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April 14, 2015

**Via E-Mail and U.S. Mail**

Board of Supervisors of San Diego County  
1600 Pacific Highway, #335  
San Diego, CA 92101

Re: San Diego County General Plan: Potential Modifications to Be  
Considered at April 22, 2014 Board Meeting

Dear Supervisors:

My firm represents the Cleveland National Forest Foundation (CNFF) and I am writing with regard to the County's interpretation, and possible modification, of its General Plan. CNFF has been involved in land use planning issues in the County for decades and was involved in the County's recent General Plan Update, which culminated in the adoption of the existing General Plan in 2011. This Plan took 13 years to develop and approve, cost approximately \$18 million, and involved hundreds of meetings with community groups and other stakeholders. Any modification to the General Plan—especially one that would fundamentally alter its vision and plan for land use development—should not be taken lightly.

Briefly, CNFF is concerned that the County is attempting to find ways to modify its General Plan, or its interpretation of the General Plan, to remove or otherwise get around the current prohibition on most “leapfrog” development – i.e., development of new villages at a distance from existing, established communities. This process appears to be driven by developers who have proposed projects that violate this prohibition on leapfrog development, including Lilac Hills Ranch, Valiano, Newland Sierra and others. Instead of holding firm on its General Plan, the County appears to be wavering in its commitment to smart growth, and seems to be looking for ways to approve projects that clearly conflict with cornerstone General Plan policies. CNFF urges the County to adhere to the General Plan's vision of promoting compact, non-sprawl development. If the County attempts to modify or misinterpret these key General Plan policies, such actions would render the Plan internally inconsistent, in violation of state law. Likewise, it would trigger the need for environmental review. Last, CNFF urges the County to

consider any changes to the General Plan in an open, public process—a process which has been missing so far.

**I. San Diego County’s General Plan Restricts Sprawling, Leapfrog Development.**

One of the General Plan’s fundamental tenets is that it promotes compact development that will reduce the loss of farmland and wildlife habitat, reduce greenhouse gas emissions, and maintain the rural and unique character of the County’s unincorporated communities. By adopting policies and zoning that are designed to steer development into existing communities, the Plan was also touted as saving public dollars by preventing urban development in many fire-prone areas.<sup>1</sup> These principles are woven throughout the General Plan, including in its vision statement and guiding principles, and in various land use, conservation and open space, and other elements.

Although these principles are embedded in numerous places in the General Plan and various Community Plans, one principle in particular embodies the General Plan’s vision and its mandate for smarter growth. Land Use Policy LU-1.2 prohibits so-called leapfrog development—development that is far from existing, dense communities. The policy states:

Leapfrog Development. Prohibit leapfrog development which is inconsistent with the Community Development Model. Leapfrog Development restrictions do not apply to new villages that are designed to be consistent with the Community Development Model, that provide necessary services and facilities, and that are designed to meet the LEED - Neighborhood Development Certification or an equivalent. For purposes of this policy, leapfrog development is defined as Village densities located away from established Villages or outside established water and sewer service boundaries. [See applicable community plan for possible relevant policies.]

There are numerous problems associated with leapfrog development. As Kaid Benfield, a prominent land use and LEED expert, explained:

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<sup>1</sup> KPBS, “San Diego County Targets Sprawl with New General Plan,” attached as Exhibit 1.

Development locations far from existing cities and towns cause substantial environmental problems, disrupting agricultural lands and natural ecosystems; requiring the spread of resource-consuming infrastructure, including new road capacity that brings more runoff-causing pavement to watersheds; attracting ancillary sprawling development nearby; and causing major transportation impacts.<sup>2</sup>

Of particular concern during this prolonged drought, sprawl development also uses more water than urban, infill development. As a study by Western Resource Advocates concludes: “The simple rule: Low-density development uses more water than high-density development.”<sup>3</sup> This is “primarily due to comparatively large amounts of water used for outdoor landscape irrigation.”<sup>4</sup>

In terms of climate impacts and greenhouse gas emissions, a development’s location is probably more important than any other factor. Mr. Kaid, an instrumental developer of the U.S. Green Building Council’s LEED standards, described the importance of a development’s location as follows:

