

Letter I51a

July 22, 2014

To: Mark Slovick, Project Manager
County of San Diego Planning and Development Services
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Subject: Revised DEIR Public Comments Regarding the DEIR Executive Summary with regard to the Proposed Accretive Lilac Hills Ranch General Plan Amendment and Specific Plan PDS2012-3800-12-001(GPA),PDS2012-3810-12-001 (SP).

Dear Mr. Slovick:

The following Public Comments pertain to the Executive Summary

Executive Summary Comment DEIR Paragraph S.3 Areas of Controversy page S-4 – Item 1 – Project’s ability to acquire legal Right of Way

THIS SECTION NEEDS THE ADDITION OF A FRANK AND SUCCINCT DISCUSSION OF THE PROJECT’S FACTUAL LACK OF LEGAL RIGHT OF WAY FOR ROADS, SEWER, AND RECYCLED WATER. FACTUAL AND QUANTITATIVE DISCUSSION NEEDS TO BE MADE PROMINENTLY APPARENT TO DECISION MAKERS ON HOW OFFSITE IMPROVEMENTS REQUIRED FOR THIS PROJECT WILL BE ACQUIRED. THERE ARE FACTUALLY 30 OR MORE RIGHT OF WAY ACQUISITIONS THAT PROJECT REQUIRES. THE PROJECT HAS MADE LITTLE PROGRESS IN FOUR YEARS ON ACQUIRING REQUIRED RIGHT OF WAY. IT IS HIGHLY LIKELY THAT THE USE OF EMINENT DOMAIN FOR A MINIMUM OF THIRTY AND LIKELY GREATER NUMBER OF SEPARATE TAKINGS OF UNWILLING PROPERTY OWNERS’ LAND OR INTEREST IN ROAD AND UTILITY EASEMENTS WILL BE REQUIRED TO MAKE THIS PROJECT FEASIBLE.

I51a-1

The County of San Diego has received hundreds of pages of factual information from multiple Attorneys that demonstrate the absence of legal rights for the Project’s intended use of private roads and right of way for Sewer and Recycled water utility pipelines.

I51a-2

The Valley Center Municipal Water District (VCMWD) has verified that the Project has proposed pipeline routes for which no legal right of way currently exists for Sewer and Recycled Water. To use the Project’s preferred Sewer and Recycled Water pipelines for this project, Eminent Domain taking of right of way is required. The Project’s Alternate 4 pipeline route is claimed by the Applicant to have full legal right of way. However, as pointed out in Chapter 3 Public Comments, this claim requires substantiation in the three areas questioned.

I51a-3

The County has taken the position that Private Road right of way disputes are between individual private parties. That said, the County of San Diego has certain knowledge that offsite road improvements for the Project will require right of way for at least thirty separate takings of unwilling property owners’ land or interest in road easements.

I51a-4

I51a-1 The FEIR adequately analyzes the potential environmental impacts associated with construction of the off-site physical improvements as required under CEQA. With respect to related property rights, please see the Global Response: Off-Site Improvements – Environmental Analysis and Easement Summary Table, which describes the respective off-site improvements, corresponding environmental analysis, status of easement rights, and affected properties. Please also see Global Response: Easements (Covey Lane and Mountain Ridge Roads) for additional information responsive to this comment.

I51a-2 See response to comment I51a-1, above.

I51a-3 See response to comment I51a-1, above.

I51a-4 See response to comment I51a-1, above.

The County has been less than forthright in providing Public information on required right of way for Offsite Improvements for assessment of Environmental Impact. Provide the following information:

The County needs to disclose the following information so that impacts are identified and required Mitigation can be implemented.

A). Required Disclosure of Relevant Information regarding legal rights for construction of Off Site Improvements as well as how the Applicant intends to gain legal rights

In the DEIR, the County has not provided adequate disclosure regarding off-site impacts of the Project and its Alternatives to surrounding property owners.

This information is necessary to demonstrate Project Feasibility that the Project can ever be legally built.

For the Project and each of its Alternatives, provide the following information regarding off-site improvements for which Acetive Investments currently holds less than full legal right of way. Please provide evidence that there is adequate Project rights for construction of these improvements, including temporary encroachment permissions for construction that enable continued use of the road by Residents during construction.

