that will decrease biological diversity and negatively impact sensitive species occurring on the site. Turning this process on its head, approval of the project at this premature juncture would dictate outcomes in the North County MSCP and potentially foreclose more thoughtful and sustainable regional planning. The Center urges the County to table the project until the County finalizes the North County MSCP so that a more informed determination can be made as to whether or not the project is consistent with the County's vision of conservation and sustainable land use future.

The DEIR fails to adequately analyze a range of environmental impacts, mitigation measures, and alternatives. At a minimum, the DEIR must be revised and recirculated to remedy these deficiencies. However, because of the permanent and irreconcilable conflicts with the County of San Diego General Plan, the Valley Center and Bonsall Community Plans, and failure to comply with the California Environmental Quality Act (CEQA) as well as the California Endangered Species Act (CESA).

While the DEIR's shortcomings are numerous, this letter focuses specifically on the DEIR's analysis of the project's impacts on biological resources and water resources. While the project touts its purported consistency with "Smart Growth Principles," locating residential development far from jobs and meaningful public transit defies any rationale definition of smart growth. Development of this scale in a remote, biologically sensitive location is fundamentally incompatible with California's efforts to transition to a sustainable low-carbon future and should be flatly rejected as proposed.

## **I. THE DEIR FAILS TO PROPERLY ANALYZE IMPACTS TO BIOLOGICAL RESOURCES.**

The DEIR fails in providing the level of analysis mandated by CEQA because it fails to address numerous aspects of how the project will affect wildlife, as well as providing a thorough analysis of the project's impacts to sensitive species. An EIR must include a description of the physical environmental conditions in the vicinity of the project at the time the environmental analysis is commenced with special emphasis placed on environmental resources that are rare or unique to that region and would be affected by the project. Guidelines § 15125 (a), (c). An "inadequate consideration and documentation" in an EIR "of existing environmental conditions renders it impossible for the FEIR to accurately assess the impacts the project will have on wildlife and wildlife habitat or to determine appropriate mitigation measures for those impacts." *San Joaquin*

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<sup>3</sup> DEIR, at 1-39.

*Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713, 722 (internal citation omitted). Unfortunately the EIR fails this requirement.

Given the fact that the project itself provides habitat for at least 50 special status plant and animal species it is critically important that impacts to biological resources be fully evaluated. These species include Federally listed threatened and endangered species such as the arroyo toad, southwestern willow flycatcher, least Bell's vireo, coastal California gnatcatcher, and Stephen's kangaroo rat. Additionally, the project site serves as potential habitat for California fully protected species including mountain lions and ringtails.

The project site is located within the proposed North County MSCP Subarea Plan Area, and is within four hundred feet of pre-approved mitigation areas (PAMAs) located in the north (Keys Canyon) and west (I-15 corridor).<sup>4</sup> Additionally, the project site contains ecologically valuable coastal sage scrub vegetation; coastal/valley freshwater marshes that are considered a category of RPO wetland;<sup>5</sup> coastal live oak woodland;<sup>6</sup> and large, relatively undisturbed areas of southern mixed chaparral.<sup>7</sup>

Currently the existing land use (primarily agricultural) is more consistent with maintaining the project site as undeveloped for rare and common species. Clearly these lands also provide not only a buffer to adjacent wildlife habitat, but rare and endangered species habitat, based on the number of occurrences of rare species that were documented on the project site. However, the Project site will significantly change the land use by introducing highly urbanized, high density housing directly adjacent to future PAMAs and eliminating much of the marginal habitat that currently allows for movement and persistence of rare and common plants and animals in the area. The document fails to address many of the insidious issues that accompany the development of a new village in a rural area, nor does it evaluate the effects of this village on natural areas. The DEIR fails to analyze the impacts to the biological resources from this proposal according to CEQA requirements.

The DEIR identifies 50 special status wildlife species and 3 special status plant species that have been documented to occur on site demonstrates the ecological importance of the area. Placing a population of 4,700 people in a semi-rural area with diminishing natural communities including wetlands and coastal sage scrub ecosystems will have a significant impact on the numerous species that rely on this preserve to survive. The County has a heavy burden in demonstrating that their proposed project will not adversely impact any of these species or their habitats.

The CEQA Guidelines require mandatory findings of significance when a project has the potential to substantially reduce the habitat of a fish or wildlife species, cause a

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<sup>4</sup> DEIR, at 1-39.

<sup>5</sup> DEIR, at 2.5-6.

<sup>6</sup> DEIR, at 2.5-6.

<sup>7</sup> DEIR, at 2.5-5.

fish or wildlife population to drop below self-sustaining levels, threaten or eliminate a plant or animal community, or reduce the number or restrict the range of an endangered, rare or threatened species. CEQA Guidelines § 15065(a). As described below this project will do all of these things has the potential to substantially reduce the habitat for numerous wildlife species, and manifestly reduce the number and/or restrict the range of several rare, threatened, and endangered species. The County is required under CEQA to fully disclose the impacts to rare and common plants and animals.

**a. The DEIR Needs to Fully Disclose Project Impactsp**

A DEIR is required to be an informational document from which the public can properly weigh any adverse effects presented by a project. Pub. Res. Code §§ 21061; 21005(a) (“noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented...may constitute a prejudicial abuse of discretion...”). A lead agency “must use its best efforts to find out and disclose all that it reasonably can” and cannot simply hide behind its failure to gather and analyze the necessary information. Guidelines § 15144.

The DEIR needs to specifically discuss these mandated Guidelines with regards to the protected species at issue. First, an EIR must include description of the physical environmental conditions and baseline physical conditions as they exist at the time the notice of preparation is prepared or at the environmental analysis is commenced.<sup>8</sup> Environmental analysis for the project began in 2011, therefore any baseline scientific information must pertain to this approximate time period. As well, substantial evidence needs to be provided as to the expected success of mitigation measures for sensitive species. Finally, the DEIR cannot simply conclude that following these measures will result in a less than significant impact, but needs to demonstrate this outcome through scientific data that takes into account the unique characteristics and habitat needs for the species at issue, and utilizes such information in determining impacts.

A full quantitative analysis of impacts to special-status species must be provided in this DEIR, and appropriate and effective avoidance and mitigation measures must be adopted. Every project must conduct and disclose project-level, species-specific, direct and cumulative analyses of impacts in an EIR and to mitigate those impacts providing analysis for that mitigation. The Endangered Species Act standards and definitions are not analogous to the CEQA standards for review, public disclosure, analysis of alternatives, and analysis of direct and cumulative impacts.

A DEIR is required to provide full and detailed scientific evidence as to what the project’s impact will be, as well as providing detailed and enforceable mitigation measures to lessen these impacts. A DEIR cannot simply make conclusory statements that it complies with an existing plan, and that this alleged compliance is sufficient to protect sensitive species; such conclusory statements are insufficient to meet CEQA

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<sup>8</sup> CEQA Guidelines Section 15125(a).

standards. Public Res. Code § 21082.2(c); *see also Village Laguna of Laguna Beach, Inc. v Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1034-1035.

The DEIR is fundamentally flawed as it fails to measure and fully disclose project impacts to sensitive species as many of the surveys were conducted when the project was proposed to be 518.3 acres instead of the current 608 acres. Specifically, the DEIS states that additional studies are being conducted for least Bell's vireo in the northern portion of the project, since it was not part of the project and therefore was not included in the original surveys dating May to July, 2011.<sup>9</sup> Indeed, the Biological Resources Report verifies this statement as the original survey results discussed the proposed project as 518.3 acres instead of the current 608 acres.<sup>10</sup> The DEIR cannot rely upon future analysis and mitigation to defer the disclosure of impacts. *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 306 (1988). The DEIR does not mention conducting an expanded survey to include the additional acres for the California coastal gnatcatcher even though surveys for the species were conducted during a similar period of time (July-August, 2011) when the project only encompassed 518.3 acres.<sup>11</sup> More importantly, 26 of the 31 survey trips were between February and August of 2011, which means that the vast majority of the surveys were completed relying on the fact that the project only included 518.3 acres at the time.<sup>12</sup> The DEIR essentially relies on outdated biological assessments in evaluating impacts on sensitive species and their habitats, as well as in determining associated avoidance and mitigation measures--without any information for 89.7 acres of the proposed project. By failing to assess and include potential additional impacts on species and habitats to accommodate the whole of the project DEIR has completely failed to meet the CEQA mandate that EIRs to be informational documents that allow the public to properly weigh adverse effects of the project. In order to satisfy CEQA requirements for full disclosure, new species and habitat surveys must be completed and the DEIR must be recirculated containing updated analyses on impacts to sensitive species and habitats covering all 608 acres of the proposed project.

**b. The Proposed Project will Have a Significant Impact on Protected Plant Species**

Three special-status plant species have been observed within the Project site:<sup>13</sup>

- Prostrate spineflower
- Southwestern spiny rush
- Engelmann oak

Although only the Engelmann oak is covered under the draft MSCP, all three species are on County List D of uncommon species and are California Native Plant

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<sup>9</sup> DEIR, at 2.5-1.

<sup>10</sup> DEIR, Appendix G (Biological Resources Report), at Attachment 1.

<sup>11</sup> Biological Resources Report, at Attachment 2.

<sup>12</sup> Biological Resources Report, at 7-8.

<sup>13</sup> DEIR, at 2.5-11.

Society rank 4.2 species. Appropriate evaluation of impacts (project specific and cumulative), avoidance measures, mitigation measures and management measures still need to be more accurately provided for all species. One large flaw in the DEIR is the failure to assess the change in hydrology that will occur from the proposed project implementation and its effects on the soils. Any decrease in the alkalinity of the soils will be detrimental not only to the onsite plants, but could also have detriment to the downstream populations. Changes in soil alkalinity can allow for additional invasions of non-native species too. Simple on-site avoidance of the documented populations fails to address this critical issue.

i. Prostrate spineflower

The DEIR notes that the prostrate spineflower was found on the project site in scattered patches, and acknowledges that direct impacts to southern mixed chaparral on-site could result in the direct loss of up to 100 individuals of prostrate spineflower.<sup>14</sup> However, the DEIR states this loss would not be considered significant as the 100 individuals observed during surveys did not “appear to be great enough to consider this location a significant regional population,” based on its abundance and wide-range within the San Diego region and that it regularly occupies disturbed areas.<sup>15</sup> The DEIR does not define a significant regional population. Furthermore, the study that the DEIR and the Biological Resource Report rely on is a 2001 study by Reiser and does not provide an up-to-date baseline against which to determine whether the 100 observed individuals would make up a regionally significant population within the DEIR.

