

CHAPTER 8.0 LETTERS OF COMMENT AND RESPONSES

This chapter contains all comments received on the Draft SEIR and responses thereto and is organized as follows:

- 8.1 List of Agencies and Individuals that Commented on the Draft SEIR
- 8.2 Comment Letters Received and Responses to Comments

The focus of the responses to comments in Chapter 8.0 is on the disposition of significant environmental issues raised in the comments, as specified by Section 15088(c) of the CEQA Guidelines. Detailed responses are not provided to comments on the merits of the proposed Project. When a comment is not directed to significant environmental issues, the responses indicate that the comment has been acknowledged and no further response is necessary.

This section of the Final SEIR presents copies of comments on the Draft SEIR received in written form during the public review period, and it provides the County of San Diego's responses to those comments. Each comment letter is lettered and the issues within each comment letter are bracketed and numbered. Comment letters are followed by responses, which are numbered to correspond with the bracketed comment letters.

The County's responses to comments on the Draft SEIR represent a good-faith, reasoned effort to address the environmental issues identified by the comments. Under the CEQA Guidelines, the County is not required to respond to all comments on the Draft SEIR, but only those comments that raise environmental issues. In accordance with CEQA Guidelines 15088 and 15204, the County has independently evaluated the comments and prepared the attached written responses describing the disposition of any significant environmental issues raised. CEQA does not require the County to conduct every test or preform all research, studies, and experimentation recommended or demanded by commenters. Rather, CEQA requires the County to provide a good faith, reasoned analysis supported by factual information.

To fulfill these requirements, the County experts in planning and environmental sciences consulted with and independently reviewed analysis responding to the Draft SEIR comments prepared by KLR Planning and other experts identified in the Draft SEIR's list of preparers, which include experts in planning, air quality, biology, cultural resources, geology and soils, greenhouse gas emissions, noise, and , transportation and traffic, each of whom has years of educational and field experience in these categories of environmental sciences; is familiar with the Project and the environmental conditions in the vicinity of the Project; and is familiar with the Federal, State, and local rules and regulations (including CEQA) applicable to the Project site. Accordingly, the County staff's final analysis provided in this response to comments chapter are backed by substantial evidence. Likewise, the County Counsel's Office prepared and/or independently reviewed legal analysis supplementing the expert-supported factual responses to the Draft SEIR comments.

In the case of specific comments, the County has responded with specific analysis; in the case of a general comment, the reader is referred to a related response to a specific comment, if applicable. The absence of a specific response to every comment does not violate CEQA if the response would merely repeat other responses.

8.1 **List of Agencies and Individuals that Commented on the Draft SEIR**

This section identifies all written comments received during the public comment period. Table 8-1, *Commenters and Comment Letters*, provides an index to commenters and comment letters. Changes have been made to SEIR in strikeout/underline format in response to comments and to provide updates and clarifications to information provided herein. Table 8-2, *Summary of SEIR Text Changes*, provides a summary of the areas within the Final SEIR that are updated from the Draft SEIR.

8.2 **Comment Letters Received and Responses to Comments**

The comment letters listed in Table 8-1 have been bracketed for the purposes of responding. Individual responses to comments are found in Table 8-3. The focus of the responses to comments in Chapter 8.0 is on the disposition of significant environmental issues raised in the comments, as specified by Section 15088(c) of the CEQA Guidelines. Detailed responses are not provided to comments on the merits of the proposed Project. When a comment is not directed to significant environmental issues, the responses indicate that the comment has been acknowledged and no further response is necessary.

TABLE 8-1. COMMENTERS AND COMMENT LETTERS

Letter Number	Organization/Commenter
F1/S1	U.S. Fish and Wildlife Service, Karen Goebel, California Department of Fish and Wildlife, Gail K. Sevens
S2	Office of Planning and Research, State Clearinghouse, Scott Morgan
S3	California Department of Transportation, Maurice Eaton
L1	San Diego Association of Governments, Seth Litchney
L2	San Diego County Archaeological Society, Inc., James W. Royle, Jr.
O1	Marathon Land & Cattle Company, Mark Kennedy
O2	Shute, Mihaly & Weinberger, LLP., Joseph Petta

TABLE 8-2. SUMMARY OF SEIR TEXT CHANGES

Section (Page)	Change	Reason for Change
Summary (pages S-2, S-4, S-7, S-14, and S-25)	Editorial corrections.	Update
Summary (page S-3)	Correction to Project Objective no. 6.	Update
Summary (page S-5)	Clarified that all Project impacts would be mitigated to below a level of significance.	Update
Summary (page S-9, S-10, S-12, S-13)	Updated information regarding significance of GHG emissions for project alternatives.	Update
Summary (page S-14)	Added the following to M-BI-1: a pre-construction survey shall be conducted in the Project development area prior to clearing of the development area.	Update
Summary (page S-15)	Added the following as M-BI-2a: A pre-construction survey shall be conducted in the Project development area prior to clearing of the development area to determine if San Diego fairy shrimp are present on the Project site. Adjusted numbering of other components to M-BI-2.	Update
Summary (page S-16)	Added the following as M-BI-3a: A pre-construction survey shall be conducted in the Project development area prior to clearing of the development area to determine if Riverside fairy shrimp are present on the Project site.	Update
Summary (page S-17)	Inserted "prior to grading or other ground disturbance and added the following to M-BI-4a: Variegated dudleya surveys shall be conducted in a year with adequate plant expression at a reference site with a 1:1 off-site mitigation for dudleya plants. If surveys are conducted in a year that does not have adequate plant expression, then off-site mitigation for 80 variegated dudleya plants shall be required.	Update
Summary (page S-20)	M-BI-5 has been revised to include a requirement that a burrowing owl translocation plan be prepared, if owls are found during pre-construction surveys.	Update
Summary (page S-21)	Added to M-BI-8 that, if white-tailed kite is found nesting on the Project site during pre-construction surveys, CDFW shall be notified.	Update

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Summary (page S-22)	Replaced “can be minimized” with “would be reduced” in M-BI-12a.	Update
Summary (page S-22)	Update to M-BI-12c regarding when mitigation measure would occur.	Update
Summary (page S-22)	Replaced “can also be mitigated” with “would be mitigated.”	Update
Summary (page S-23)	Update to M-BI-12d regarding when mitigation measure would occur.	Update
Summary (page S-27)	Clarified type of fencing.	Clarification
Summary (page S-28)	Clarification to Impact Type.	Clarification
Summary (page S-29)	Correction to Waters of the U.S. Updated reference to mitigation measure.	Update
Summary (page S-29)	Deleted CR-1 and CR-2, as impacts to SDI 9975 and SDI 12730 would not occur since these sites are located in preserved open space. Updated mitigation numbering.	Update
Summary (page S-34)	Added clarification to Disposition of Cultural Material.	Clarification
Summary (pages S-34 – S-38)	Updated GHG emissions mitigation measures.	Update
Summary (page S-38)	Added “following County DEH standards” to M-HZ-1.	Update
Summary (page S-39)	Added “to demonstrate compliance with County noise regulations or implementation of measures that would reduce noise levels to comply with noise regulations” to M-N-2. Added clarification to M-N-2, indicating purpose for mitigation measure.	Update Clarification
Summary (page S-47, S-48 – S-52)	Replaced “it is recommended that” with “the Project would” for M-TR-1.	Update
Summary (pages S-49 – and S-51)	Change “should” to “would” in M-TR-2, M-TR-3, M-TR-4, M-TR-5, and M-TR-7.	Update
Chapter 1.0 (page 1-1)	Correction to Project Objective no. 6.	Update
Chapter 1.0 (page 1-2)	Clarified Project Description	Clarification
Chapter 1.0 (pages 1-4, 1-16, 1-18, 1-21, 1-22, 1-29, 1-30, and 1-32)	Correction to TM number for previously approved project.	Update

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Chapter 1.0 (page 1-16)	Added clarification regarding amendment to the Otay Subregional Plan also amends the General Plan. Clarifies modification to existing zone.	Clarification
Chapter 1.0 (page 1-18)	Corrected references to "Project area" with "Specific Plan area."	Update
Chapter 1.0 (page 1-2)2	Added clarification regarding mitigation measures included in the Sunroad Spectrum Supplemental EIR.	Clarification
Chapter 1.0 (page 1-23)	Inserted (c) to reference for subdivision.	Update
Chapter 1.0 (page 1-27; and Table 1-6, page 1-41)	Added clarification regarding amendment to the Otay Subregional Plan also amends the General Plan.	Clarification
Chapter 1.0 (page 1-30)	Clarified status of planned fire station and that the Project would not require the construction of new fire or law enforcement facilities or the expansion those facilities that are currently planned to serve the area.	Clarification
Chapter 1.0 (page 1-31)	Clarified provision of parks to serve the project.	Clarification
Chapter 1.0 (Figure 1-13, page I-47)	Updated figure to reflect trails planned as part of approved Specific Plan.	Update
Section 2.1 (pages 2.1-4 and 2.1-5)	Updated discussion relative to the SDAB's 2008 nonattainment.	Update
Section 2.1 (page 2.1-9)	Updated RAQS date.	Update
Section 2.1 (pages 2.1-12, 2.1-14, 2.1-17, and 2.1-21)	Updated <i>Guideline for the Determination of Significance</i> .	Update
Section 2.1 (page 2.1-13)	Deleted text and clarified that the Project's traffic generation is consistent with that assumed in the Specific Plan and, therefore, would not result in trips above the levels anticipated in the General Plan.	Update and Clarification
Section 2.1 (page 2.1-14)	Corrections.	Update
Section 2.1 (page 2.1-15)	Corrections and restating the Project's contribution to VOCs.	Update
Section 2.1 (page 2.1-14)	Corrections.	Update
Section 2.1 (page 2.1-27)	Restated conclusions relative to cumulative air quality impacts.	Update
Section 2.2 (page 2.2-1)	Restated that the "1994 EIR", as previously indicated as an abbreviation in Chapter 1.0, is	Update and Clarification

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	for the East Otay Mesa Business Park Specific Plan.	
	Add clarification that the RCP is for the Sunroad Centrum project.	
	Editorial corrections.	
Section 2.2 (pages 2.2-6, 2.2-9, 2.2-11, and 2.2-31)	Corrected reference to spreading navarretia and last reported date of on-site occurrence.	Update
Section 2.2 (page 2.2-7)	Added clarification regarding area previously mapped as coastal sage scrub that subsequently burned.	Clarification
Section 2.2 (pages 2.2-9, 2.2-37, 2.2-50)	Added approximate date of burn. Also added that the area within which the San Diego sunflower was observed is now mapped as non-native grassland.	Update
Section 2.2 (page 2.2-9 – 2.2-10)	Added information regarding location of San Diego sunflower occurring within the burn area.	Update
Section 2.2 (page 2.2-10)	Added clarification as to the occurrence of variegated dudleya in 2001.	Clarification
Section 2.2 (pages 2.2-11, 2.2-12, 2.2-16, 2.2-17, 2.2-23)	Added update information that no surveys were conducted in 2017, during which time the SEIR was circulated for public review and the Final SEIR was in preparation.	Update
Section 2.2 (page 2.2-11)	Corrected date of last vernal pool survey where spreading navarretia had been found.	Update
Section 2.2 (pages 2.2-13 – 2.2-34, 2.2-39)	Editorial corrections.	Update
Section 2.2 (page 2.2-14)	Deleted reference to County guidelines relative to unoccupied burrows.	Update
Section 2.2 (page 2.2-16)	Added information regarding no fairy shrimp sampling in 2016 due to lack of adequate rainfall and ponding.	Update
Section 2.2 (pages 2.2-25, 2.2-55)	Corrected reference to USACE permits relative to individual and Nationwide.	Update
Section 2.2 (pages 2.2-29 and 2.2-49)	Added information relative to Minor Amendment and Major Amendment Area.	Update
Section 2.2 (page 2.2-31)	Added “significant” before “impacts”.	Update
Section 2.2 (page 2.2-32)	Correction to TM number for previously approved project.	Update

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Section 2.2 (page 2.2-32)	Added reference to Table 2.2-3, <i>Comparison of 2017 BTR and 2000 FSEIR Vegetation/Habitat Impacts</i> which is being added to page 2.2-69.	Clarification
Section 2.2 (page 2.2-34)	Added "level" to "less than significant."	Update
Section 2.2 (pages 2.2-36 and 2.2-40)	Updated information regarding burrowing owl, unoccupied burrows, and mitigation ratio.	Update
Section 2.2 (page 2.2-37)	Added approximate date of burn.	Update
Section 2.2 (page 2.2-41)	Clarified impacts to non-native grassland burrowing owl habitat.	Clarification.
Section 2.2 (page 2.2-43)	Corrected table number.	Update
Section 2.2 (page 2.2-49)	Added background regarding Minor Amendment.	Update
Section 2.2 (page 2.2-50)	Added approximate date of burn. Added information regarding the Project site's location relative to the MSCP.	Update
Section 2.2 (pages 2.2-51)	Clarified that only a portion of the Project site qualifies as a BRCA.	Clarification
Section 2.2 (page 2.2-55)	Added "non-native grassland" to BI-5.	Update
Section 2.2 (pages 2.2-56, 2.2-57, 2.2-64)	Added reference for Fairy Shrimp Translocation and Five Year Monitoring Mitigation Plan.	Update
Section 2.2 (page 2.2-55)	Added the following to M-BI-1: a pre-construction survey shall be conducted in the Project development area prior to clearing of the development area.	Update
Section 2.2 (page 2.2-56)	Added the following as M-BI-2a: A pre-construction survey shall be conducted in the Project development area prior to clearing of the development area to determine if San Diego fairy shrimp are present on the Project site. Adjusted numbering of other components to M-BI-2.	Update
Section 2.2 (page 2.2-56)	Added the following as M-BI-3a: A pre-construction survey shall be conducted in the Project development area prior to clearing of the development area to determine if Riverside fairy shrimp are present on the Project site.	Update

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Section 2.2 (pages 2.2-57)	Inserted “prior to grading or other ground disturbance and added the following to M-BI-4a: Variegated dudleya surveys shall be conducted in a year with adequate plant expression at a reference site with a 1:1 off-site mitigation for dudleya plants. If surveys are conducted in a year that does not have adequate plant expression, then off-site mitigation for 80 variegated dudleya plants shall be required.	Update
Section 2.2 (page 2.2-57)	Inserted “prior to development of Project area to M-BI-3c.	Update
Section 2.2 (page 2.2-57)	Added clarification for variegated dudleya surveys.	Clarification
Section 2.2 (page 2.2-59)	Added to M-BI-5 that a burrowing owl translocation plan shall be developed and approved by the County and Wildlife Agencies, if owls are found during pre-construction surveys.	Update
Section 2.2 (page 2.2-59)	Added to M-BI-8 that, if white-tailed kite is found nesting on the Project site during pre-construction surveys, CDFW shall be notified.	Update
Section 2.2 (page 2.2-60)	Replaced “can be minimized” with “would be reduced.”	Update
Section 2.2 (page 2.2-60, 2.2-61)	Clarification regarding when mitigation measures would be applied.	Clarification
Section 2.2 (page 2.2-63)	Added the requirement for a sturdy fence.	Update
Section 2.2 (page 2.2-64)	Updated numbering for mitigation measure.	Update
Section 2.2 (page 2.2-70)	Added Table 2.2-3: <i>Comparison of 2017 BTR and 2000 FSEIR Vegetation/Habitat Impacts.</i>	Update
Section 2.2 (Table 2.2-4)	Updated table number.	Update
Section 2.2 (page 2.2-72)	Added Table 2.2-5: <i>Conditions Associated with the Wildlife Agencies’ Concurrence for Sunroad Centrum Minor Amendment to the MSCP County Subarea Plan.</i>	Update
Section 2.2 (page 2.2-83)	The approximate location of the 7.29 acres of native grassland mapped within the coastal sage scrub-grassland matrix in the mima-mound area in 2000 that burned, which occurred on or around May 3, 2013, has been added to Figure 2.2-3, <i>Biological Resources.</i>	Clarification
Section 2.3 (page 2.3-1)	Corrected lot number for Open Space Easement.	Update

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Section 2.3 (page 2.3-14 – 2.3-15)	Added clarification regarding sites SDI 12337 and SDI 9975. Updated discussion of impacts to these resources.	Update and Clarification
Section 2.3 (page 2.3-16)	Corrected number for impact.	Update
Section 2.3 (page 2.3-18)	Editorial correction.	Update
Section 2.3 (page 2.3-19)	Deleted impacts to resources that are preserved within the open space easement.	Update
Section 2.3 (page 2.3-20)	Deleted mitigation for resources that are preserved within the open space easement. Updated numbering of mitigation.	Update
Section 2.3 (page 2.3-22)	Added clarification to Disposition of Cultural Material.	Clarification
Section 2.4 (pages 2.4-1, 2.4-8 – 2.4-9)	Updated discussion relative to significance of impacts.	Update
Section 2.4 (page 2.4-7)	Added additional information regarding GHG emissions and CEQA Guidelines.	Update
Section 2.4 (pages 2.4-10, 2.4-11)	Updated status of County's CAP.	Update
Section 2.4 (pages 2.4-16)	Updated discussion relative to GHG emissions thresholds.	Update
Section 2.4 (pages 2.4-17, 2.4-18)	Updated discussion relative to GHG emissions thresholds.	Update
Section 2.4 (pages 2.4-17 – 18, 2.4-21)	Updated basis for Project evaluation relative to GHG emissions.	Update
Section 2.4 (2.4-20)	Added information regarding CO ₂ emissions from vehicles.	Update
Section 2.4 (2.4-21)	Updated discussion relative to recent adoption of the CAP and the Project's relative to GHG emissions.	Update
Section 2.4 (pages 2.4-22)	Updated Consistency with Applicable Plans	Update
Section 2.4 (page 2.4-24)	Updated discussion relative to Comparison with Existing Entitlement.	Update
Section 2.4 (page 2.4-25)	Updated discussion relative to significance of impacts.	Update
Section 2.4 (pages 2.4-25 – 2.4-28)	Updated mitigation measures.	Update

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Section 2.4 (pages 2.4-28 – 2.4-29)	Updated Conclusions relative to GHG emissions impacts.	Update
Section 2.4 (page 2.4-33)	Deleted Table 2.4-4.	Update
Section 2.4 (pages 2.4-39 – 2.4-41)	Revisions to Table 2.4-8, 2.4-9, and 2.4-10.	Update
Section 2.5 (page 2.5-4)	Editorial correction.	Update
Section 2.5 (page 2.5-23)	Added “following County DEH standards” to M-HZ-1.	Update
Section 2.6 (page 2.6-3)	Changed approximately “3,600 to 4,600 feet” to approximately “one mile.”	Update
Section 2.6 (page 2.6-9)	Corrected “air quality” to “noise.”	Update
Section 2.6 (page 2.6-10)	Inserted “conduct” before “site-specific noise analyses.”	Update
Section 2.6 (page 2.6-11)	Inserted background relative to the Noise Element of the General Plan.	Update
Section 2.6 (page 2.6-12)	Defined when sound level variations are considered significant.	Update
Section 2.6 (page 2.6-13)	Editorial correction.	Update
Section 2.6 (page 2.6-13)	Inserted “Mitigation measures” to clarify sentence.	Clarification
Section 2.6 (page 2.6-14)	Inserted “significant” before “impact.”	Update
Section 2.6 (pages 2.6-15, 2.6-16, and 2.6-18)	Editorial corrections.	Update
Section 2.6 (page 2.6-17)	Clarified mitigation measure.	Clarification
Section 2.8 (page 2.8-1)	Corrected reference to previously approved TM.	Update
Section 2.8 (page 2.8-9)	Inserted background information regarding location of the project site and application of City of San Diego thresholds.	Update
Section 2.8 (page 2.8-11)	Deletes guideline regarding congestion management programs, as the County is not a participant in the regional Congestion Management Plan.	Update
Section 2.8 (page 2.8-11)	Clarified mitigation included in the 2000 SEIR.	Clarification
Section 2.8 (page 2.8-12)	Spelled out Avenue and Boulevard. Inserts text regarding mitigation measures for the proposed Project. Deletes guideline regarding congestion management programs, as the County is not a	Update

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	participant in the regional Congestion Management Plan.	
Section 2.8 (page 2.8-16)	Clarifies location of Brown Field Airport and Project's impacts.	Clarification
Section 2.8 (page 2.8-21)	Reference to Table 2.8-16 changed to 2.8-17. Reference to Table 2.18 added.	Update
Section 2.8 (pages 2.8-40 – 2.8-44)	Changes “recommended” to “would” for mitigation measures.	Update
Section 2.8 (page 2.8-48)	Table 2.8-18 added.	Update
Section 2.9 (page 2.9-2)	Corrected reference to previously approved TM.	Update
Section 3.1 (page 3.1-7)	Editorial correction.	Update
Section 3.1 (pages 3.1-26 and 3.1-27)	Corrected reference to previously approved TM.	Update
Section 3.2 (page 3.2-1, 3.2-6)	Corrected reference to previously approved TM.	Update
Chapter 4.0 (page 4-2)	Correction to Project Objectives.	Update
Section 4.0 (pages 4-9, 4-14 – 4-15, 4.21, 4-27, 4-33)	Updated summary of Project impacts relative to GHG emissions.	Update
Section 4.0 (pages 4-15, 4-4.21, 4-27 – 4-33, 4-34)	Updated impacts relative to GHG emissions for Alternatives.	Update
Section 4.0 (pages 4-17, 4-21, 4-27 - 28, 4-34, 4-36, 4-37,	Updated Conclusions relative to GHG emissions for Alternatives.	Update
Section 4.0 (pages 4-51 – 5-52, Table 4-14)	Updated Table 4-14, <i>Comparison of Alternatives to Proposed Project</i> .	Update
Section 5.0 (page 5-4)	Most recent RAQS reference added to reference list.	Update
Section 6.0 (page 6-2)	Added Technical Consultants.	Update
Section 7.0 (pages 7-1 – 7-2)	Updated numbering of mitigation measures.	Update
Section 7.0 (pages 7-1, 7-2, 7-4, 7-9)	Added approval date and approving authority to referenced plans and programs.	Update
Section 7.0 (page 7-1)	Added the following as M-BI-2a: A pre-construction survey shall be conducted in the Project development area prior to clearing of the development area to determine if San Diego fairy	Update

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	shrimp are present on the Project site. Adjusted numbering of other components to M-BI-2.	
Section 7.0 (page 7-1)	Added the following as M-BI-2a: A pre-construction survey shall be conducted in the Project development area prior to clearing of the development area to determine if San Diego fairy shrimp are present on the Project site. Adjusted numbering of other components to M-BI-2.	Updated
	Added the following as M-BI-3a: A pre-construction survey shall be conducted in the Project development area prior to clearing of the development area to determine if Riverside fairy shrimp are present on the Project site. Adjusted numbering of other components to M-BI-3.	
Section 7.0 (pages 7-2 – 7-3)	Added clarification to M-BI-4a.	Clarification
Section 7.0 (pages 7-4 – 7-6)	Added clarifications to mitigation measures.	Clarification
Section 7.0 (page 7-8)	Added the requirement for a sturdy fence.	Update
Section 7.0 (page 7-9)	Added reference for Fairy Shrimp Translocation and Five Year Monitoring Mitigation Plan.	Update
Section 7.0 (pages 7-9 – 7-10)	Deleted mitigation measure as resources would be preserved in open space easement.	Update
Section 7.0 (page 7-10)	Re-numbered mitigation measure.	Update
Section 7.0 (page 7-12)	Added clarification to Disposition of Cultural Material.	Clarification
Section 7.0 (page 7-12 – 7-14)	Updated mitigation measures.	Update
Section 7.0 (page 7-14)	Added “following County DEH standards” to M-HZ-1.	Update and Clarification
	Added clarification to M-N-1.	
Section 7.0 (page 7-18 – 7-20)	Updated mitigation measures to replace “recommend” with “would.”	Update
Section 7.0 (page 7-18 – 7-20)	Added footnote describing fair share and TIF.	Update
Section 7.0 (7-19)	Added footnote defining TIF	Update

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Chapter 8.0

Add Chapter 8.0 - Responses to Comments.