On average, we use more energy and emit more carbon getting to and from a building than does the building itself. Peer-reviewed research published by the federal EPA shows that even green homes in conventional suburban locations use more energy and emit more carbon than non-green homes in transit-served city neighborhoods. The problem only gets worse when the development is located beyond suburbia on truly rural land. Indeed, the most exhaustive research I know on how land use affects travel behavior found that location – measured by, among other things, the distance from the regional center – is by far the most significant determinant of how much household driving will occur, over time, from a given location.<sup>5</sup>

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<sup>2</sup> K. Benfield, “Sprawl Is Still Sprawl, Even If It's ‘Green,’” attached as Exhibit 2.

<sup>3</sup> Western Resource Advocates, *Urban Sprawl: Impacts on Urban Water Use*, p. 96, attached as Exhibit 3.

<sup>4</sup> *Id.*, p. 103.

<sup>5</sup> *Id.*

Accordingly, the County's efforts to promote energy efficient buildings, alternative energy, and other greenhouse gas reduction measures<sup>6</sup> are important, but insufficient on their own. In the absence of strong policies to promote infill development and prohibit sprawl development, they will be wholly insufficient to achieve the greenhouse gas reductions necessary to achieve statewide reduction goals or to stabilize our climate. The state acknowledged this fact when it adopted SB 375 in 2008. The law noted that:

The transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California; automobiles and light trucks alone contribute almost 30 percent. The transportation sector is the single largest contributor of greenhouse gases of any sector . . . Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32.

Stats. 2008, Chapter 728, §1(a), (b).

Accordingly, the County's efforts to curb sprawl and promote smarter development are critical for maintaining open space, protecting farmland and wildlands, protecting the public from wildfire, conserving water, and reducing the County's greenhouse gas emissions. And the General Plan, with its prohibition on most leapfrog development, represents the County's governing policy for carrying out these goals. CNFF strongly supports the policy of preventing sprawling development from taking over what little is left of the County's undeveloped land, and urges the County to maintain and strengthen its positions with regard to prohibiting leapfrog development.

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<sup>6</sup> See, e.g., General Plan, p. 1-17 – 19 (listing policies to reduce GHG emissions).

**II. The County Should Maintain Its Strong Anti-Leapfrog Development Policies; If It Changes Them, It Must Conduct Thorough Environmental Review for This Discretionary Policy Change.**

CNFF understands that the County is considering ways to approve large, new developments in rural locations of the County that are not adjacent to established communities. For example, the proposed Lilac Hills Ranch project in Valley Center would plunk a huge new community of 1,700 homes in a rural, agricultural area, far from existing community centers, jobs and services. This firm has previously submitted comments on that project, detailing how it is blatantly inconsistent with the General Plan and relevant Community Plans. In particular, it violates Land Use Policy LU-1.2, which prohibits leapfrog development unless such development is consistent with LEED ND standards or an equivalent.

CNFF further understands that developers are attempting to influence the County to circumvent LU-1.2 in a mistaken belief that this policy is not working. *See e.g.*, Exhibit 4 (telephone conference record re County's efforts to develop LEED ND equivalent standards). CNFF strongly believes that the Current General Plan is working fine. Modifying it would not benefit the County; rather, it would signal to developers that the County is not serious about land use planning. Developers will have no incentive to invest in existing communities if they know the Board will simply approve new sprawl developments. Maintaining strong, clear mandates such as Policy LU-1.2 ensures that a developer may not avoid the General Plan's anti-sprawl policies through the artifice of portraying a sprawl project as "sustainable development" merely because it contains a bit of mixed use and a couple of bike trails.

Below are three actions that the County may be considering, but which must be rejected. As described below, none of these actions make sense, and in fact they would be unlawful, either entirely, or at least in the absence of further environmental review. CNFF strongly encourages the County to maintain its current General Plan, which strictly prohibits nearly all leapfrog development, and not to let it be chipped away by taking action that makes far-flung sprawl development easier.