The DEIR fails to describe management measures necessary for the survival of the prostrate spineflower on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the prostrate spineflower by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

ii. Southwestern spiny rush

Similar to the prostrate spineflower, the DEIR fails to adequately analyze project impacts to the southwestern spiny rush. The DEIR notes that 20 individuals of southwestern spiny rush were observed in an on-site drainage course, and that additional populations could occur in riparian woodlands that were inaccessible. However, the DEIR states this loss would not be considered significant as the 20 individuals observed during surveys did not “appear to be great enough to consider this location a significant regional population,” based on its abundance and wide-range within the San Diego region.<sup>16</sup> Again, the DEIR draws the conclusion that impacts of the Project will be less than significant on the southwestern spiny rush based on outdated scientific information by Reiser and without providing a quantified baseline to assess significance by.

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<sup>14</sup> DEIR; at 2.5-11, 2.5-18; Biological Resources Report, at 80.

<sup>15</sup> Biological Resources Report, at 80.

<sup>16</sup> Biological Resources Report, at 80.

The DEIR fails to describe the numerous management measures necessary for the survival of the prostrate spineflower on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the prostrate spineflower by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

iii. Engelmann oak

The Engelmann oak is covered under the draft MSHCP, is a CNPS rank 4.2 species, and is on the County List D of uncommon species.<sup>17</sup> The DEIR notes that three Engelmann oak trees were observed on-site associated with coast live oak riparian woodlands.<sup>18</sup> However, the DEIR concludes that the population numbers are too low to consider this a significant regional population of the species based on the countywide abundance of this species.<sup>19</sup> Again, the DEIR draws the conclusion that impacts of the Project will be less than significant on the Engelmann oak based on outdated scientific information by Reiser and without providing a quantified baseline to assess significance by.

The draft MSCP would conserve at minimum 69% of all Engelmann oak populations in North County.<sup>20</sup> The DEIR fails to address the proposed Project's consistency with this conservation requirement. Additional avoidance, minimization and mitigation measures need to be included that addresses the long-term persistence of this proposed covered species.

The DEIR also identifies numerous plant species with the potential to occur on site.<sup>21</sup> This includes:

- Rainbow manzanita
- San Diego ambrosia
- Orcutt's brodiaea
- Peninsular spine flower
- Palmer's grappling hook
- Ramona horkelia
- Golden-rayed oentachaeta
- Narrow-petaled rein orchid

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<sup>17</sup> DEIR, at 2.5-11 and 2.5-18; Biological Resources Report, Attachment 9, at 5.

<sup>18</sup> DEIR, at 2.5-11.

<sup>19</sup> DEIR, at 2.5-11; Biological Resources Report, at 80.

<sup>20</sup> North County Covered Species, [http://www.sdcountry.ca.gov/pds/mscp/docs/NCMSCP/North\\_County\\_Covered\\_Species.pdf](http://www.sdcountry.ca.gov/pds/mscp/docs/NCMSCP/North_County_Covered_Species.pdf) (last visited July 22, 2014).

<sup>21</sup> DEIR Appendix G, Attachment 9.

Merely because these species were not documented on site at the time surveys were carried out, does not excuse the lead agency from analyzing impacts to these species. The DEIR must take into consideration that a major aspect of statutes such as CEQA, and the ESA, is not just to provide protection for currently existing plant populations, but also restore and enhance habitat so that these plant species can recover. The DEIR must therefore include, as part of its significance determination, analysis of the fact that if the proposed project is implemented, the project site will never be able to provide habitat for the majority of the above listed species. The project as proposed has potential to impact downstream locations of many of these rare species, yet an analysis of this aspect of the project was totally ignored and must be addressed.

This is of particular concern for species listed under the Endangered Species Act (ESA) and/or the California Endangered Species Act (CESA). In this instance, this includes the San-diego ambrosia (federally endangered) and Orcutt's brodiaea (federal species of concern). The rainbow manzanita, San Diego ambrosia, and Orcutt's brodiaea are also covered species under the draft MSCP.<sup>22</sup>

Both the ESA and CESA mandate protection of existing species, as well as providing a legislative prerogative that habitat be maintained and restored in order to fully restore endangered/threatened species populations and allow for adequate recovery that would create robust populations that no longer require Endangered Species Act protection. While this goal has also been incorporated into the MSCP, the project avoidance, minimization and mitigation measures as proposed fail to support this goal.

The DEIR needs to assess how the project prevents or conflicts with this goal, which it does not. Therefore, the DEIR cannot accurately say that this proposed project will have a less than significant impact on special-status plant species.

**c. The Proposed Project will Have a Significant Impact on Protected Wildlife Species**

The DEIR identifies 14 special status wildlife species that have a high potential to be on site and has been observed on site or immediately adjacent to the Project site.<sup>23</sup> However, the DEIR fails to adequately analyze how the project will impact these species. CEQA mandates determinations of significance to be based on substantial evidence. Pub. Res. Code § 21082.2(a), Guidelines § 15064(a)(1). An EIR must also include description of the physical environmental conditions and baseline physical conditions as they exist at the time the notice of preparation is prepared or at the environmental analysis is commenced.<sup>24</sup> CEQA expressly provides against mere conclusory statements that are not supported by substantial evidence. Public Res. Code § 21082.2(c); *see also Californians*

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<sup>22</sup> North County Covered Species, [http://www.sdcounty.ca.gov/pds/mscp/docs/NCMSCP/North\\_County\\_Covered\\_Species.pdf](http://www.sdcounty.ca.gov/pds/mscp/docs/NCMSCP/North_County_Covered_Species.pdf) (last visited July 22, 2014).

<sup>23</sup> DEIR, at 2.5-12 to 2.5-14; Biological Resources Report, at 76.

<sup>24</sup> CEQA Guidelines Section 15125(a).

for *Alternatives v. Department of Forestry*, 136 Cal.App.4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill.”). However, many of the DEIR’s conclusions are not supported by substantial evidence and therefore fail to meet CEQA requirements, as discussed in further detail below.

The DEIR fails to provide an adequate level of analysis for protected and/or rare wildlife species. Fourteen special-status species were found within the project area or immediately adjacent to the area.<sup>25</sup> These species include:

- Belding's orange-throated whiptail
- Coastal whiptail
- Coastal horned lizard
- Red-diamond rattlesnake
- Turkey vulture
- Western bluebird
- Cooper’s hawk
- Loggerhead shrike
- White-tailed kite
- Yellow warbler
- Yellow-breasted chat
- San Diego desert woodrat
- San Diego black-tailed jackrabbit
- Southern mule deer

Each of the fourteen species are found immediately adjacent to, or within the project area, and each has specific conservation measures that need to be achieved. The DEIR fails to analyze individual species and fails to state whether the Management Measures as given in the MSCP will be enforced. Enforceable mitigation measures are required under CEQA.

The DEIR needs to analyze impacts to each species covered under the proposed MSCP individually, as well as individually discussing mitigation measures.

i. Belding's orange-throated whiptail

The DEIR states that six Belding's orange-throated whiptail were observed on the Project site near coast live oak riparian woodland, coastal sage scrub, and southern mixed chaparral habitats.<sup>26</sup> The DEIR concludes that the Project will not significantly impact the species since these locations do not represent a significant regional population given its relatively wide range in San Diego County.<sup>27</sup> However, this conclusion is based on a 2006 report by Lemm, which is outdated and does not establish an updated, quantified

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<sup>25</sup> DEIR, at 2.5-12 to 2.5-14.

<sup>26</sup> DEIR, at 2.5-12.

<sup>27</sup> DEIR, at 2.5-12.

baseline population against which to measure the observed population. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Just as the DEIR notes regarding the coastal whiptail, habitats within the project site are likely to support additional individuals of this reptile species. The DEIR is also inconsistent with the Biological Resources Report, which concluded that up to four individuals of the lizard would be lost.<sup>28</sup> The DEIR must reconcile this inconsistency with the Biological Resource Report. Furthermore, the DEIR does not discuss the specific threats to the orange-throated whiptail, which includes issues that the proposed project will contribute to, such as predation from domestic cats.

The draft MSCP would require 66% of the orange-throated whiptail to be conserved.<sup>29</sup> The DEIR fails to describe management measures necessary for the survival of the lizard on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the orange-throated whiptail by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

ii. Coastal whiptail

The DEIR notes that one individual of the coastal whiptail was observed on-site near an orchard.<sup>30</sup> Similar to the orange-throated whiptail, the DEIR draws the conclusion that impacts to this reptile species will be less than significant given the relatively wide range of this lizard in the County based on the 2006 Lemm study. As discussed above, the outdated scientific information by Lemm does not provide a quantified baseline to assess significance by. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. The DEIR itself even notes that “habitats within the project site are likely to support additional individuals of this reptile species.”<sup>31</sup>

The DEIR fails to describe the numerous management measures necessary for the survival of the coastal whiptail on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the coastal whiptail by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

iii. Coastal horned lizard

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<sup>28</sup> Biological Resources Report, at 76.

<sup>29</sup> North County Covered Species, [http://www.sdcountry.ca.gov/pds/mscp/docs/NCMSCP/North\\_County\\_Covered\\_Species.pdf](http://www.sdcountry.ca.gov/pds/mscp/docs/NCMSCP/North_County_Covered_Species.pdf) (last visited July 22, 2014).

<sup>30</sup> DEIR, at 2.5-12.

<sup>31</sup> DEIR, at 2.5-12.

The DEIR states that one individual of coastal horned lizard was observed just off-site in the southwestern portion of the project site in an open area adjacent to southern mixed chaparral.<sup>32</sup> The DEIR acknowledges that the coastal horned lizard has high potential to occur on-site and therefore directly impacted through habitat loss.<sup>33</sup> However, the DEIR concludes that the site does not likely support a significant regional population of the lizard because suitable habitat is limited to undisturbed coastal sage scrub, oak woodlands, and southern mixed chaparral.<sup>34</sup> First, these identified habitats make up approximately 123.5 acres on the project site, which intrinsically accounts for a large area suitable for the coastal horned lizard.<sup>35</sup> Second, the DEIR draws the conclusion that the 123.5 acres of habitat is not significant within the region without citing to any scientific studies. This statement is therefore conclusory and violates CEQA requirements, as discussed above.