Responses,
updates, and
clarifications

	Response to Comment Letter F1/S1
<div data-bbox="241 251 346 365"></div> <div data-bbox="352 251 577 365"> <p>U. S. Fish and Wildlife Service Carlsbad Fish and Wildlife Office 2177 Salk Avenue, Suite 250 Carlsbad, California 92008 (760) 431-9440 FAX (760) 431-9624</p> </div> <div data-bbox="661 251 745 365"></div> <div data-bbox="772 251 1050 365"> <p>California Department of Fish and Wildlife South Coast Region 3883 Rutlin Road San Diego, California 92123 (858) 467-4201 FAX (858) 467-4299</p> </div> <div data-bbox="787 203 1018 235" style="background-color: black; color: white; text-align: center; padding: 2px;"> Comment Letter F1/S1 </div> <div data-bbox="241 381 472 414"> <p>In Reply Refer To: FWS/CDFW-16B0236-17CPA0128</p> </div> <div data-bbox="871 430 976 470"> <p>May 8, 2017 <i>Sent by email</i></p> </div> <div data-bbox="241 479 693 576"> <p>Ms. Michelle Irace County of San Diego, Planning and Development Services 5510 Overland Avenue, Suite 310 San Diego, CA 92123</p> </div> <div data-bbox="241 592 997 641"> <p>Subject: Comments on the Otay 250 - Sunroad East Otay Specific Plan Amendment (SCH# 2016031028, CEQA-2016-0174-0000-R5), San Diego, California</p> </div> <div data-bbox="241 657 367 682"> <p>Dear Ms. Irace:</p> </div> <div data-bbox="241 706 997 836"> <p>The U.S Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department), hereafter collectively referred to as the Wildlife Agencies, have reviewed the above-referenced draft Supplemental Environmental Impact Report (SEIR) dated March 27, 2017. The Wildlife Agencies have identified potential effects of this project on wildlife and sensitive habitats. The project details provided herein are based on the information provided in the draft SEIR and associated documents.</p> </div> <div data-bbox="241 860 976 1128"> <p>The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has the legal responsibility for the welfare of migratory birds, anadromous fish, and threatened and endangered animals and plants occurring in the United States. The Service also is responsible for administering the Federal Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 <i>et seq.</i>), including habitat conservation plans (HCPs) developed under section 10(a)(1)(B) of the Act. The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; §§15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the State's biological resources, including rare, threatened, and endangered plant and animal species pursuant to the California Endangered Species Act (Fish and Game Code §2050 <i>et seq.</i>) and other sections of the Fish and Game Code. The Department also administers the Natural Community Conservation Planning (NCCP) program (Fish and Game Code 2800, <i>et seq.</i>).</p> </div> <div data-bbox="241 1153 976 1372"> <p>The Service issued a section 10(a)(1)(B) permit pursuant to the ESA for the County's Multiple Species Conservation Program (MSCP) Subarea Plan (SAP) on March 17, 1998. The Department also issued NCCP Approval and Take Authorization per Section 2800 <i>et seq.</i> of the California Fish and Game Code. The MSCP is a comprehensive, long-term habitat conservation planning program that addresses the needs of multiple species and the preservation of natural vegetation communities within the southwestern subregion of San Diego County. The MSCP also addresses the loss of covered species and their habitats due to the direct, indirect, and cumulative impacts associated with land development. The County's SAP and associated Implementing Agreements and permits are the means by which the County is obligated to assemble the MSCP Preserve and to mitigate for impacts to covered species and their habitats.</p> </div>	<div data-bbox="1249 251 1774 316"> <p>U.S. Fish and Wildlife Service Karen Goebel, Assistant Field Supervisor</p> </div> <div data-bbox="1197 349 1827 438"> <p>California Department of Fish and Wildlife Gail K. Sevrens, Environmental Program Manager May 8, 2017</p> </div> <div data-bbox="1081 925 1942 1356"> <p>F1/S1-1 This comment summarizes the U.S. Fish and Wildlife Service's mandate and legal responsibilities in administering federal law directed at protection of fish and wildlife resources and their habitats. It also addresses the California Department of Fish and Wildlife's position as a Trustee and Responsible Agency for implementing the California Environmental Quality Act and ensuring appropriate conservation of the state's biological resources. The comment includes background information relative to issuance of the Section 10(a)(1)(B) permit for the County's MSCP Subarea Plan and explains the purpose of the MSCP and its authority through associated Implementing Agreements and permits. This comment does not address the adequacy of the EIR, therefore, no further response is required.</p> </div>

F1/
S1-1

<p>F1/ S1-2</p> <p>F1/ S1-3</p> <p>F1/ S1-4</p>	<p>Ms. Michelle Irace (FWS/CDFW-16B0236-17CPA0128) 2</p> <p>We offer the following recommendations and comments to assist the County in minimizing and mitigating project impacts to biological resources and to assure that the proposed project is consistent with the MSCP and the County's SAP.</p> <p><i>Project Description</i></p> <p>The project site is generally located at the northeastern corner of Otay Mesa Road and Harvest Road immediately east of SR-125. The project is located in the Otay Community Planning area, within unincorporated San Diego County. The proposed project site is located within the approved East Otay Mesa Business Park Specific Plan area and encompasses 253.13 acres, including 218.12 acres of lot area and approximately 35.01 acres of right-of-way area for various roadway improvements. The project proposes a Specific Plan Amendment (SPA) to the East Otay Mesa Business Park Specific Plan to establish a new Mixed-Use Village Core area within the Specific Plan Area, which would allow for a mix of employment, retail, and residential uses. The proposed project would allow for the entitlement of a maximum of 3,158 dwelling units, 84,942 square feet of general commercial uses, and 1,389,564 square feet of employment uses, and approximately 51.3 acres of permanent biological open space which will be used for mitigation for impacts to sensitive habitats and species. The project would impact vernal pool habitats, non-native grasslands, and disturbed wetlands. The project would also impact two federally endangered species, the San Diego fairy shrimp (<i>Branchinecta sandiegonensis</i>) and San Diego button celery (<i>Eryngium aristulatum</i> var. <i>parishii</i>), as well as MSCP covered, narrow endemic species such as variegated dudleya (<i>Dudleya variegata</i>). The project also requires an amendment to the Otay Subregional Community Plan, a Rezone to incorporate mixed uses, and a Tentative Map to subdivide the property. The project will also require both Major and Minor Amendments to the County SAP.</p> <p>The Wildlife Agencies have been working with the County concerning projects in East Otay Mesa since 1998. Previously, a Minor Amendment request was submitted to the Wildlife Agencies by the County for the Sunroad Centrum project in accordance with their SAP. In a letter dated November 12, 2003, the Wildlife Agencies concurred with the amendment request provided that certain conditions were required of the project. These conditions included the implementation of conservation measures outlined in the Service's biological opinion (FWS-DG-944.5), and modifications to the Resource Conservation Plan (RCP) that was originally proposed for the Sunroad Centrum project. With regards to the area of the project site that is located within a Major Amendment area, we concluded that if there were no impacts to this area, there was no need to process a major amendment for the project.</p> <p>More recently, the Wildlife Agencies commented on the Notice of Preparation (NOP) for this project in a letter dated April 11, 2016. In this letter, we stated "Provided the impacts to sensitive and listed species have not changed from the previous project, these measures should be included as mitigation measures in the SEIR. If there are changes to the project impacts or mitigation measures, our Minor Amendment concurrence will need to be re-evaluated based on the current project design." Although the project footprint may be similar to the previous project, there have been significant changes to the status of the species and habitat on the project site and East Otay Mesa in the past 14 years. As an example, the onsite open space has significantly degraded due to a fire and no management, which has resulted in the loss of coastal sage scrub (CSS) habitat and narrow endemic species. In addition, the loss of suitable burrowing owl habitat in East Otay Mesa is a significant concern to the Wildlife Agencies. Therefore, we recommend that the Minor</p>	<p>F1/S1-2 This comment provides a general overview of the Project description and discretionary actions as presented in the SEIR (see Chapter 1.0) and provides a summary of the Project's impacts to biological resources (see Chapter 2.0, Section 2.2). This comment does not address the adequacy of the EIR, therefore, no further response is required.</p> <p>F1/S1-3 This comment provides background relative to the Wildlife Agencies prior involvement with projects in the East Otay Mesa Business Park Specific Plan area in relationship to the County's MSCP Subarea Plan. This comment also references the Wildlife Agencies' concurrence letter and conditions for the Minor Amendment associated with the previously approved Sunroad Spectrum project. (The Sunroad Spectrum project is the current project approved for the Project site.) As part of the Wildlife Agencies' previous actions relative to the Sunroad Spectrum project, it was concluded that there was no need to process a Major Amendment for the Sunroad Spectrum project as there were no impacts to the Major Amendment area. This comment does not address the adequacy of the EIR, therefore, no further response is required.</p> <p>F1/S1-4 This comment summarizes the Wildlife Agencies' comment letter to the Notice of Preparation issued for the Project on March 11, 2016. It also states the Wildlife Agencies' opinion that there have been significant changes to the status of species and habitat on the Project site and East Otay Mesa since the time the Minor Amendment was approved in 2003. The comment also addresses "significant changes to the status of the species and habitat on the project site ... in the past 14 years."</p> <p>The 2017 Biological Technical Report (BTR) and the Biological Resources section of the 2017 SEIR (Section 2.2) for the Proposed Project acknowledge that a fire has occurred on the Project site, which burned coastal sage scrub habitat and sensitive species occurring in that area. The 7.29 acres of native grassland mapped within the coastal sage scrub-grassland matrix in the mima-mound area in 2000 that was consumed by fire on or around May 3, 2013 and now mapped as non-native grassland is located within the Biological Open Space. This area was</p>
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	<p>previously mapped as a mosaic of coastal sage scrub, native grassland, and non-native grassland.</p> <p>Impacts to non-native grassland were previously analyzed in the 2000 SEIR and mitigation included on-site preservation of non-native grassland and off-site purchase of additional lands at a ratio of 0.5:1. The offsite mitigation was completed in 2001 and the Open Space Easement on the Project site was dedicated in 2003. Mitigation Measure M-BI-13 in the 2017 SEIR for the Proposed Project discusses the on-site and off-site mitigation, which have been satisfied.</p> <p>As stated in the 2017 SEIR and BTR, fifteen abandoned burrows were found within the Project development footprint [and another 24 within the proposed Open Space Easement (Lot 20 of the proposed Tentative Map)]; however, no active or recently active burrows were found on-site during the 2015 and 2016 surveys. Mitigation Measure M-BI-5 requires a pre-construction burrowing owl survey and has been updated to require a translocation plan if owls are found during the pre-construction survey (see SEIR text changes). In summary, the mitigation for non-native grassland has been completed and mitigation measure M-I-5 will ensure there are no significant impacts to burrowing owl.</p>
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TABLE 8-3. COMMENT LETTERS AND RESPONSES

RESPONSE TO COMMENTS

		Ms. Michelle Irace (FWS/CDFW-16B0236-17CPA0128)	3	
F1/ S1-5		Amendment be re-evaluated for consistency under current conditions. At a minimum, the RCP will need to be updated and submitted to us for review and approval. The Service will also need to re-initiate the biological opinion for this project as conditions have changed, including designation of critical habitat within the project site for San Diego fairy shrimp.		<p>F1/S1-5 In their letter dated November 14, 2003, the Wildlife Agencies concurred with the Minor Amendment for the Sunroad Centrum Project [Tentative Map (TM) 5139] provided the Conservation Measures in the Services biological opinion, the measures described in the Resource Conservation Plan, and conditions in the concurrence letter are met. The Resource Conservation Plan (RCP) received approval from the Director of the County Department of Planning and Land Use on December 12, 2003. The RCP serves as both a Resource Management Plan and Revegetation Plan.</p> <p>The applicant for the approved Sunroad Centrum Project has acted on Conservation Measures, measures in the RCP, and conditions in the previously approved Minor Amendment. Measures and conditions which have been completed to date include the following:</p> <ul style="list-style-type: none"> • 52 acres of Biological Open Space recorded – 11/20/03 • Director Decision issued approval of RCP 12/12/03 • Revegetation/RCP agreement recorded - 12/12/03 • Receipt of performance bonds for RCP from applicant – 1/9/04 • Bonds refunded – Revegetation portion complete 1/5/2012 <p>In addition, on April 16, 2001, the applicant contributed \$243,450 toward the preservation of land in Hollenbeck Canyon, a preserve area in the MSCP subarea, which provided habitat value equal to 5.4 acres of native grassland and 48.6 acres of non-native grassland. Approximately 0.4 acre of mitigation has been purchased to mitigate southern willow scrub. A San Diego Barrel Cactus Transplantation plan has been completed, as well.</p> <p>The County has re-evaluated the previously approved Minor Amendment for consistency under the Biological Mitigation Ordinance, and conformance with the MSCP and Subarea Plans, and found that it is still consistent. The Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment Project proposes grading the same development footprint as the area that is covered in the Minor Amendment previously approved by the Wildlife Agencies.</p>
F1/ S1-6		With regards to the Major Amendment area, we concur with the draft SEIR which states “that Major Amendment Areas contain habitat of higher value, including dedicated or designated preserve areas. Projects in Major Amendment Areas must be fully processed by USFWS and CDFW in conformance with all applicable laws and regulations.” Although the Major Amendment Area is designated primarily for preservation, the SEIR (Figure 1-13, Trails and Pathways) shows a trail directly through vernal pool habitat in the Northern Biological Open Space. Trails are generally not compatible with vernal pool habitat as they can compact the soil, alter the hydrology, and the pools are easily damaged if people walk through them; therefore, we recommend that the trail be relocated outside of the Biological Open Space. If the County and/or project proponent wants to pursue a trail in this area, they should locate it outside of the watershed of all of the vernal pools. Any remaining direct or indirect impacts to the habitat would require mitigation and would trigger the need to process a Major Amendment. In addition, no trails were addressed previously in the Service’s biological opinion; therefore, this is another change that will trigger re-initiation of the consultation.		
F1/ S1-7		In our NOP letter, we recommended that the draft SEIR evaluate opportunities to maximize onsite conservation of grassland habitat and burrowing owl in light of the proposed change in land use. The draft SEIR does not show that any effort was made to conserve additional grassland for burrowing owls on site. Instead, the document only looked at a reduced project footprint around the historic locations of the sensitive plant species. We continue to recommend that the project be re-designed to avoid additional grassland habitat in order to meet conservation goals for burrowing owls within the MSCP and SAP. The associated MSCP Findings should be updated to reflect the significance of the site for burrowing owls. The findings incorrectly conclude that the site is not a Biological Resource Core Area because it is not in the Pre-Approved Mitigation Area (PAMA). The site is not in the PAMA because it is designated as an amendment area. The site is greater than 500 acres and is located in an area that could contribute to the long-term survival of sensitive species (e.g. burrowing owls and other raptors) and is contiguous with other conserved lands to the north. The “Findings for Conformance with the Biological Mitigation Ordinance” require that the project development be sited in areas to minimize impact to habitat and that clustering to the maximum extent permitted by County regulations be considered. The document provides no information regarding how clustering was utilized given the change in land use from industrial to residential; therefore, it is unclear how this finding can be met.		
F1/ S1-8				
F1/ S1-9				
F1/ S1-10		Although the draft SEIR acknowledges on Page 2.2-32 that the 2017 Biological Technical Report update follows the current “Guidelines for Determining Significance and Report Format and Content Requirements” (2010), it does not acknowledge the County requirements denoted in the Strategy for Mitigating Impacts to Burrowing Owls in the Unincorporated County (San Diego County Report Format and Content Requirements Appendix A), which states that “In East Otay Mesa (EOM) all grassland habitats are considered occupied”, and that, “Impacts to non-native grasslands in East Otay Mesa must be mitigated at 1:1, with at least half in East Otay Mesa or Otay Mesa, and the rest somewhere else”. The draft SEIR states, “Because burrows are unoccupied, the habitat is considered non-native grassland, per County guidelines.” To be consistent with the Burrowing Owl Strategy, the mitigation should be 1:1 for non-native grassland due to the location		

	<p>In regard to the San Diego fairy shrimp, the County and the Service have already approved mitigation for the San Diego fairy shrimp in the 2000 Sunroad Centrum EIR (see mitigation measure 2.3.4.7.a). Mitigation for San Diego fairy shrimp is also included as M-BI-2 in the 2017 SEIR for the Proposed Project. The designation of critical habitat for San Diego fairy shrimp within the Project site does not require re-evaluation of the Minor Amendment—the mitigation is still required and has not changed. The County is not issuing a take permit for vernal pool species, including the San Diego fairy shrimp. The 2000 SEIR, the 2017 SEIR, and the 2017 BTR fully evaluate impacts to vernal pools and include required mitigation.</p> <p>F1/S1-6 Since the approval of the East Otay Mesa Specific Plan in 1994, the County adopted a Community Trails Master Plan that guides the type and location of trails throughout the unincorporated area. Planned trails within the East Otay Mesa Specific Plan area are shown on SEIR Figure 1-13, which is the same as Figure 2.2-1 in the approved East Otay Mesa Business Park Specific Plan. The trail easement within the Biological Open Space (BOS) was included in the previously adopted East Otay Mesa Business Park Specific Plan. The Project is not proposing any modifications of the Specific Plan relative to trails/pathways within the BOS. No trail improvements are proposed as part of the Project. Future construction of a trail within the trail easement would be the responsibility of the County, would require trail design and review under CEQA, and would require review by Wildlife Agencies if listed species have the potential to be adversely affected. Therefore, re-initiation of consultation regarding the existing planned trail identified in the East Otay Mesa Business Park Specific Plan is unnecessary.</p> <p>F1/S1-7 Mitigation for impacts to non-native grassland has been implemented as part of mitigation requirements for TM 5139, as discussed in response to comment F1/S1-5 above. The Proposed Project would result in the loss of the same area of habitat as TM 5139, and subsequent TM 5538 which is the current existing entitlement.</p>
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	<p>While the Project proposes an Amendment to the East Otay Mesa Business Park Specific Plan to allow development of the Project site as a mixed-use Village rather than as singular development with industrial, business park, and retail uses, the development area for the Project and the area that would be graded are the same as that approved for TM 5139. In order to implement the Project Objectives, the Project requires grading the entire footprint of the Project site. Therefore, there would be no change in areas where development would occur beyond what has already received approval.</p> <p>CEQA Guidelines Section 15126.6 requires that an EIR describe a range of reasonable alternatives to the project which would feasibly attain <u>most of the basic objectives</u> of the project but would <u>avoid or substantially lessen</u> any of the significant effects of the project. Therefore, in accordance with CEQA, the SEIR includes a range of alternatives that could feasibly attain most of the basic objectives of the Project but would avoid or substantially lessen any of the significant effects of the Project.</p> <p><u>Avoiding</u> impacts to non-native grassland would require implementation of the No Project/No Development Alternative, which is addressed in Section 4.4 of the SEIR. <u>Substantially reducing</u> impacts to non-native grassland would require preserving large areas of the Project site as open space. Such an alternative would not allow for most of the Project Objectives to be attained. Specifically, the No Project/No Development Alternative would not allow for the following Project Objectives:</p> <ol style="list-style-type: none"> 1. The No Project/No Development Alternative would not <i>contribute to the Specific Plan goals of promoting a well-organized international industrial and business district to attract and accommodate forecasted growth by providing a Mixed-Use Village Core that would permit a variety of residential uses at higher densities, in addition to light industrial/technology, office, and commercial uses</i> because no new development would occur. 2. The No Project/No Development Alternative would <i>promote the conservation of open space to preserve environmental</i>
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	<p><i>resources but would not provide recreational opportunities for the industrial workforce and surrounding community residents because no new development would occur.</i></p> <p>3. The No Project/No Development Alternative would not <i>implement the County of San Diego General Plan vision of creating compact communities by creating a Village Core within the East Otay Mesa sub-region that contains a mix of housing types located near retail businesses, employment, and recreational uses</i> because no new development would occur.</p> <p>4. The No Project/No Development Alternative would not <i>establish a land use pattern with a mix of densities and land uses that will minimize automobile trips, support walking and bicycling, encourage participation in recreational activities, and invigorate the economic health of surrounding businesses</i> because no new development would occur.</p> <p>5. The No Project/No Development Alternative would not <i>provide convenient housing opportunities for the adjacent industrial and business district employees in addition to supporting commercial/retail and employment uses to reduce vehicular use</i> because no new development would occur.</p> <p>6. The No Project/No Development Alternative would not <i>support development of the East Otay Mesa Specific Plan multi-modal transportation system by providing a multi-modal internal street network that serves vehicular, pedestrian, and bicycle travels; as well as installation of a bus stop providing access to local and regional transit</i> because no circulation network or transit would be constructed on the Project site.</p> <p>7. The No Project/No Development Alternative would not <i>develop well-designed infrastructure, buildings, and landscaping, on-site and off-site, that create a distinct urban character for the East Otay Mesa Specific Plan area</i> because no new development would occur on the Project site.</p>
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	<p>8. The No Project/No Development Alternative would not <i>provide infrastructure and public facilities in a planned and orderly fashion that will accommodate the planned growth</i> because no new project would occur on the Project site.</p> <p>The Reduced Footprint Alternative represents an alternative that could reduce impacts to sensitive species that occur or have been previously documented on the Project site. That alternative would allow for the Project to attain most of the Project objectives. It would not, however, avoid or substantially reduce impacts to biological resources. Reducing the project footprint would reduce, but not avoid impacts to biological resources; mitigation measures required under the proposed Project would also be required under this alternative.</p> <p>The Reduced Footprint Alternative would reduce the development footprint to place open space easements around areas where San Diego button-celery and variegated dudleya have been previously documented would not avoid or substantially lessen any of the significant impacts of the Project. While any project entitlement would require pre-grading surveys for San Diego button-celery and variegated dudleya, neither species has been recorded on-site for more than a decade.</p> <p>Furthermore, since the last recorded observation, the area that contained the sensitive species have suffered a fire. There is insufficient information to support that increased open space easements as considered under a Reduced Development Footprint alternative would substantially reduce a significant impact, because there is no evidence the impact would actually occur based on the unknown and unverified occurrence of these species. Pursuant to CEQA Guidelines Section 15126.6(f)(3), CEQA does not require that an EIR consider an alternative whose effect cannot be reasonably ascertained. Moreover, the Project has mitigated all impacts to biological resources to less than significant. The easement areas proposed around the sensitive species for this alternative would be isolated and surrounded by urban development. The isolation of these areas, surrounded by urban development and adjacent to a major roadway, without connectivity to a larger open space, would lessen the long-term</p>
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	<p>viability for protecting these areas – particularly where the species have not been documented in recent history.</p> <p>There is insufficient information to support that increased open space easements as considered under a Reduced Development Footprint alternative would substantially reduce a significant impact, because there is no evidence the impact would actually occur with the unknown and unverified occurrence of these species. Pursuant to CEQA Guidelines Section 15126.6(f)(3), CEQA does not require that an EIR consider an alternative whose effect cannot be reasonably ascertained. Moreover, the Project has mitigated all impacts to biological resources to less than significant.</p> <p>Additionally, the isolation of sensitive species is not considered the ideal method of mitigation for these species. Even with the Reduced Development Footprint, the Specific Plan and the General Plan identify the Project site for development. The easement areas would be isolated and surrounded by urban development. The isolation of these areas, surrounded by urban development and adjacent to a major roadway, without connectivity to a larger open space, would lessen the long-term viability for protecting these areas – particularly where the species have not been documented in recent history.</p> <p>Therefore, the Reduced Development Footprint alternative has been rejected as infeasible and was eliminated from detailed consideration in this SEIR.</p> <p>As part of the SEIR for the proposed Project, consideration is given to modifying the development footprint to avoid areas where sensitive plant species occur or have been previously documented on the Project site, in particular, San Diego button-celery and variegated dudleya. Protection of these areas within the Project site was a focus of consideration for a Reduced Development Footprint alternative because these species require new mitigation beyond what was previously required for TM 5139 and mitigation that has already been accomplished. The Reduced Development Footprint alternative would create additional open space easements around areas where these</p>
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	<p>sensitive plant species were documented on the Project site in previous surveys in order to avoid or substantially lessen impacts to the species. The additional open space easement areas could be connected to the existing easement protecting the vernal pools south of Lone Star Road; however, there would not be a connection to the large Open Space Easement north of Lone Star Road, as it would be bifurcated by the road. Lone Star Road is a General Plan Mobility Element Road, and construction of that roadway is a requirement for development within the East Otay Mesa Business Park Specific Plan.</p> <p>In summary, a range of reasonable alternatives to the project which would feasibly attain most of the project objectives are included in the EIR. As discussed above, in order to feasibly attain the project objectives, the entire project site requires grading. Thus, the alternative recommended in the NOP letter would not feasibly attain the project objectives and has not been included in the EIR.</p> <p>F1/S1-8 MSCP Findings dated December 15, 2000, were prepared for the Sunroad Centrum project (TM 5139). The Wildlife Agencies' letter dated November 14, 2003 provided conditional concurrence for the Sunroad Centrum Minor Amendment. The Otay 250 Sunroad project would grade and develop the same area as compared to the previously approved Sunroad Centrum project, for which the prior MSCP findings and Minor Amendment received concurrence.</p> <p>For clarification, the MSCP Findings dated December 15, 2000, state that the Project Site is not within PAMA, but this is not the basis of the BRCA findings. As discussed in the MSCP Findings, approximately 60 acres of the Project site is a BRCA because it is underlain by clay soils that has the potential to support sensitive plant species, including San Diego button celery, variegated dudleya, San Diego barrel cactus, and spreading navarretia. The BRCA contributes to the wildlife corridor associated with Johnson Canyon. Project design minimizes impacts to the BRCA by: (a) developing the least environmentally sensitive section of the site (non-native grassland adjacent to development); and (b) preserving the higher value resources, designated as Major</p>
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	<p>Amendment Area, in the Open Space Easement (Lot 20 of the proposed Tentative Map) (vernal pools, approximately half of the mima mound area, native grassland, and the wildlife corridor of Johnson Canyon). As discussed in the Sunroad Centrum MSCP Findings, approximately 193 acres of the Project site are non-BRCA lands. As discussed above, because the Proposed Project is relying on the prior Minor Amendment and mitigation has been satisfied, the MSCP Findings dated December 15, 2000, are adequate.</p> <p>F1/S1-9The Project proposes an amendment to the East Otay Mesa Business Park Specific Plan to allow development of the Project site as a Mixed-Use Village Core area in accordance with the General Plan. The Proposed Project would grade and develop the same area that was approved under the Sunroad Centrum project (TM 5139), as well as the approved East Otay Mesa Business Park Specific Plan. Additionally, the proposed Project relies on, to the extent possible, the circulation network approved for the East Otay Mesa Business Park Specific Plan and TM 5139.</p> <p>A project EIR was certified for the East Otay Mesa Business Park Specific Plan in 1994, which included analysis of the impacts associated with development of industrial and commercial land uses on the Project site. Since that time, a change of circumstances not previously considered in the East Otay Mesa Business Park Specific Plan EIR has occurred – proposed development of the Project site with a mix of residential, industrial, and commercial land uses. Therefore, pursuant to CEQA Section 15163, an SEIR has been prepared to address changes in circumstances and to provide minor changes and additions to the previously certified EIR in order to make the previous EIR adequately apply to the proposed Project.</p> <p>Impacts have been evaluated in concert with the 1994 EIR, the Supplemental EIR for Sunroad Otay Industrial Subdivision/ Sunroad Centrum project (TM 5139RPL6, ER 98-19-013), and an Addendum to the previously certified Environmental Impact Report for East Otay Mesa Specific Plan (GPA 94-002, Log # 93-19-006) and Supplemental Environmental Impact Report for Sunroad Otay project (TM 5139RPL6, Log # 98-19-013) for the</p>
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	<p>Sunroad Otay Tech Centre (TM 5538) project (98-19-013B). The SEIR updates information included in those documents as appropriate for the proposed Project.</p> <p>Development on the Project site was clustered in 2000 for the Sunroad Centrum project. The footprint for the current proposed Project has not changed from what was approved with the Centrum project. Therefore, the Project remains clustered to the maximum extent possible.</p> <p>As stated in the MSCP Findings dated December 15, 2000, the development is concentrated away from the sensitive resources. Areas not proposed for development are placed in a Biological Open Space to be managed under the Resource Conservation Plan.</p> <p>Furthermore, the proposed development has designed open space that protects the viability of sensitive resources. All (0.21 acre) of the vernal pool habitat (supporting two sensitive plant species and the endangered San Diego fairy shrimp), 1.96 acres of native grassland, and 46.87 acres of non-native grassland will be preserved onsite.</p> <p>F1/S1-10 The 1994 East Otay Mesa Specific Plan EIR and the 2000 Supplemental EIR for the Sunroad Centrum project (TM 5139) preceded the <i>2010 Strategy for Mitigating Impacts to Burrowing Owls in the Unincorporated County</i> (Attachment A to the <i>County of San Diego Report Format and Content Requirements Biological Resources</i>). The certified 2000 SEIR states that the Sunroad Centrum project would result in impacts to non-native grassland; no burrowing owls were identified on the Sunroad Centrum project site. Mitigation for impacts to non-native grassland was implemented as discussed above in response to comment F1/S1-5. It should be noted that the 2010 Strategy states “In EOM, the burrowing owl strategy applies to all development sites that have not received written concurrence on their minor or major amendments from the Wildlife Agencies...” A Minor Amendment for the Sunroad Centrum project was approved in 2003; thus the 2010 Strategy does not apply.</p>
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TABLE 8-3. COMMENT LETTERS AND RESPONSES