**A. The County Should Not Delete the Requirement that Leapfrog Development Must Comply with LEED ND.**

When the County adopted its General Plan in 2011, it chose to adopt Policy LU-1.2, which prohibits new "villages" that are located away from established villages unless such new villages provide necessary services and facilities and are designed to meet the

LEED ND certification or an equivalent. The requirement for the LEED ND or equivalent certification ensures that any new village is not simply plunked down in an improper location. Rather, the LEED ND certification emphasizes “site selection, design, and construction elements that bring buildings and infrastructure together into a neighborhood and relate the neighborhood to its landscape as well as its local and regional context.” LEED 2009 for Neighborhood Development, p. xii, attached as Exhibit 5. To qualify for LEED ND certification, a project must satisfy a variety of mandatory prerequisites and additionally qualify for a minimum number of points based on other project features. *Id.*, p. xix.

First, the standard requires a development to be in a “smart location.” *Id.*, p. 1. The goal is to “encourage development within and near existing communities and public transit infrastructure. To encourage improvement and redevelopment of existing cities, suburbs, and towns while limiting the expansion of the development footprint in the region to appropriate circumstances[, and t]o reduce vehicle trips and vehicle miles traveled.” *Id.* To carry out this goal, projects must locate the project either on an infill site or a site that is adjacent to previously developed land where the connectivity of the site and adjacent land is at least 90 intersections per square mile. *Id.* Previously developed land does not include agricultural land. *Id.*, p. 14. Alternatively, a project may qualify if it is constructed on a transit corridor where at least 50% of dwelling units are located within close walking distance to transit stops, and the service at those stops provide at least 60 trips per day. *Id.*, p. 3. Or it may meet the standard if residences are located within close walking distance to preexisting shops and services. *Id.*, p. 4-5

Second, the LEED ND standard requires that development must preserve agricultural land by “Locat[ing] the project development footprint such that it does not disturb prime soils, unique soils, or soils of state significance as identified in a state Natural Resources Conservation Service soil survey.” *Id.*, p. 15. As an alternative, a project may be located on a site with transferred development rights, or may mitigate the loss of farmland “through the purchase of easements providing permanent protection from development on land with comparable soils in accordance with the ratios based on densities per acre of buildable land as listed in Tables 1 and 2 [of the LEED ND guidance].” *Id.* These are just a few of the many requirements for LEED ND certification.

As demonstrated by the discussion above, requiring new villages to meet LEED ND standards ensures that new development is not sprinkled just anywhere through the backcountry. Rather, it may only occur in locations where such development is connected to adjacent communities or development, and where agricultural lands are

preserved to the extent possible, among other requirements. This standard fits with the General Plan's overall vision. For example, the "core concept for the County's Land Use Element is to direct future growth to areas where existing or planned infrastructure and services can support that growth *and to locations within or adjacent to existing communities.*" 2014 General Plan Progress Report, p. 4 (emphasis added).<sup>7</sup> Likewise, the General Plan itself describes how "[f]ocusing development in and around existing unincorporated communities allows the County to maximize existing infrastructure, provides for efficient service delivery, and strengthens town center areas while preserving the rural landscape that helps define the unique character of the unincorporated County." General Plan, p. 1.

If the County were to remove the LEED ND requirement, Policy LU-1.2 would then only state that: "Leapfrog Development restrictions do not apply to new villages that are designed to be consistent with the Community Development Model [and] that provide necessary services and facilities." In other words, the policy would be entirely meaningless, because new villages might be allowed in any location so long as they provide necessary services and conform to the Community Development Model – i.e., contain a denser core surrounded by less intense land uses. A policy that states it *prohibits* leapfrog development would then likely be interpreted to *allow* leapfrog development anywhere at all. \$18 million in taxpayer money and 13 years of planning would be thrown out the window, and all of the General Plan's rhetoric about smart growth would be a sham. CNFF does not want this result, and hopes that the Board of Supervisors does not either.

