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January 20, 2009

Mr. Jeff Murphy
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92124

Re: Letter on Comments on the Draft General Plan Update

Dear Mr. Murphy:

Please replace the earlier letter inadvertently mailed out to you last week entitled "Comments on the Draft General Plan Update" with the enclosed approved letter. Please feel free to call me should you have any questions relating to this matter.

NORTON MOORE & ADAMS
A Limited Liability Partnership



AYM/ag

By: Ann Y. Moore

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*Copy by e-mail:
gpupdate.dplu@sdcounty.ca.gov*

Re: Comments on the Draft General Plan Update

Dear Mr. Murphy:

We represent Accretive Investments, Inc., and its affiliated land owning entities ("Accretive"). On behalf of our client, we would like to provide the following comments on the Draft County of San Diego's General Plan, dated November 2008 ("Update").

We support the County of San Diego ("County") in its efforts to update its General Plan. We know that such an update provides the County with a unique opportunity to direct future development to those areas within the County that have infrastructure and services that can accommodate such growth, while still maintaining the character and strengthening the economy of its various communities. We also understand that such an endeavor involves balancing a wide range of interests and goals throughout the San Diego County Region.

Unfortunately, our review has revealed some significant legal flaws that will require the County to amend portions of the Update in order to have a legally viable document. In addition, we offer a number of suggestions to improve the County's ability to implement the Update and to realize its vision in the future.

1. Portions of the Land Use map are inconsistent with the policies identified in the Land Use Element, rendering the Update internally inconsistent.

In order for a general plan to be legally valid it must comply with the requirements of state law. California Government code Section 65300.5 requires a general plan and its elements to comprise an "integrated internally consistent and compatible statement of policies. (See also

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Concerned Citizens of Calaveras County v. Board of Supervisors, 166 Cal.App. 3d at 90, 97-98 (1985).) The courts also have interpreted internal consistency to mean that diagrams in the land use, circulation, open space and natural resource elements must be consistent with and reflect the written policies and programs of those elements. (See generally Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo, 172 Cal. App. 3d 151 (1985) and Environmental Council v. Board of Supervisors, 135 Cal.App. 3d 428 (1982).)

Portions of the Land Use Map referred to as the "County Referral Map (May 2008)" which forms the basis for the Regional Categories Land Use Map in the Update ("Land Use Map") are inconsistent with a number of policies identified in the Update's proposed Land Use Element ("Land Use Element").

The Land Use Element provides that the location and density of land uses, depicted on the Land Use Map, are based on an analysis of development constraints such as, road access, available water/sewer services, topography, significant habitats, groundwater resources and accessibility to emergency fire protection services. (Page 3-5) The Land Use Element further explains that growth is to be directed to areas where existing or planned infrastructure and services can support growth. As a result most areas that are appropriate for growth are located within the County Water Authority ("CWA") boundary. (Page 3-6) The majority of new development (approximately 80 percent) is planned for areas within the CWA boundary and in particular higher density neighborhoods are to be located within this boundary. (Page 3-27)

However, the proposed Land Use Map assigns "Rural" and "Semi-rural" land use classifications to a portion of the County described herein as the far western area of the Valley Center Community Planning Group boundary that is adjacent to Interstate 15, south of West Lilac Road and north of Circle R. Road ("Property"). The land use classifications are being proposed despite the fact that the Property is located along I-15, approximately one tenth (1/10) of a mile east of this major transportation corridor. In addition the Property is within the CWA boundaries and is within and adjacent to the Moosa Sewer District. A proposed new County Circulation Element Road (identified as "New East-West Road" in the Mobility Element and referred to herein as "Road 3A") will traverse through this area from Hwy 395 to West Lilac Road in a generally west to east direction. Road 3A would relieve pressure from other roads within the Valley Center transportation network, provide interconnectivity between Valley Center and I-15, and provide a much needed alternative evacuation route in cases of emergency.

By focusing growth within the Property, the County would be complying with a number of land use policies including the following:

- Locate development in proximity to existing infrastructure and services thus reducing the costs of construction and maintenance of such improvements.
- Locate development within the CWA boundaries.
- Comply with smart growth principles by locating development next to existing infrastructure.
- Minimize the public cost of infrastructure by linking construction of Road 3A with development.
- Encourage the development of environmentally sustainable communities that reduces green house gas emissions by locating growth in areas in close proximity to existing major transportation corridors which minimizes vehicular traffic.
- Protect key open space corridors identified in the County's proposed North County Multiple Species Conservation Plan by directing growth into noncritical areas.

At one point in the County's Update process, the Board of Supervisors (Board) addressed this inconsistency issue when at the August 2, 2006 meeting, they directed staff to develop a "cost estimate for Road 3A and meet with any willing property owners to develop a Specific Planning Area for the Board Alternative Map" ("Specific Planning Area"), with land use designations necessary to pay for the construction of the road." A portion of the Specific Planning Area included the Property.