RESPONSE TO COMMENTS



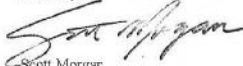
		Ms. Michelle Irace (FWS/CDFW-16B0236-17CPA0128)	4	
F1/ S1-10, (cont.)		of the project, whether or not the site is currently occupied. Additionally, the Wildlife Agencies advocate that since the site has been used by burrowing owls per the Burrowing Owl Survey Report dated June 2016, which shows the site being occupied by burrowing owls somewhere between 2012 and 2014 due to the presence of burrowing owl signs, the project should mitigate in a manner that benefits burrowing owls. Therefore, we recommend that mitigation measure M-BI-13 be revised accordingly. In addition to onsite avoidance, this could also include site enhancements to the already conserved grassland area, such as translocating squirrels and installing burrows. Also, M-BI-5 should include a condition that a burrowing owl translocation plan would be developed and approved by the County and Wildlife Agencies if owls are found during pre-construction surveys.		F1/S1-11 M-BI-5 (pages S-19, 2.2-58, and 7-4), has been revised to include a requirement that a burrowing owl translocation plan be prepared, if owls are found during pre-construction surveys. (See Table 8-2.)
F1/ S1-11				
		We offer the following specific comments and recommendations to assist the County in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources, and to ensure that the project is consistent with all applicable requirements of the MSCP and SAP.		
F1/ S1-12		1. Our NOP comment letter stated that "The SEIR should address whether or not the construction footprint and areas of dedicated conservation have changed from the previously approved project. If any changes to the footprint have occurred, please show them clearly on a map and describe land uses within changed areas." Although it appears that the location of the project boundary has not changed, the resources within have changed per the draft SEIR, most notably being the loss of CSS and associated species, as well as other species that were previously found onsite. The draft SEIR does not contain a map that shows the conversion of the areas that were previously mapped as CSS, and other habitat changes that have taken place since the 2000 FSEIR. Please include a map in the 2017 FSEIR that shows the habitat conversions. Also, please include Table 2-2 from the 2017 Biological Technical Report update to further illustrate the habitat changes that have occurred since earlier approved documents. Furthermore, it is not clear how long the CSS has had to recover since the fire date was not provided. We recommend updating mitigation measure M-BI-12n to require the CSS to be restored as part of the RCP.		F1/S1-12 The coastal sage scrub within the area previously mapped as a mosaic of coastal sage scrub, native grassland, and non-native grassland within the mima-mound area is no longer present. The coastal sage scrub was located generally in the mima mound area that occurs north (within the Biological Open Space) and south of future Lone Star Road This former coastal sage scrub-grassland was consumed by fire on or around May 3, 2013. The entire mima mound area is now vegetated with non-native grassland heavily infested with Russian-thistle. The approximate location of the burn area has been added to Figure 2.2.3, <i>Biological Resources</i> , and occurs within both the area proposed for development, as well as the BOS.
F1/ S1-13				
F1/ S1-14				
F1/ S1-15		2. In our NOP comment letter we requested updated surveys. Many sensitive species that are known within the project boundary or in East Otay Mesa require surveys during a year of adequate rainfall, plant expression, or adult flight season; these include vernal pool species such as San Diego button celery, San Diego and Riverside fairy shrimp, variegated dudleya, and Quino checkerspot butterfly (<i>Euphydryas editha quino</i>). Therefore, surveys done in years without adequate rainfall or species expression are inconclusive. The draft SEIR states, "As required by the 2003 USFWS Biological Opinion, wet season and dry season Riverside fairy shrimp surveys shall be conducted in 2016-2017." In 2016-2017, rainfall was above average and would have been a suitable year to get more conclusive data. If surveys were conducted, an update to the Biological Technical Report with the relevant information should be submitted. If surveys were not conducted, please include a requirement that they be completed prior to construction.		F1/S1-13 Biological Technical Report Table 2-2 has been added to the SEIR as Table 2.2-3.
F1/ S1-16				
		3. The 2016 Quino survey report states that, "Although a medium density population of Quino larval host plant was identified onsite, no larvae or adults of the Quino checkerspot were identified during the 2016 protocol survey. Therefore, any proposed future development of the Sunroad Centrum 250 property will have no effect on the endangered Quino Checkerspot butterfly." Please note that surveys done for other projects in the		F1/S1-14 As stated on page 2.2-50 of the SEIR, the previous coastal sage scrub-grassland matrix in the mima-mound area was consumed by fire on or around May 3, 2013. This area occurs within both the area proposed for development, as well as the BOS. The approximate date of the fire has been added to the SEIR (see table 8-2 above).
				F1/S1-15 Updated surveys have not been completed; however, the Final SEIR includes mitigation measures which require surveys for San Diego button celery, San Diego and Riverside fairy shrimp, and variegated dudleya prior to grading or other ground disturbance. A condition of approval will require Quino checkerspot butterfly surveys prior to grading or other ground disturbance; see response to comment F1/S1-16 below.
				F1/S1-16 As stated in the SEIR, no Quino Checkerspot Butterfly (QCB) critical habitat occurs on-site; the closest critical habitat is located approximately 1,300 feet north and west of the Project boundary. A protocol survey was conducted in 1999 over the northern mima

	<p>mound area. In the 1999 survey, no QCB were detected, and the primary host plant, dot-seed plantain, was not found on-site. In 2001, QCB surveys were conducted again; no QCB were detected. The 2001 report concluded “in that neither larvae nor adults of the QCB were identified during the protocol survey; and, only an extremely limited population of food plants suitable for the QCB were identified within the boundaries of the property, it would appear that development of the Sunroad Centrum Property will have no effect on the endangered Quino Checkerspot Butterfly.” In 2015 and early 2016, primary host plant dot-seed plantain was found on-site where vegetation was recolonizing the disturbed Lone Star Road alignment. Nectar plants, including common goldfields (<i>Lasthenia gracilis</i>), were also observed. Based on the presence of dot-seed plantain, a third protocol survey was conducted in March 2016. Results of the survey were negative for QCB. The 2016 report concluded “although a medium density population of a Quino larval host plant was identified on-site, no larvae nor adults of the Quino Checkerspot were identified during the 2016 protocol survey.</p> <p>Although there are no potentially significant impacts associated with Quino checkerspot butterfly, as a precautionary approach the Applicant has committed to the following condition of approval:</p> <p>Within one year of construction, surveys for Quino checkerspot butterfly shall be conducted prior to grading or other ground disturbance in accordance with the most up to date protocol. If Quino checkerspot butterfly are found, the applicant shall consult with the USFWS to ensure there is no take of the species. The Project Biologist shall prepare the survey report and submit it to the PDS and USFWS. Timing: Prior to grading or other ground disturbance. Monitoring: PDS shall review the survey report for compliance with this condition.</p>
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Ms. Michelle Irace (FWS/CDFW-16B0236-17CPA0128)		5	
F1/ S1-16 (cont.)	<p>vicinity and other reference sites throughout the County show that 2015 and 2016 did not have sufficient Quino adult activity to support a negative finding for Quino presence. However, many areas that were recorded as unoccupied in 2016 were found to be occupied in 2017; therefore, surveys done in 2015 and 2016 should not be considered conclusive. The County does not have incidental take coverage for this species under their approved SAP. Therefore, we recommend that Quino surveys are conducted prior to construction in order to demonstrate that the project site is not occupied by this species. Avoidance measures should be incorporated to ensure that no impacts to Quino checkerspot occur if they are found to be present prior to construction; this includes avoidance of larval host plants. If impacts cannot be avoided, the applicant will need to contact the Service to address potential incidental take of the butterfly. In addition, the restoration plan for the onsite open space should include the host plant for Quino (i.e., <i>Plantago erecta</i>) and a variety of nectaring species in the seed mix.</p>		
	<p>4. M-BI-4 discusses the mitigation for variegated dudleya. Surveys must be done in a year with adequate plant expression at a reference site, or the 2012 Addendum for the 2000 SEIR condition for the project to provide offsite mitigation for 80 variegated dudleya plants should still apply.</p>		
	<p>5. The SEIR should address direct and indirect impacts of the change in use from industrial to mixed use, and the incorporation of residential uses. Although the document addresses some of these aspects, it does not demonstrate avoidance, minimization, and mitigation of the potential impacts. Measure M-BI-12a notes that "In addition, the RCP would require fencing around the entire open space preserve easement to discourage trespassing and illegal dumping." The Biological Technical Report 2017 update mentions that a "a 3-strand wire fence shall be installed along the eastern and western edges of the open space area for a distance of 200 feet north of fencing along Lone Star Road, to deter trespassers without blocking wildlife use." A three-strand wire fence is not sufficient to deter trespass and off road vehicle use. Fencing should surround the entire open space, and be sturdy enough to prevent cutting, but should still allow for wildlife passage. An example of appropriate fencing to block off road vehicle use would be a steel barrier similar to that used on Proctor Valley Road south of SR 94. The RCP should also contain sufficient provisions for enforcement of trespass and illegal use in the Biological Open Space.</p>		
F1/ S1-17 F1/ S1-18	<p>6. We recommend that Measure M-BI-12c be revised to prohibit residences as well as the streetscapes and industrial areas from using invasive plant species.</p>		
	<p>7. The RCP is referenced in various locations in the draft SEIR; however, it is unclear whether the applicant is required to update the RCP to reflect current conditions and requirements. The RCP should be updated to be consistent with current standards, conditions, and San Diego Monitoring and Management Program guidance. For example, Appendix A of the RCP, the Harvest Road Property, Eastern Otay Mesa, County of San Diego, California Fairy Shrimp Translocation and Five Year Monitoring Plan states "The upland control area is the Kenyon Trust Pools (J-23 Complex) managed by The Environmental Trust (TET) (REC Figure 8)," which is no longer a viable reference site option as TET is now defunct. Furthermore, the draft SEIR states that the "The southern vernal pool would be managed as a part of the larger vernal pool complex within the Open Space Easement (Lot 20 of the proposed Tentative Map) to the north. Integrated</p>		
			<p>F1/S1-17. The Resource Conservation Plan (RCP) approved in 2003 will not be revised; however, a condition of approval will require that the seed mix for restoration of the onsite open space include <i>Plantago erecta</i> and a variety of nectaring species.</p>
			<p>F1/S1-18 As shown in Table 8-2, M-BI-4 has been expanded in the SEIR (page 2.2-56) to require that variegated dudleya surveys be conducted in a year with adequate plant expression at a reference site with a 1:1 off-site mitigation for dudleya plants. If surveys are conducted in a year that does not have adequate plant expression, then off-site mitigation for 80 variegated dudleya plants shall be required.</p>
			<p>F1/S1-19 The SEIR concludes that the Project could cause indirect impacts to preserved land in open space through increased human access; increasing competition from exotic species; and alteration of natural drainage (in particular impacting vernal pool hydrology). These indirect impacts are potentially significant and would require mitigation (Impact BI-12). Indirect impacts to preserved land in open space through increased human access would be mitigated to below a level of significance with mitigation measure M-BI-12, as specified in Section 2.2.5 of the SEIR.</p>
			<p>According to the approved RCP (Section 5.0, page 23):</p> <ul style="list-style-type: none">• The southern boundary of the open space area north of Lone Star Road and the vernal pool to the south of Lone Star Road will be fenced using a 4-foot temporary fence installed prior to any clearing or grubbing on the Project site.• The open space area along Lone Star Road (to the north of the easement dedicated for construction of Lone Star Road) shall be fenced with permanent four-foot chain-link fencing.• In addition to the fencing along Lone Star Road, a 3-strand wire fence will be installed along the eastern and western edges of the open space area for a distance of 200 feet remaining open space boundary.• Four-foot chain-link fencing for the vernal pool south of Lone Star Road shall be placed around the perimeter of the vernal pool's watershed.

<p>Ms. Michelle Irace (FWS/CDFW-16B0236-17CPA0128) 6</p> <p>F1/ S1-21, (cont.)</p> <p>management of the southern pool with the rest of the vernal pool complex would ensure the long term viability of this pool and associated plant populations.” Yet the RCP document does not discuss how the southern pool will be hydrologically connected to the northern pools, which may be an important factor in keeping the populations genetically connected to reduce the potential of inbreeding depression in the southern pool. A hydrological study of the watershed supporting this pool should be completed as part of the update to the restoration plan to ensure that this pool will remain viable. The current RCP and associated translocation plans should be updated to current standards and conditions as part of M-BI-12n, which states that RCP must be completed prior to initiation of construction. We recommend that the RCP and any associated restoration plans be updated and submitted to the Wildlife Agencies for review and approval prior to project construction.</p> <p>F1/ S1-22</p> <p>8. Page 11 of the draft SEIR discusses spreading navaretia (<i>Navaretia fossalis</i>) but shows an inconsistency in the species name and observation data described in the document that needs to be clarified. For instance, the document refers to the plant as both spreading navaretia and prostrate navaretia (<i>Navaretia prostrata</i>), which are different species. The document also in one paragraph says, “During the 1991 County of San Diego surveys approximately 12 individuals were detected in the J22 vernal pool complex north of Lone Star Road. It has not been documented on-site since that time.” The following paragraph states that it has not been seen since 1979. Since there is the potential for the seeds to be stored in the seed bank, management for this species should be included in the RCP.</p> <p>F1/ S1-23</p> <p>9. Mitigation Measure M-BI-8 for white-tailed kite (<i>Elanus leucurus</i>) states, “Mitigation requirements for the loss of foraging habitat and potential breeding habitat for white-tailed kite (BI-8) would be met by requiring a qualified biologist to monitor the construction area for suitable nesting habitat (e.g., trees) in the vicinity of construction during the breeding season. The RCP would require that a ‘construction-free zone’ be created around any identified nesting sites until fledging has occurred. The biologist would coordinate with County staff during the monitoring efforts to determine the size of any required construction zone.” The white-tailed kite is a State Fully Protected species Under Fish and Game section 3511, and no take of individuals is allowed. If white-tailed kite is found nesting within the project area during pre-construction surveys, please notify the Department for recommendations to help avoid any potential impacts.</p> <p>We appreciate the opportunity to comment on this draft SEIR. If you have questions or comments regarding this letter, please contact Elyse Levy of the Department at (858) 467-4237, or Susan Wynn of the Service at (760) 431-9440 extension 216.</p> <p>Sincerely,</p> <p>DOREEN STADTLANDER For Karen Goebel Assistant Field Supervisor U.S. Fish and Wildlife Service</p> <p>Digitally signed by DOREEN STADTLANDER Date: 2017.05.08 15:12:33 -07'00'</p> <p> Gail K. Sevrens Environmental Program Manager California Department of Fish and Wildlife</p> <p>cc: State Clearinghouse</p>	<p>These measures have been implemented as part of the RCP. The fencing provisions of the RCP will discourage trespassing and illegal dumping. Signs, in English and Spanish, will be posted every 100 feet along the permanent fencing, stating that any persons found vandalizing or trespassing shall be prosecuted to the full extent of the law. Signs shall also provide information as to why access to the site is restricted, as well as the contact number for both the biological monitor and maintenance contractor so that vandalism or suspicious activity can be reported. The County will be responsible for enforcing trespassing and illegal uses. Additionally, as requested in this comment, mitigation measure M-BI-12 has been revised to require installation of a sturdy fence to prevent access into the western, northern, and eastern edges of the northern Open Space Easement (Lot 20 of the proposed Tentative Map).</p> <p>F1/S1-20 According to the East Otay Mesa Business Park Specific Plan, “[d]rought tolerant, non-invasive, and fire-wise landscaping is required throughout East Otay Mesa.” The County has no control over what private homeowners may plant in their private yards; however, the landscaping plan for common open space will require drought tolerant, non-invasive, and fire wise landscaping.</p> <p>F1/S1-21 As described in response no. F1/S1-5, the Project is not required to update the Resource Conservation Plan (RCP). The RCP received Director approval December 2003. In a letter dated November 14, 2003, the Wildlife Agencies provided conditions concurrence for the Sunroad Minor Amendment, provided certain conditions are met, including the approval of a RCP.</p> <p>The RCP (pages 34 – 35 and Appendix F) addresses integrated management of the southern pools with the vernal pool complex within the Biological Open Space (BOS) and includes removal of non-native species, repairs to fencing and signage, trash removal, monitoring of the vernal pool complex twice a year, visual estimate of exotic plant species cover and vernal pool species cove twice a year, and examination of the health of the pools in terms of increase of vernal pool plant species cover. If monitoring findings reveal a decline in the health of the vernal pool complex, an analysis of the cause(s) of failure shall be prepared and, if</p>
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	<p>determined necessary by the County, remedial action will be recommended. Remedial actions may include revising the maintenance schedule, thereby increasing weeding and monitoring frequency or the preparation of a vernal pool enhancement program that might include additional plantings or restoration activities. The RCP does not state that the pools should be hydrologically connected. In fact, this is not possible as a future County Circulation Element roadway (Lone Star Road) will separate the BOS from the southern pools.</p> <p>F1/S1-22 Revisions have been made to the SEIR (pages 2.2-6, 2.2-9, 2.2-11, 2.2-31) to change references to “prostrate” navarretia to spreading navarretia and to change the reference date to 1991. (See Table 8-2.)</p> <p>Spreading navarretia is known from just three areas within the County including San Marcos, National City, and Otay Mesa. During the 1991 County of San Diego surveys approximately 12 individuals were detected in the J22 vernal pool complex north of Lone Star Road. It has not been documented on-site since that time. Furthermore, because spreading navarretia has not been reported on-site since the 1991 vernal pools survey, it is unlikely to have high potential to occur on-site. Therefore, the County has determined that updates to the RCP are not necessary.</p> <p>F1/S1-23 M-BI-8 (page 2.2-58) has been revised (see Table 8-2) to require that notification be sent to the County and wildlife agencies, if white-tailed kite is found nesting within the Project area during pre-construction surveys.</p>
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Comment Letter S2	Response to Comment Letter S2
<div data-bbox="228 300 333 402"></div> <div data-bbox="210 406 363 438">EDMUND G. BROWN, JR. GOVERNOR</div> <div data-bbox="390 316 867 404">STATE OF CALIFORNIA GOVERNOR'S OFFICE of PLANNING AND RESEARCH STATE CLEARINGHOUSE AND PLANNING UNIT</div> <div data-bbox="919 300 1024 402"></div> <div data-bbox="938 406 1003 438">KEN ALEX DIRECTOR</div> <p data-bbox="317 446 396 467">May 9, 2017</p> <p data-bbox="317 516 508 589">Michelle Irace San Diego County 5510 Overland Ave, Suite 310 San Diego, CA 92123</p> <p data-bbox="317 605 852 643">Subject: Otay 250 Sunroad- East Otay Mesa Business Park Specific Plan Amendment SCH#: 2016031028</p> <p data-bbox="317 659 449 678">Dear Michelle Irace:</p> <p data-bbox="317 695 972 768">The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on May 8, 2017, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.</p> <p data-bbox="317 784 968 837">Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.</p> <p data-bbox="317 854 384 873">Sincerely,</p> <div data-bbox="302 873 543 938"></div> <p data-bbox="317 930 504 963">Scott Morgan Director, State Clearinghouse</p> <p data-bbox="422 1344 827 1385">1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044 (916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov</p>	<p data-bbox="1335 289 1640 378">State Clearinghouse Scott Morgan, Director May 9, 2017</p> <p data-bbox="1073 743 1913 833">S2-1 This letter acknowledges compliance with the State Clearinghouse review requirements for draft environmental documents. No further response is required.</p>

S2-1,
(cont.)