The draft MSCP would require 78% of the coastal horned lizard to be conserved.<sup>36</sup> The DEIR fails to describe management measures necessary for the survival of the lizard on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the coastal horned lizard by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

iv. Red-diamond rattlesnake

The DEIR states that two individuals of red-diamond rattlesnake was observed just on-site near southern coast live oak riparian woodland and southern mixed chaparral.<sup>37</sup> However, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. The DEIR acknowledges that habitat in the project site likely supports additional individuals of this snake and that direct impacts to a variety of native vegetation communities and agricultural lands would likely impact the species, yet still concludes that the project will only impact up to two individuals.<sup>38</sup> The DEIR therefore does not draw its conclusions on impacts to this species based on substantial evidence. Furthermore, the DEIR draws the conclusion that impacts to this reptile species will be less than significant given the relatively wide range of this lizard in the County based on the outdated 2006 Lemm study. As discussed above, the outdated scientific information by Lemm does not provide a quantified baseline to assess significance by.

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<sup>32</sup> DEIR, at 2.5-14.

<sup>33</sup> DEIR, at 2.5-14; Biological Resources Report, at 77.

<sup>34</sup> DEIR, at 2.5-14.

<sup>35</sup> Biological Resources Report, at Table 8: Habitat/Vegetation Communities, Impacts, and Mitigation.

<sup>36</sup> North County Covered Species,

[http://www.sdcountry.ca.gov/pds/mscp/docs/NCMSCP/North\\_County\\_Covered\\_Species.pdf](http://www.sdcountry.ca.gov/pds/mscp/docs/NCMSCP/North_County_Covered_Species.pdf) (last visited July 22, 2014).

<sup>37</sup> DEIR, at 2.5-12.

<sup>38</sup> DEIR, at 2.5-12; Biological Resources Report, at 76.

The draft MSCP would require 68% of the red-diamond rattlesnake to be conserved.<sup>39</sup> The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the red-diamond rattlesnake by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

v. Turkey vulture

The DEIR notes that four individuals of turkey vulture were observed roosting in an orchard.<sup>40</sup> However, the DEIR concludes that turkey vultures are commonly seen in San Diego County and therefore would not be significantly impacted by the Project through habitat loss.<sup>41</sup> This conclusion is based on a 2004 study by Unitt, which is outdated and cannot be relied on per CEQA mandates. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away. The DEIR is also inconsistent with the Biological Resources Report, which concluded that three or more of the species would be displaced.<sup>42</sup> The DEIR must reconcile this inconsistency with the Biological Resource Report.

The DEIR fails to describe the numerous management measures necessary for the survival of the turkey vulture on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the turkey vulture by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

vi. Western bluebird

The DEIR notes that four individuals of western bluebird were observed in southern mixed chaparral on-site.<sup>43</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.<sup>44</sup> This conclusion is based on a 2004 study by Unitt, which is outdated and cannot be relied on as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were

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<sup>39</sup> North County Covered Species, [http://www.sdcounty.ca.gov/pds/mscp/docs/NCMSCP/North\\_County\\_Covered\\_Species.pdf](http://www.sdcounty.ca.gov/pds/mscp/docs/NCMSCP/North_County_Covered_Species.pdf) (last visited July 22, 2014).

<sup>40</sup> DEIR, at 2.5-12.

<sup>41</sup> DEIR, at 2.5-13 and 2.5-39.

<sup>42</sup> Biological Resources Report, at 77.

<sup>43</sup> DEIR, at 2.5-12.

<sup>44</sup> DEIR, at 2.5-13 and 2.5-39.

limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

The DEIR fails to describe the numerous management measures necessary for the survival of the western bluebird on the project site. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the western bluebird by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

vii. Cooper's hawk

Cooper's hawk is considered a Watch List species by CDFW. The DEIR states four individuals of this raptor species were observed on-site using coast live oak riparian woodland, orchards, and coastal sage scrub.<sup>45</sup> The Biological Resources Report also acknowledges that direct impacts to coast live oak riparian woodland, orchards, and coastal sage scrub will result in habitat loss for the hawk, and that up to four birds would be displaced.<sup>46</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.<sup>47</sup> This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

Because the Cooper's hawk primarily forages on smaller songbirds, no analysis of the effects from the competition of introduced domestic cats from the proposed project is analyzed. Therefore the DEIR fails to meet CEQA mandates.

The DEIR states that the Project would complete construction outside of the raptor breeding season (January 15- July 15) or conduct preconstruction nesting raptor surveys and complete avoidance measures as necessary. However, the DEIR has not developed avoidance measures in further detail, therefore it is impossible for the public to assess whether they are adequate at this point.

The DEIR also acknowledges that 538.29 acres suitable for raptor forage will be directly impact as a result of the project, that would result in the direct loss of foraging

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<sup>45</sup> DEIR, at 2.5-12; Biological Resources Report, at 77.

<sup>46</sup> Biological Resources Report, at 77.

<sup>47</sup> DEIR, at 2.5-12 and 2.5-39.

habitat for raptors.<sup>48</sup> It is unclear how the DEIR concluded 538.29 acres will be impacted, since the Project will impact 505.04 acres according to the Biological Resources Report.<sup>49</sup> Additionally, the DEIR is inconsistent in describing the total acreage of the project as 608.3 acres throughout the DEIR but 610.76 acres on page 2.5-19. The DEIR must reconcile these inconsistencies to determine the exact amount of forage habitat for raptors will be lost due to the project. In any case, the DEIR concludes that this loss in forage habitat is significant.<sup>50</sup>

Please see below for discussions regarding the DEIR's proposed measures to mitigate impacts to raptor forage habitats.

viii. Loggerhead shrike

The DEIR states one individual of loggerhead shrike was observed on-site in an orchard adjacent to southern mixed chaparral.<sup>51</sup> The Biological Resources Report also acknowledges that direct impacts to orchards and native uplands and riparian habitats on-site could impact the bird through habitat loss, and that at least one bird would be displaced.<sup>52</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.<sup>53</sup> This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the loggerhead strike by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

ix. White-tailed kite

The white-tailed kite is a California fully protected species for nesting areas.<sup>54</sup> The DEIR states one pair of white-tailed kits were observed on-site in an orchard

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<sup>48</sup> DEIR, at 2.5-19.

<sup>49</sup> Biological Resources Report, Table 8.

<sup>50</sup> DEIR, at 2.5-19.

<sup>51</sup> DEIR, at 2.5-13.

<sup>52</sup> Biological Resources Report, at 77.

<sup>53</sup> DEIR, at 2.5-13 and 2.5-39.

<sup>54</sup> DEIR, at 2.5-12.

adjacent to southern mixed chaparral.<sup>55</sup> The Biological Resources Report also acknowledges that direct impacts to orchards and native uplands and riparian habitats on-site could impact the bird through habitat loss, and that at least one pair of birds would be displaced.<sup>56</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.<sup>57</sup> This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the white-tailed kite by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

x. Yellow warbler

The DEIR states one individual of yellow warbler was observed on-site in an coast live oak riparian woodland and willow scrub habitats.<sup>58</sup> The Biological Resources Report also acknowledges that direct impacts to coast live oak riparian woodlands and southern willow riparian woodland/scrub habitats on-site could impact the bird through habitat loss, and that at least one bird would be displaced.<sup>59</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.<sup>60</sup> This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

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<sup>55</sup> DEIR, at 2.5-12.

<sup>56</sup> Biological Resources Report, at 77.

<sup>57</sup> DEIR, at 2.5-12 and 2.5-39.

<sup>58</sup> DEIR, at 2.5-13.

<sup>59</sup> Biological Resources Report, at 77.

<sup>60</sup> DEIR, at 2.5-13 and 2.5-39.

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the yellow warbler by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

xi. Yellow-breasted chat

The DEIR states five individuals of yellow-breasted chat was observed on-site in an coast live oak riparian woodland and willow scrub habitats.<sup>61</sup> The Biological Resources Report also acknowledges that direct impacts to coast live oak riparian woodlands and southern willow riparian woodland/scrub habitats on-site could impact the bird through habitat loss, and that at least five birds would be displaced.<sup>62</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County.<sup>63</sup> This conclusion was made based on the 2004 Unitt study, which is outdated and cannot be relied on as baseline as previously discussed. Additionally, the observed individuals do not represent the entire population on the Project site as the surveys and the locations surveyed were limited. Furthermore, the Biological Resources Report concludes that the Project will not result in direct loss of individuals as the species will fly away; however, this statement is not supported by scientific evidence and is therefore conclusory, and does not consider the circumstances when young or injured birds will not be able to fly away.

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the yellow-breasted chat by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

xii. San Diego desert woodrat

The DEIR states several nests of San Diego desert woodrat were found on-site.<sup>64</sup> However, the DEIR concludes that the impacts that would result from the Project would be less than significant since these locations do not represent a significant regional population given the relatively wide range of the species in the County.<sup>65</sup> However, this statement is not supported by scientific evidence and is therefore conclusory and fails to meet CEQA mandates.

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<sup>61</sup> DEIR, at 2.5-13.

<sup>62</sup> Biological Resources Report, at 77.

<sup>63</sup> DEIR, at 2.5-13 and 2.5-39.

<sup>64</sup> DEIR, at 2.5-13.

<sup>65</sup> DEIR, at 2.5-13; 2.5-39.

Additionally, the DEIR acknowledges that at least two individuals of the species will be lost as the woodrat may not always be able to avoid construction equipment. Yet the DEIR fails to describe management measures necessary for the survival of San Diego desert woodrat on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the species by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

xiii. San Diego black-tailed jackrabbit

The DEIR states two individuals of San Diego black-tailed jackrabbit were observed on-site in coastal sage scrub and agricultural habitats.<sup>66</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County, based on a 2004 study by Jameson et al.<sup>67</sup> As discussed previously, outdated scientific information cannot be relied on as baseline or existing environmental conditions per CEQA mandates.

Additionally, the DEIR acknowledges that at least two individuals of the species will be lost as the rabbit may not always be able to avoid construction equipment. Yet the DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the San Diego black tailed jackrabbit by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

xiv. Southern mule deer

The DEIR states a group of three mule deer were observed on-site adjacent to southern mixed chaparral.<sup>68</sup> The DEIR also acknowledges that riparian woodlands, coastal sage scrub, and southern mixed chaparral vegetation on-site provides habitat to the deer, and that presence of the species could be impacted by human activities and domestic pets.<sup>69</sup> However, the DEIR concludes that the species would not be significantly impacted by the Project as this location does not represent a significant regional population given its relatively wide range in San Diego County, based on a 2004 study by Jameson et al.<sup>70</sup> As discussed previously, outdated scientific information cannot be relied on as baseline or existing environmental conditions per CEQA mandates.