Furthermore, removing the LEED ND standard, and therefore allowing leapfrog development in any location, would render the General Plan internally inconsistent, in violation of state law. *See DeVita v. County of Napa* (1995) 9 Cal.4th 763, 772-773. For example, allowing new villages in any location would conflict with the General Plan's vision of "[f]ocusing development in and around existing unincorporated communities." General Plan, p. 1. It would also conflict with the vision that "[o]ur villages are intended to grow in compact land development patterns to minimize intrusion into agricultural lands and open spaces; the distance that we travel to our local services and businesses; and the need for extensive infrastructure and services." *Id.*, p. 2-3. Likewise, it would be inconsistent with the guiding principle that the County will "locat[e] new growth near

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<sup>7</sup> See <http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/GP-APRs/GPAPR2014.pdf>

existing and planned infrastructure, services, and jobs in a compact pattern of development.” *Id.*, p. 2-6.

It would also create inconsistencies with various Community Plans, many of which have policies intended to protect agricultural land, protect the rural setting, prevent sprawl development, save water. As described in the proposed Specific Plan for Lilac Hills Ranch, which would be located in Valley Center and Bonsall, “[p]erhaps the major goal in the Valley Center Community Plan is to maintain its rural character. The theme of this goal is repeated in several policies.” Specific Plan, p. V-15.<sup>8</sup> Likewise, “[p]erhaps the major goal in the Bonsall Community Plan is the maintenance of rural character. This goal is supported by several policies emphasizing the retention of agriculture and large lot estate development.” *Id.*, p. V-18. Currently, the Bonsall and Valley Center communities are characterized by spaced, rural housing, agricultural operations and open space. Allowing new “villages” to be plunked down anywhere a developer wants them would not preserve the rural character, agriculture or other attributes that the Community Plans protect. Indeed, it would be antithetical to these goals.

In any event, even assuming the County could simply drop the LEED ND or equivalent requirement from Policy LU-1.2, it may not do so unless it first conducts environmental review for that General Plan modification. CEQA requires that all public agencies consider whether any discretionary project or activity they approve may have significant direct or indirect impacts on the environment. Pub. Res. Code §§ 21082.2, 21065. The County previously studied the environmental impacts of its General Plan Update, but the project it approved included the LEED ND or equivalent standard. Therefore, when the County prepared the EIR for its 2011 General Plan Update, it analyzed the impacts of its General Plan on the assumption that the Plan—and LU-1.2 in particular—would not allow sprawling, leapfrog development.

As the EIR described, “in general the General Plan Update land use map would intensify development densities *within established communities*.” San Diego County General Plan Update EIR, p. 2.9-28 (GP EIR) (emphasis added).<sup>9</sup> Accordingly, it did not

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<sup>8</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC\\_HILLS\\_RANCH/Recirculation/LHR\\_Specific\\_Plan\\_Public\\_Review\\_6-9-14\\_Final\\_Strikeout\\_Underline\\_part\\_3.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/LILAC_HILLS_RANCH/Recirculation/LHR_Specific_Plan_Public_Review_6-9-14_Final_Strikeout_Underline_part_3.pdf)

<sup>9</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/BOS\\_Aug\\_2011/EIR/FEIR\\_2.09\\_-\\_Land\\_Use\\_2011.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/BOS_Aug_2011/EIR/FEIR_2.09_-_Land_Use_2011.pdf)

analyze the impacts of allowing new villages to be plunked down at a distance from existing, established villages. For example, the EIR's project description section includes a map showing designated areas where villages are planned. GP EIR at 1-64, Figure 1-3. The EIR's analysis is based on this project description. GP EIR, p. 1-7. Further, state law requires project descriptions to include *all* aspects of a project so that the environmental review appropriately analyzes the whole of the project. CEQA Guidelines § 15378. Here, the whole of the project included the anticipated "villages" shown on Figure 1-3, but no others.

If the County dropped the LEED ND requirement from Policy LU-1.2, this would allow far more development than the General Plan EIR anticipated. This extra development, in turn, would cause far more severe impacts than disclosed in the General Plan EIR related to farmland, biological resources, water supply, air quality and greenhouse gas emissions (due to the fact that people would be driving farther to access these disconnected new villages), aesthetics, energy, provision of emergency services, wildland fire hazards, cultural resources, traffic, growth, hydrology, and nearly every other impact area. As described above, sprawling, leapfrog development has far greater impacts than concentrated, urban-centered development. Accordingly, the County could not legitimately claim that this change in the General Plan was a minor shift that would not cause new environmental impacts, and therefore avoid conducting appropriate environmental review. Rather, modifying LU-1.2 would constitute a substantial change in the Plan that would require major revisions of the EIR. See Pub. Res. Code § 21166(a).