Document Details Report State Clearinghouse Data Base			
SCH#	2016031028		
Project Title	Otay 250 Sunroad- East Otay Mesa Business Park Specific Plan Amendment		
Lead Agency	San Diego County		
Type	EIR Draft EIR		
Description	The project proposes a Specific Plan Amendment (SPA) to the East Otay Mesa Business Park Specific Plan to establish a new Mixed-Use Village Core area within the Specific Plan Area, which would allow for the establishment of a mix employment, retail, and residential emphases. Approval of the project would allow for the entitlement of a maximum of 3,158 dwelling units, 78,000 sf of general commercial uses, and 765,000 sf of employment uses, and approximately 51.3 acres of permanent biological open space.		
Lead Agency Contact			
Name	Michelle Irace		
Agency	San Diego County		
Phone	858-505-6857	Fax	
email			
Address	5510 Overland Ave, Suite 310		
City	San Diego	State	CA Zip 92123
Project Location			
County	San Diego		
City			
Region			
Lat / Long	32° 34' 04.4" N / 116° 56' 41.1" W		
Cross Streets	Otay Mesa Rd/Harvest Rd		
Parcel No.	646-240-3000		
Township	Range	Section	Base
Proximity to:			
Highways	SR-125		
Airports	Brown Field Municipal Airport		
Railways			
Waterways			
Schools			
Land Use	Village-Regional Category, Specific Plan Area-Land Use Designation, S-86-Zoning-Technology Business Park		
Project Issues	Agricultural Land, Air Quality, Archaeologic-Historic, Biological Resources, Economics/Jobs, Flood Plain/Flooding, Geologic/Seismic, Minerals, Noise, Population/Housing Balance, Public Services, Recreation/Parks, Sewer Capacity, Soil Erosion/Compaction/Grading, Traffic/Circulation, Landuse, Aesthetic/Visual, Cumulative Effects		
Reviewing Agencies	Resources Agency, Department of Conservation, Department of Fish and Wildlife, Region 5, Native American Heritage Commission, Cal Fire, Department of Parks and Recreation, Office of Emergency Services, California, Caltrans, Division of Aeronautics, California Highway Patrol, Caltrans, District 11, Department of Housing and Community Development, Regional Water Quality Control Board, Region 9, State Water Resources Control Board, Division of Drinking Water, Air Resources Board, Public Utilities Commission		
Date Received	03/23/2017	Start of Review	03/23/2017 End of Review 05/08/2017

Comment Letter S3

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DISTRICT 11, DIVISION OF PLANNING
4050 TAYLOR ST., M.S. 240
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May 8, 2017

11-SD-125, PM 0.0
11-SD-905, PM 8.5 & 9.5
Otay 250 Sunroad - East Otay Mesa Business Park
Draft SEIR
SCH #2016031028

Ms. Michelle Irace
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 310
San Diego, CA 92123

Dear Ms. Irace:

The California Department of Transportation (Caltrans) has reviewed the Draft Supplement Environmental Impact Report (DSEIR) and the responses to Caltrans Comments dated August 23, 2016, the revised Traffic Impact Analysis (TIA) dated December 08, 2016 and has the following comments:

S3-1

1. Comment on response to Comment 1: Caltrans existing volumes are taken for a 7 day/24 hour period duration. Taking traffic counts for one day does not give a good representation of actual volume counts. If possible, take counts for an additional day (Monday through Thursday). Please refer to the original comment to compare your one day counts with the Caltrans traffic counts, if needed.

S3-2

2. Comment on response to Comment 2: Caltrans agrees that the State Route 125 (SR-125) is much less congested, that it is closest to the proposed development, and that San Diego Association of Governments (SANDAG) reduced toll prices as of June 30, 2012. The reality is that even though SANDAG reduced the toll prices, Caltrans has not seen a 70:30 split in usage by travelers. This could be because the travelers' destination would still take them to either Eastbound (EB) SR-54, EB SR-94, or EB SR-52, which are all congested. Taking the SR-125 would only take them to a congested route and they would have to pay a toll versus taking the SR-905 to the Interstate (I) 805 would still be congested, but they do not have to pay a toll. Caltrans believes that 32% assumption of traffic volumes using Northbound (NB) SR-125 is too high.

S3-3

3. New Comment: The revised TIA, Section 10.0 Project Access and On-Site Circulation, states that "The Ultimate Improvements are not needed to mitigate the Project's

"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"

Response to Comment Letter S3

Department of Transportation, District 11
Maurice Eaton, Chief
May 8, 2017

S3-1 The standard of practice for conducting intersection traffic counts in traffic impact studies in the San Diego region is to count on one weekday. Additional count days are not warranted.

LLG retained a sub-consultant, Accurate Video Counts, Inc. (AVC) to conduct the traffic counts which were conducted on Thursday, May 14, 2015. AVC specializes in conducting traffic counts and has completed thousands of such counts in the past few years. The counts were conducted using video technology. It is not clear during what time period Caltrans' counts were conducted.

LLG checked all existing traffic count sheets in the appendices of the TIA and found that they matched those reported in the TIA. The counts in the TIA were found to be accurate.

S3-2 It is understood that Caltrans believes the 32 percent distribution on SR 125 is high. The distribution is believed to be accurate for the following reasons:


- a. The SR-125 operates with much less congestion as compared to the I-805 which likely makes the SR-125 a preferred route choice.
- b. The SR-125 is located less than one mile from the Project site, as compared to I-805 which is located over five miles from the Project site which would make SR-125 a likelier preferred route choice.
- c. Several segments of I-805 operate at LOS F during the peak hours and are among the most congested in the County.
- d. As the operator of SR-125, SANDAG reduces prices for using the facility by up to 40% to adjust for peak and off-peak periods. Lower tolls function as an inducement for commuters to use SR-125 over other more congested routes like I-805.

S3-3 A sensitivity analysis (i.e., running the analysis assuming an increasing number of dwelling units until the impact is triggered) was conducted to determine the amount of equivalent dwelling units which could be built before the mitigation is required. There is not a physical analysis sheet that can be provided. Table 11-4 is provided below and has been added to Section 2.8 of the SEIR as Table 2-18.


TABLE 11-4
PROJECT MITIGATION PHASING SUMMARY

Impacted Location	EDU Before Impact is Triggered
Intersections	
4. Otay Mesa Road / La Media Road	35 EDU
8. Otay Mesa Road / Harvest Road	35 EDU
9. Otay Mesa Road / Sanyo Avenue	1,980 EDU
10. Otay Mesa Road / Vann Centre Boulevard	1,530 EDU
Street Segments	
Otay Mesa Road: Sanyo Ave to Vann Centre Blvd	60 EDU


<p>Ms. Michelle Irace May 8, 2017 Page 2</p> <p>S3-3 (cont.) Significant Impacts.” Section 11.3 Mitigation Phasing, of the same TIA states that there was an analysis done to determine the number of units that could be built before the significant impact would occur and subsequent mitigation required. Please provide this analysis as well as Table 11-4 which summarizes the number of “Equivalent Dwelling Units” that may be built before each mitigation is required as it was not included in the submitted TIA. This information is very critical to show which sections of the “Ultimate Improvements” will be needed per phase.</p> <p>S3-4 4. The revised Table 11-1 – Summary of Significant Impacts & Mitigation Measures show a list of locations where Direct and Cumulative Impacts are found and their associated mitigation measures. Please be more specific on what sections of these mitigations are direct and which are cumulative. For example, the Otay Mesa Road/La Media Road, there are direct and cumulative impacts. Which of the list of improvements will be done due to a direct impact? Synchro files were provided for the Ultimate Condition, but it does not state anywhere when will the Ultimate Condition be done (before building occupation, and after, etc.).</p> <p>S3-5 5. New Comment: The City of San Diego is proposing to have La Media Road as the ‘preferred’ truck route exit. These additional trucks need to be incorporated into the Cumulative analysis and analyzed. There might be a cumulative traffic impact at this intersection and will need to be mitigated, if affected.</p> <p>S3-6 6. New Comment: The revised Summary of Significant Impacts & Mitigation Measures Table 11-1 location #8 states that the Otay Mesa Road/Harvest Road intersection falls under Caltrans jurisdiction. As of mid-June, 2017 this intersection is anticipated to be relinquished to the County of San Diego.</p> <p>7. Synchro Comments:</p> <p>S3-7 • Comment on response to Synchro Comment 1: Caltrans made modifications to the files in order to be able to simulate. There is back up on SR-905 EB off-ramp to La Media Road into the main lanes based on the simulation of the Synchro files submitted.</p> <p>S3-8 • Comment on response to Synchro Comment 2: Due to the high traffic volumes generated by the proposed development, impact to SR-905 has to be analyzed and mitigated, if affected.</p> <p>S3-9 • Comment on response to Synchro Comment 4: The synchro files show SR-905 EB off-ramp to La Media Road ramp’s queue length extend into the main lanes. This impact needs to be mitigated.</p> <p>S3-10 • New Comment: The Synchro files for the “AM/PM existing conditions” does not show vehicle queue into the main lanes at the SR-905 EB off-ramp to La Media Road. The “AM/PM existing plus project” Synchro files show the SR-905 EB off-ramp to La Media Road traffic backing up into the main lanes. The “AM/PM existing plus project plus mitigation” Synchro files also show the SR-905 EB off-</p> <p><i>“Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability”</i></p>	<p>S3-4 All mitigation for “direct and cumulative” impacts must be implemented per the phasing summary. The Project Mitigation Summary Table has been added as Table 11-4 of the traffic study dated December 8, 2016 and Table 2-18 in the SEIR. The timing of when the mitigation must be implemented is included in the environmental document.</p> <p>S3-5 The applicant has contacted the City and has confirmed that plans are not finalized. Therefore, the analysis as presented will not change.</p> <p>S3-6 As of the date the traffic study was prepared, the Otay Mesa Road/ Harvest Road was under Caltrans jurisdiction and therefore, it is appropriate to assume it is a Caltrans-controlled intersection. Even if it was assumed to be County controlled by June 2017, no change to the analysis would occur</p> <p>S3-7 The variable/measure of effectiveness utilized to determine significant impacts in both the Caltrans and County of San Diego Guidelines is Level of Service (LOS) delay and not queues. Therefore, queues are not used to determine significant impacts. The analysis shows that acceptable LOS B/C is calculated at the La Media Road / SR 905 eastbound ramps intersection (see Table 9-1 of the traffic study). The intersection capacity analysis does not indicate a queue issue. Therefore, no significant impacts are calculated.</p> <p>S3-8 Table 9-3 of the traffic study contains a full analysis of SR 905, which is calculated to operate at LOS C or better under Year 2020 conditions.</p> <p>S3-9 See response no. S3-7.</p> <p>S3-10 See response no. S3-7.</p>
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<p>Ms. Michelle Irace May 8, 2017 Page 3</p> <p>S3-10, (cont.) ramp to La Media Road's traffic queue into the main lanes. This is a Direct Significant Impact and needs to be mitigated at this location.</p> <p>S3-11 New Comment: Comparing the Synchro AM & PM existing conditions plus project with the AM & PM existing plus project plus mitigation, the SR-905 EB off-ramp to La Media Road still backs up into the main lanes.</p> <p>S3-12 New Comment: The revised Summary of Significant Impacts & Mitigation Measures Table 11-1 has changed from the previous TIA dated August 2015. The synchro files "Existing AM/PM plus project mitigation" are still showing the improvements on Harvest Road/Otay Mesa Road from the previous mitigations. The new mitigations include less improvements to this intersection.</p> <p>S3-13 New Comment: The mitigation on Sanyo Road/Otay Mesa Road and Vann Centre Blvd./Otay Mesa Road are not included in the synchro files "Existing AM/PM plus project mitigation." These mitigations need to be included in order to analyze the entire transportation network.</p> <p>S3-14 New Comment: The improvements on Paseo de las Americas/Siempre Viva Road in the synchro files "Existing AM/PM plus mitigations" do not match the mitigations of the revised table.</p> <p>If you have any questions, please contact Mark McCumsey at (619) 688-6802 or by email at mark.mcumsey@dot.ca.gov</p> <p>Sincerely,  MAURICE EATON, Chief Development Review Branch</p> <p>c: Benjamin Mills, County of San Diego John Boorman, LLG Engineers Amelia Giacalone, LLG Engineers</p> <p><small>"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"</small></p>	<p>S3-11 See response no. S3-7.</p> <p>S3-12 The August 2015 TIA recommends the following improvements at the intersection of Otay Mesa Road / Harvest Road:</p> <ul style="list-style-type: none"> • Southbound movement: two dedicated right turn lanes with overlap phasing and a shared thru / left turn lane. • Westbound movement: one dedicated right turn lane, three thru lanes and one dedicated left turn lane. • Northbound movement: one shared thru / right turn lane and one dedicated left turn lane. • Eastbound movement: one shared thru / right turn lane, two dedicated thru lanes and two dedicated left turn lanes. <p>The December 2016 TIA recommends the following impact mitigation improvements at the intersection of Otay Mesa Road / Harvest Road:</p> <ul style="list-style-type: none"> • Southbound movement: one dedicated right turn lane with overlap phasing and a shared thru / left turn lane. • Westbound movement: one shared thru / right turn lane, one dedicated thru lane and one dedicated left turn lane. • Northbound movement: one shared thru / right turn / left turn lane. • Eastbound movement: one shared thru / right turn lane, one dedicated thru lane and two dedicated left turn lanes. <p>This is the lane configuration that was assumed when conducting the post-mitigation analysis for the December 2016 study. The commenter should also review the ultimate access improvements shown in Figure 10-2 of the TIA.</p> <p>S3-13 The Synchro files in Appendix J of the traffic study were checked by the consulting traffic engineer and it was confirmed that reports for Sanyo Road/Otay Mesa Road as well as Vann Centre Blvd./Otay Mesa Road are included (See Intersection Analyses No. 9 and 10 of Appendix J of the traffic study). The mitigation measures are accurately included per Table 11-2 of the traffic study dated December 8, 2016.</p>
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	<p>S3-14 Post-mitigation analysis was included for direct Project impacts as outlined in Table 11-2 of the traffic study. Since the impact at Paseo de las Americas / Siempre Viva Road was a cumulative impact, a post mitigation analysis is not included in Table 11-2 of the traffic study.</p>
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	Comment Letter L1	Response to Comment Letter L1
	 <p>401 B Street, Suite 800 San Diego, CA 92101-4231 (619) 699-1900 Fax (619) 699-1905 sandag.org</p> <p>May 5, 2017</p> <p>File Number 3300300</p> <p>Ms. Michelle Irace Planning & Development Services County of San Diego 5510 Overland Avenue, Suite 310 San Diego, CA 92123</p> <p>Dear Ms. Irace:</p> <p>SUBJECT: Otay 250 – Sunroad East Otay Mesa Business Park Specific Plan Amendment Draft Supplemental Environmental Impact Report</p> <p>Thank you for the opportunity to comment on the County of San Diego's Otay 250 – Sunroad East Otay Mesa Business Park Specific Plan Amendment Draft Supplemental Environmental Impact Report (SEIR). The San Diego Association of Governments (SANDAG) is submitting comments based on the policies included in San Diego Forward: The Regional Plan. These policies will help provide people with more travel and housing choices, protect the environment, create healthy communities, and stimulate economic growth. SANDAG's comments are submitted from a regional perspective emphasizing the need for better land use and transportation coordination.</p> <p>Smart Growth and Transportation Demand Management</p> <p>Please consider developing smart growth concepts and a transportation demand management (TDM) plan for the Otay 250 – Sunroad East Otay Mesa Business Park Specific Plan and SEIR. The SANDAG <i>Smart Growth Toolbox</i> and <i>Smart Growth Design Guidelines</i> provide planning, visualization, and financial tools to show how smart growth principles can be put into practice.</p> <p>A custom TDM plan can help to mitigate traffic congestion and greenhouse gas emissions within and around the Specific Plan area, and could aid in reducing emissions impacts below the County's screening-level thresholds. Examples of TDM measures to consider include:</p> <ul style="list-style-type: none"> • Provision of enhanced bicycle and pedestrian facilities that connect residents, tenants, and employees to nearby commercial areas, recreation areas, and existing and future transit services. • Encourage employers to offer commuter benefit programs for their employees. Commuter benefit programs offer incentives to employees who use transportation alternatives to driving alone. The SANDAG TDM program, iCommute, can assist employers with developing customized commuter benefit programs and promoting regional commuting services 	<p>San Diego Association of Governments (SANDAG) Seth Litchney, Senior Regional Planner May 5, 2017</p> <p>L1-1 This comment acknowledges SANDAG's receipt of the Draft SEIR for review and comment, states that review was based on the San Diego Forward: The Region Plan, and briefly summarizes the purpose of policies included in San Diego Forward. This comment does not address the adequacy of the EIR, therefore, no further response is required.</p> <p>L1-2 The Specific Plan Amendment has been modified to include a requirement that Transportation Demand Management (TDM) plans be considered at each Site Plan Review for future development. The requirement for a TDM at Site Plan Review will allow the development-specific TDM to be tailored to the specifics of the actual land use (commercial, business tech, etc.).</p>

<p>L1-2, (cont.)</p>	<p>to their employees. This includes the SANDAG Vanpool Program, which offers a subsidy of up to \$400 per month for eligible vans, the Guaranteed Ride Home service, online ridematching and trip planning, support for taking transit, and bike education and encouragement programs. More information on regional TDM programs can be accessed through iCommuteSD.com.</p> <ul style="list-style-type: none"> Given the proximity to the forthcoming South Bay Bus <i>Rapid</i> Transit service, offer subsidized transit passes for residents and employees. Promote transit by offering interactive trip planning kiosks in employment areas that display real-time information about regional transit service and other transportation options. Implement parking management strategies that encourage transportation alternatives and maximize the parking supply, including shared parking among land uses, priced parking and parking cash-out, and designated parking for carpools and vanpools at employment sites. <p>SANDAG has a number of additional resources that can be used for additional information or clarification on smart growth and TDM. These can be found on the SANDAG website at sandag.org/figr:</p> <ul style="list-style-type: none"> SANDAG Regional Parking Management Toolbox Riding to 2050, the San Diego Regional Bike Plan Regional Multimodal Transportation Analysis: Alternative Approaches for Preparing Multimodal Transportation Analysis in Environmental Impact Reports Planning and Designing for Pedestrians, Model Guidelines for the San Diego Region Integrating Transportation Demand Management into the Planning and Development Process – A Reference for Cities <p>Air Quality</p> <p>There are two minor clarifications relating to air quality within the Draft SEIR:</p> <ul style="list-style-type: none"> On Page 2.1-4, please see the updated text below regarding the San Diego Air Basin's non-attainment classification for the 2008 ozone standard: <p>"Effective June 3, 2016, the U.S. Environmental Protection Agency (U.S. EPA) determined that 11 areas, including the San Diego air basin, failed to attain the 2008 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2015, and thus are reclassified by operation of law as "Moderate" for the 2008 ozone NAAQS. States containing any or any portion of these new Moderate areas must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to 2008 ozone nonattainment areas classified as Moderate by January 1, 2017. The San Diego Air Pollution Control District submitted an SIP revision addressing Moderate area requirements to the Air Resources Board (ARB). The revised SIP was adopted by ARB on March 23, 2017, and will be submitted to the U.S. EPA."</p> <ul style="list-style-type: none"> On Page 2.1-9, the Regional Air Quality Strategy was most recently published in 2016. 	<p>L1-3 This revision has been made in the Final SEIR (page 2.1-5) (see Table 8-2 above).</p> <p>L1-4 This date has been corrected in the Final SEIR (page 2.1-9) (see Table 8-2 above).</p>
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<p>When available, please send any additional environmental documents related to this project to:</p> <p>SANDAG Attention: Intergovernmental Review 401 B Street, Suite 800 San Diego, CA 92101</p> <p>We appreciate the opportunity to comment on County of San Diego's Otay 250 – Sunroad East Otay Mesa Business Park Draft SEIR. If you have any questions, please contact me at (619) 699-1943 or via email at seth.litchney@sandag.org.</p> <p>Sincerely,</p>  <p>SETH LITCHNEY Senior Regional Planner</p> <p>SLI/KHE/abar</p> <p>3</p>	
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	Response to Comment Letter L2
<div data-bbox="184 207 394 414">  </div> <div data-bbox="399 267 1033 308"> <p>San Diego County Archaeological Society, Inc.</p> </div> <div data-bbox="466 311 749 334"> <p>Environmental Review Committee</p> </div> <div data-bbox="554 357 659 381"> <p>7 May 2017</p> </div> <div data-bbox="772 214 945 235"> <p>Comment Letter L2</p> </div> <div data-bbox="214 449 753 566"> <p>To: Ms. Michelle Irace Department of Planning and Development Services County of San Diego 5510 Overland Avenue, Suite 310 San Diego, California 92123</p> </div> <div data-bbox="214 586 968 680"> <p>Subject: Draft Supplemental Environmental Impact Report Otay 250 – Sunroad East Otay Mesa Business Park Specific Plan Amendment PDS2015-SPA-15-001, PDS2015-GPA-15-008, PDS2015-REZ-15-007, PDS2015-TM-5607, Log No. PDS2015-ER-15-98-190-13G</p> </div> <div data-bbox="214 724 348 748"> <p>Dear Ms. Irace:</p> </div> <div data-bbox="214 771 989 818"> <p>I have reviewed the cultural resources aspects of the subject DSEIR on behalf of this committee of the San Diego County Archaeological Society.</p> </div> <div data-bbox="214 839 970 885"> <p>Based on the information contained in the DSEIR and its Appendix D, we have the following comments:</p> </div> <div data-bbox="58 906 1001 1370"> <p>L2-1 1. As SDCAS has consistently noted, failure to curate the collections (excluding any human remains and directly associated burial items) results in a failure to complete the mitigation of impacts to cultural resources. Per CEQA, it thus requires a statement of overriding considerations to explain the failure to do so.</p> <p>L2-2 2. Also as we have consistently noted, requiring the project archaeologist to <i>not</i> curate the collections results in potentially exposing that archaeologist to the Register of Professional Archaeologists' grievance process and, ultimately, suspension. That could, in turn, possibly expose the County to legal action.</p> <p>L2-3 3. If collections are to be turned over rather than curated, the project archaeologist must be permitted to make 3D laser scans of any of the collection artifacts, at his/her own discretion. Those scans must be verified by producing at least one proof "print", and the digital files and a proof print shall be curated at the curation facility meeting 36CFR79 requirements.</p> <p>L2-4 4. The third bullet under "Disposition of Cultural Material" in M-CR-2, on page 2.3-22 of the DSEIR, has an ambiguity which requires resolution. The wording needs to make clear that the material referred to is any material not otherwise collected as part of the monitoring process. That is, if the project archaeologist chooses, for any reason, not to include any items</p> <p>P.O. Box 81106 San Diego, CA 92138-1106 (858) 538-0935</p> </div>	<p>Response to Comment Letter L2</p> <p>San Diego County Archaeological Society, Inc. James W. Royle, Jr., Chairperson May 7, 2017</p> <p>L2-1 The County is aware that the San Diego County Archaeological Society (SDCAS) does not agree with the repatriation of prehistoric (Native American) cultural materials and that to do so would cause an impact requiring overriding considerations. The mitigation measures related to the disposition of prehistoric materials includes curating artifacts at a San Diego curation facility or Tribal curation facility that meets federal standards per 36 CFR Part 79, or alternatively have been repatriated to a culturally affiliated tribe. Historic materials may only be curated at a San Diego curation facility and may not be repatriated or curated at a Tribal curation facility. CEQA identifies that curation (§15126.4b) may be an appropriate mitigation measure should data recovery be implemented but does not require curation. In addition, the NOP post-dates the requirement for Assembly Bill 52 (AB-52) consultation and the consideration of tribal cultural resources. AB-52 consultation requires that culturally appropriate mitigation measures be considered and included in the environmental document. As a result of consultation, repatriation was requested by Viejas due to the sensitivity of the Project site.</p> <p>All scientific information is retained through the information provided in the cultural study and there are no unmitigated impacts. As such, overriding considerations are not required. No changes were made to the EIR as a result of this comment.</p> <p>L2-2 The comment is related to RPA standards and is not at variance with the environmental document. No changes were made to the EIR as a result of this comment.</p> <p>L2-3 The comment is related to the 3-D scanning of artifacts that were collected as part of the Project analysis and/or monitoring program. The cultural sites associated with the Project were previously tested by Gallegos and Kyle (1992) and Byrd et al. (1994). As such, additional testing was not conducted by Gallegos in 2008 or</p>

	<p>by the current efforts of ASM (2016). Should artifacts be identified during monitoring, it is up to the discretion of the Project Archaeologist as to whether 3-D scanning would be conducted. 3-D scanning would be appropriate for artifacts that are considered unusual or of research value. Human remains and associated grave goods would inappropriate for 3-D scanning as they are considered sacred by the Native American community.</p>
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L2-4,
(cont.)