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<sup>66</sup> DEIR, at 2.5-13.

<sup>67</sup> DEIR, at 2.5-13 and 2.5-39.

<sup>68</sup> DEIR, at 2.5-13.

<sup>69</sup> DEIR, at 2.5-14.

<sup>70</sup> DEIR, at 2.5-13 and 2.5-39.

The DEIR fails to describe management measures necessary for the survival of the species on the project site toward this proposed goal. The DEIR needs to demonstrate that the proposed project will not have a significant impact on the southern mule deer by providing binding, permanent avoidance, minimization, and mitigation measures that addresses the long-term persistence of this rare plant on the project site and in the region.

**d. The Proposed Project Fails to Analyze Impacts to Species That May Occur on Site.**

Additionally, the DEIR lists over 37 species with the potential to occur on site due to the presence of suitable habitat. The DEIR must also analyze impacts to these species, given that the currently existing suitable habitat will be destroyed or severely reduced given project implementation. Without analyzing impacts to species that have the potential to occur on-site, the DEIR denies the public a full analysis of project impacts. Species with the potential to occur on site include:

- Golden eagle
- Northern harrier
- Coastal rosy boa
- San Bernardino ring-neck snake
- Southern Pacific pond turtle
- Sharp-shinned hawk
- Western least bittern
- Silvery legless lizard
- Hermes copper
- Monarch butterfly
- Arroyo toad
- Western burrowing owl
- Southwestern willow flycatcher
- Least Bell's vireo
- Coastal cactus wren
- Coastal California gnatcatcher
- Southern California rufous-crowned sparrow
- Grasshopper sparrow
- California leaf-nosed bat
- Pallid bat
- Townsend's western big-eared bat
- Western mastiff bat
- Pocketed free-tailed bat
- Big free-tailed bat
- Western yellow bat
- Small-footed bat
- Long-eared myotis
- Fringed myotis

- Long-legged myotis
- Yuma myotis
- Dulzura pocket mouse
- Northwestern San Diego pocket mouse
- Stephen's kangaroo rat
- Southern grasshopper mouse
- Ringtail
- Mountain lion

The DEIR fails to adequately analyze impacts to species with habitat on the project site, but not found during surveys. Negative surveys do not mean that the species does not utilize the habitat on the project site; it simply means that the species was not present at the time of the survey. The project will eliminate suitable habitat for sensitive, endangered, and threatened species, and contribute to continued habitat fragmentation and destruction. The elimination of marginal or immature habitat will prevent the species from ever using that habitat in the future during dispersal and/or colonization. These impacts must be addressed and mitigated.

This is especially important when analyzing impacts to threatened or endangered species (under either the ESA or CESA) that have the potential to occur on the premises. Here, this includes the coastal California gnatcatcher (federally threatened), Least Bell's vireo (federally endangered, state endangered), Southwestern willow flycatcher (federally endangered, state endangered), Stephen's kangaroo rat (federally endangered), and the Arroyo toad (federally endangered). Additionally, the ringtail and the mountain lion are both California fully protected species and may occur in the project area.

Both the ESA and the CESA are designed to not only protect species from going extinct, but also to recover species numbers and enlarge their habitat. Therefore, the DEIR needs to assess how the Lilac Hills Ranch project will interfere with this goal by limiting the future range of endangered or threatened species that have the potential to occur on site.

**e. The DEIR Fails to Adequately Analyze Impacts to Wildlife Habitat Linkages and Corridors That Will Be Impacted by the Project.**

The General Plan states that maintaining large, interconnected blocks of habitat containing sizable and diverse populations of sensitive species is superior to a fragmented landscape with undersized populations.<sup>71</sup> The DEIR acknowledges native habitat connectivity will be reduced, esp. to the west and southwest as linked through patches of coastal sage scrub, southern mix chaparral, and riparian woodlands--thus fragmenting these habitats and reducing on-site habitat that supports local "stepping stone"

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<sup>71</sup> County of San Diego General Plan, at 5-5, *available at*:  
[http://www.sdcounty.ca.gov/pds/gpupdate/docs/BOS\\_Aug2011/C.1-4\\_Conservation\\_and\\_Open\\_Space.pdf](http://www.sdcounty.ca.gov/pds/gpupdate/docs/BOS_Aug2011/C.1-4_Conservation_and_Open_Space.pdf).

connections for wildlife that can migrate between the larger regional connections.<sup>72</sup> The DEIR also notes that connectivity will also be reduced in northern part of Project where it links to south of habitat in Keys Canyon--a regional habitat linkage in the draft North County MSCP.<sup>73</sup> Furthermore, the DEIR finds that off-site expansions of existing roads will have potential to affect future PAMA areas that currently serve as a wildlife corridor along I-15.<sup>74</sup> Despite recognizing multiple local and regional wildlife habitat linkages and corridors, DEIR still concludes that the project would reduce local wildlife refuges that are less than significant, and that the site does not contain regionally significant wildlife linkages.<sup>75</sup> It is clear that the project findings and conclusions are inconsistent, and that the project will likely significantly impact not only local wildlife linkages and corridors but will result in indirect impacts to regional linkages and corridors, as well as direct significant impacts to regional linkages and corridors. The DEIR has failed to adequately analyze these impacts and must do so in order to adhere to the General Plan's for maintaining large, interconnected habitat to protect the movement of sensitive species.

**f. The DEIR fails to conform to provisions of the County of San Diego General Plan according to CEQA requirements.**

The DEIR fails to address inconsistencies of the proposed project and the General Plan's policy to protect, restore, and enhance natural environments outside of preserves as development occurs according to the underlying land use designation (Goal COS-2.1).<sup>76</sup> Guidelines § 15125(d) (DEIR must discuss “any inconsistencies between the proposed project and the applicable general plans and regional plans.”); *see also* Guidelines § Appendix G, § IX (CEQA Checklist includes assessing consistency with Habitat Conservation Plan.) By failing to include a discussion of *how* the DEIR complies with *all* aspects of the General Plan, the DEIR has violated the General Plan, and the above sections of CEQA. Further, in merely concluding, without actually demonstrating, that the project complies with the General Plan, the DEIR has also violated CEQA's prohibition on conclusory statements. Public Res. Code § 21082.2(c); *see also Californians for Alternatives v. Department of Forestry*, 136 Cal.App.4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill”).

Even assuming that the project did comply with the General Plan, conformity with a planning document does not guarantee that a project has no significant impacts. *See, e.g. City of Antioch v. City Council*, 187 Cal.App.3d 1325, 1332 (Cal. App.1986) (“conformity with the general plan for the area, if such is the case, does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.”).

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<sup>72</sup> DEIR, at 2.5-42.

<sup>73</sup> DEIR, at 2.5-14.

<sup>74</sup> DEIR, at 2.5-32; DEIR, at 2.5-26.

<sup>75</sup> DEIR, at 2.4-42.

<sup>76</sup>COUNT OF SAN DIEGO GENERAL PLAN 5-8 (2011), *available at*:

[http://www.sdcountry.ca.gov/pds/gpupdate/docs/BOS\\_Aug2011/C.1-4\\_Conservation\\_and\\_Open\\_Space.pdf](http://www.sdcountry.ca.gov/pds/gpupdate/docs/BOS_Aug2011/C.1-4_Conservation_and_Open_Space.pdf).

Because the proposed project is inconsistent with the General Plan, courts will take such inconsistency into account when determining whether the lead agency should have concluded that the project will have a significant impact. *See e.g. Lighthouse Field Beach Rescue v. City of Santa Cruz*, 131 Cal. App. 4<sup>th</sup> 1170 (Cal. App. 2005). Additionally, courts have even held that inconsistency with a general plan, the purpose of which is avoiding or mitigation of an environmental effect, such as the MSHCP, mandates a finding of significance. *The Pocket Protectors v. City of Sacramento*, 142 Cal. App. 4<sup>th</sup> 903, 929 (Cal. App. 2004); *See also Endangered Habitats League v. County of Orange* 131 Cal. App. 4<sup>th</sup> 777 (Cal. App. 2005).

Until the DEIR fully analyzes all potential impacts to the General Plan, and completes all the analysis and assessments required there under, the DEIR cannot conclude that they are in compliance with the General Plan or that they have adequately protected covered species from significant impacts.

In addition, the proposed project should not be approved until the County can demonstrate consistency with the North County MSCP. The goal of the draft MSCP is to maintain and enhance biological diversity in the region and maintain viable populations of endangered, threatened, and key sensitive species and their habitats while promoting regional economic viability through streamlining the land use permit process. Accommodating a development of this massive scale and scope prior to completion of the North County MSCP embodies poor land-use planning that will decrease biological diversity and negatively impact sensitive species occurring on the site. Turning this process on its head, approval of the Project at this premature juncture would dictate outcomes in the North County MSCP and potentially foreclose more thoughtful and sustainable regional planning. The Center urges the County to table the Project until the County finalizes the North County MSCP so that a more informed determination can be made as to whether or not the Project is consistent with the County's vision of conservation and sustainable land use future.

**g. The DEIR Fails to Analyze Multiple Types of Threats to Species.**

The DEIR fails to address threats and impacts to sensitive species other than threats and impacts from direct habitat loss and edge effects. This includes the potentially significant impacts from direct deaths to special status species from vehicles. The impacts of vehicular deaths to species such as the Stephen's kangaroo rat (SKR) or burrowing owl for instance, are nowhere discussed in the DEIR or any supporting document. Undoubtedly, there will be vehicular caused death as a result of the project.

Additionally, the DEIR presents no information regarding impacts to covered species from pesticide use associated with the project. That the DEIR does not address these issues violates CEQA.

Instead, the DEIR must fulfill CEQA requirements. Further, it must ensure that even with CEQA compliance, the project still will not result in significant impacts to biological resources and protected species.

i. The DEIR Fails to Analyze Potential Impacts from Pesticide Use.