Dropping the LEED ND standard, and thereby allowing projects such as Lilac Hills Ranch to proceed, would also conflict with SB 375 and SANDAG's Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). See Exhibit 5, p. 2 (SANDAG questioning Lilac Hills Ranch's consistency with the RTP/SCS and stating that the County "has not identified this area on the SANDAG Smart Growth Concept Map [] as an opportunity area for smart growth." \_This RTP/SCS assumed that jurisdictions such as the County would actually abide by their general plans and would place 80 percent of new housing in compact developments near transit and existing infrastructure and services. SANDAG 2050 RTP, pp. 3-7, 3-25, 3-26<sup>10</sup>. Although—as evidenced by CNFF's successful litigation against it—this RTP/SCS is woefully inadequate to achieve the greenhouse gas reductions needed to stabilize our climate and

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<sup>10</sup> [http://www.sandag.org/uploads/2050RTP/F2050rtp\\_all.pdf](http://www.sandag.org/uploads/2050RTP/F2050rtp_all.pdf)

achieve the state’s climate goals, it nevertheless represents one effort, however meager, to address climate change and protect farmland. Removing the LEED ND requirement from the County’s General Plan would demonstrate that the County has no intention of meeting even the minimal standards outlined in the RTP/SCS, and no intention of supporting the state’s efforts to promote smarter development and reduce greenhouse gas emissions. This is inconsistent with the General Plan, which set policies to “[w]ork with SANDAG to implement SB 375 and to achieve regional goals in reducing GHG emissions associated with land use and transportation.” General Plan Implementation Plan, p. 55;<sup>11</sup> *see also* General Plan, p. 5-39 (COS-20.3: “Coordinate air quality planning efforts with . . . SANDAG, and other jurisdictions”). The County would also have to analyze the conflict with the RTP/SCS if it removed the LEED ND standard from its General Plan. CEQA Guidelines § 15125(d).

**B. If the County Develops a LEED ND Equivalent Standard, It Must Do So In a Transparent, Public Process, and May Only Adopt a Standard that is Actually *Equivalent* to LEED ND.**

As described above, LU-1.2 prohibits “leapfrog development” that is inconsistent with the “Community Development Model.” These restrictions, however, do not apply to “new villages . . . that are designed to meet the LEED Neighborhood Development Certification *or an equivalent*.” *Id.* (emphasis added). The LEED ND program is a system for rating and certifying green neighborhoods. The LEED ND standard is contained in a 144 page document, which details a system of credits based on the U.S. Environmental Protection Agency’s TRACI<sup>3</sup> environmental impact categories. *See* Exhibit 6. In order to be LEED ND certified, a project must have be awarded at least 40 credits by meeting various criteria related to energy efficiency, preservation of farmland, and other impacts. *Id.*, p. xix.

The General Plan does not define what it would mean to be “equivalent” to LEED ND. However, the term’s meaning is obvious and can be derived from other contexts.

Black’s Law Dictionary defines “equivalent” as “[e]qual in value, force, amount, effect, or significance,” or “[c]orresponding in effect or function; nearly equal; virtually

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identical.” Black’s Law 561 (7th ed. 1999). The term “equivalent” is also used in other environmental contexts, including CEQA review. For example, a state regulatory program may be certified as being a “functional equivalent” to CEQA review, and thus exempted from formal CEQA review. *See* Pub. Res. Code § 21080.5; CEQA Guidelines § 15250. To qualify for such certification, the regulatory program must meet criteria that mirror CEQA’s requirements. Pub. Res. Code § 21080.5(d). For example, a certified regulatory program must require that an activity will not be approved if there are feasible alternatives or mitigation measures that would substantially lessen a significant adverse effect of the activity on the environment. Additionally, they must require the lead agency to consult with other agencies that have jurisdiction over resources affected by a project, and respond in writing to comments received on the proposed project. Pub. Res. Code § 21080.5(d)(2)(A), (D). As courts have stated, a “regulatory program requir[es] information *essentially duplicative* of that which would be included in an EIR.” *Citizens for Non-Toxic Pest Control v. Cal. Dept. of Food and Agriculture* (1984) 187 Cal.App.3d 1575, 1584 (emphasis added).