L2-5

as part of the collection to be taken from the field for analysis, the Native American monitor is free to rebury them onsite. The present wording could unintentionally set up an "I saw it first" competition between the monitors and thus diminish the overall mitigation of impacts.

5. Other than the above, we concur with the impact analysis and mitigation measures.

SDCAS appreciates the opportunity to participate in the environmental review process for this project.

Sincerely,




James W. Royle, Jr., Chairperson
Environmental Review Committee

cc: ASM Affiliates
SDCAS President
File

P.O. Box 81106 • San Diego, CA 92138-1106 • (619) 538-0935

L2-4 The comment identifies an ambiguity regarding the disposition of cultural materials and requests that only those materials not collected for curation be allowed to be repatriated. Under the Disposition of Cultural Materials discussion on page 2.3-22 of the SEIR, prehistoric cultural materials may be curated at a San Diego curation facility or Tribal curation facility, or may alternatively be repatriated to a culturally affiliated tribe. The subsection related to the repatriation within the Project site has been revised to indicate that repatriation would occur after artifact analysis. Also see response to comment L2-1.

L2-5 This comment states that, other than comments expressed in the letter, SANDAG agrees with the impact analysis and mitigation measures presented in the SEIR. This comment does not address the adequacy of the EIR, therefore, no further response is required.

<div data-bbox="382 191 808 305">  </div> <div data-bbox="760 207 957 237"> <p>Comment Letter O1</p> </div> <div data-bbox="543 337 659 362"> <p>May 8, 2017</p> </div> <div data-bbox="382 360 823 386"> <p>Via email only to: Michelle.Irace@sdcounty.ca.gov</p> </div> <div data-bbox="186 404 627 539"> <p>Michelle Irace Land Use Environmental Planner III Department of Planning and Development Service COUNTY OF SAN DIEGO 5510 Overland Avenue, Suite 310 San Diego, CA 92123</p> </div> <div data-bbox="247 557 1014 628"> <p>Re: DEIR Otay 250- Sunroad East Otay Mesa Business Park Specific Plan Amendment; PDS2015-SPA-15-001, PDS2015-GPA-15-008, PDS2015-REZ-15-007, PDS2015-TM- 5607, LOG NO. PDS2015-ER-15-98-190-13G.</p> </div> <div data-bbox="186 646 321 670"> <p>Dear Michelle:</p> </div> <div data-bbox="186 690 987 760"> <p>Marathon Land & Cattle Company has received the Notice of Availability of the Draft Supplemental EIR ("DEIR" dated March 23, 2017 for the above-entitled project. We have the following comments.</p> </div> <div data-bbox="65 878 138 982"> <p>O1-1 O1-2 O1-3</p> </div> <div data-bbox="216 777 1014 980"> <ol style="list-style-type: none"> 1. The DEIR indicates that direct impacts to intersections 4, 16& 22 will be mitigated by fair share payments. CEQA requires specific, certain, reasonable and enforceable mitigation measures. However, the County does not have Capital Improvement Projects identified nor accounts set up for each of the fair-share-funded mitigation measures for the impacted intersections. 2. The DEIR does not possible buffers between the propose residential uses and the off-site non-residential uses as required by the General Plan Noise Element. 3. The DEIR does not address how the ADT transfer table will comply with SB 743's VMT analysis. </div> <div data-bbox="186 998 942 1047"> <p>If you have any questions or require clarification to these comments, please contact the undersigned at your convenience.</p> </div> <div data-bbox="186 1066 573 1114"> <p>Sincerely, MARATHON LAND & CATTLE COMPANY</p> </div> <div data-bbox="186 1118 462 1243">  <p>Mark Kennedy Corporate Counsel mark@marathonsd.com</p> </div> <div data-bbox="306 1403 898 1424"> <p>10108 KNEELAND ROAD, LAKESIDE, CA 92040-2740 TEL: (619) 276-4401 FAX: (619) 276-0717</p> </div>	<div data-bbox="1266 191 1701 222"> <p>Response to Comment Letter O1</p> </div> <div data-bbox="1260 251 1713 344"> <p>Marathon Land & Cattle Company Mark Kennedy, Corporate Counsel May 8, 2017</p> </div> <div data-bbox="1062 378 1925 501"> <p>O1-1 These intersections with direct impacts and fair-share payments are in the jurisdiction of the City of San Diego, which has Facilities Benefit Assessment/Development Impact Fee accounts set up for these improvements.</p> </div> <div data-bbox="1062 544 1925 1003"> <p>O1-2 It is unclear to which requirement of the General Plan Noise Element this comment is directed. General Plan Noise Element Goal N-2, Protection of Noise Sensitive Uses, and Policies N-2.1 and N-2.2 relate to this comment. Policy N-2.1 states, "Require an acoustical study to identify inappropriate noise level where development may directly result in any existing or future noise sensitive land uses being subject to noise levels equal to or greater than 60 dBA CNEL and require mitigation for sensitive uses in compliance with the noise standards listed in Table N-2." Policy N-2.2 states, "Assure that in developments where the exterior noise levels on patios or balconies for multi-family residences or mixed-use developments exceed 65 CNEL, a solid noise barrier is incorporated into the building design of the balconies and patios while still maintaining the openness of the patio or balcony."</p> </div> <div data-bbox="1131 1031 1925 1399"> <p>The SEIR states that the Project site is currently zoned S-88 for agricultural use and is subject to the most restrictive 45 dBA requirements, which is the same requirement for residences. Thus, existing land uses adjacent to the Project site are currently restricted to noise level limits of 50 dBA Leq from 7:00 a.m. to 10:00 p.m. and 45 dBA Leq from 10:00 p.m. to 7:00 a.m. at property lines. With and without the Project, the 45 dBA requirement would continue to apply to the site. Therefore, the proposed Project's residential uses would not be subject to noise limits higher than the allowable limits for residential uses by off-site land uses. The Project would not require neighboring land uses to adopt a more restrictive property standard or the use of</p> </div>
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	<p>buffers between the proposed residential uses and the off-site non-residential uses.</p> <p>O1-3 The ADT Transfer table is based on average daily traffic associated with the various land uses that will develop on the Project site. Vehicle miles travel pertains to travel within a region and are not directly correlated with specific land use but rather transportation networks and land use patterns. The purpose of the ADT Transfer table provides a control such that the traffic associated with the Project is not exceeded, even with refinements in development intensities and densities in the future. Further, the pending changes required by SB 743 are not final and their implementation by a lead agency haven't been fully established.</p>
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May 8, 2017

Via E-Mail and Federal Express

Michelle Irace
San Diego County
Planning & Development Services
5510 Overland Avenue, Suite 310
San Diego, CA 92123
Michelle.Irace@sdcounty.ca.gov

Re: Draft SEIR for Otay 250 Sunroad – East Otay Mesa Business Park
Specific Plan Amendment SCH No. 2016031028; Project Numbers
PDS2015-SPA-15-001, PDS2015-GPA-15-008, PDS2015-REZ-15-
007, PDS2015-TM-5607; LOG No. PDS2015-ER-15-98-190-13G

Dear Ms. Irace:

This firm represents the Endangered Habitats League (“EHL”) in connection with the proposed Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment Project (“Project”) and its associated Draft Supplemental Environmental Impact Report (“DEIR”). EHL is southern California’s only regional conservation organization and a long-term stakeholder in County planning efforts. It and its members have a direct stake in maintaining the health of Southern California’s unparalleled biodiversity and the native ecosystems that support it. EHL is deeply concerned about the far-ranging environmental impacts that would result from implementation of the proposed Project.

After reviewing the DEIR, we have concluded that the Project fails to comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq. As described below, the DEIR violates CEQA because it fails to properly analyze the Project’s environmental impacts, in particular its impacts on climate change. It also fails to include adequate mitigation for the Project’s significant climate change impacts. Such fundamental errors undermine the integrity of the DEIR.

Response to Comment Letter O2

Endangered Habitats League
Joseph Petta - Shute, Mihaly & Weinberger LLP
May 8, 2017

O2-1 The County disagrees that the SEIR is inadequate or fails to properly analyze the Project’s environmental impacts and provide adequate mitigation relative to climate change. The *Greenhouse Gas Evaluation* prepared by Scientific Resources Associated (February 3, 2017) for the proposed Project, included as Appendix E of this SEIR, relies on an efficiency metric based on the future statewide GHG emissions reductions goals divided by the statewide service population as a guideline for evaluating potential GHG emissions impacts. Since the time that the *Greenhouse Gas Evaluation* was prepared and the Draft SEIR was issued for public review, it has been determined that the service population efficiency metric cannot be used as the appropriate guideline. Therefore, the analysis in Section 2.4 of the Final SEIR relies on CEQA’s guidance relative to evaluating GHG emissions.

Pursuant to Section 15064.4(b) of the State CEQA Guidelines, when addressing the significance of impacts from GHG emissions on the environment, the following factors were considered:

- (1) The extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting;
- (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and
- (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

The County does not currently have thresholds of significance for evaluating GHG emissions impacts. Additionally, the County has not yet adopted a Climate Action Plan for the reduction of GHG emissions; although the Draft CAP and Draft SEIR were released for public review in August 2017. Therefore, the analysis in the Final EIR relies on the first guideline outlined above: *the extent to which the project may increase or reduce GHG emissions as compared to the existing*

O2-1

	<p><i>environmental setting</i> as the guideline for evaluating GHG emissions impacts.</p> <p>With the revisions incorporated into the Final SEIR, the SEIR properly analyzes the proposed Project's impacts on climate change. Section 2.4 of the SEIR includes a detailed analysis of the proposed Project's GHG emissions. The Final SEIR provides an adequate analysis potential impacts associated with GHG emissions, in conformance with CEQA Guidelines Appendix G and Section 15064.4(b). In addition, subsequent to publishing and public review of the Draft SEIR, the Project applicant has voluntarily committed to achieve carbon neutrality. As concluded in Section 2.4.2 of the Final SEIR, the Project would result in significant GHG emissions impacts. To fully mitigate the project's impacts relative to GHG emissions, mitigation measures have been expanded to include a requirement for net zero emissions from future developments within the Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment area.</p> <p>As detailed in Section 2.4.5 within the Final SEIR, CARB recommends that lead agencies prioritize on-site design features and direct investments in GHG reductions in the vicinity of the project. CARB also recommends that where further project design or regional investments are infeasible or not proved to be effective, it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits issued by a recognized and reputable accredited carbon registry. Examples of off-site mitigation can include, among other mechanisms, the purchase of verifiable carbon "offsets" from a carbon registry that will undertake mitigation.</p> <p>Table 2.4-7 lists the proposed project's on-site project design features to reduce GHG emissions. Based on the emissions inventory data presented in Table 2.4-8, the project will result in 37,554 MT CO₂E with the incorporation of project design features. Note that this calculation under-represents the percentage of GHG emissions reductions that will be achieved through on-site features and measures because, as provided in Table 2.4-7, many of the features and measures conservatively were not assigned quantitative emissions reductions values.</p>
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	<p>Each phase of the project (i.e., implementing site plans) would be required to undergo a site plan review, and at that time, shall require the development to have net zero emissions. Because the project would result in a significant impact, mitigation measures (as fully detailed in Section 2.4 of the Final EIR) would reduce GHG impacts to less than significant.</p> <p>With mitigation, the Project would result in net zero GHG emissions and, therefore, would be consistent with the goals of Executive Order B-30-15 and SB 32 that requires the state to reduce its GHG emissions to 40 percent below 1990 levels by 2030. Thus, GHG emissions impacts would be reduced to below a level of significance.</p>
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Page 2

The Environmental Impact Report ("EIR") is "the heart of CEQA." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 ("Laurel Heights I") (citations omitted). It "is an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' Because the EIR must be certified or rejected by public officials, it is a document of accountability." *Id.* (internal quotations and citations omitted).

O2-2

Where, as here, the environmental review document fails to fully and accurately inform decisionmakers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of either statute. *See* Pub. Res. Code § 21061 ("The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."). As a result of the DEIR's numerous and serious inadequacies, there can be no meaningful public review of the Project. San Diego County must revise and recirculate the DEIR in order to permit an adequate understanding of the environmental issues at stake.

I. The DEIR's Analysis of and Mitigation for the Climate Impacts of the Proposed Project Are Inadequate.

O2-3

The discussion of a proposed project's environmental impacts is at the core of an EIR. *See* Cal. Code Regs., tit. 14 (CEQA "Guidelines") §15126.2(a) ("[a]n EIR shall identify and focus on the significant environmental effects of the proposed project") (emphasis added). As explained below, the DEIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to "inform the public and its responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 (citation omitted) ("Laurel Heights II"). To do so, an EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational mandate.

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O2-2 The County disagrees that the SEIR's analysis fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the proposed Project. With the revisions incorporated into the Final SEIR, the SEIR fully and accurately informs decision makers and the public with detailed information about the effect of the proposed Project on climate change. Section 2.4 in the Final SEIR has been revised in regard to significance criteria and mitigation measures, as discussed in response to comment O2-1. The Final SEIR accurately identifies the significant impact associated with GHG emissions and provides mitigation measures that, in concert with the Project's design features presented in the Final SEIR, would reduce the GHG impacts to less than significant. As discussed in response to comment O2-1 above, the Project applicant has voluntarily agreed to condition the proposed Project to further reduce GHG emissions to a net-zero level. The addition of mitigation measures and other text revisions to Section 2.4 do not constitute significant new information. The new information clarifies and amplifies information in the SEIR. A new significant impact would not result from the project or from a new mitigation measure proposed to be implemented. A substantial increase in the severity of an environmental impact would not result. Thus, in accordance with CEQA, Section 15088.5, the Final SEIR does not require recirculation.

O2-3 Comment O2-3 is a restatement of the law and does not pertain to the adequacy of the EIR. Furthermore, the County disagrees that the SEIR's analysis fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the proposed Project. Refer to responses to comments O2-1 and O2-2 above. The Final SEIR includes feasible mitigation measures to reduce GHG emissions associated with the proposed Project to net zero.