The DEIR at no point discusses or analyzes potential impacts from pesticide use associated with the project. The DEIR fails to disclose information regarding pesticide usage associated with the project, either on a programmatic level, or associated with individual residential uses. This type of vague and unenforceable mitigation violates CEQA. This is especially disconcerting as many of the protected species located within or adjacent to the project suffer adverse consequences as a result of exposure to pesticides. This includes the burrowing owl, cooper's hawk, white-tailed kite, and numerous species that the DEIR has identified as having the potential to occur on site.

ii. The DEIR Fails to Fully Analyze Impacts from Light Pollution.

The DEIR contains only a cursory discussion of the potential impacts of night time lighting within the project site to wildlife.<sup>77</sup> This is insufficient to meet CEQA's requirement of fully disclosing impacts. Pub. Res. Code §§ 21061; 21005(a). CEQA Guidelines mandate that relevant information be presented so that agencies and the public are fully informed as to the ramifications of a project. *See e.g.* Pub. Res. Code § 21005(a). Here, the DEIR includes not even a modicum of scientific data on the impacts to wildlife from light pollution.

Light pollution is a major problem that can significantly confuse migratory birds and otherwise disturb and disrupt wildlife foraging and breeding. (CNN, "Light Pollution Threatens National Park," 1999). Light pollution can seriously threaten the continual survival of numerous species; "[t]he cumulative effects of behavioral changes induced by artificial night lighting on competition and predation have the potential to disrupt key ecosystem functions" (Longcore and Rich, 2004). Light pollution is not to be taken lightly in the DEIR, and should be afforded a weighty and detailed analysis, with full mitigation and/or avoidance of any identified significant effects on wildlife. That the DEIR affords only one sentence to explaining the light pollution problem fails to provide decision-makers and the public with the full impacts from the project, (Pub. Res. Code §§ 21061; 21005).

Many bird species fly at night, and have evolved to navigate their migration paths in the dark, aided by star and moon light, which is of course blocked by artificial light sources. (American Bird Conservancy, 2008). Further, birds can be attracted to lit structures, including streetlights, and can become disoriented as a result. (American Bird Conservancy, 2008). Disorientation often results in collisions with the lit structures themselves or with other birds, leading to injury and death. (American Bird Conservancy 2008). More than 100 million birds are affected by collisions each year in North America,

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<sup>77</sup> Biological Resources Report, at 81, 94.

and this includes many endangered species. (Deda, et al). Many such catastrophes have been documented, the worst incidents involving hundreds of birds killed at one building in a single night. (American Bird Conservancy, 2008).

Another aspect of light pollution that the DEIR does not address is that some species, including certain birds and reptiles, have begun to utilize artificial lights, such as streetlights to forage underneath for food. (Longcore and Rich, 2004). However, this can increase their risk of predation, as well as increase these species dependence on these human structures. (Longcore and Rich, 2004). The EIR should also analyze the potential for night lighting to impact SKR populations both on and off the Project site. SKR often forages and moves around at night. Natural and artificial lighting impacts kangaroo rats because it inhibits their nocturnal foraging and makes them more susceptible to the chance of predation. (COSEWIC 2006). The EIR must discuss the extent that the proposed lighting will reduce SKR habitat adjacent to the project because of predation or avoidance. Therefore, the presence of street lights within the VOL could actually attract some species into the development, prompting problematic interactions between these species and humans or their pets.

Bird species can also become “entrapped” within lighted areas, refusing to move for the night, and thus increasing their risk of predation. (Longcore and Rich, 2004). The only mitigation measure regarding light impacts on wildlife the DEIR proposes is to shield and direct nighttime lighting away from riparian and sensitive habitat.<sup>78</sup> However, this does not address this “entrapment” issue.

Plant species are also impacted by light pollution. Plants measure and react to night length, and duration of darkness can manipulate how frequently plants pollinate or flower, how they prepare for dormancy during winter, and even how much photosynthesizing they do. (Deda, et. al). Trees are similarly affected, for instance, an abundance of light pollution can keep a tree from losing its leaves at the correct time. (Deda, et. al). This also impacts animals that depend on these trees for habitat; for instance, birds are prevented from nesting in trees as a result of surrounding light pollution. (Deda, et. al).

Furthermore, light pollution need not be highly extensive to have a major impact on nearby plants and wildlife. For instance, one study found that desert rodents reduced foraging activity when exposed to the light of a single camp lantern. (Longcore and Rich, 2004). As well, light pollution has far reaching effects; a study of national parks found that artificial lights over *100 miles away* could still affect national parks and their wildlife. (CNN, “Light Pollution Threatens National Park,” 1999).

The DEIR needs to fully disclose these risks; only then can the likely effectiveness of proposed mitigation measures be evaluated when compared to the severity of the risk. Given the impact that light pollution has on wildlife species, particularly migratory birds, the proposed mitigation measures are inadequate to protect

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<sup>78</sup> Biological Resources Report, at 94.

against this harm. This is especially true in light of evidence showing that light pollution can be felt as far as 100 miles away. The relatively miniscule buffer the DEIR provide here to protect against light pollution is insufficient.

iii. The DEIR fails to Adequately Analyze Impacts on Wildlife from Domesticated Cats and Dogs.

Similarly, the DEIR has failed to disclose the severity of potential impacts from domestic cats and dogs on wildlife. The DEIR only offers a brief explanation of the issue involved, stating that domestic animals would result in indirect impacts to sensitive habitats.<sup>79</sup> The DEIR needs to provide a full and detailed analysis of this particular threat to wildlife presented by the project. Furthermore, the DEIR fails to and must provide mitigation measures to minimize the impacts of domesticated animals on wildlife.

Domestic cats kill hundreds of millions of birds, and more than a billion small mammals each year, as well as many small amphibians and reptiles. (American Bird Conservancy, Domestic Cat Predation of Birds and Other Wildlife). This includes documented instances of cats killing endangered and rare species. (American Bird Conservancy). Because domestic cats have been documented to successfully prey on rodents, this presents the possibility of significant harm to rodent species in the area, especially the endangered SKR that could occur within the project site. (George, 1974).

Predation by domestic cats is seen as such a severe problem that scientists now list invasive species, domestic cats being chief among them, as the second most serious threat to bird populations worldwide after habitat destruction and fragmentation. (American Bird Conservancy). Predation by domestic cats can also be made easier by habitat fragmentation, which forces wildlife into smaller tracts of land in which they are easier to prey on. (American Bird Conservancy). Predation by domestic cats can also have an impact not only on the species they directly kill, but on other predator species such as hawks, which are forced to compete with domestic cats for their typical food sources such as small rodents. (George, 1974)

Some free-roaming domestic cats kill more than 100 animals each year. (American Bird Conservancy) One well-fed cat that roamed a wildlife experiment station was recorded to have killed more than 1,600 animals (mostly small mammals) over 18 months. (American Bird Conservancy). Further, birds that nest or feed on the ground, such as California Quail or the burrowing owl, are the most susceptible to cat predation, as are nestlings and fledglings of many other bird species. (American Bird Conservancy). This is of particular concern for this particular project because bird species that nest on the ground, such as the burrowing owl, are present within the project site.

Unvaccinated cats can also transmit diseases, such as rabies, to wildlife. (American Bird Conservancy). Cats are the domestic animal most frequently reported to be rabid to the Centers for Disease Control and Prevention. (American Bird

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<sup>79</sup> Biological Resources Report, at 94.

Conservancy). Cats are also suspected of spreading fatal feline diseases to native wild cats such as mountain lion, the endangered Florida panther, and bobcat. (American Bird Conservancy).

CEQA Guidelines also require agencies to implement monitoring programs to ensure compliance with mitigation measures. Guidelines § 15097(a) (to ensure mitigation measures are actually carried out, agencies “shall adopt a program for monitoring or reporting.”) Here, the agency has provided no such monitoring program, and neither the public nor government officials can be assured that the identified mitigation measures will in fact be carried out or complied with.

iv. The DEIR Fails to Adequately Analyze Noise Impacts.

Impacts on wildlife from noise are not adequately addressed within the DEIR. The DEIR merely states that “[n]oise would not be sustained at levels that would disrupt wildlife movement during construction through breeding season noise restrictions or general post-project conditions through establishment of buffers and limited building zones.”<sup>80</sup> A full analysis of project related noise on wildlife should be provided in the forthcoming EIR.

v. The DEIR Fails to Address Harmful Interactions Between Humans and Wildlife.

Another issue that is not addressed in the DEIR or any of its supporting documents is the strong likelihood of problematic interactions between humans and wildlife. By placing over 4,700 people in such close proximity to coyotes and other animals, there is a strong probability that coyotes and other animals will forage in trash cans, prey on domestic pets, and otherwise disturb and frighten residents. In response, project residents may try to handle such interactions themselves, causing greater damage – for instance, putting out poison which could then kill an endangered species such as the Stephen’s kangaroo rat that could be present on-site. Poisoning from rodent control measures has previously been an issue for SKR survival. (SKR HCP § 3(E)(3)). That interactions between humans and wildlife will occur is a problematic issue that should have been foreseen and analyzed in the DEIR.

Another aspect of human and wildlife interaction that is commonly not considered is the likelihood of increasing the dependency of certain wildlife species on human food sources. For many species this will be through coming into contact with human trash. However, another issue is that artificial sources of bird food, which people often place in bird feeders outside their homes, can cause an increase in certain bird-species as well as bird predators in that area, creating competition among birds, increased predation, and the spread of parasites between species. (Berthold and Terrill, 1991). For instance, Jays, which are significant predators of eggs and nestlings of migratory birds, benefit greatly from artificial food sources such as bird feeders, and their population tends to swell.

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<sup>80</sup> DEIR, at 2.5-26.

(Berthold and Terrill, 1991). Cowbirds have benefited greatly from artificial food sources, causing their population to swell, and then increase their nest-parasite practice of laying their eggs in other birds' nests. (Berthold and Terrill, 1991). In fact, cowbirds nearly caused the extinction of one migratory bird, the Kirland's warbler, and appear to be having major negative impacts on numerous other species as well. (Berthold and Terrill, 1991). In southern California's coastal sage scrub communities, cowbird trapping regularly occurs in perpetuity to reduce the impact on the federally threatened California gnatcatcher.

vi. The DEIR Fails to Assess the Impacts of Air Pollution.

The DEIR fails to analyze the impacts of air pollution on biological resources. This omission fails CEQA's requirement of fully disclosing impacts. Pub. Res. Code §§ 21061; 21005(a).