The Board's action was also an attempt, to facilitate the construction of an east-west emergency road in the northern part of the Valley Center community which has been the subject of discussion for many years. The imminent need for this access became critical after the 2003 Cedar Fires and then again after the 2007 Poomacha and Witch Creek fires. During the Update process, an east-west road was proposed by the community to be included in the roadway network for the Mobility Element. As early as October 24, 2005, the need for an east-west road to be included in the roadway network was endorsed by the Valley Center Circulation Subcommittee and Valley Center Community Planning Group. In addition, the County Planning Commission on July 28, 2006 and the Board on August 2, 2006, endorsed the proposed Circulation Element Roadway Network which included Road 3A. It was at this hearing, that the Board made the referral to staff to develop the Specific Planning Area to pay for the construction of Road 3A.

However, on July 23, 2008, when the Board directed staff to remove the Specific Planning Area from the Update to proceed on a separate track as a separate GPA, the inconsistency between the Land Use Map and the goals and policies of the Land Use Element remained unresolved. In addition, the only immediate financing mechanism available for the construction of Road 3A was removed.

Not only does the inconsistency between the Land Use Map and Land Use Element render the Update invalid, it also impacts the County's ability to provide an emergency access road needed by the Valley Center community. We suggest adding the following language to the Land Use Element to solve this inconsistency and to reflect the Board's earlier direction to staff:

LU-1.1 Assigning Land Use Designations. Assign land use designations on the Land Use Map in accordance with the Community Development Model and boundaries established by the Regional Categories Map. It is anticipated that future general plan amendments will be processed in areas that have been previously designated as Specific Planning Areas on the Board Referral Map in order for the land use designations in these areas to be consistent with the goals and policies of the Land Use Element.

2. Community Plans must be consistent with the Goals and Policies of the General Plan.

The Update focuses a great deal on the important role community plans play in the implementation of the goals and policies contained in the Update. Nevertheless, such community plans must be consistent with the goals and policies of the County's General Plan in order for the General Plan to remain internally consistent. The Update should clearly explain that the two documents must be consistent with each other by adding the following language:

LU-2.1 Community Plans. Maintain Community Plans, ~~as part of the General Plan, which are consistent with and carry out the goals and policies of the General Plan,~~ to guide development to reflect the character and visions for each individual unincorporated community.

In addition, the following revision should be made to page 3-19 of the Land Use Element:

"...These may be further modified by specific policies for the Community Plan Areas as specified by their respective Community Plan provided that such policies are consistent with the goals and policies of the General Plan (separately bound as part of this General Plan)..."

3. The General Plan's circulation element must correlate with its land use element.

The Circulation Element (Mobility Element) must identify the general location and extent of existing and proposed major thoroughfares, transportation routes, and other local public facilities. It serves as an infrastructure plan and must correlate with the Land Use element of a General Plan. (CA Govt. Code Section 65300.5) (See also *Concerned Citizens of Calaveras County v. Board of Supervisors*, 166 Cal. App.3d 90, 94 (1985).

The court in *Calaveras* held that the circulation element of a general plan must demonstrate how the transportation needs of any increase in population that is described in a general plan will be met. This means that the road network identified in the Mobility Element must adequately support the areas designated for future growth in the Land Use Element. Lowering the classification of roadways or eliminating roads, such as Road 3A, within those areas described in the Land Use Element that accommodate future growth within the County, puts the County at great risk that the Mobility Element will be rendered inconsistent with the Land Use Element and is contrary to good planning practices.

Additionally, state law requires a general plan to be integrated and internally consistent, both among the elements and within each element. (CA Govt. Code Section 65300.5) Lowering the classification or eliminating Road 3A would be inconsistent with a number of policies of the Mobility Element. For example, Policy M- 1.2 provides that interconnected roads must be provided that would improve efficiency by incorporating shorter routes between trip destinations, disperse traffic and reduce traffic congestion in specific areas. In addition, the roadway network is required to include roads that will provide primary and secondary access/egress routes that support emergency services during fire and other emergencies.

Also, the County cannot depend solely on providing a roadway network to accommodate future growth based upon an "expectation" that the regional transportation network will be funded in order to support the uses designated in the Land Use Map at build-out. (Page 4-4) Such reliance would render the Update invalid by violating the correlation requirement of state law. As stated by the Court in *Calaveras*, the County cannot achieve statutorily mandated correlation with its land use element and circulation element "...simply by stating that the county will solve its problems by asking other agencies for money." (Id at 281.)

The County will need to depend on a variety of methods to provide the roadway network needed for future growth, which includes depending on future development to construct needed infrastructure. In order to demonstrate that its transportation needs will be met, we suggest adding the following implementation measure:

- Road 3A may be constructed as a requirement of development for projects located within the area in which Road 3A is to be sited.