<p>Michelle Irace May 8, 2017 Page 3</p> <p>O2-3 Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines §15126.4. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects” Pub. Res. Code § 21002.</p> <p>O2-4 The proposed Project has the potential to significantly contribute to GHG emissions, yet neither the public nor decisionmakers have any way of knowing the magnitude of this impact. As we explain below, the DEIR simply fails to provide detailed, accurate information about the Project’s significant environmental impacts or to analyze mitigation measures that would reduce or avoid such impacts.</p> <p>O2-5 A. The DEIR Fails to Adequately Analyze and Mitigate Climate Change Impacts.</p> <p>The DEIR concludes that the Project would result in significant impacts related to climate change but that those impacts would be reduced to less than significant levels with proposed mitigation measures. As detailed below, the DEIR’s analysis is fundamentally flawed. It unlawfully relies on the County’s July 2016 GHG guidance, which itself was recently ruled to be in violation of CEQA in <i>Sierra Club v. County of San Diego</i>, San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL. As directed by the <i>Sierra Club</i> case and the County General Plan, the DEIR should have analyzed climate impacts pursuant to thresholds developed under the County’s Climate Action Plan (“CAP”). But the County has failed to adopt a legally adequate CAP. In addition, the DEIR’s analysis violates the California Supreme Court’s direction in <i>Center for Biological Diversity v. California Dept. of Fish & Wildlife</i> (2015) 62 Cal.4th 204 (“<i>Newhall Ranch</i>”) because it relies on statewide thresholds without any evidence that they are relevant to individual projects. The DEIR’s proposed mitigation—based primarily on installation of solar photovoltaic panels on rooftops of new homes—fails to sufficiently mitigate for GHG emissions resulting from the Project’s increase in VMT.</p> <p>1. The County May Not Rely On Its July 2016 GHG Guidance Recommending Use of the Efficiency Metric to Determine Significance.</p> <p>The DEIR analyzes GHG impacts based on guidance that its Planning and Development Services department issued in July 2016. See DEIR at 2.4-7 (failing to mention the Guidance by name but relying on its recommended thresholds verbatim). This guidance sets forth the County’s recommended CEQA threshold of significance for GHG emissions. See County of San Diego, 2016 Climate Change Analysis Guidance,</p> <p style="text-align: right;">SHUTE, MIHALY & WEINBERGER LLP</p>	<p>O2-4 The County disagrees that the public and decision makers have no way of knowing the magnitude of the impact. Please see the response to comment O2-1. The County evaluated the proposed Project’s GHG emissions impacts by first calculating the Projects sources of greenhouse gas, as discussed in Section 2.4.2.5 of the Draft SEIR. As shown in Table 2.4-8 in the SEIR, the proposed Project’s total CO₂ equivalent emissions were calculated to be 37,554 MTCO₂e per year. After calculating the proposed Project’s emissions, the County considered the following factors, which are outlined in CEQA Guidelines 15064.4 in the Final SEIR: (1) whether the project increases or reduces GHG emissions compared to the existing setting; (2) where the project emissions exceeded an applicable threshold of significance; and (3) whether the project complies with applicable regulations, plans or policies that have been adopted to reduce GHG emissions. As discussed in Section 2.4 of the Final SEIR, the proposed Project would have a potentially significant impact. Mitigation measures were then set forth in order to reduce the impact to less than significant. .</p> <p>O2-5 The commenter is correct in that the Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of <i>Sierra Club v. County of San Diego</i>; and the Final SEIR changes no longer relies on the County’s 2016 Guidelines for its significance analysis but rather uses CEQA Guidelines Section 15064.4.</p> <p>The commenter incorrectly states that the SEIR should have analyzed climate impacts pursuant to thresholds developed under a County Climate Action Plan (CAP). Please refer to Section 2.4.2.1 of the Final EIR.</p> <p>Pursuant to Section 15064.4(b) of the State CEQA Guidelines, when determining the significance of impacts from GHG emissions on the environment, the following factors should be considered:</p> <p>(1) The extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting; (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and</p>
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	<p>(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.</p> <p>The County cannot consider factor (2), because the County does not currently have thresholds or guidelines for significance for GHG emissions. The County adopted a Guidance Document in 2016. However, the Superior Court in <i>Sierra Club v. County of San Diego</i>, Case No. 2012-0101054/<i>Golden Door Properties LLC v. County of San Diego</i>, Case No. 2016-0037402 (April 28, 2017) ruled that the 2016 Guidance Document and its "County Efficiency Metric" may not be used to provide the basis for CEQA review of GHG impacts for development proposals within the unincorporated County lands. Factor (3) is also not considered due to the parallel processing of the proposed project and the County's Climate Action Plan (CAP). Although the CAP was very recently adopted by the Board of Supervisors on February 14, 2018, it has been determined that a standalone analysis independent of the Draft CAP is more appropriate at this time. Therefore, in the context of this project, when determining the significance of GHG emissions, the County may only use factor (1): the extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting.</p> <p>O2-6 The efficiency metric analysis previously included in the Draft SEIR has been removed in the Final SEIR. See response to comment O2-1.</p>
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	<p>Michelle Irace May 8, 2017 Page 4</p> <p>O2-7 { July 29, 2016 (“July 2016 GHG guidance”), attached as Exhibit 1. However, the July 2016 GHG guidance and thresholds were not developed through a public review process or adopted by ordinance, resolution, rule, or regulation, as required by CEQA. Guidelines § 15064.7. For this among other reasons, the July 2016 GHG guidance is currently the subject of four pending lawsuits, including one in which the San Diego County Superior Court ruled the July 2016 GHG guidance violated CEQA and may not be relied on for approval of any pending or future development projects in the County. <i>See</i> April 28, 2017 Decision in San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL, attached as Exhibit 2.¹</p> <p>O2-8 { Even absent the <i>Sierra Club</i> court’s injunction, the County could not rely on its July 2016 GHG guidance because it is substantively invalid under <i>Newhall Ranch</i>. There, the Court held that while a “Business As Usual” approach was not categorically unlawful, the agency’s application of that methodology failed to comply with CEQA because the EIR “simply assume[d]” that the level of reduction effort required in the statewide context would be sufficient for the specific land use development at issue, failing to support its finding of no significant GHG impacts with substantial evidence. 62 Cal.4th at 226. The Court explained:</p> <p style="padding-left: 40px;">At bottom, the EIR’s deficiency stems from taking a quantitative comparison method developed by the Scoping Plan as a measure of the greenhouse gas emissions reduction effort required by the state as a whole, and attempting to use that method, without consideration of any changes or adjustments, for a purpose very different from its original design: To measure the efficiency and conservation measures incorporated in a specific land use development proposed for a specific location.</p> <p><i>Id.</i> Similarly, the County may not assume that the July 2016 GHG efficiency metric based on statewide reduction targets would be sufficient to attain those targets when applied to individual projects.</p> <p>O2-9 { The County’s July 2016 GHG guidance does exactly what the Supreme Court forbids. The DEIR explains that the efficiency metric “represents the rate of emissions</p> <p>¹ <i>Sierra Club v. County of San Diego</i> (SDSC Case No. 37-2012-00101054); <i>Golden Door Properties, LLC v. County of San Diego</i> (SDSC Case No. 37-2016-00037402); <i>Cleveland National Forest Foundation et al. v. County of San Diego</i> (SDSC Case No. No. 37-2017-00001628); <i>Sierra Club v. County of San Diego</i> (SDSC Case No. No. 37-2017-00001635).</p> <p style="text-align: right;">SHUTE, MIHALY & WEINBERGER LLP</p>	<p>O2-7 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of <i>Sierra Club v. County of San Diego</i>. The GHG analysis in the Final SEIR is consistent with CEQA Guidelines Section 15064.4. The CEQA Guidelines offer two paths to evaluating GHG emissions impacts in CEQA documents: 1) Projects can tier off a “qualified” GHG Reduction Plan (CEQA Guidelines Section 15183.5); or 2) Projects can determine significance by calculating GHG emissions and assessing their significance (CEQA Guidelines Section 15064.4). Neither the CARB nor the San Diego Air Pollution Control District (SDAPCD) has adopted significance criteria applicable to land use development projects for the evaluation of GHG emissions under CEQA. OPR’s Technical Advisory <i>CEQA and Climate Change: Addressing Climate Change through CEQA Review</i> states, “public agencies are encouraged, but not required to adopt thresholds of significance for environmental impacts. Even in the absence of clearly defined thresholds for GHG emissions, the law requires that such emissions from CEQA projects must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact.” Furthermore, OPR’s advisory document indicates, “in the absence of regulatory standards for GHG emissions or other scientific data to clearly define what constitutes a ‘significant impact,’ individual lead agencies may undertake a project-by-project analysis, consistent with available guidance and current CEQA practice.”</p> <p>O2-8 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of <i>Sierra Club v. County of San Diego</i>. The climate change analysis in the Final SEIR does not rely on efficiency metric based on statewide reduction targets. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA’s guidance relative to evaluating GHG emissions. Discussion and references to the efficiency metric previously included in the Draft SEIR have been removed.</p> <p>O2-9 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of <i>Sierra Club v. County of San Diego</i>. The SEIR does not rely on the 2016 Climate Change Analysis Guidance document. Discussion, and references to the efficiency metric previously included</p>
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	<p>in the Draft SEIR have been removed. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions. Furthermore, this comment does not address the adequacy of the EIR, therefore, no further response is required.</p>
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<p>Michelle Trace May 8, 2017 Page 5</p> <p>O2-10 needed to achieve a fair share of the State's emission mandate embodied in AB 32." DEIR at 2.4-7. The DEIR goes on to say that the use of "fair share" in this instance indicates the GHG efficiency level that, if applied statewide, would meet the AB 32 emissions target and support efforts to reduce emissions beyond 2020. <i>Id.</i> The DEIR then states that if the emissions per capita for the Project are lower than the state's average efficiency metric of 3.0 MTCO₂e per service population in year 2028, the impact would be considered less-than-significant. <i>Id.</i>; <i>id.</i> at 2.4-8. However, it fails to provide evidence that new projects, like this one, need only meet the statewide per capita average for the statewide GHG targets to be met.</p> <p>O2-11 The County should have bridged this analytic gap by preparing a legally sufficient CAP before embarking on this analysis. Without the CAP, the statewide metrics have only questionable relevance to San Diego County or its ability to achieve compliance with AB 32 and SB 32, and Executive Orders EO S-03-05 and B-30-15. In fact, the available San Diego County-specific data show that the County must do more to meet 2028 targets, and presumably <i>much</i> more to meet the 2050 target. <i>See</i> attached University of San Diego's 2013 GHG inventory (Exhibit 3), which shows that even in the rosiest of scenarios, the County is not on track to meeting AB 32 targets in 2020. To the extent the DEIR provides some of this analysis for the San Diego region, it is deemed "preliminary" since the County is still in the process of preparing the CAP and refining the emissions inventories. DEIR at 2.4-14. In short, the DEIR and the July 2016 GHG guidance both fail to explain why cumulative targets for the entire state or San Diego region should be presumptively sufficient for individual projects like this one.</p> <p>O2-12 To be consistent with AB 32, SB 32 and the Executive Orders, any new individual project will likely need to provide significantly greater emission reductions than merely meeting a statewide target. Contrary to the methodology applied by the DEIR, there is no reason to presume without evidence that the Project's "fair share" of reductions would match a state or even regional average. The Court explained this point in <i>Newhall Ranch</i>: new projects may require a greater level of reduction because "[d]esigning new buildings and infrastructure for maximum energy efficiency and renewable energy use is likely to be easier, and is more likely to occur, than achieving the same savings by retrofitting of older structures and systems." 62 Cal.4th at 226. The DEIR ignores this reality and directly imports the statewide standards, assuming the reduction rate for new and existing development should be the same. The Scoping Plan, on which these methodologies are all based, is silent on the distinction between new and existing development in terms of the capacity to reduce emissions, but it stands to reason that new developments will need to reduce at a greater rate, as older development will continue to exist and emit at levels higher than the average. As the DEIR blindly assumes the same emissions reductions</p> <p style="text-align: right;">SHUTE, MIHALY & WEINBERGER LLP</p>	<p>O2-10 Section 2. 4.1.2 Methodology of the Final SEIR has been revised to remove the evaluation of the Proposed Project based on the efficiency metric. The analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions.</p> <p>O2-11 The County disagrees that a CAP must be prepared prior to conducting a GHG analysis for the proposed Project; see response to comment O2-5 above and O2-13 below. The text previously included in the Draft SEIR has been revised to remove the evaluation of the proposed Project based on statewide metrics. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions. The analysis in the Final SEIR is consistent with CEQA Guidelines Section 15064.4; refer to response to comment O2-7.</p> <p>O2-12 The proposed Project will reduce its contribution to greenhouse gas emissions through the Project applicant's commitment to achieve carbon neutrality. The Final SEIR includes several mitigation measures to reduce greenhouse gas emissions to a net-zero level. See response to comment O2-1.</p>
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<p>Michelle Irace May 8, 2017 Page 6</p> <p>O2-12, (cont.) levels for statewide and project-specific compliance with AB 32, its GHG analysis is not supported by substantial evidence and the EIR is deprived of its "sufficiency as an informative document." <i>Id.</i> at 227 (citing <i>Laurel Heights</i>, 47 Cal.3d at 392).</p> <p>2. The County's Failure to Adopt a Legally Sufficient Climate Action Plan is the Root of the Problem.</p> <p>The County's General Plan contains a mitigation measure that requires the County to adopt a Climate Action Plan that will ensure that the County sufficiently reduces its GHG emissions to meet AB 32's goals and beyond. As the Court of Appeal stated:</p> <p>[Mitigation Measure] CC-1.2 requires the preparation of a County Climate Change Action Plan within six months from the adoption date of the General Plan Update. The Climate Change Action Plan will include a baseline inventory of greenhouse gas emissions from all sources and more detailed greenhouse gas emissions reduction targets and deadlines. The County Climate Change Action Plan will achieve comprehensive and enforceable GHG emissions reduction of 17% (totaling 23,572 MTCO₂e) from County operations from 2006 by 2020 and 9% reduction (totaling 479,717 MTCO₂e) in community emissions from 2006 by 2020.</p> <p>O2-13 <i>Sierra Club v. County of San Diego</i> (2014) 231 Cal.App.4th 1152, 1159. This mitigation measure is a crucial aspect of the General Plan, and the General Plan EIR made it clear that adoption of the Climate Action Plan, among other measures, was necessary to mitigate the Plan's significant climate impacts. However, when the County adopted its Climate Action Plan, it failed to ensure that the Plan contained enforceable measures to reduce Countywide emissions to 1990 levels by 2020. <i>Sierra Club</i> successfully challenged the Climate Action Plan, which the court invalidated. <i>Id.</i></p> <p>Without the Climate Action Plan, the Project cannot be found consistent with the General Plan's climate-related policies. For example, the General Plan requires the CAP to establish thresholds:</p> <p>CC-1.8 Revise County Guidelines for Determining Significance based on the Climate Change Action Plan. The revisions will include guidance for proposed discretionary projects to achieve greater energy, water, waste, and transportation efficiency.</p> <p>SHUTE, MIHALY & WEINBERGER LLP</p>	<p>O2-13 This comment states that because the County of San Diego does not have an adopted CAP and that the Draft EIR does not have sufficient impact thresholds to analyze the project's GHG emissions and impacts. Relatedly, comment O2-21 states the Draft EIR will have to be recirculated following adoption of a County CAP. The County does not agree with either of these comments for the reasons stated below.</p> <p>First, the Program EIR (PEIR) for the General Plan Update (GPU) includes a mitigation measure that requires preparation of a CAP. Following certification of the Program EIR and adoption of the General Plan Update, the County prepared and adopted a CAP. However, litigation successfully challenged the validity of the County's CAP, the CEQA compliance documentation prepared for the CAP, and the thresholds of significance derived from the CAP. The County is working to issue and adopt an updated CAP, including thresholds of significance for GHG emissions in CEQA analysis, consistent with the mitigation parameters of the set forth in the GPU PEIR. It should be noted that the San Diego County Superior Court recently rejected arguments from the <i>Sierra Club et al.</i> to prevent the County from processing and approving projects prior to the adoption of a lawful CAP and corresponding CEQA significance thresholds. The Superior Court held that an injunction prohibiting the "County from undertaking its planning process is too broad." See <i>Sierra Club v. County of San Diego</i> (Case No. 2012-0101054) and <i>Golden Door Properties LLC v. County of San Diego</i> (Case No. 2016-0037402).</p> <p>Second, the Draft EIR for the project has thresholds consistent with the parameters of CEQA Guidelines Section 15064.4. Specifically, as set forth in Section 2.4, Greenhouse Gas Emissions, the Final SEIR includes feasible mitigation measures to reduce GHG emissions associated with the proposed Project to net zero. Mitigation measure GHG-1a requires that the Project buildings will exceed Title 24 as of 2016 by 20 percent. Mitigation measure GHG-1b requires the Project to include photovoltaic solar panels designed to provide 50 percent of</p>
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	<p>the Project's commercial electricity use needs and 50 percent of the residential dwelling units' electricity needs.</p> <p>Therefore, the environmental analysis for the project has been developed to comply with the requirements of CEQA, which exist independent of the County's CAP. Further, the requirement to achieve no net increase in GHG emissions ensures that the project will not conflict with the CAP that is under development because it fully eliminates project-related GHG emissions.</p>
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<p>Michelle Irace May 8, 2017 Page 7</p> <p>O2-14 The Project is flatly inconsistent with Policies CC-1.2 and CC-1.8, and the County has failed to comply with these mitigation measures. These policies prohibit the County from approving major development projects at this time. The County must first adopt a legally adequate CAP (as required by CC-1.2) and adopt thresholds based on that CAP (as required by CC-1.8).</p> <p>O2-15 The County's backwards approach is also unfair and bad public policy. When the County ultimately completes the analysis required by the General Plan, the thresholds may need to be made more stringent. Ironically, future applicants proposing projects that are <i>consistent</i> with the General Plan will bear a greater burden of reducing GHG emissions than projects like this one that are <i>inconsistent</i> with the General Plan.</p> <p>O2-16 In sum, the County puts the cart before the horse by analyzing impacts based on the July 2016 GHG guidance, not on thresholds developed by the CAP. The DEIR's analysis violates CEQA because it relies on a threshold of significance that: (1) the County is enjoined by court order from applying; (2) violates the Supreme Court's guidance in <i>Newhall Ranch</i>; and (3) violates the express policies of the General Plan.</p> <p>O2-17 In addition, until the CAP is completed, the DEIR cannot adequately analyze the cumulative GHG impacts of the Project together with those of existing and reasonably foreseeable future development. The CAP will presumably include information on the cumulative GHG emissions under potential buildout of the General Plan. Until such information is developed, the County lacks the information upon which a meaningful cumulative analysis can be based.</p> <p>3. The DEIR Proposes Inadequate Mitigation and Ignores Other Feasible Mitigation Measures, Including Retirement of Development Rights at Other Sites.</p> <p>O2-18 The DEIR states that the Project's significant effects on climate change will be mitigated to a less-than-significant level by exceeding "by 20 percent" the Title 24 building standards for energy efficiency, and by including solar panels ("or their equivalent") designed to provide 50 percent of the Project's commercial use electricity needs, and on 50 percent of the residential dwelling units to provide those units' entire electricity needs. DEIR at 2.4-22. For the reasons discussed above, the DEIR lacks any basis for determining that this measure will eliminate the Project's significant GHG impacts because the analysis of those impacts is based on a legally inadequate threshold of significance (the 2016 Climate Change Analysis Guidance).</p> <p>SHUTE, MIHALY & WEINBERGER LLP</p>	<p>O2-14 See responses to comments O2-5 and O2-13 above.</p> <p>O2-15 This comment does not address the adequacy of the EIR. Concerning the project at hand, as described in the response to comment O2-1, the Project applicant has committed to achieve a net-zero level of emissions. With incorporation of mitigation, impacts would be less than significant.</p> <p>O2-16 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of <i>Sierra Club v. County of San Diego</i>. The proposed Project has been designed and conditioned with additional mitigation to achieve carbon neutrality (i.e., net zero emissions), and thus does not violate CEQA. See responses to comments O2-1, O2-4, O2-6, and O2-13.</p> <p>O2-17 See responses to comments O2-5 and O2-13.</p> <p>O2-18 The Final SEIR includes mitigation measures to achieve carbon neutrality. The efficiency metric analysis has been removed from the Final SEIR. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions. Subsequent to publishing and public review of the Draft SEIR, the Project applicant has voluntarily committed to achieve carbon neutrality. To fully mitigate the project's impacts relative to GHG emissions, mitigation measures have been expanded to include a requirement for net zero emissions from future developments within the Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment area.</p> <p>Table 2.4-7 lists the proposed project's on-site project design features to reduce GHG emissions. Based on the emissions inventory data presented in Table 2.4-8, the project will result in 37,554 MT CO₂e with the incorporation of project design features. Note that this calculation under-represents the percentage of GHG emissions reductions that will be achieved through on-site features and measures because, as provided in Table 2.4-7, many of the features and measures conservatively were not assigned quantitative emissions reductions values.</p>
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	<p>Each phase of the project (i.e., implementing site plans) would be required to undergo a site plan review, and at that time, shall require the development to have net zero emissions. With mitigation, the Project would result in net zero GHG emissions and, therefore, would be consistent with the goals of Executive Order B-30-15 and SB 32 that requires the state to reduce its GHG emissions to 40 percent below 1990 levels by 2030. Thus, GHG emissions impacts would be reduced to below a level of significance.</p>
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<p>Michelle Irace May 8, 2017 Page 8</p> <p>O2-19 Furthermore, the DEIR ignores the fact that the mitigation proposed—building energy efficiency and solar panels on rooftops—addresses only energy use in the Project’s buildings. While solar panels are laudable, they do nothing to mitigate the climate change impacts associated with Project’s increase in vehicle miles traveled (“VMT”), the source of the largest share of the Project’s GHG emissions by far. <i>See</i> DEIR at 2.4-33.</p> <p>O2-20 EHL urges the County to require mitigation that will begin to address the most serious threat of increased VMT facing the County—proposed sprawl development that is auto-dependent and far from urban centers. EHL proposes that the Project mitigate emissions generated from increased VMT by acquiring and retiring development rights at other sites in the County that, if developed, could otherwise generate a comparable increase in VMT. Such a requirement would not only provide substantial mitigation for this Project, but could provide a model for addressing VMT at other sites in the County, and a framework for preventing development in the more remote parts of the County where it does not belong.</p> <p>II. The DEIR Must Be Recirculated.</p> <p>O2-21 Under California law, the present EIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the draft EIR is so “fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” Guidelines § 15088.5.</p> <p>Here, both circumstances apply. Decisionmakers and the public cannot possibly assess the Project’s impacts, or even its feasibility, through the present DEIR. In order to resolve these issues, the County must prepare a revised EIR that would necessarily include substantial new information.</p> <p>III. Conclusion</p> <p>O2-22 As set forth above, the Project DEIR is inadequate under CEQA. The deficiencies of the DEIR necessitate extensive revision of the document and recirculation for public comment. EHL respectfully requests that the County reevaluate the Project and make changes to the design to reduce the Project’s serious environmental impacts.</p> <p style="text-align: right;">SHUTE, MIHALY & WEINBERGER LLP</p>	<p>O2-19 The County disagrees with the contentions within this comment. See to response to comment O2-1 above.</p> <p>There are a number of guiding documents that provide possible on-site design measures that subsequent site plans will be required to implement or otherwise prove to be infeasible in a subsequent GHG analysis, including requirements that future development achieve net zero emissions levels in addition to building efficiency and solar panels (see M-GHG-2). Additionally, as detailed in Section 2.4.2.5, it is important to recognize that the proposed Project is part of the planned and approved East Otay Mesa Business Park Specific Plan community, which contains a mix of residential, commercial, civic, recreational, and public facilities, all of which reduce the amount of vehicle miles traveled and corresponding GHG emissions. The proposed Project would further reduce the amount of vehicle miles traveled by incorporating into the Specific Plan an increase in residential units at high densities mixed with supporting retail and employment uses, adding to what was previously a primarily light industrial/technology center to create a mixed-use village setting. In addition to being part of a larger Specific Plan area, the proposed Project itself contributes a more integrated and balanced mix of uses, including community-serving commercial, light industrial employment uses, a 50.3-acre open space preserve, and trail amenities. The Project’s mix of uses allows for the Project to internally capture approximately 15.04 percent of all vehicle trips. Further, the Project’s mix of land uses, including residential in conjunction with the retail and employment, is coupled with an integrated pathway and trail plan and traffic calming features along internal streets and roads that promote a pedestrian experience for the Project’s residents and visitors and facilitate non-vehicular travel.</p> <p>O2-20 See response to comment O2-19 above. VMT is not a metric used for traffic analysis in this SEIR. LOS is used for the traffic analysis, and the Project fully mitigates its impacts. The State has not provided final guidance for VMT.</p> <p>O2-21 The Final SEIR accurately identifies the significant impact associated with greenhouse gas emissions and provides mitigation measures that, in concert with the Project’s design features presented in the SEIR, will reduce impacts to a net-zero level. The revisions in</p>
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	<p>the Final SEIR do not constitute significant new information that would require recirculation, in accordance with the CEQA, Section 15088.5. See response to comment O2-2.</p> <p>O2-22 See responses to comments O2-1 and O2-2.</p>
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Michelle Itrace
May 8, 2017
Page 9

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Joseph Petta

cc: Dan Silver, Endangered Habitats League

List of Exhibits:

- Exhibit 1: County of San Diego, 2016 Climate Change Analysis Guidance, July 29, 2016.
- Exhibit 2: April 28, 2017 Decision in San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL.
- Exhibit 3: University of San Diego's 2013 GHG inventory, Executive Summary, March 2013.

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SHUTE, MIHALY
& WEINBERGER LLP

EXHIBIT 1	
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<div data-bbox="552 269 632 350" data-label="Image"> </div> <div data-bbox="424 350 758 393" data-label="Section-Header"> <h2>County of San Diego</h2> </div> <div data-bbox="214 418 323 466" data-label="Text"> <p>MARK WARDLAW DIRECTOR PHONE (619) 694-2962 FAX (619) 694-2955</p> </div> <div data-bbox="436 418 741 466" data-label="Text"> <p>PLANNING & DEVELOPMENT SERVICES 5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123 www.sdcountry.ca.gov/pds</p> </div> <div data-bbox="844 418 963 466" data-label="Text"> <p>DARREN GRETLER ASSISTANT DIRECTOR PHONE (619) 694-2962 FAX (619) 694-2955</p> </div> <div data-bbox="394 508 783 532" data-label="Section-Header"> <h3>2016 CLIMATE CHANGE ANALYSIS GUIDANCE</h3> </div> <div data-bbox="359 558 821 630" data-label="Section-Header"> <h4>RECOMMENDED CONTENT AND FORMAT FOR CLIMATE CHANGE ANALYSIS REPORTS IN SUPPORT OF CEQA DOCUMENTS</h4> </div> <div data-bbox="438 647 741 708" data-label="Text"> <p>County of San Diego Planning & Development Services (PDS) July 29, 2016</p> </div> <div data-bbox="220 721 329 743" data-label="Section-Header"> <h4>Background</h4> </div> <div data-bbox="220 756 959 888" data-label="Text"> <p>The California Environmental Quality Act (CEQA) requires public agencies to review the environmental impacts of proposed projects and consider feasible alternatives and mitigation measures to reduce significant adverse environmental effects. As part of this analysis, agencies must consider potential adverse effects from a proposed project's greenhouse gas (GHG) emissions. The California Natural Resources Agency adopted amendments to the CEQA Guidelines to address GHG emissions, consistent with Legislature's directive in Public Resources Code section 21083.05 (enacted as part of Senate Bill (SB) 97 [Chapter 185, Statutes 2007]). These amendments took effect in 2010.</p> </div> <div data-bbox="220 902 959 997" data-label="Text"> <p>This Climate Change Analysis guidance is being provided by the County of San Diego to assist in project-level analyses of GHGs for discretionary projects. The guidance will be modified as needed if and when more specific guidance is provided by the California Air Resources Board (ARB), the Governor's Office of Planning and Research (OPR), or in response to legislative or judicial action pertaining to this issue.</p> </div> <div data-bbox="220 1010 959 1177" data-label="Text"> <p>Instigated by Governor Schwarzenegger's Executive Order S-3-05, the Global Warming Solutions Act of 2006, also known as Assembly Bill 32 (AB 32), requires reduction of statewide GHG emissions to 1990 emissions levels by 2020. In 2008, ARB adopted a <i>Climate Change Scoping Plan</i> to identify the next steps in reaching AB 32 goals. ARB adopted an update to the Scoping Plan in 2014. California Governor Brown signed Executive Order B-30-15, which established a reduction target of 40 percent below 1990 levels by 2030 to reflect the need for continued pursuit of GHG reductions necessary to avoid the most environmentally damaging aspects of climate change. ARB is currently working on an update to the Scoping Plan to address this target. However, no specific emission reduction goal beyond 2020 has been formally adopted by ARB or the California State Legislature.</p> </div> <div data-bbox="220 1190 959 1286" data-label="Text"> <p>Project analyses prepared consistent with this guidance document will need to be reviewed and verified by the County and is subject to County staff approval. The guidance provided in this document does not supersede the County's discretionary authority. It is important to note that alternative approaches to evaluating GHG emissions may be utilized; however, any approach must be supported by fact-based rationale and substantial evidence to demonstrate compliance with applicable CEQA Guidelines.</p> </div>	
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Climate Change Analysis Guidance
County of San Diego

Determination of Need for Climate Change Analysis

Although climate change is ultimately a cumulative impact, not every individual project that emits GHGs must necessarily be found to contribute to a significant cumulative impact on the environment. While the County encourages CEQA analyses to focus on the GHG efficiency of a proposed project, it also acknowledges that some projects are sufficiently small such that it is highly unlikely they would generate a level of GHGs that would be cumulatively considerable.

Thus, the County encourages the use of the project size-based screening levels published by the California Air Pollution Control Officers Association (CAPCOA), and presented here in Table 1, to determine whether Climate Change Analysis is needed to examine the GHG impacts of a proposed project.

The annual 900 metric ton carbon dioxide equivalent (MT CO₂e) screening level referenced in the CAPCOA white paper¹ is recommended by the County as a conservative screening criterion for determining which projects require further analysis and identification of project design features or potential mitigation measures with regard to GHG emissions. The CAPCOA white paper reports that the 900 metric ton screening level would capture more than 90 percent of development projects, allowing for mitigation towards achieving the State's GHG reduction goals. Table 1 shows the sizes of projects that would generally require additional analysis and mitigation.

Table 1 Project Sizes that Would Typically Require a Climate Change Analysis *	
Project Type**	Project Size Equivalency
Single Family Residential	50 units or more
Apartments/Condominiums	70 units or more
General Commercial Office Space	35,000 square feet or more
Retail Space	11,000 square feet or more
Supermarket/Grocery Space	6,300 square feet or more
Source: The screening levels are published in California Air Pollution Control Officers Association. 2008 (January). <i>CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act</i> . Available at http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf	
*A determination on the need for a climate change analysis for project types not included in the table will be made on a case-by-case basis considering the 900 metric ton criterion.	
**A project with a combination of types may demonstrate compliance with the screening threshold through addition of the ratios of each contribution by the associated equivalency threshold.	

If a proposed project is the same type and smaller than the project sizes listed in the table above, it is presumed that the construction and operational GHG emissions for that project would not exceed 900 MT CO₂e per year, and there would be a less-than-cumulatively considerable impact. It should be noted that the screening level assumes that the project does not involve unusually extensive construction activities and does not involve operational characteristics that would generate unusually high GHG emissions. The applicability of the screening criteria presented in Table 1 will be evaluated by County staff on a project-by-project basis to determine if there is evidence to suggest that a project's

¹ California Air Pollution Control Officers Association. 2008 (January). *CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*. Available at <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.

<p>Climate Change Analysis Guidance County of San Diego</p> <p>unique attributes would lead to emissions that are higher than 900 MT CO₂e per year, thus justifying the need for a complete Climate Change Analysis.</p> <p>Though CAPCOA's recommended project size-based screening criteria are based on the mass emissions level of 900 MT CO₂e per year, it does not mean that project-generated GHG levels greater than 900 MT CO₂e per year are automatically deemed cumulatively considerable. Instead, the screening levels presented in Table 1 are to be used to determine whether it is necessary to conduct further analysis to quantify a project's GHG emissions and evaluate its GHG efficiency.</p> <p>Contents of Climate Change Analysis Reports</p> <p>The following are the minimum recommended components of a Climate Change Analysis consistent with CEQA, prepared for discretionary projects in the County that exceed the screening level identified in Table 1 above.</p> <p><u>Introduction and Project Description.</u> This section explains the purpose of the report and a summary of the most current scientific information related to climate change. A brief project description and general location is required, and it must include all elements of the project that would or could generate GHG emissions, with an estimated timeframe for project implementation. This section would also identify the project design and location features that have the effect of reducing GHG emissions.</p> <p><u>Environmental Setting.</u> This section includes a description of the existing environmental conditions or setting, without the project, which constitutes the baseline physical conditions for determining the project's impacts. Existing uses onsite that generate GHG emissions under baseline conditions must be disclosed and associated GHG emissions should be quantified to establish the baseline conditions.</p> <p><u>Regulatory Setting.</u> This section includes a discussion of the existing regulatory environment pertaining to climate change such as AB 32 and the California Building Efficiency Standards. In addition, a description of implementing plans, programs and policies including but not limited to the County General Plan, the San Diego Association of Governments (SANDAG) Regional Transportation Plan and associated Sustainable Communities Strategy, Executive Orders S-3-05 and B-30-15, ARB Scoping Plan (including any adopted and ongoing updates), and Advanced Clean Cars Program should be addressed as they relate to the proposed project. The list presented here is not all inclusive and the regulatory setting should address all regulations, programs, and policies directly relevant to the project.</p> <p><u>Emissions Inventory.</u> The Climate Change Analysis must provide a detailed accounting of the project's estimated construction and operational GHG emissions. Construction GHG emissions include an inventory of emissions associated with the use of heavy construction equipment, construction worker vehicle miles traveled (VMT), and truck trips required to deliver construction materials to the project site. Operational GHG emissions include energy use (including electricity, natural gas and other fuels) from land use development, water distribution, and wastewater treatment processes, off-gassing from solid waste generation, transportation VMT, and area sources (such as landscaping equipment and fireplaces). Emissions associated with other sectors, such as agricultural uses or industrial operations, should be quantified depending upon the individual project's proposed uses.</p> <p>The analysis must also quantify the loss in sequestered carbon, expressed in CO₂e that would result from any vegetation permanently removed as a result of project development. The total loss of sequestered carbon can be estimated using the Vegetation module in CalEEMod.</p> <p>The GHG inventory must include justification and references to document the assumptions that are made about the emissions calculations. Activity data, such as trip distances, and emission factors</p>	
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<p>Climate Change Analysis Guidance County of San Diego</p> <p>specific to the County must be used, where available. The County suggests the use of modeling tools such as the current version of CalEEMod. Alternatively, emissions may be estimated using emission factors from EMFAC or OFFROAD, provided the current versions are used and the sources are appropriately cited. The URBEMIS model is no longer acceptable for use by the County.</p> <p>Because some GHG emissions models build in different statewide programs and mitigation measures, it is important to coordinate with County staff to ensure that the correct approach is being used to estimate the effects of statewide efforts, particularly since new statewide programs, regulations and mitigation measures are likely to be established over time and certain actions are likely to be included in updates to the various GHG emissions models.</p> <p>Significance Criteria</p> <p><u>Guidelines for Determining Significance.</u> This section includes identification and justification of the selected significance criteria used to assess impacts. The report must discuss the reasons for choosing the significance criteria, referencing State legislation and implementing strategies that have been developed to reduce GHG emissions to meet statewide reduction targets. This section should explain that climate change is not generally considered a direct impact, but should be analyzed as a potential cumulative impact under CEQA. The significance criteria used in the Climate Change Analysis should include a statement and supporting analysis as to whether the subject project complies with GHG reduction requirements under AB 32, the Global Warming Solutions Act of 2006 for the year 2020; and whether the subject project is on the trajectory towards GHG emission reduction goals of Executive Orders S-3-05 and B-30-15 at buildout. Additional detail on the process to make the latter determination is provided below. Due to the range of project types processed by the County, significance criteria and analysis approaches may vary. The following sections identify one potential set of criteria and methodologies, along with supporting evidence that would be appropriate for a Climate Change Analysis.</p> <p>This section should discuss the suggested questions referenced in the <i>CEQA Guidelines</i>, Appendix G, VII. Greenhouse Gas Emissions.</p> <p><i>Would the project:</i></p> <p><i>Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?</i></p> <p><i>Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?</i></p> <p>The Study should describe how the appropriate significance criteria are used to address the above-referenced questions.</p> <p>Significance Determination</p> <p>The County Efficiency Metric is the recognized and recommended method by which a project may make impact significance determinations. The County is recommending a quantitative GHG analysis be conducted and the significance of the impact determined for project emissions at 2020 and buildout year (if post-2020). For a Climate Change Analysis to be considered adequate, the County recommends quantification of GHG emissions at 2020 and project buildout. The determination of a project's efficiency may be determined by using applicable efficiency metrics derived for those specific years, e.g. 2020 and project buildout (if post-2020). Other methods to determine the significance of</p> <p>4</p>	
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Climate Change Analysis Guidance
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impacts relative to project emissions at 2020 and buildout will be considered on a case-by-case basis. All analysis (significance determination) results must be supported with substantial evidence.