**h. The DEIR Fails to Properly Consider Cumulative Impacts.**

The DEIR hints at future growth in the area, but never flushes out what actual projects are being planned for the area. The DEIR simply states that "the potential impacts could include impacts to visual resources, air quality, biological resources, cultural resources, and noise," but "potential impacts are too speculative for evaluation in this EIR because the specific nature, design and timing of future projects is unknown at this time."<sup>81</sup> Yet the DEIR states in the biological resources subchapter that "cumulative impacts from the proposed project were evaluated with regards to past, present, and future projects within the cumulative study area."<sup>82</sup> The DEIR needs to include a list of all reasonably foreseeable projects in the general area, and an analysis of how these projects will cumulatively contribute to the identified impacts of the project, especially to biological resources.

**i. The EIR Must Analyze Global Warming's Affects on Biological Resources in Determining Project Impacts.**

Climate change is having a major adverse impact on numerous plant and animal species. (Cameron and Scheel, 2001). Climate change impacts species by altering the climatic conditions that species need to survive or use a particular location as habitat, including particular temperature, type of food, water levels and water abundance, or weather conditions. (Schwartz, et. al., 2006). This causes massive migration shifts, with species seeking out other areas featuring their needed climatic conditions. (Schwartz, et. al., 2006). However, such migration shifts are not simple. For many species, their habitat is already so limited that there is no other location they can practically relocate to. As well, major impediments such as urban areas can keep species from reaching other habitats. Species migration can also cause increased food and habitat competition as

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<sup>81</sup> DEIR, at 1-48 to 1-49.

<sup>82</sup> DEIR, at 2.5-29.

more species attempt to forage, hunt, or breed, in smaller areas. Migration also has the potential to cause many of the issues commonly associated with invasive species.

For many species migration just is not possible and, as their habitats quickly change, they will be unable to adapt in time, and will become extinct. Extinction as a direct result of climate change is an imminent possibility for numerous species. (Cameron and Scheel, 2001).

The threat of climate change induced species extinction is found to be highest in species with a small current distribution, (Schwartz, et. al. 2006), such as the SKR. This makes sense given that the reason that these species have small habitats in the first place is that they are “habitat specialists,” meaning they can only survive in a very specific set of climatic/habitat conditions. (Schwartz, et al., 2006).

The DEIR should have disclosed this threat to species, and discussed the potentiality of the project contributing to the massive problem. The lead agency must include such an analysis in their subsequent EIR. The EIR must use its best efforts to find out and disclose all it reasonably can about the impacts of climate change on the environment and—most importantly—use that information to form an educated opinion about how to plan and adapt for the impacts of climate change. (California Attorney General 2009).

Such an analysis is particularly important to include given that the DEIR has already concluded that the project will have a significant contribution to climate change. Because the project will have a significant impact to climate change, the project will also have a significant contribution to the various secondary effects resulting from climate change, including massive migration shifts and species extinction. Further, it is irrelevant that species that are currently receiving the most attention for being at risk of extinction, such as the pika or the polar bear, are not located anywhere near the project site. Climate change is not localized in its effects so that any GHG emissions will cumulatively contribute to climate change induced species extinction.

Further, we are just beginning to understand how climate change is impacting species. Little information exists as to how climate change is impacting species that currently exist within the vicinity of the project site such as the burrowing owl or the SKR. However, what data we do have indicates that these species may as well be feeling the effects of climate change. Here, the EIR has conducted no scientific inquiry into what the potential impacts from climate change to species such as the SKR may be.

## **II. THE DEIR'S PROPOSED MITIGATION MEASURES ARE INADEQUATE TO MITIGATE THE PROJECT'S IMPACTS ON BIOLOGICAL RESOURCES.**

### **a. The Proposed Mitigation for Impacts to Forage Habitat On-site Are Inadequate.**

The DEIR provides inadequate mitigation measures that would not reduce the impacts to forage habitats for raptors to below a significant level (M-Bio-1a to M-Bio-1h). The DEIR states the project would provide 66.4 acres of native habitat mitigation to provide protected foraging habitat for raptors through on-site and/or off-site and/or mitigation banking, which will be subject to the approval of the County and appropriate wildlife agencies.<sup>83</sup> However, without further information these mitigation measures are too vague regarding the location and specific types of native vegetation that would be included in the habitats, as well as timing of implementation. Furthermore, the mitigation measures would be conducted under a currently conceptual resource management plan that does not guarantee the implementation or the effectiveness of these mitigation measures. Finally, the DEIR is unclear whether mitigation for Bio-Impact-1 would be incorporated as part of M-Bio-2 or be established independently. The DEIR should establish on-site mitigation for impacts to raptor forage habitats in addition to mitigation under Bio-Impact-2 since they address different biological impacts.

The DEIR acknowledges various species, including the coastal whiptail, turkey vulture, cooper's hawk, and loggerhead shrike were observed in orchards and other agricultural areas. The project, however, will impact 276.4 acres of orchard habitat alone.<sup>84</sup> Yet the DEIR does not provide any mitigation measures for impacted agricultural lands that will be impacted as a result of the project, thereby allowing extensive habitat loss for sensitive species of in addition to habitat loss for these species natural communities. The DEIR must avoid, minimize, and mitigate habitat loss for orchard and other agricultural areas that sensitive species depend on to survive.

### **b. The Proposed Mitigation for Riparian Habitats and Sensitive Natural Communities Are Inadequate.**

The DEIR states that a qualified biologist will prepare a resource management plan (RMP) prior to the issuance of the first grading permit and each subsequent grading permit to address restoration, enhancement, and maintenance of a 104.1-acre open space on the project site, and 70.3-acre open space off-site.<sup>85</sup> The DEIR includes conceptual RMPs that provide outlines of RMPs and mapped areas of where the RMPs would be applied.<sup>86</sup>

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<sup>83</sup> DEIR, at 2.5-40; 2.5-35 & 2.5-36.

<sup>84</sup> DEIR, at 2.5-45.

<sup>85</sup> DEIR, at 2.5-36; See DEIR, Appendix G (Biological Resources Report), Attachments 17 and 18.

<sup>86</sup> See DEIR, Appendix G, Attachments 17 and 18.

The conceptual RMPs fail to satisfy CEQA requirements of assuring the implementation and the effectiveness and enforceability of mitigation measures. CEQA requires that mitigation measures be “fully enforceable through permit conditions, agreements, or other legally-binding instruments.” Guidelines § 15126.4(a)(2). In particular, potential funding sources for the implementing the RMPs has not been identified. The financing mechanism has not been determined since the DEIR states that funding would be provided by an endowment, Community Facility District, or other finance mechanism approved by the County.<sup>87</sup> The conceptual RMPs acknowledge that specific internal and external management constraints that may affect meeting RMP goals have not been identified, further demonstrating the DEIR's failure in ensuring that the RMPs will be implemented.<sup>88</sup>

Furthermore, the DEIR fails to demonstrate that the RMPs will be effective if they are implemented. For instance, the DEIR states the Resource Manager shall be responsible for determining and achieving the ongoing success of a RMP, according to success standards and adaptive management strategies that have not yet been developed. However, it is impossible to evaluate whether the RMPs would be enforceable or effective since these measures of success have not been developed. And as above, the RMPs would not need to be finalized until the County approves the project and issues grading permits. Additionally, the County will need to approve the RMPs via separate RMP agreements before they will be executed.<sup>89</sup> The RMPs should be finalized prior to potential approval of the project and, if the project is approved, the RMPs should be implemented prior to--not during or after--construction for the project, in order for the RMPs to fulfill their purposes of protecting and minimizing impacts to sensitive plant and wildlife species. In order to comply with CEQA mandates the DEIR must finalize detailed RMPs and obtain County approval for the RMPs prior to any project approval, and must include assurances for funding as well as measurable goals and success standards within the RMPs.

**c. The Proposed Mitigation for Impacts to Jurisdictional Waterways and Wetlands Are Inadequate.**

The proposed project would result in significant, direct impacts to 13 acres of coastal/valley freshwater marshes, southern willow riparian woodland, and other riparian habitats through grading activities and construction of road crossings and culverts.<sup>90</sup> Wetlands that will be impacted by the project include 2.3 acres of County of San Diego Resource Protection Ordinance wetlands. The DEIR acknowledges that the wetlands within the project site are important locally as they provide vegetated areas that protect the watershed; provide a water source for local wildlife species and habitat; and protect

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<sup>87</sup> DEIR, at 2.5-36.

<sup>88</sup> DEIR, Appendix G, Attachment 17 at 7-8, and Attachment 18 at 8.

<sup>89</sup> DEIR, Appendix G, Attachment 17 at 7, and Attachment 18 at 7-8.

<sup>90</sup> DEIR, at 2.5-41; DEIR, at 2.5-23.

the downstream watershed of Moosa Creek and the San Luis Rey River by moderating erosion, sedimentation, and stream flows.<sup>91</sup>

The DEIR proposes vague and inadequate mitigation measures to alleviate the impacts to jurisdictional waters and wetlands.<sup>92</sup> In particular, the DEIR states the Project would include a 50-foot minimum wetland buffers around preserved wetlands, and 90-foot minimum buffers around wetland creation areas, signage and fencing, and 100-foot limited building zones, as well as a RMP as discussed earlier.<sup>93</sup> However, the DEIR does not assess or discuss the effectiveness with which these measures would actually be able to reduce disturbance to these areas.

Additionally, the DEIR includes a conceptual revegetation plan that outlines the project's plan to conduct on-site jurisdictional waters/wetland creation, restoration, and enhancement. In particular, the conceptual wetland revegetation plan proposes the number of acres that the project will mitigate and states that 6 acres of wetland will be created and 12 acres will be enhanced or restored on-site as part of the project's open space component.<sup>94</sup> However, the DEIR does not explain how these mitigation acres were determined. Additionally, the acreage of jurisdictional waters/wetlands that will be impacted according to the revegetation plan (Table 3) is different from the acreage that will be impacted according to Table 2.5 of the DEIR.<sup>95</sup> Although the revegetation plan states that the project proponent will be responsible for funding and implementing the plan once it is approved by the County, funding and an implementation schedule for this plan has not been determined.<sup>96</sup> Without a rationale in acreage and certainty in funding as well as timing for implementing the revegetation plan it is impossible for the public to properly assess the potential effectiveness of the plan in mitigation impacts to important waterways and riparian habitats to less than significant.