For each impacted parcel, indicate what the Applicant has done to attempt to secure legal rights. Disclose how the Applicant or the County intends to secure the necessary legal rights for these parcels:

<u>Parcel Number</u>	<u>Property Owner</u>	<u>sq ft. Right of Way required</u>	<u>sq.ft.Slope Easement</u>	<u>Total sq. ft. Encroachment</u>
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i) West Lilac Road

Scenario 1 – Construction of West Lilac Road from Old Hwy 395 to proposed new Road 3b to 2.2 C Road Standards as is the General Plan Baseline. No information on offsite improvements has been provided by the County for the full route of this Alternative, which is the present General Plan Mobility Element baseline.

Scenario 2 a – As per "Right of Way Analysis W. Lilac Rd Alt 1 2.2C/2.2F dated Oct 31, 2013 **with additional land necessary to incorporate Reid Middleton Roundabout design modification recommendations identified.** The Oct 31, 2013 study found that 22 parcels were impacted for a total of 4.3 acres. The Study did not quantify the additional parcels impacted by Roundabout redesigns recommended by Reid Middleton. Please include a current and accurate disclosure of the parcels as impacted by Roundabout redesign.

Scenario 2 b – As per "Right of Way Analysis W. Lilac Rd Alt 1 2.2 C dated Oct 31, 2013 **with additional land necessary to incorporate Reid Middleton Roundabout design modification recommendations identified.** The Oct 31, 2013 study found that 22 parcels were impacted for a total of 5.6 acres. The Study did not quantify the additional parcels impacted by Roundabout redesigns recommended by Reid Middleton. Please include a current and accurate disclosure of the parcels as impacted by Roundabout redesign.

151a-4 (cont.)

151a-5

151a-6

151a-7

151a-8

151a-9

151a-5 All of the impacts related to offsite improvements have been quantified, described, and included in the FEIR throughout Chapters 2.0 and 3.0. All off-site improvements associated with each alternative are analyzed and discussed in Chapter 4.0 of the FEIR. See response to comment I51a-1, above.

151a-6 See response to comment I51a-5 and Global Responses: Easements (Covey Lane and Mountain Ridge Roads) and Off-Site Improvements – Environmental Analysis and Easement Summary Table for additional information responsive to this comment.

151a-7 Proposed improvements to West Lilac Road are discussed in their entirety in Chapter 1.0 of the FEIR. Specifically, the project proposes improvements to West Lilac Road from Old Highway 395 to the northeastern corner of the project site. Impacts associated with these improvements have been considered throughout the appropriate subsections of the FEIR and are included in the cumulative impacts section of each subject as well. Please also see response to comment 151a-6 above and related reference materials for additional information responsive to this comment.

151a-8 The commenter accurately represents that a redesign of the roundabout resulted from the Reid Middleton Roundabout Study. This revised design is reflected in the current project description and all impacts located within the footprint of the roundabout are addressed in the EIR. The roundabout redesign would impact offsite areas; however, these areas are within existing Irrevocable Offers of Dedication (IODs) with both slope and drainage rights. Please also see Global Responses: Easements (Covey Lane and Mountain Ridge Roads) and Off-Site Improvements – Environmental Analysis and Easement Summary Table for additional information responsive to this comment

151a-9 The commenter is referencing a second alignment study associated with the Reid Middleton Roundabout Study. This design was not selected to be included in the project and is not relevant for inclusion in the project's CEQA analysis.

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Scenario 3 – Impact of improvement from non-compliant 2.2F to 2.2E configuration to improve horizontal curves and provide bicycle lanes in each direction and 8 foot shoulders for West Lilac Road from Easterly boundary of Subdivision (currently near existing Lilac Walk private road intersection) to Covey Lane. This scenario is discussed further in section 2). Direct Impacts to West Lilac Road section of this letter.

151a-10

ii). Covey Lane/West Lilac Intersection

Scenario 1 – Impact of construction to Applicant’s proposed design including Sight Distance Clearance and turn tapers. Please carefully analyze the need for Additional Slope Easements beyond those granted in IOD’s.

151a-11

iii). Mountain Ridge Private Road including Mountain Ridge/Circle R Intersection

Scenario 1 – Impact of improvement to Applicant’s proposed design including Sight Distance Clearance and turn tapers.

151a-12

Scenario 2 – Impact of improvement of Mountain Ridge Private Road to 30 Mph Private Road Design Speed Standards including Sight Distance Clearance and turn tapers.