Horizon Year 2020. For projects that exceed the screening criterion of 900 MT CO₂e, as determined through the screening levels in Table 1 or emissions quantification, and that would be operational (buildout) on or before 2020, the Climate Change Analysis must analyze and determine the significance of project emissions in 2020. The County recognizes the quantitative efficiency metric for 2020 to be 4.9 MT CO₂e/SP/year (where SP refers to the project's service population [residents + employees]).

Buildout Year. The County anticipates that some projects would have buildout dates beyond 2020. The County recommends quantification of project emissions for the year the project is anticipated to be fully constructed (buildout), in addition to 2020, and make a significance determination relative to the emissions reduction downward direction.

ARB has indicated in their 2030 Target Scoping Plan, October 1, 2015, that State GHG emissions would need to be reduced at an annual average rate of 5.2 percent between 2020 and 2050, representing an emission reduction downward direction ⁽²⁾ necessary to meet the goals advocated in Executive Orders S-3-05 and B-30-15.

Efficiency Metric Background

The Efficiency Metric assesses the GHG efficiency of a project on a "service population (SP)" basis (Efficiency Metric = project emissions divided by the sum of the number of jobs and the number of residents provided by a project). The metric represents the rate of emissions needed to achieve a fair share of the State's emissions mandate embodied in AB 32 and Executive Orders B-30-15 and S-3-05. The use of "fair share" in this instance indicates the GHG efficiency level that, if applied statewide, would meet the AB 32 emissions target and support efforts to reduce emissions beyond 2020.

The Efficiency Metric is based on the AB 32 GHG reduction target and GHG emissions inventory prepared for ARB's 2008 Scoping Plan. To develop the efficiency metric for 2020, land-use driven sectors in ARB's 1990 GHG inventory were identified and separated to tailor the inventory to land use projects. This process removes emission sources not applicable to land use projects. The land-use driven sector inventory for 1990 was divided by the service population projections for California in 2020. The Efficiency Metric allows the threshold to be applied evenly to most project types (residential, commercial/retail and mixed use) and employs an emissions inventory comprised only of emission sources from land-use related sectors. The Efficiency Metric allows lead agencies to assess whether any given project or plan would accommodate population and employment growth in a way that is consistent with the emissions limit established under AB 32.

If a project includes a use that would not be covered by the adjusted land use-driven inventory, a tailored efficiency metric may be derived. For example, a project that proposes agricultural uses onsite may not use the efficiency metrics shown above because the inventory used to develop the metric did not include agricultural emissions. Coordination with County staff is recommended to develop the appropriate efficiency metric for such projects.

² 2030 Target Scoping Plan Workshop Slides, Page 10 – Path to 2050 Greenhouse Gas Target. Available: http://www.arb.ca.gov/cc/scopingplan/meetings/10_1_15slides/2015slides.pdf. It should be noted that ARB did not establish interim year reduction targets using the 5.2 percent annual reduction rate; rather it was used to illustrate the average annual emissions reduction needed to achieve the long-term targets for 2030 and 2050. The 2030 Target Scoping Plan has not been adopted as of this writing and this information is considered preliminary (from the first public workshop for the 2030 Target Scoping Plan) and used only to establish interim year efficiency metrics for CEQA analyses.

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2020 Efficiency Metric

The GHG efficiency metric is 4.9 MT CO₂e/SP/year for 2020.

California Service Population in 2020

2020 Population Projection* =	40,619,346
2020 Employment Projection** =	18,511,200
2020 Service Population =	59,130,546 SP

ARB's 1990 California GHG Inventory

1990 Total Emissions =	431 MMT CO ₂ e
1990 Non-land Use Emissions =	144.3 MMT CO ₂ e
1990 Land Use Emissions =	286.7 MMT CO ₂ e

1990 Land Use Emissions/2020 SP, or 286.7 MMT/59,130,546 SP = 4.9 MT/SP
where MMT = million metric tons

Sources:

*California Department of Finance, Demographic Research Unit
Report P-2, State and County Population Projections by Race/Ethnicity and Age (5-year groups)
2010 through 2060 (as of July 1); December 15, 2014

**California Department of Finance, Employment Development Department
Industry Employment Projections, Labor Market Information Division, 2010-2020; May 23, 2012

Post-2020 Efficiency Metric

ARB has indicated that an average statewide GHG reduction of 5.2 percent per year between 2020 and 2050 is necessary to achieve the 2030 and 2050 emissions reduction goals of Executive Orders B-30-15 and S-3-05 (ARB 2015). Efficiency metrics can be derived for each year between 2020 and 2050 based on this identified reduction downward direction, or based on other sources if supported by substantial evidence. As previously noted, the intent of the 5.2 percent annual reduction data is not to establish interim year reduction targets for the State; rather it is meant to allow projects to develop and apply interim year Efficiency Metrics at their buildout year and demonstrate consistency with the overall State reduction downward direction.

In *Center for Biological Diversity v. California Department of Fish and Wildlife and Newhall Land and Farming* (2015) 224 Cal.App.4th 1105 (*CBD vs. CDFW*), the California Supreme Court, citing the above-referenced Executive Orders, cautioned that those Environmental Impact Reports taking a goal-consistency approach to CEQA significance may "in the near future" need to consider the project's effects on meeting emission reduction targets beyond 2020. ARB is currently working on a second update to the Scoping Plan to reflect the 2030 target established in Executive Order B-30-15. Even though State policy for post-2020 GHG reduction is expressed in executive orders and programs, rather than legislation, CEQA impact evaluation in the context of longer term goals is advised. Additionally, certain regulations that are relevant to land use development will continue to be phased in after 2020 (e.g., Advanced Clean Cars, Renewables Portfolio Standard [RPS], SB 375) and result in additional GHG reductions. Thus, projects that are built out after 2020 should analyze consistency with the State's longer-term GHG reduction goals to provide a good-faith CEQA analysis.

For these reasons, the County requests a significance determination for a project's anticipated buildout year. Analysis of project emissions at buildout is consistent with current CEQA practice and available guidance from air districts on analyzing emissions from the first fully operational year (SMAQMD 2015:6-5, BAAQMD 2011:4-6). Operational emissions for a land use development project would be

<p>Climate Change Analysis Guidance County of San Diego</p> <p>highest during the first year and continue to decline due to fleet turnover to cleaner vehicles and implementation of additional regulations at the State level.</p> <p>Service Population Recommended sources of information to determine a proposed project's service population are provided below. Other sources for this data will be considered on a case-by-case basis and should be from credible sources. Applicants are advised that use of different data sources from those listed below, should be approved by County staff prior to their use for an impact determination. Alternative sources of data such as State (Department of Finance), regional (SANDAG) or local government agencies (City of San Diego), industry groups or professional associations (Institute of Traffic Engineers), with clearly disclosed assumptions and limitations will be considered; provided the analysis clearly substantiates the representativeness of the data in terms of county-wide averages, planning area averages, census tracts, and others as applicable.</p> <p>Alternative data sources should have San Diego region applicability and be supported with substantial evidence, including a discussion with fact based rationale explaining why the data source and its geographic representation are the most appropriate for the proposed project.</p> <p><u>Service Population Data Sources</u> SANDAG Demographics and Other Data: http://www.sandag.org/index.asp?classid=26&fuseaction=home.classhome</p> <p>SANDAG Data Surfer for existing and forecasted socio-economic data: http://datasurfer.sandag.org/</p> <p>Mitigation Measures</p> <p>Projects may be able to mitigate GHG emissions sufficiently to render impacts less than cumulatively significant. Such mitigation measures would be in addition to all project design features and may include measures that are not required by existing regulations (e.g., rooftop solar).</p> <p>Mitigation measures must include specific, enforceable actions to reduce project emissions, and would need to provide some analysis about the emission reductions that would be achieved from each measure. To the extent feasible, each mitigation measure should include references or a logical, fact based explanation as to why a specific mitigation measure would achieve the stated reductions. While it will generally be possible to quantify reductions associated with energy and water related mitigation measures, other mitigation may require a qualitative discussion of reductions achieved.</p> <p>Mitigation measures must be supported with substantial evidence. For example, a potential approach that can be considered is the inclusion of mitigation that requires certain GHG efficiency measures upon buildout of each development phase for projects that would develop over multiple phases across an extended period of time.</p> <p>Many local, regional, and state agencies have produced lists of feasible mitigation measures and strategies that can be used to reduce GHG emissions. These lists can be consulted when developing feasible mitigation measures for projects within the County, including, but not limited to:</p>	
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<p>Climate Change Analysis Guidance County of San Diego</p> <p>Governor's Office of Planning and Research. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: http://opr.ca.gov/docs/june08-ceqa.pdf.</p> <p>California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf.</p> <p>California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf.</p> <p>Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.</p> <p>#####</p> <p>8</p>	
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EXHIBIT 2	
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<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO HALL OF JUSTICE TENTATIVE RULINGS - April 27, 2017</p>		
<p>EVENT DATE: 04/28/2017 EVENT TIME: 01:30:00 PM DEPT.: C-72 JUDICIAL OFFICER: Timothy Taylor</p>		
<p>CASE NO.: 37-2012-00101054-CU-TT-CTL CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE]</p>		
<p>CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental</p>		
<p>EVENT TYPE: Motion Hearing (Civil) CAUSAL DOCUMENT/DATE FILED:</p>		
<p>Tentative Rulings on 1) Second Amended/Supplemental Petition for Writ of Mandate; and 2) Petition for Writ of Mandate</p>		
<p><i>Sierra Club v. County of San Diego</i>, Case No. 2012-0101054 <i>Golden Door Properties LLC v. County of San Diego</i>, Case No. 2016-0037402</p>		
<p>April 28, 2017, 1:30 p.m., Dept. 72</p>		
<p>1. Overview and Procedural Posture.</p>		
<p>In late 2012 and early 2013, the court was required to address, in two CEQA cases, the controversial topics of greenhouse gases and global climate change. The first was <i>Cleveland Nat'l. Forest Foundation v. SANDAG</i>, Case No. 2011-00101593; that case was the subject of a learned opinion of the 4th DCA, Div. 1 [D063288, 180 Cal.Rptr.3d 548 (2014)], and remains pending review by the California Supreme Court [No. S223603, 343 P.2d 903 (2015)]. The Court has limited the issue in that case to "Must the environmental impact report for a regional transportation plan include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05 to comply with the California Environmental Quality Act?" As of this writing, there has been extensive party and <i>amicus</i> briefing, and the High Court has set a date early next month for oral argument.</p>		
<p>In the second 2012 case, the Sierra Club contended that the County of San Diego's June 20, 2012 "Climate Action Plan" (CAP), was insufficient and violated CEQA in several respects: it did not comply with mitigation measures spelled out in the County's 2011 Program EIR (PEIR), adopted in connection with the 2011 General Plan Update (GPU) (AR 0441 ff); it failed to satisfy the requirements for adopting thresholds of significance for greenhouse gas emissions (GHG); and it should have been set forth in a stand-alone environmental document rather than in an addendum to the PEIR. The County denied these claims, and asserted that the CEQA challenge was time-barred, the CAP complied with all legal requirements, the use of an addendum was appropriate, and that all relief was barred by the Sierra Club's failure to notify the AG as required by Pub. Res. Code section 21167.7.</p>		
<p>A little more than four years ago, the court ruled in favor of the Sierra Club on the original petition. ROA 33. The County appealed. ROA 44. The parties thereafter stipulated to stay the case while it was on appeal. ROA 60. But before they did, the Sierra Club had filed a supplemental petition. ROA 54. The stipulated stay prevented consideration of that document. Subsequently, the parties filed a stipulation</p>		
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<p>CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN CASE NUMBER: 37-2012-00101054-CU-TT-CTL DIEGO [E-FILE]</p> <p>regarding the disposition of the supplemental petition, depending on the disposition of the appeal. ROA 64.</p> <p>In October of 2014, the 4th DCA, Div. 1 issued its learned opinion affirming this court, ultimately published at 231 Cal.App.4th 1152 (2014). On March 11, 2015, the Supreme Court denied review. A remittitur thereafter issued. ROA 105.</p> <p>The parties were before the court on April 15, 2015. Petitioner asked that the stay be lifted, and that the case be restored to the civil active list. These requests were granted without objection.</p> <p>The Sierra Club also wanted the court to sign an order, while the County wanted the court to sign a different order. There were two problems: first, the court had not received petitioner's version of the proposed order, nor had a chance to review the County's proposed order; and second, the parties were before the court while it was in the middle of a lengthy trial with jurors arriving shortly. The court continued the matter to the regular law and motion calendar of May 1, 2015. ROA 73.</p> <p>The court thereafter reviewed the parties' competing submissions. The central problem was that a dispute had arisen regarding the intent, import and meaning of the December 11, 2014 stipulation (ROA 64). The court, following several submissions and argument, resolved the dispute in May of 2015. ROA 91-92.</p> <p>The Sierra Club's counsel thereafter sought an award of attorneys' fees. ROA 95-104. The amended moving papers (ROA 116, 117) made clear that the County agreed petitioner was entitled to fees; the only question was how much. Petitioner sought a lodestar of over \$661,000.00 with a multiplier of two, for a total of over \$1.3 million, plus fees necessary for the fee motion.</p> <p>The County filed opposition. ROA 122-125. After presenting very focused argument, the County ended by making several specific "suggestions" for reducing the fee award: a combination of cutting hours, reducing rates, and denial of any multiplier. Petitioner filed reply. ROA 126-130. The court, after it had reviewed all the briefing and heard argument, granted a fee award in the amount of over \$961,000.00. ROA 133. Judgment was thereafter entered in this amount, plus additional costs not challenged by the County. ROA 135. This occurred in September of 2015; at this point, the court (perhaps naively) considered the case to have been concluded. Neither side sought further appellate review of the attorneys' fee ruling or the May 2015 ruling.</p> <p>In early 2016 and again the following summer, the County filed returns on the supplemental writ. ROA 137, 138. Both sides changed counsel. ROA 136, 147.</p> <p>The Sierra Club filed its second amended petition on September 26, 2016. ROA 140. The County demurred to it on two grounds, including non-justiciability (ripeness). ROA 142. Following briefing and argument, the court overruled the demurrer on January 6, 2017. ROA 160. The County thereafter answered. ROA 161-162.</p> <p>Also at the January 6, 2017 hearing, the court allowed the parties' stipulation whereby a more recently filed case, <i>Golden Door Properties LLC v. County of San Diego</i>, Case No. 2016-0037402, would be transferred to Dept. 72 and heard with the <i>Sierra Club</i> 2012 case. ROA 160. Both the current iteration of the <i>Sierra Club</i> 2012 case and the <i>Golden Door</i> 2016 case challenge the County's 2016 Climate Change Analysis Guidance Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA Documents ("2016 Guidance Document" or "2016 Significance Document") prepared by the County's Department of Planning & Development Services.</p> <p>The parties subsequently stipulated to a briefing schedule, which the court also allowed. ROA 167.</p> <p>The court has reviewed the following briefing:</p> <hr/> <p>Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32 Page: 2</p>	
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<p>CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN CASE NUMBER: 37-2012-00101054-CU-TT-CTL DIEGO [E-FILE]</p> <p>Sierra Club's opening brief, request for judicial notice and joinder filed February 6, 2017 (ROA 169-173).</p> <p>Golden Door's opening brief and request for judicial notice filed February 6, 2017 (ROA 24-25).</p> <p>The County's answering briefs and supporting documents filed March 17, 2017 (ROA 30-34 and 180-184).</p> <p>Sierra Club's reply brief, supporting documents, and joinder filed April 20, 2017 (ROA 85-189).</p> <p>Golden Door's reply brief filed April 20, 2017 (ROA 36).</p> <p>The court has also reviewed the administrative record materials submitted January 24, 2017 and April 14, 2017 (ROA 23, 35).</p> <p>With its opposition brief in both cases, the County filed the Declaration of Peter Eichar (ROA 31, 181). With its reply brief, the Sierra Club filed the Declaration of Josh Chatten-Brown and the Declaration of Corey Briggs (ROA 186, 187). The Sierra Club also filed a tardy Second Declaration of Josh Chatten-Brown. ROA 190. The submission of the declarations is inconsistent with the oft-repeated rule in CEQA cases: "If it is not in the administrative record, it does not exist." See <i>Sierra Club v. Coastal Comm'n</i> (2005) 35 Cal.4th 839, 863; Code of Civil Procedure § 1094.5; <i>Western States Petroleum Assn. v. Superior Court</i> (1995) 9 Cal.4th 559, 565. Evidentiary objections were not interposed. The declarations were therefore considered.</p> <p>2. Applicable Standards.</p> <p>A. The court incorporates part 2 of its own ruling of April 19, 2013. ROA 33. The court incorporates the learned opinion of the Fourth District Court of Appeal, Div. 1, published at 231 Cal.App.4th 1152 (2014). The court also incorporates its own rulings from May of 2015. ROA 91-92.</p> <p>B. The ripeness element of the doctrine of justiciability is intended to prevent courts from issuing purely advisory opinions. <i>Pacific Legal Foundation v. California Coastal Com.</i> (1982) 33 Cal.3d 158, 170. It is "primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (<i>Ibid.</i>) In an action for declaratory relief under Code of Civil Procedure section 1060, an "actual controversy" ... is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do. [Citations.] <i>Selby Realty Co. v. City of San Buenaventura</i> (1973) 10 Cal.3d 110, 117; <i>Wilson & Wilson v. City Council of Redwood City</i> (2011) 191 Cal.App.4th 1559, 1573-74. During the summer of 2016, the Court of Appeal considered ripeness in the context of a CEQA petition in <i>California Bldg. Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.</i> (2016) 2 Cal.App.5th 1067, 1088-89 (<i>Cal. BIA</i>):</p> <p>District relies on inapposite case law in which the courts declined to use the remedy of mandamus to set aside interim actions by an agency during a multilayered review process. (<i>California High-Speed Rail Authority v. Superior Court</i> (2014) 228 Cal.App.4th 676, 708-713, 175 Cal.Rptr.3d 448 [no present duty to redo preliminary funding plan]; <i>California Water Impact Network v. Newhall County Water Dist.</i> (2008) 161 Cal.App.4th 1464, 1486, 75 Cal.Rptr.3d 393 [water assessment report providing information to be included in EIR was not final determination as necessary to obtain relief by mandamus].) The District Guidelines are not interim steps in a larger review process; rather, they are interpretive guidelines for CEQA analyses promulgated by an air district that acts as either the lead agency or a responsible agency on projects within its jurisdictional boundaries.</p> <p>For purposes of assessing the propriety of a writ of mandate, the District Guidelines are akin to the guidelines issued by the California Coastal Commission and challenged in <i>Pacific Legal Foundation</i>.</p> <p>Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32 Page: 3</p>	
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<p>CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO CASE NUMBER: 37-2012-00101054-CU-TT-CTL DIEGO [E-FILE]</p> <p><i>supra</i>, 33 Cal.3d at page 163, 188 Cal.Rptr. 104, 655 P.2d 306. Those guidelines, though not binding on any agency, explained the Commission's interpretation of the public beach access provisions of the Coastal Act, and were asserted to be invalid on their face because they required property owners to dedicate easements giving beach access to the public as a condition of obtaining permit approval for proposed developments. Noting that the promulgation of the access guidelines was a quasi-legislative act reviewable by an action for declaratory relief or traditional mandamus (as opposed to administrative mandamus), the court went on to consider whether a ripe controversy existed. (<i>Id.</i> at p. 169, 188 Cal.Rptr. 104, 655 P.2d 306.)</p> <p>Turning to the question of whether the challenge to the Coastal Commission's guidelines was ripe, the court applied a standard used by the federal courts and considered " 'both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.' " (<i>Pacific Legal Foundation, supra</i>, 33 Cal.3d at p. 171, 188 Cal.Rptr. 104, 655 P.2d 306, italics omitted.) It concluded the facial challenge to the guidelines was not ripe: "Although it may be predicted with assurance that some of the plaintiff landowners will eventually wish to make improvements on their property, it is sheer guesswork to conclude that the Commission will abuse its authority by imposing impermissible conditions on any permits required. The guidelines are not mandatory. <i>They do not require the Commission to impose access conditions in any particular circumstances, but rather adopt a flexible approach: the Commission is to determine the appropriateness of access exactions on a case-by-case basis.</i>" (<i>Id.</i> at p. 174, 188 Cal.Rptr. 104, 655 P.2d 306, italics added.)</p> <p>Unlike the Coastal Commission guidelines at issue in <i>Pacific Legal Foundation</i>, the District Guidelines do not call for the Receptor Thresholds to be applied to projects on a case-by-case basis. Instead, they suggest a routine analysis of whether new receptors will be exposed to specific amounts of toxic air contaminants. Given the clarity of the Supreme Court's decision that such an analysis oversteps the bounds of CEQA except in specified circumstances (<i>Building Association, supra</i>, 62 Cal.4th at p. 392, 196 Cal.Rptr.3d 94, 362 P.3d 792), the issue is fit for judicial determination. The ripeness requirement "should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question." (<i>Pacific Legal Foundation, supra</i>, 33 Cal.3d at p. 170, 188 Cal.Rptr. 104, 655 P.2d 306.)</p> <p>C. "Under the law-of-the-case doctrine, the determination by an appellate court of an issue of law is conclusive in subsequent proceedings in the same case. [Citation.] The doctrine applies only if the issue was actually presented to and determined by the appellate court. [Citation.] The doctrine is one of procedure that prevents parties from seeking reconsideration of an issue already decided absent some significant change in circumstances." <i>People v. Yokely</i> (2010) 183 Cal.App.4th 1264, 1273. Furthermore, "the law-of-the-case doctrine governs only the principles of law laid down by an appellate court, as applicable to a retrial of fact" <i>People v. Boyer</i> (2006) 38 Cal.4th 412, 442. "[T]he doctrine applies only to an appellate court's decision on a question of law; it does not apply to questions of fact." <i>People v. Barragan</i> (2004) 32 Cal.4th 236, 246. The doctrine applies only to rulings by appellate courts and not trial courts. <i>Yokely</i>, at p. 1273; <i>Boyer</i>, at p. 442; <i>Barragan</i>, at p. 246.</p> <p>D. Since the court decided the first Sierra Club petition in April of 2013, and since the court's May 2015 ruling, the Supreme Court has decided two cases of importance to the current inquiry, particularly as they relate to the standard of review:</p> <p>In <i>Center for Biological Diversity v. Calif. Dept. of Fish and Wildlife</i>, (November 30, 2015) 62 Cal.4th 204, the High Court held that the lead agency did not abuse its discretion in using AB 32 as a significance criterion in analyzing the GHG-related effects of a large, mixed use development. <i>Id.</i> at 222-223.</p> <p>In <i>Banning Ranch Conservancy v. City of Newport Beach</i> (March 30, 2017) __ Cal.5th __, 2017 WL 1174436, the Court held that, in "punting" to the Coastal Commission, the City had failed to use its best efforts to investigate and disclose what it had discovered about environmentally sensitive areas in the project site. <i>Id.</i> at *11.</p> <p>Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32 Page: 4</p>	
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<p>CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN CASE NUMBER: 37-2012-00101054-CU-TT-CTL DIEGO [E-FILE]</p> <hr/> <p>E. An injunction is appropriate in a CEQA case where activities will prejudice the implementation of a mitigation measure. <i>Californians for Alternatives to Toxics v. Department of Food and Agriculture</i> (2005) 136 Cal.App.4th 1, 21 ("a court can issue an order enjoining activities that could adversely change or alter the environment, if it finds that such activities 'will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project' ")</p> <p>3. Requests for Judicial Notice.</p> <p>The Sierra Club seeks (ROA 170) judicial notice of two documents: (A) the October 20, 2016 Notice of Preparation of the County of San Diego Climate Action Plan and General Plan Amendment; and (B) a chart, prepared by the County, of the proposed and in-process General Plan Amendment applications within San Diego County.</p> <p>Golden Door seeks (ROA 25) judicial notice of the County's October 21, 2009 CEQA Guidelines.</p> <p>The petitioners' requests are made pursuant to Evid. Code section 452(c), official acts of a state political subdivision.</p> <p>The County seeks judicial notice (ROA 32* and 182) of 20 documents (three in the <i>Golden Door</i> case and 17 in the <i>Sierra Club</i> case). These requests are made pursuant to Evid. Code sections 452(c), official acts of a state political subdivision, and 452(d), court records.</p> <p>Courts of appeal review a trial court's ruling granting a request for judicial notice pursuant to the abuse of discretion standard of review. <i>In re Social Services Payment Cases</i> (2008) 166 Cal.App.4th 1249, 1271.</p> <p>Evidence Code section 453 provides that a trial court must take judicial notice of any matter specified in Evidence Code section 452, upon a party's proper request.</p> <p>In <i>People v. Harbolt</i> (1997) 61 Cal.App.4th 123, 126-127, the court discussed the limited purposes for which a court may take judicial notice of a court record:</p> <p>"Evidence Code sections 452 and 453 permit the trial court to 'take judicial notice of the <i>existence</i> of judicial opinions and court documents, along with the truth of the results reached-in the documents such as orders, statements of decision, and judgments-but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.' [Citations.]</p> <p>The County did not oppose either petitioner request, and they are granted. With regard to the County's requests, the court rules as follows:</p> <p>Ex. 1, April 19, 2013 reporter's transcript: Granted Ex. 2, April 24, 2013 Judgment: Granted Ex. 3, April 19, 2013 Minutes: Granted Ex. 4, April 24, 2013 Writ: Granted Ex. 5 and Ex. 2, Nov. 7, 2013 Guidelines: Granted Ex. 6, Supplemental Petition: Granted Ex. 7, Stipulation and Order (ROA 64): Granted Ex. 8, May 4, 2015 supplemental writ of mandate: Granted Ex. 9 and Ex. 3, June 4, 2015 Initial Return: Granted Ex. 10, January 5, 2016 Second Return: Granted Ex. 11, June 29, 2016 Third Return: Granted Ex. 12, Dec. 29 2016 Fourth return: Granted</p> <hr/> <p>Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32 Page: 5</p>	
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<p>CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN CASE NUMBER: 37-2012-00101054-CU-TT-CTL DIEGO [E-FILE]</p> <hr/> <p>Ex. 13, Second Supp. Petition: Granted Ex. 14, opposition to demurrer: Granted Ex. 15 and Ex. 1, Bay Area June 2010 document: Denied Ex. 16, 2007 San Bernardino document: Denied Ex. 17, 2011 San Bernardino document: Denied</p> <p>With regard to the latter three documents, the denial is based on lack of relevance and the fact that none of the three documents was, so far as the court can discern, within the administrative record in these matters.</p> <p>4. Discussion and Rulings.</p> <p>A. Law of the Case.</p> <p>The following are the holdings of the Fourth District Court of Appeal, Div. 1, in the 2012 <i>Sierra Club</i> case:</p> <p>"[W]ith respect to the CAP as mitigation for a plan-level document, the County failed to proceed in the manner required by CEQA by proceeding with the CAP and Thresholds project in spite of the express language of Mitigation Measure CC-1.2 requiring that the CAP "include ... more detailed greenhouse gas emissions reduction targets and deadlines" and that the CAP "will achieve comprehensive and enforceable GHG emissions reduction" by 2020. With respect to the CAP as a plan-level document itself, the County failed to proceed in the manner required by law by failing to incorporate mitigation measures into the CAP as required by <i>Public Resources Code section 21081.6</i>."</p> <p>231 Cal.App.4th at 1167 (italics in original).</p> <p>"Instead of analyzing and making findings regarding the environmental effects of the CAP and Thresholds project, the County made an erroneous assumption that the CAP and Thresholds project was the same project as the general plan update. ... As a result, the County failed to render a "written determination of environmental impact" before approving the CAP and Thresholds project. ...This constitutes a failure to proceed in the manner required by law."</p> <p>231 Cal.App.4th at 1170-71.</p> <p>The "trial court did not err in finding a supplemental EIR was required."</p> <p>231 Cal.App.4th at 1174.</p> <p>The CAP "does not fulfill the County's commitment under CEQA and Mitigation Measure CC-1.2, to provide detailed deadlines and enforceable measures to ensure GHG emissions will be reduced."</p> <p>231 Cal.App.4th at 1176.</p> <p>B. Contentions of the Parties.</p> <p>The Sierra Club contends the County's 2016 Guidance Document was not properly adopted, creates a threshold of significance, and violates CEQA; that the use of the 2016 Guidance Document violates the decision of the Court of Appeal and this court's supplemental writ of mandate, as well as the County's own previously adopted mitigation measure; that the County proceeded in the absence of substantial evidence; and that the County should be enjoined from processing and approving new, large-scale developments until a lawful CAP and threshold are in place to guide that development and ensure the County can meet its greenhouse gas reduction targets. In the reply brief (p. 5:19-20), the Sierra Club withdraws its request to enjoin the processing of designated projects and states it only seeks to enjoin project approvals until a lawful CAP and threshold are in place.</p> <hr/> <p>Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32 Page: 6</p>	
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Golden Door's arguments are similar; it contends the County violated CEQA's procedural requirements in adopting the 2016 Significance Document; that the County violated CEQA by failing to comply with County General Plan EIR Mitigation Measures CC-1.2 and CC-1.8; and that by approving the 2016 Significance Document before the CAP is approved and without environmental review, the County is "piecemealing" and thwarting the County's commitment to comprehensive GHG mitigation. Golden Door also agrees with the Sierra Club argument regarding the absence of substantial evidence as to the County's "Efficiency Metric."