LEED ND equivalency is therefore a high bar. An equivalent policy must mirror all LEED ND mandates and essentially duplicate its protections. For example, LEED ND has a variety of fundamental, “prerequisite” requirements to ensure that a project: (1) is in a “smart” location that minimizes vehicular travel and maximizes interactions with adjacent, developed land, (2) provides compact development with walkable streets, (3) will be energy efficient and uses water efficiently, (4) avoids floodplains, farmland and wetlands, (5) protects imperiled species and ecological communities, and (6) is constructed in a manner to avoid pollution and waste. *See generally*, Exhibit 6. In addition to these prerequisite requirements, it also requires that projects achieve a certain number of points based on meeting other criteria. These criteria include that a project has a reduced parking footprint, steep slope protections, local food production, restoration of habitat, transit facilities, mixed-income communities, existing building reuse, heat island reduction, on-site renewable energy sources, light pollution reduction, and more. *Id.* Any “equivalent” standard must, at a minimum, meet or exceed the LEED ND prerequisite requirements. It also must address the majority of the other standards.

It is worth emphasizing one of LEED ND’s prerequisite standards—for “smart location.” This standard requires that a project must be located either (1) on an infill site, (2) on a site adjacent to previously developed land (not including agricultural land) where the connectivity of the site and adjacent land is at least 90 intersections/square mile, (3) within easy walking distance of a transit corridor with adequate service (within ¼ mile of bus or streetcar stops, or ½ mile of bus rapid transit stops or rail stations), or (4) ¼ mile

or less walking distance from *existing* neighborhood shops, services and facilities. Exhibit 6, pp. 1-6. Accordingly, the County may not approve a “LEED ND equivalent” standard that allows new villages to be located on non-infill sites that are not adjacent to previously developed land and that are at a greater distance from transit or existing services. The County may not, for example, create an “equivalent” standard that allows new villages within ½ mile of a County-designated Mobility Element road.<sup>12</sup> Simply put, such a standard would not be equivalent to LEED ND, which requires development to be within ¼ - ½ mile of high quality *transit*. Similarly, the County may not approve or utilize an equivalency standard that deviates significantly from LEED ND’s other protections and standards.

Last, if the County proceeds to develop an equivalency standard, it must make the process open and transparent, and should include important stakeholders, including community planning groups, agricultural protection groups, wildlife organizations and others. As any such standard would be essentially modifying the General Plan, the County should use as much care in crafting that standard as it did when adopting its General Plan.

**C. The County May Not Avoid LU-1.2’s Restrictions by Placing New “Villages” on Community Plan Maps.**

In relevant part, LU-1.2 prohibits most leapfrog developments, “defined as Village densities located away from *established* Villages.” (emphasis added.) The County may not avoid this policy’s restrictions by plunking down a new “paper” village on the General Plan and relevant Community Plan maps. An established village is not one that has just been “established” by amending the General Plan and Community Plan to include a new, designated village on the map. Rather, an “established village,” is one that *already exists* – i.e., it is already “established”, on the ground, as well as in the General Plan.

When the County conducted environmental review for its 2011 General Plan update, it described which villages already exist and are therefore “established.” For example, section 2.9.1.2 of the General Plan EIR describes how the Alpine planning area

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<sup>12</sup> The County was apparently considering this criteria as part of the “Thrive” effort that it presented at a public workshop on February 21, 2015. See Exhibit 7, p. 20 (“Principle 1”).

has “an established town center area.” GP EIR, p. 2.9-2. The Alpine Community Plan designates this area as the established “village.” See Alpine Community Plan, p. 9.<sup>13</sup> Likewise, the General Plan describes how the Ramona planning area has “a well-established town center area.” GP EIR, p. 2.9-16. This area is designated in the Ramona Area Plan as the sole “village” in the planning area. Ramona Community Plan, p. 27.<sup>14</sup> The General Plan also describes how Valley Center has two established “northern and southern town center areas.” GP EIR, p. 2.9-20. The Valley Center Community Plan designates these two existing community centers as the only “villages” in the planning area. Valley Center Community Plan, p. 9.<sup>15</sup>