The DEIR explains that the proposed fencing, buffers, light shields, and stormwater best management practices will reduce indirect impacts from nearby human activities to preserved and restored riparian areas would be less than significant.<sup>97</sup> However, the DEIR fails to cite studies or any analysis in justifying this conclusion, and therefore has made the determination that these mitigation measures would be effective in a conclusory manner prohibited by CEQA.

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<sup>91</sup> DEIR, at 2.5-10.

<sup>92</sup> DEIR, at 2.5-37 to 2.5-39.

<sup>93</sup> DEIR, at 2.5-41.

<sup>94</sup> DEIR, Appendix G, Attachment 16, at 1.

<sup>95</sup> DEIR, Appendix G, at Attachment 16, page 14; DEIR, at 2.5-44.

<sup>96</sup> DEIR, Appendix G, at Attachment 16, page 19.

<sup>97</sup> DEIR, at 2.5-24.

**d. The Proposed Mitigation for Light Pollution Impacts on Biological Resources Are Inadequate.**

As discussed previously the only mitigation measure regarding light impacts on wildlife the DEIR proposes is to shield and direct nighttime lighting away from riparian and sensitive habitat.<sup>98</sup> This is insufficient to meet CEQA's requirement of fully disclosing impacts. Pub. Res. Code §§ 21061; 21005(a). CEQA Guidelines mandate that relevant information be presented so that agencies and the public are fully informed as to the ramifications of a project. *See e.g.* Pub. Res. Code § 21005(a). Here, the DEIR fails to adequately analyze and mitigate the impacts to wildlife from light pollution on and adjacent to the Project.

The DEIR needs to fully disclose these risks; only then can the likely effectiveness of proposed mitigation measures be evaluated when compared to the severity of the risk. Given the impact that light pollution has on wildlife species, particularly migratory birds such as the many species that utilize the affected open space as wildlife habitat, the proposed mitigation measures are inadequate to protect against this harm. This is especially true in light of evidence showing that light pollution can be felt as far as 100 miles away.

The shielding measure the DEIR provides here to protect against light pollution is insufficient. CEQA requires that agencies "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Pub. Res. Code § 21002.1(b). The EIR fails to meet this mandate.

**III. THE EIR FAILS TO ADEQUATELY ADDRESS WATER RESOURCES AVAILABILITY FOR THE PROJECT.**

The proposed project lies within the Valley Center Municipal Water District (District) and will rely on the District to meet its water demands. The project must meet various county, state, and federal standards in ensuring that adequate water supplies will be able to meet demands the project would create, including laws requiring large projects to submit water supply assessments and requiring the city or county make a finding that sufficient water supplies are available prior to completion of a project.<sup>99</sup> Additionally, the General Plan requires the project proponent to demonstrate that adequate water supplies will be able to serve the long-term needs of a project prior to approval of the project.<sup>100</sup>

In 2012 the project proponent prepared a Water Supply Assessment and Verification (WSAV) report. The DEIR finds that there is adequate water supply to serve the project based on WSAV's conclusion that the VCMWD expects to meet and exceed expected demands for the project over a 20-year planning horizon, in normal, single-dry,

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<sup>98</sup> Biological Resources Report, at 94.

<sup>99</sup> *See* SB 610 and SB 221.

<sup>100</sup> County of San Diego General Plan LU-13.2

and multiple-dry years. The WSAV's conclusion relies on the VCMWD's water supply reliability analysis contained in the 2010 Urban Water Management Plan Update (UWMP).<sup>101</sup>

The DEIR also concludes that the project's impacts associated with adequate water supplies or entitlements will be less than significant. The DEIR reasons that adherence to adopted plans and regulations, including those summarized above, would ensure that the project would not result in a demand for water that exceeds existing entitlements and resources, necessitates new or expanded entitlements.<sup>102</sup> However, conformity with a planning document does not guarantee that a project has no significant impacts. *See, e.g. City of Antioch v. City Council*, 187 Cal.App.3d 1325, 1332 (Cal. App.1986) (“conformity with the general plan for the area, if such is the case, does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.”). Therefore the DEIR improperly relies on compliance with adopted plans and regulations to justify the conclusion that impacts to water supply adequacies would be less than significant. This reliance is not a substitute for analysis of the Project's actual water supply impacts.

The DEIR also falsely relies on the WSAV in drawing the conclusion that there is sufficient supply to serve the project.<sup>103</sup> In particular, the DEIR severely under-counts the needs that will result from the implementation of the project, fails to prove adequate water supplies will satisfy project water demand, and fails to discuss the adequacy of water supply availability in the context of climate change.

**a. The DEIR Miscalculates the Project's Water Demands.**

The WSAV report states that the project would create a demand of 1,290 acre-feet water per year (AFY) from residence and commercial needs.<sup>104</sup> However, this number is inconsistent with the 2014 Water Service Report that calculates the water demand to be 1,246 AFY.<sup>105</sup> The WSAV report also finds that the net new demand would be zero given the historic imported potable water use in the project area, the project's water conservation approach, development and use of recycled water, and continued use of onsite groundwater.<sup>106</sup>

The WSAV's conclusion that the implementation of the project will result in zero net new water demand is unjustified. First, the WSAV states the project may utilize a variety of conservation features including incorporating low flush toilets and installing smart water meters with leak detection capabilities.<sup>107</sup> The WSAV concludes that water

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<sup>101</sup> DEIR, at 3-168.

<sup>102</sup> DEIR, at 3-168.

<sup>103</sup> DEIR, at 3-151

<sup>104</sup> DEIR, Appendix Q (Water Supply Assessment and Verification report), at 2.

<sup>105</sup> DEIR, Appendix T (Water Resource Report), at 3-1.

<sup>106</sup> DEIR, Appendix Q, at 2.

<sup>107</sup> DEIR, Appendix Q, at 6-7.

demands will be reduced to 967 AFY after incorporating conservation measures.<sup>108</sup> However, the assumption that water demand from the project will be reduced by 25% via conservation measures is not supported by any scientific literature, and is not calculated according to the potential adoption of specific measures. The 25% assumed reduction via conservation measures is therefore baseless, and cannot be reasonably relied on-- especially given that specific measures have not even been identified by the project. Furthermore, the DEIR does not state whether conservation measures will be adopted by the project and, if they are, whether they will be required to meet the 25% reduction assumption. The WSAV water demand estimate is also inconsistent with calculations by the Water Services Report, which concludes that water demand will remain at 935 AFY after incorporating conservation measures that would result in a 25% reduction in demand.<sup>109</sup>

Thus although the WSAV attempts to present the 1,290 acre-feet water demand as a “net zero” demand, the methods it takes into account that would reduce this new demand are entirely speculative or illusionary, and is inconsistent with the water demands calculated by the Water Services Report. The reports must be revised to provide consistent calculations in order for the DEIR to begin an accurate analysis of water supply adequacies.

**b. The DEIR Fails to Demonstrate that Adequate Potable Water Supply Will Be Available.**

The WSAV inadequate information on the potential source for potable water supply, and provides only one sentence stating that “[w]ater supply for the Lilac Hills Ranch project will originate from the District, who in turn presently meets water demands primarily from water imported from the SDCWA . . . .”<sup>110</sup> The Water Service Report provides further information regarding possible potable and non-potable water sources directly from the District and the development of alternative sources. However, the project proponent fails to demonstrate that there is sufficient water supply to meet potable water demands that will be created due to the project as discussed below.

The DEIR states that currently all potable water in the District is imported from other areas of the state including the Colorado River and the State Water Project.<sup>111</sup> The DEIR discusses its intent to reduce the project's reliance on imported water by exploring alternate sources of water including harvested rain water, grey water, groundwater, and recycled water.<sup>112</sup> In particular, the Water Service Report estimates that harvested rain water from single-family units could provide 39 AFY of water, and it estimates that grey water collected from single-family units could provide 91 AFY of water.<sup>113</sup> However,

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<sup>108</sup> DEIR, Appendix Q, at 6-7.

<sup>109</sup> DEIR, Appendix T, at 3-2.

<sup>110</sup> DEIR, Appendix Q, at 14.

<sup>111</sup> DEIR, Appendix T, at 4-2.

<sup>112</sup> DEIR, Appendix T, at 3-3 to 3-5.

<sup>113</sup> DEIR, Appendix T, at 3-4 to 3-5.

these alternatives are encouraged but are still optional where no implementation or financial commitments have been made by the project proponent, and thus are not demonstrated water supplies for the project.

Even if the project implemented all grey water, harvested water, groundwater, and recycled water measures (assuming they are viable) these water supplies would still only provide 935 AFY of water compared to the estimated demand of over 1200 AFY. As discussed previously the 25% reduction in demand through conservation measures are merely assumed; no implementation or financial commitments have been made regarding conservation measures. If the project does not incorporate recycled water measures 619 AFY of potable water would need to be sourced from the District.<sup>114</sup> Even under the scenario that incorporate all grey water, groundwater, and recycled water measures at least 307 AFY of the potable water would still need to be sourced from the District directly.<sup>115</sup>

The Water Service Report also notes the District may pursue investigations regarding groundwater resources in the future, and may purchase water from the Carlsbad Desalination Plant that is currently under construction. However, these sources are purely speculative and do not provide any assurance that water supply will be adequate for the project.<sup>116</sup>

In addition, the DEIR states that the District will improve the existing country club reservoir into two reservoirs of 4.8 million gallons each (or 9.6 million gallons total), which would have the capacity of 29.5 AF of potable water.<sup>117</sup> However, the DEIR does not provide further detail on how the reservoir capacity would contribute to meeting water demands.

**c. The DEIR Fails to Demonstrate that Adequate Non-Potable Water Supply Will Be Available.**

The WSAV estimates that the implementation of the project will create a 510 AFY non-potable water demand.<sup>118</sup> The DEIR proposes using a combination of groundwater and recycled water to meet this demand. The WSAV identifies nine groundwater production wells currently produce 191 AFY water (based on a five-year record) that would be used to meet the project's non-potable demands at the same production rate until the source is found unreliable.<sup>119</sup> Additionally, the WSAV provides that recycled water would generate 289 AFY.<sup>120</sup> However, the WSAV and the DEIR do not discuss how the remaining 30 AFY non-potable demand will be met assuming that 480 AFY would be generated through groundwater and recycled water sources.

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<sup>114</sup> DEIR, Appendix T, at 3-5.

<sup>115</sup> DEIR, Appendix T, at 3-5.