Scenario 3 – Impact of construction of Mountain Ridge Private Road to Public Road Design Standards including Sight Distance Clearance and turn tapers.

iv). Rodriguez private road. Please further enumerate the all improvements proposed for Rodriguez Road as represented in Master Preliminary Grading Plan TM 5571 RPL 4 Sheet 7 of 12. Provide the legal basis of rights to construct the improvements to Rodriguez Road. Provide a copy for Public Review of document 2013-0021800 Rec. 1-11-2013.

151a-13

Property Rights ARE a DEIR Issue. Without the acquisition of land for offsite improvements, this Project IS INFEASIBLE and the Environmental Impacts change.

151a-14

Executive Summary Comment DEIR Paragraph S.3 Areas of Controversy page S-4 – Item 2 – Infeasibility of the Project’s undefined and infeasible Phasing Sequence

Phasing – The Applicant seeks the utmost in flexibility in developing the Project in Phases of which there are many possible permutations, and no assurance whatsoever of Project performance of Conditions of Development.

The County has endorsed this approach without any assurance of performance by the Applicant, such as bonded indemnification to ensure specific performance.

151a-15

The Applicant states in the Specific Plan and the County states in the EIR that some Phases may never be built. Mitigations for Traffic Impacts are tied to events that may never happen. This is a serious defect with the EIR. There is no assurance that promised Mitigation will ever occur.

Refer to the following Table 1 – 4 from Chapter 1 EIR Objectives page 1- 34.

151a-16

151a-10 See response to comment 151a-9, above.

151a-11 Please see Global Response: Easements (Covey Lane and Mountain Ridge Road) for a full discussion of this topic.

151a-12 Mountain Ridge Road is currently a two-lane private road that provides limited access (access only for property owners with easement rights) from the project site to the County’s public road system via Circle R Drive. Mountain Ridge Road does not currently meet the County’s Private Road Standards. Improvements to this roadway are proposed by the project. As described in Chapter 1.0 of the FEIR and shown in Table 1-2, the project proposes to design Mountain Ridge Road as a wider, slower roadway. Additionally, the project proposes a Design Exception Request to eliminate the taper requirement at the intersection of Circle R Drive in order to limit the off-site impacts associated with the taper improvements. As shown on FEIR Table 2.5-2 and illustrated in Figure 2.5-2b, no off-site impacts would occur to existing biology as a result of the road design. Additionally, as discussed in Appendix C-1 to the FEIR, sight distance issues do not currently exist due to recent vegetation clearing; however, the project is required to obtain an offsite clear space easement to ensure sight distance is maintained. Please see Global Response: Easements (Covey Lane and Mountain Ridge Road).

With respect to the widening of Mountain Ridge Road to Public Road standards, all impacts are discussed in subchapter 4.9 of the FEIR. Under the Mountain Ridge Road Fire Station Alternative, biological resource impacts would be greater than the project (see subchapter 4.9.2.5).

151a-13 Rodriguez Road is an existing 40-foot-wide private easement road that would require surface improvements necessary to accommodate secondary emergency access for Phases 4 and 5. Specifically, Rodriguez Road would be improved from its current state as an unpaved road to a 28-foot graded/24-foot paved roadway, within the existing 40-foot easement. Refer to Global Response: Off-site Improvements – Environmental Analysis and Easement Summary Table for additional details about the easement rights and the adequacy of the environmental analysis in relation to easements.

151a-14 See response to comment 151a-13.

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	<p>151a-15 The project is designed so that each phase of construction would trigger specific mitigation measures. It is correct that if those phases are never built, the mitigation would not be required. The project's Conditions of Approval would further assure that specific mitigation measures would occur prior to the construction of each phase. As stated at FEIR subchapter 2.3.5, traffic impact mitigation is tied to recordation of Final Maps involving a specific Equivalent Dwelling Unit count for the project, which are determined based on the ADT that would be generated by the specified number of dwelling units.. This phases mitigation to correspond to the timing of impacts. A Final Map cannot be recorded unless the mitigation is completed.</p> <p>Further, consistent with Public Resources Code Section 21081.6(a)(1), implementation of mitigation measures will be ensured through adoption of a Mitigation Monitoring and Reporting Program for the project as part of the CEQA Findings, as well as by the project Conditions of Approval.</p>
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**TABLE 1-24
GRADING QUANTITIES BY PHASE (cy)**

Phase	Cut	Fill	Net
1	715,000	860,000	(145,000)
2	635,000	830,000	(195,000)
3	1,815,000	1,260,000	555,000
4	295,000	420,000	(125,000)
5	610,000	700,000	(90,000)
TOTAL	4,070,000	4,070,000	-

The Project represents that it requires no import or export of soil for all Phases in total. The Project requests any possible Phase implementation sequence. It is clear that Phase 3 is the source of fill dirt for all of the other four Phases and is required to be at least partially graded concurrently with the first and any other Phase. Please identify how the Project intends to implement Phase 1 without grading on Phase 3. Also, will Phase 3 be used as a quarry for fill dirt for an extended period?