We also have grave concerns with establishing road design and classification of roadways based on considerations such as “reinforcing the positive aspects of a community character” or that “reflect the character of the area.” (Page 4-9). In fact, such “community character” issues deal primarily with the edge of road treatments and do not pertain to issues concerning roadway capacity. Therefore “community character” should not be a consideration when establishing road design standards or roadway classifications. Roadway design and classification should be based on safety issues and physical limitations such as grade and topography. Finally, if the County fails to provide a roadway network with multiple connections or evacuation routes, after this need has been so clearly identified, the County may be potentially liable should people have trouble evacuating during a disaster.

4. Road 3A is identified as a road where a lower level of service is deemed acceptable, however, it does not meet the criteria in Table M-3 that would allow for this designation.

Mobility Policy M- 2.1 requires a level of service of “D” or higher on all Mobility Element roads except for those deemed acceptable by the County when the criteria identified in Table M-3 is met. The table on page 4-31 lists Road 3A as one of the roads where a lower level of service is deemed acceptable by the County. However, Road 3A does not fall within the criteria of Table M-3; it is not located within a town center, does not provide for regional connectivity, does not have marginal deficiencies on a short segment of the road, and does not possess any environmental constraints. Therefore Road 3A must be removed from the table on page 4-31.

Table M-3 acts as an exception to maintaining a level of service of “D” on Mobility Element roads. Therefore, roads only should be placed on this Table as a matter of last resort when the County does not have the ability to remedy a level of service problem. In the case of Road 3A, the County’s level of service requirement can be met by conditioning development in the area to build the road at an appropriate roadway classification.

5. The General Plan is considered a comprehensive policy document that provides long term guidance for the physical development of the County and should be sufficiently flexible to be able to apply to future community needs.

There are a number of proposed policies that use mandatory language equivalent to shall, such as *require*, *avoid* or *prohibit*. Mandatory language is not appropriate in a general plan

Requiring a Major Use Permit or Specific Plan simply to provide more desirable project design appears to be an overly bureaucratic process that is contrary to the Business Process Re-engineering Program currently underway by the County.

- LU-5.3. Rural Land Preservation. ~~Preserve e~~Existing undeveloped and rural areas (e.g., forested areas, agricultural lands, wildlife habitat and corridors, wetlands, watersheds and groundwater recharged areas) that provide carbon sequestration benefits should be preserved.

As written, this policy could preclude development on semi-rural lands that are currently undeveloped or employed for agricultural purposes even if such development is otherwise allowed.

- LU-14.4. Sewer Facilities. Prohibit sewer facilities that would induce unplanned growth. -Require sewer systems to be planned, developed, and sized to serve the land use pattern and densities depicted on the Land Use Map. ~~Sewersystems and series shall not be extended beyond Village boundaries except when necessary to preserve open space or serve civic facilities.~~

There are several; circumstances where the extension of sewer facilities could be beneficial. For example, sewer: 1) facilitates the use of smaller lot sizes, thereby enabling smaller development footprints and reducing project impacts associated with grading; 2) produces reclaimed water that can be used to reduce or offset the demand for fresh water irrigation or agricultural uses; and (3) provides the most practical and feasible methodology for implementing “conservation subdivisions” that will reduce a tract’s carbon footprint.

- COS-2.2. ~~Require development~~ Development should to be sited in the least biologically sensitive areas of the site to minimize the loss of natural habitat, including woodlands, forests and three resources.
- LU-6.2. Areas with sensitive natural resources should be Aassigned low-density or low intensity land use designations. ~~to areas with sensitive natural resources.~~

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- COS-14.1. Land Use Development form. ~~Require that d~~Development should be located and designed to reduce vehicular trips (and associated air pollution) by utilizing compact, regional and community-level development patters while maintaining consistency with community character whenever feasible.

Some site-criteria flexibility is essential in order to consider unique situations that could otherwise possibly result in implementation of an inefficient land use plan as it relates to increased carbon footprint, irregular and elongated circulation networks, and additional vehicle trips. In addition, failure to provide some amount of flexibility may leave an individual with no economically viable use of his land.

6. The definitions found within the Glossary should be consistent with the policies of the Update.

The definitions of the Glossary should mirror the language within the Update, in order to avoid issues in the interpretation of its policies. For example, the definition of “Leapfrog Development” is inconsistent with the language of Policy LU-1.4. In order to avoid this problem, we suggest that the following language be added to the Glossary:

“The terms defined in this Glossary do not supersede any of the provisions or policies within the General Plan. Should a definition in this Glossary restrict, limit or contradict the intent of a General Plan provision or policy such provision or policy shall take precedence”

In conclusion, we would like to thank you for the opportunity to comment on the Update. We would appreciate the opportunity to meet with County staff to discuss our comments further in an effort to work cooperatively on resolving the current inconsistencies in the Land Use Plan. In addition, we strongly urge the County to carefully consider any changes to the roadway network in relation to its other polices in the Update. Finally, we hope the County will allow an additional period to comment on the Update once the EIR has been completed and made available for public review.

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