<sup>116</sup> DEIR, Appendix T, 4-2.

<sup>117</sup> DEIR, at S-2 and S-3.

<sup>118</sup> DEIR, Appendix Q, at 8.

<sup>119</sup> DEIR, Appendix Q, at 8; DEIR, at 3-136.

<sup>120</sup> DEIR, Appendix Q, at 8.

Furthermore, the DEIR does not analyze whether the current 191 AFY extraction rate for groundwater is sustainable over the long term, making it impossible to assess the viability of this water source even within the short 20-year outlook water supply has been assessed. Finally, the DEIR also does not assess the certainty of meeting water demands through recycled water, as no plan for obtaining recycled water has been adopted. The DEIR discusses the possibility of building a new wastewater reclamation facility and/or expanding the existing Lower Moosa Canyon Water Reclamation Plant.<sup>121</sup>

The project proponent has thus failed to demonstrate that nonpotable water needs will be met by groundwater or recycled water sources, which will not produce sufficient supply even if the proponent verify the long-term viability of groundwater resources and implement one of the water recycling options as discussed.

**d. The DEIR Assesses Water Supply Availability Under an Inadequate Planning Horizon.**

The WSAV report concluded that there will be sufficient water supply for the project including projected growth in the next 20 years.<sup>122</sup> This is simply too small of a window for assuring that the water supply needs of the proposed community since the community would be expected to function for more than merely 20 years. Without a sufficient water supply for at least 100 years in order to provide long-term certainty for the existence of the community.

**e. The DEIR Dismisses Groundwater Extraction Impacts to Sensitive Species and Habitats Without Proper Support.**

The General Plan discourages development that would significantly draw down groundwater levels to the detriment of groundwater-dependent habitat.<sup>123</sup> The DEIR states that groundwater-dependent habitat will not be impacted by continuous groundwater extraction by the project based on the amount of groundwater that would be extracted, the depth at which groundwater would be extracted, and potential recharge by recycled water, potable water over the project site.<sup>124</sup> In particular, the DEIR draws this conclusion by citing that well depths range from 110-1210 feet and are therefore below the surface groundwater depths used by riparian plants species.<sup>125</sup> The DEIR fails to mention that well depths documented account for total depth, not the depth where wells begin to draw water from groundwater sources, and therefore cannot be used to support the DEIR's conclusion that groundwater withdrawal has no potential impact on species and habitats on-site.<sup>126</sup> The DEIR does not include any other assessments on groundwater

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<sup>121</sup> DEIR, Appendix Q, at 8.

<sup>122</sup> DEIR, Appendix Q, at 3.

<sup>123</sup> County of San Diego General Plan LU-8.3.

<sup>124</sup> DEIR, at 2.5-23.

<sup>125</sup> DEIR, at 2.5-23.

<sup>126</sup> DEIR, at Appendix P (Hydrogeologic Assessment), Table 1.

sources, geological formations, or their potential impacts on riparian habitats on the project site supporting its conclusion that the project would not negatively harm groundwater-dependent impact.

Since the open space riparian woodlands run nearly the length of the Project they very likely transect groundwater resources at several points and are very likely dependent on adequate ground water to support the oaks, willows and other riparian species. The DEIR dismisses potential impacts continued groundwater drawdown will have on groundwater-dependent species and habitat, and must assess and disclose the full range of impacts the project will have on these sensitive biological resources.

**f. The EIR Must Analyze Global Warming's Affect on Water Supply in Determining Project Water Supply Impacts.**

Significantly for the state, as well as the project area, is global warming's impact on water supply. The IPCC specifically identified the American West as vulnerable, warning, "Projected warming in the western mountains by the mid-21st century is very likely to cause large decreases in snowpack, earlier snow melt, more winter rain events, increased peak winter flows and flooding, and reduced summer flows" (IPCC 2007b). Recently, researchers found that an increase in atmospheric greenhouse gases has contributed to a "coming crisis in water supply for the western United States" (Barnett 2008). Using several climate models and comparing the results, the researchers found that "warmer temperatures accompany" decreases in snow pack and precipitation and the timing of runoff, impacting river flow and water levels (Barnett 2008). These researchers concluded with high confidence that up to 60 percent of the "climate related trends of river flow, winter air temperature and snow pack between 1950-1999" are human-induced (Barnett 2008). This, the researchers wrote, is "not good news for those living in the western United States" (Barnett 2008).

The California Center on Climate Change has also recognized the problem global warming presents to the state's water supply and predicts that if greenhouse gas emissions continue under the business-as-usual scenario, this snowpack could decline up to 70-90 percent, affecting winter recreation, water supply and natural ecosystems (Cayan 2007). Global warming will affect snowpack and precipitation levels, and California will face significant impacts, as its ecosystems depend upon relatively constant precipitation levels and water resources are already under strain (Cayan 2007). The decrease in snowpack in the Sierra Nevada will lead to a decrease in California's already "over-stretched" water supplies (Cayan 2007). It could also potentially reduce hydropower and lead to the loss of winter recreation (Cayan 2007). All of this means "major changes" in water management and allocation will have to be made (Cayan 2007). Thus, global warming may directly affect the ability to supply clean, affordable water to the residents, or change how the project will utilize water, and it may also impact other activities outside the project area, such as agriculture.

Scientists indicate that climate change will also exacerbate the problem of flooding by increasing the frequency and magnitude of large storms, which in turn will cause an increase in the size and frequency of flood events (NRDC 2007). The increasing cost of flood damages and potential loss of life will put more pressure on water managers to provide greater flood protection (NRDC 2007). At the same time, changing climate conditions (decreased snowpack, earlier runoff, larger peak events, etc.) will make predicting and maximizing water supply more difficult (NRDC 2007). These changes in hazard risk and water supply availability must be considered during environmental review.

Water quality, in addition to water quantity and timing, will also be impacted. Changes in precipitation, flow, and temperature associated with climate change will likely exacerbate water quality problems (NRDC 2007). Changes in precipitation affect water quantity, flow rates, and flow timing (Gleick 2000). Shifting weather patterns are also jeopardizing water quality and quantity in many countries, where groundwater systems are overdrawn (Epstein 2005). Decreased flows can exacerbate the effect of temperature increases, raise the concentration of pollutants, increase residence time of pollutants, and heighten salinity levels in arid regions (Schindler 1997).

#### **IV. THE EIR FAILS TO ADEQUATELY ANALYZE A REASONABLE RANGE OF ALTERNATIVES.**

The EIR failed to consider a meaningful analysis of reasonable alternatives to the Project in order to lessen or avoid the Project's significant impacts. CEQA mandates that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d). A rigorous analysis of reasonable alternatives to the project must be provided to comply with this strict mandate. "Without meaningful analysis of alternatives in the EIR, neither courts nor the public can fulfill their proper roles in the CEQA process." *Laurel Heights Improvement Ass'n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988). Moreover, "[a] potential alternative should not be excluded from consideration merely because it 'would impede to some degree the attainment of the project objectives, or would be more costly'" even when that alternative includes Project development on an alternative site. *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1456-57 (2007) (quotations omitted).

The EIR must consider a reasonable range of alternatives including, but not limited to, the following: creation of the Project on an alternative site that impacts less wildlife habitat, existing core reserves, or connections between existing reserves; Development of the Project on existing lands previously disturbed by development and exclusion of development on undeveloped lands; increased density, mixed use development, transportation oriented design surrounding existing transit nodes or transit corridors within or adjacent to the Project area; and mixed use development combined with preservation and enhancement of existing wildlife habitat. An off-site alternative has been considered by the DEIR. However, the DEIR has improperly dismissed this

alternative due to 1) a lack of a suitable-sized suit; 2) lack of ability to reduce vehicle miles traveled for greater GHG emissions and traffic impacts; and 4) that the proponent already owns the proposed site and cannot reasonably acquire an alternative site.<sup>127</sup> None of these reasons are both supported by the evidence and legally tenable.

An offsite alternative would meet the project's objectives, and could be constructed in the City of Escondido. This City is adjacent to I-15 and is much closer to existing service areas, and would therefore drastically reduce VMT related to Project travel. As the recently adopted Escondido General Plan demonstrates, there is also plenty of room to put the Project's planned 1,700 units, as the General Plan anticipates development of more than 6,000 new residential units.<sup>128</sup>

The EIR should also set forth and frame an alternative as a "low carbon" alternative and discuss the types of measures and land use decisions that would be required for the Town to comply with AB 32 targets and move forward to 2050 reduction targets. (California Attorney General 2009). Mitigation Measures to encourage the "low carbon" alternative are described in these comments and attachments and can be easily achieved while reaching the project objectives. To the extent the low carbon alternative or feasible mitigation measures are rejected that decision must be supported by substantial evidence. These alternatives would meet the project's basic goals and objectives and, therefore, must be considered.

In analyzing the no-project alternative, the EIR must discuss the need for this project and whether the uses that would potentially utilize the Project can be accommodated in existing areas. As CAPCOA states in its white paper, one way local governments can avoid significant increases in greenhouse gas emissions and help solve the problem of global warming is to "facilitate more efficient and economic use of the lands" already developed within the community (CAPCOA 2008). Reinvesting in existing communities is "appreciably" more efficient than new development and may even result in a net reduction of greenhouse gases (CAPCOA 2008). The EIR should consider an alternative that relies more on higher-density mixed commercial/residential development projects on existing disturbed lands in order to support the reduction of vehicle trips, promote alternatives to individual vehicle travel, and encourage efficient delivery of services and goods (Office of the California Attorney General 2008).

An analysis of alternatives should also quantify the estimated greenhouse gas emissions, quantified impacts to biological resources, water resources including water quality and water availability, and traffic resulting from each proposed alternative.

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<sup>127</sup> DEIR, at 4-4 to 4-6.

<sup>128</sup> See p. 3-23 of Escondido General Plan EIR, *available at*:  
<http://www.escondido.org/Data/Sites/1/media/PDFs/Planning/GPUupdate/Vol1ProjectDescription.pdf>.

**V. CONCLUSION.**

The Center encourages the County to deny the proposed project. Thank you for the opportunity to submit comments on the proposed Lilac Hills Ranch project. Please do not hesitate to contact the Center with any questions at the number listed above. We look forward to reviewing any further environmental documentation on this project. Please place us on the notice list for all future project meetings.

Sincerely,



Chelsea Tu

Staff Attorney  
Center for Biological Diversity

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