If there was any doubt as to what the County meant by “established” villages, the General Plan EIR specifically defined what it meant by the term: “established communities are defined as established town centers and communities described above in Section 2.9.1.2, such as the established town centers in the Alpine CPA and Ramona CPA . . . .” GP EIR, p. 2.9-27.<sup>16</sup> In other words, the County described which town centers and villages are already established in its General Plan EIR, and the General Plan was specifically designed to concentrate development in these areas. Notably, these areas were selected because they already form the core commercial and residential hubs for the communities. They already have more dense development than other areas of the communities, and as such can form the nucleus for further, more intense, village-style development. As the EIR described, “in general the General Plan Update land use map would intensify development densities *within established communities.*” GP EIR, p. 2.9-28 (emphasis added).

This underscores the fact that the Plan was *not* designed to allow later developers to avoid the County’s prohibition on leapfrog development through the ruse of: (1) updating the General Plan by drawing a new village in the middle of some rural, agricultural area on the relevant maps, (2) claiming that the new village was “established” by dint of it being on the land use map, and (3) that the new village was therefore not

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<sup>13</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/Alpine\\_CP.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/Alpine_CP.pdf)

<sup>14</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/Ramona\\_CP.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/Ramona_CP.pdf)

<sup>15</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/Valley\\_Center\\_CP.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/Valley_Center_CP.pdf)

<sup>16</sup> See also *id.* at 2.9-28 (“established communities are *generally already developed* and would be unlikely to contain large open space areas.”)

located away from established Villages, and consequently did not violate LU-1.2. Any such interpretation would render LU-1.2 wholly meaningless, as it would allow any developer to come in, propose a new town or village in any location at all, and simply amend the General Plan maps to include the village designation as part of the development approvals. Courts do not interpret laws in a manner that renders their language meaningless. *Brewer v. Patel* (1993) 20 Cal.App.4th 1017, 1021 (courts “avoid[] interpretations that render any language surplusage.”). Accordingly, any such interpretation of General Plan Policy LU-1.2 would be unlawful and rejected by a court.

Thus, the County may not approve any new villages that are at a distance from existing, established villages unless it complies with LEED ND standards or a legitimate equivalent. This is what the County committed to when it adopted its General Plan, and this is the policy it must enforce.

## **Conclusion**

The County obviously believes that its current policies, including LU-1.2, will not allow approval of sprawling new developments such as Lilac Hills Ranch. It appears to be concerned about this and is attempting to find ways to avoid this result. CNFF agrees that the General Plan prohibits new villages or towns that are distant from existing, established communities—and for good reason.

CNFF urges the County not to backpedal on its General Plan. Nor should it seek backdoor ways to approve projects such as Lilac Hills Ranch. Rather, CNFF urges the County to hold the line on new “villages” that are proposed for inappropriate, backcountry locations. Why did the County spend \$18 million and 13 years on a General Plan if it does not even plan to follow it, or plans to change it frequently? The General Plan is supposed to be a “constitution” for land use that guides the public’s expectations and the County’s project approvals. It cannot serve this purpose if it is undermined through frequent changes and illogical interpretations that undermine its integrity.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Erin B. Chalmers

cc: Mark Wardlaw, Director of Planning & Development Services  
Duncan McFetridge

Exhibit List:

- 1) KPBS, San Diego County Targets Sprawl with New General Plan.
- 2) K. Benfield, Sprawl Is Still Sprawl, Even If It's 'Green'
- 3) Western Resource Advocates, Urban Sprawl: Impacts on Urban Water Use
- 4) Telephone Conference Record re County's Efforts to Develop LEED ND Equivalent Standards
- 5) SANDAG Comment Letter on DEIR for Lilac Hills Ranch
- 6) U.S. Green Building Council, LEED for Neighborhood Development (excerpts)
- 7) PDS Public Workshop, Feb., 21, 2015, Thrive Standards PowerPoint Presentation