The County of San Diego is deficient for not recognizing this most basic disconnect. The net result of this is a Significant Impact of Project Feasibility.

This example of infeasibility or vastly different Environmental Impacts is repeated over and over again with every Infrastructure aspect: Roads, Sewers, Waste Water, etc.

The timing of implementation of Mitigation is also required to be defined with much more rigor than the County has employed. Road Improvement from Significant Impacts are 'triggered' by attainment of a threshold number of Residential Units. The County of San Diego should recognize that certain Commercial Land Uses are far greater drivers of Traffic Impacts than Residential.

Another related defect of this "Phase Game" is that the sum of the Traffic related analyses, for example, have analyzed fewer than 50% of the possible permutations of Phase execution that the County has endorsed in this EIR.

Left with the unbounded Phasing strategy the Applicant proposes, the Project as implemented will have vastly different Environmental Impacts than those analyzed in this EIR.

The Project needs to be required to adopt a defined Phasing Plan sequence with only a few allowable Phase Alternates in order that the proper Environmental Impacts can be assessed.

151a-16
(cont.)

151a-17

151a-18

151a-19

151a-16 Project grading is discussed in Chapter 1.0 of the FEIR (Section 1.2.1.10).. With respect to the net import or export of fill, project construction would be a balanced cut/fill operation as shown on FEIR Table 1-4. Throughout the phasing of the construction, however, there are some areas with a net cut and other areas with a net import. The project will be using those sites with net cut for borrow sites. Phase 3 land will be used as a borrow pit, which use will be required to comply with all applicable government regulations and requirements, including provisions of the County Grading Ordinance found at Section 87.101 et seq. of the San Diego County Code. In addition, the County Zoning Ordinance limits the time period for borrow pits to one year, which would prevent any area of the site from being used as a borrow site for an extended period of time.

151a-17 The subject of this comment is unclear and expresses the opinions of the commentator only. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project. However, because the comment does not raise an environmental issue, no further response is required.

151a-18 The phasing plan discussed at FEIR subchapter 1.2.1.10, as well as Section 5 of the Traffic Impact Study (FEIR Appendix E), describe the traffic trips for both the equivalent residential dwelling units and the commercial uses, if any, in each phase of the project. Pursuant to Section 5 of the Traffic Impact Study (Appendix E) and subchapter 2.3.5 of the FEIR, the phased traffic mitigation measures therefore relate both to residential and commercial traffic trips generated in each phase. Further, the commercial uses for the project generate only 33 percent of peak hour traffic trips at project buildout. As a result, the recommended mitigation measures are appropriately tied to the approval of a specified number of residential dwelling units associated with final maps because the commercial uses within each Final Map have been translated into equivalent residential dwelling units. Therefore, the timing appropriately considers both residential and commercial uses.

Sincerely,



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151a-19 The Specific Plan, Section IV Implementation includes a Community Phasing Plan, starting on page IV-1. Construction of the project is anticipated to occur over an 8- to 10-year period in response to market demands and to provide a logical and orderly expansion of roadways, public utilities, and infrastructure. The five phases of the project are shown in Figure 15a of the Specific Plan and phasing would be implemented through the recording of Final Maps. Actual construction of dwelling units could occur in any order (additional directionary permits are required for Phases 2, 3, 4 and 5). For example, Phase 3 may be constructed after Phase 1, followed by Phase 2, etc. However, the applicant would be required to meet various requirements prior to approval of each Tentative Map or Tentative Parcel Map such as landscaping, street improvements, parks, open space dedications, and satisfying the mitigation measures included in the FEIR. As a result, regardless of the order of phasing, the environmental impacts would be fully mitigated prior to the impact occurring. The County has not identified any different environmental impacts that would occur due to the unspecified phasing order. See also response to comment 151a-18. The remainder of this comment expresses the opinions of the commentator. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project.