The County contends that the claims of the Sierra Club and Golden Door are not ripe; that the 2016 Guidance Document is merely an advisory document to be used on a project-by-project basis, and not a formally adopted threshold of significance; that the 2016 Guidance Document is based on substantial evidence; that it is in full compliance with the earlier decisions of this court and the 4th DCA, Div. 1; and that petitioners are not entitled to injunctive relief [either to stop all large scale ("greenfields") development (Sierra Club) or to stop the use of the 2016 Guidance Document (Golden Door)].

C. Rulings of the Court.

1. Are the Claims Ripe for Decision?

Yes. It is somewhat ironic that in 2013, the County argued the Sierra Club's claims were time-barred, and now it argues they are not ripe. As the court held in overruling the demurrer, a definite and concrete dispute is raised in the Second Supplemental Petition (SSP). The SSP pleads that the 2016 Guidance Document contains or constitutes a threshold of significance. SSP, paragraphs 1-4, 15, 34-35, 41, 52. The 2016 Guidance Document contains interpretative guidelines for CEQA analysis prepared by the County for use when it acts as the lead agency or responsible agency on projects within its jurisdictional boundaries. AR 10976-10983. This scenario is similar to *Cal. BIA, supra*, in which the court was not persuaded by the District's argument that the District's guidelines are a nonbinding, advisory document. *Cal. BIA, supra*, 2 Cal.App.5th at 1088. If the County's approach was to proceed on a project-by-project basis, as it now claims, it would just do so; it would not need the 2016 Guidance Document. If, instead, the 2016 Guidance Document was intended as an interim set of thresholds of significance for use between now and the time the County finally gets around to complying with the decisions of this court and the Fourth District Court of Appeal, the County cannot be heard to complain that there is no definite and concrete dispute. The County's apparent failure to devote sufficient resources to complying with the decisions of the courts in a timely fashion cannot be held to allow the County to invoke the ripeness doctrine.

2. Is the 2016 Guidance Document a Threshold of Significance under CEQA Guideline 15064.7, or Is It Merely Advisory?

The 2016 Guidance Document is a threshold of significance under CEQA Guideline 15064.7.

CEQA Guideline 15064.7(a) provides, "[a] threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." CEQA Guideline 15064.7(a).

The 2016 Guidance Document meets this threshold of significance definition. It sets forth the "County Efficiency Metric" and recommends the use of the "Efficiency Metric" as a "quantitative GHG analysis." See AR 10979. It provides a "measuring stick" for the significance of GHG impacts as to the "Efficiency Metric." It sets 4.9 metric tons of CO₂e per person per year as the level above which a project's GHG impacts are found significant and below which the impacts will be found less than significant. See AR 10980. It describes the "Efficiency Metric" as a "threshold." See AR 10980. The metric is included in the 2016 Guidance Document in a section entitled "Significance Determination." See AR 10979-80.

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<p>CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN CASE NUMBER: 37-2012-00101054-CU-TT-CTL DIEGO [E-FILE]</p> <p>The fact that the "Efficiency Metric" is recommended, and not mandatory, does not mean that the 2016 Guidance Document is not a threshold of significance. See <i>Cal. BIA, supra</i>, 2 Cal.App.5th at 1088-89 ("District argues writ relief is inappropriate because the District Guidelines are a nonbinding, advisory document and their review is premature given the lack of a specific controversy. We are not persuaded The District Guidelines are not interim steps in a larger review process; rather, they are interpretive guidelines for CEQA analyses promulgated by an air district that acts as either the lead agency or a responsible agency on projects within its jurisdictional boundaries.") The same is true here. The 2016 Guidance Document contains interpretative guidelines for CEQA analysis. It was drafted by the County that acts as the responsible agency on projects within its jurisdictional boundaries.</p> <p>Since the 2016 Guidance Document is a threshold of significance under CEQA, the County is required to comply with the CEQA's mandated procedures for adopting it. That is, CEQA requires that a threshold of significance "be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence." See CEQA Guidelines 15064.7(b). Thresholds of significance that are "clearly erroneous and unauthorized under CEQA" must be set aside. <i>Cal. BIA, supra</i>, 2 Cal.App.5th at 1088.</p> <p>The County failed to comply with the CEQA-required procedures in adopting the 2016 Guidance Document. It did not adopt the 2016 Guidance Document by "ordinance, resolution, rule, or regulation." It did undertake a public review process. Also, the County's rules (ignored by the County) require that the 2016 Guidance Document be subject to public review. See Golden Door's RJN, Ex. 5, County's CEQA Guidelines, p. 5 ("Processing Departments shall prepare and maintain administrative guidance for determining the significance of environmental effects. Such guidance, if available, should be utilized in the preparation of Initial Studies and EIRs and updated periodically <u>Before any administrative guidance or revisions are approved by the Processing Department, the proposal shall be circulated for public review and comments...</u>") Accordingly, the 2016 Guidance Document is a threshold of significance under CEQA.</p> <p>Interestingly, the 2016 Guidance Document allows more GHG emissions per year (4.9 metric tons of CO₂e per year), as opposed to the County 2013 GHG Significance Document (4.3 metric tons of CO₂e per year. AR 10349. However, the lower 4.32 metric tons of CO₂e per year threshold was vacated by this court. ROA 92. CEQA was violated because there was no opportunity for public discussion of this determination.</p> <p>3. Does the 2016 Guidance Document Violate Mitigation Measures CC-1.2 or CC-1.8?</p> <p>Yes. In order to mitigate the climate change impacts of the 2011 GPU, the County approved mitigation measures requiring it to prepare a CAP (CC-1.2) and to revise its thresholds of significance (CC-1.8). AR 1317-1318 (CC-1.2, CC-1.8). The 2016 Guidance Document violates CC-1.2 and CC-1.8 when the County processes projects using the 2016 Guidance Document in lieu of a threshold of significance based on the CAP. The County got the cart before the horse.</p> <p>4. Is the 2016 Guidance Document Supported by Substantial Evidence?</p> <p>No. A threshold of significance must be based on substantial evidence. See CEQA Guideline 15064.7(c). The 2016 Guidance Document fails to bridge the analytical gap with substantial evidence, and thus is not supported by substantial evidence.</p> <p>The 2016 Guidance Document relies on statewide service population and statewide GHG inventory to derive a "per person" limit of GHG emissions. AR 10981. It provides no data specific to San Diego County. It makes no effort to explain why the calculation of the "County Efficiency Metric" based only on statewide data is appropriate for San Diego County. It provides no information on what level of population was assumed for unincorporated San Diego County in the statewide service population number. It does not differentiate between various types of development, such as new, urban, and rural. Thus, it fails to bridge the analytical gap with substantial evidence explaining why calculation of the</p> <p>Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32 Page: 8</p>	
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<p>CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN CASE NUMBER: 37-2012-00101054-CU-TT-CTL DIEGO [E-FILE]</p> <hr/> <p>"County Efficiency Metric" based on statewide data is proper for San Diego County.</p> <p>The matter is somewhat similar to <i>Cal. B/A</i>. In that case, the Supreme Court held that an EIR's GHG analysis was insufficient given it failed to provide substantial evidence that the statewide GHG reduction levels were a "proper measuring stick" at the project level. <i>Cal. B/A, supra</i>, 62 Cal.4th at 225-227. The Supreme Court's holding was partly premised on potential differences in new and existing development and differences in assumptions used in statewide models and in local models. <i>Id.</i> Here, the "County Efficiency Metric" is somewhat similar to the <i>Cal. B/A</i> EIR. It relies on statewide service population and statewide GHG inventory to derive a "per person" limit of GHG emissions. AR 10981. It provides no data specific to San Diego County (which has topography, marine influences, and an industrial mix different from many parts of the state (not to mention an international border no other part of the state has). It makes no effort to explain why the calculation of the "County Efficiency Metric" based only on statewide data is appropriate for San Diego County.</p> <p>Golden Door does not (and is not required to) discuss the evidence supporting the County's statewide service population and statewide GHG inventory. Golden Door does not challenge the sufficiency of such evidence for <u>statewide</u> purposes.</p> <p>The court grants Sierra Club's joinder in Golden Door's supporting and reply briefs regarding the lack of substantial evidence for the 2016 Guidance Document. ROA 171, 188.</p> <p>5. Is the County in Compliance with This Court's Directives as Affirmed by the Court of Appeal?</p> <p>No. The Court of Appeal in the 2012 <i>Sierra Club</i> case found that the CAP and thresholds of significance based on the CAP are a single project that is subject to environmental review. 231 Cal.App.4th at 175 ("As a plan-level document, the CAP and Thresholds project was required to undergo environmental review as a matter of law.") Three years later, the County has not completed a CAP. Also, it has not performed CEQA review for the 2016 Guidance Document. Thus, the 2016 Guidance Document violates the Court of Appeal ruling and is piecemeal environmental review.</p> <p>6. Are Petitioners Entitled to Injunctive Relief?</p> <p>Yes, although not the extent sought by the Sierra Club.</p> <p>The Sierra Club seeks an injunction prohibiting the County from processing and approving new large scale developments on undeveloped land in San Diego County until the County approves a lawful CAP and thresholds regarding GHG impacts. The Sierra Club proposes to enjoin 17 in-process projects listed in the Sierra Club's RJN, Ex. B (ROA 170).</p> <p>The Sierra Club and Golden Door also seek an injunction prohibiting the County from using the 2016 Guidance Document and its "County Efficiency Metric" for CEQA review of GHG impacts for development proposals on undeveloped land in San Diego County.</p> <p>The Sierra Club's request (injunction prohibiting the County from processing and approving new large scale developments on undeveloped land in San Diego County until the County approves a lawful CAP and thresholds) is denied. An injunction to prohibit the County from undertaking its planning process is too broad, and would embroil the court in County operations the court is not equipped to oversee. Further, there is the possibility that the County will deny some or all of the projects. Moreover, the Sierra Club has withdrawn its request to enjoin the processing of the designated projects. <i>See</i> reply brief, p. 5:18 ("The Club no longer seeks to enjoin the <i>processing</i> of the designated projects..."; italics in original).</p> <p>The Sierra Club's request (injunction prohibiting the County from approving new large scale developments) is denied. The parties involved in the projects are not before the court, and thus, do not have the opportunity to address the request. This is a basic due process concern. Also, granting the request would probably prejudice the applicants in the projects. <i>Save Our Bay, Inc. v. San Diego Unified</i></p> <p>Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32 Page: 9</p>	
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CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN CASE NUMBER: 37-2012-00101054-CU-TT-CTL
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Port District (1996) 42 Cal.App.4th 686, 696 ("the test is whether the person is one whose rights must necessarily be affected by the judgment in the proceeding"). Undoubtedly, some applicants have expended time and financial resources and would be obviously impacted by an injunction prohibiting the approval. In addition, the Sierra Club has an available adequate remedy - filing an individual lawsuit with respect to each project that is approved. In addition, the Sierra Club concedes the injunction request is a "novel situation" and that "it may be unusual for a court to issue the type of injunctive ... relief sought here". See opening brief, p. 23:21; see also reply brief, p. 11:14-15.

However, the court is very concerned that the County has not acted expeditiously and has allowed approximately 4 years to transpire since the court ordered the preparation of a new CAP and approximately 2 years to transpire since the High Court denied the County's petition for review. As such, the injunction is denied without prejudice for the Sierra Club to renew the request if it appears within the next couple of months that the County is still avoiding its obligation to effectuate a lawful CAP and threshold.

The joint injunction request is granted. The County is prohibited from using the 2016 Guidance Document and its "County Efficiency Metric" for CEQA review of GHG impacts for development proposals on undeveloped land in San Diego County. The injunction does not enjoin planning activities. It only prevents the County from utilizing an improper threshold of significance in the CEQA review of GHG impacts on undeveloped land in San Diego County. It only enjoins an action that is inconsistent with CEQA. *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454-55.

Accordingly, let a writ of mandate issue forthwith, directing respondent the County of San Diego to set aside and vacate the 2016 Guidance Document; and let an injunction issue wherein the 2016 Guidance Document and its "County Efficiency Metric" may not be used to provide the basis for CEQA review of GHG impacts of development proposals on unincorporated County lands. The court declares that the 2016 Guidance Document and its "County Efficiency Metric" are legally inadequate and may not be used to provide the basis for CEQA review of GHG impacts of development proposals on unincorporated County lands.

The court believes it has addressed all of the principal controverted issues of the case, and the court therefore finds it unnecessary to address the other contentions in the second amended/supplemental petition for writ of mandate and petition for writ of mandate. *Compare Natter v. Palm Desert Rent Review Com.* (1987) 190 Cal.App.3d 994, 1001; *Young v. Three for One Oil Royalties* (1934) 1 Cal.2d 639, 647-648. By proceeding in this fashion, the court aims to deliver a prompt decision, bearing in mind that the trial court is most often just a waystation in the life of a CEQA case.

Attorneys' fees, if sought, may be addressed in a future noticed motion.

The court thanks the parties for their high-quality briefs. The court expects to return the lodged AR to the parties at the hearing so that it will be available for appellate proceedings should that be deemed appropriate. Accordingly, the parties should bring an extra briefcase to the hearing.

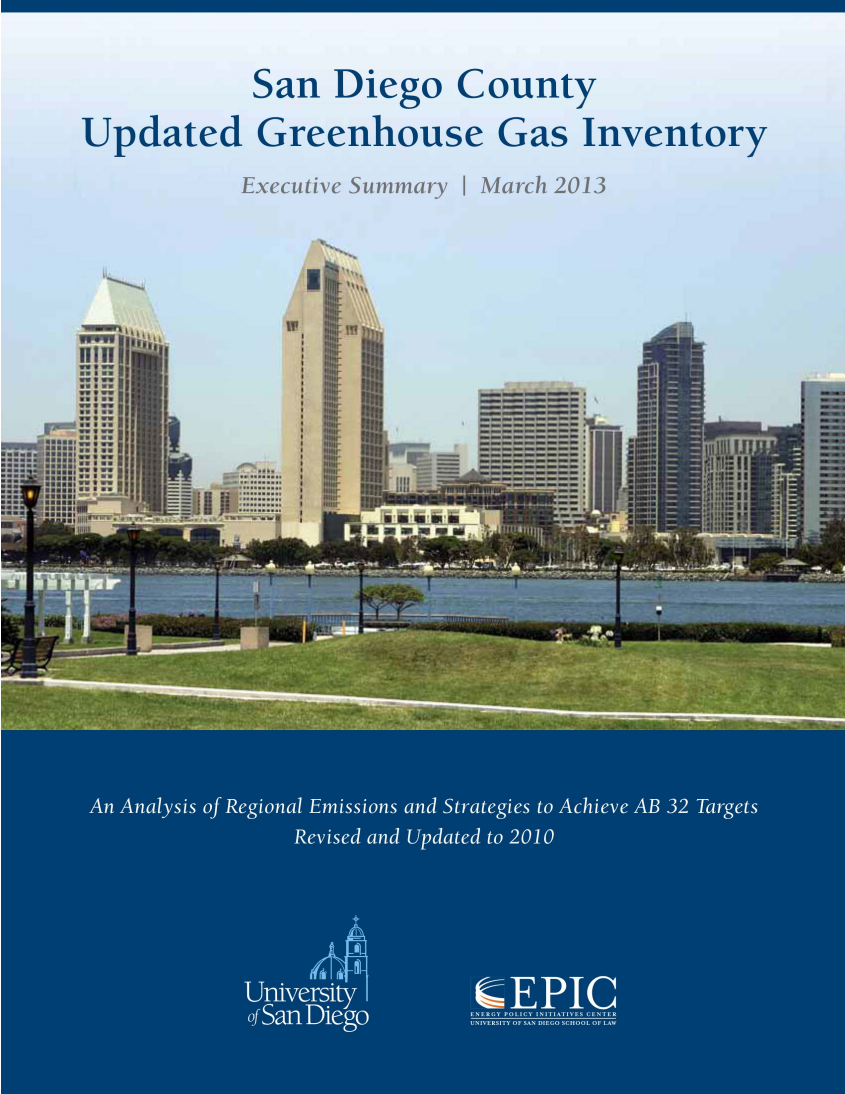
*The County's request in the *Golden Door* case is confusing, as it refers initially to "Exhibits A-P" but then only references and attaches Exhibits 1-3.

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EXHIBIT 3	
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<p>Authors:</p> <p>Scott J. Anders <i>Director, Energy Policy Initiatives Center, University of San Diego School of Law</i></p> <p>Nilmini Silva-Send, Ph.D. <i>Senior Policy Analyst and C. Hugh Friedman Fellow in Energy Law and Policy, Energy Policy Initiatives Center, University of San Diego School of Law</i></p> <p>Acknowledgements:</p> <p>The authors would like to thank the following individuals who contributed as authors to the regional greenhouse gas inventory of 2008 and on whose work this summary builds:</p> <p>David O. De Haan, Ph.D. <i>Associate Professor of Chemistry, University of San Diego</i></p> <p>Sean Tanaka <i>Energy and Environment Research Scientist and Engineer, Tanaka Research.</i></p> <p>For an electronic copy of this summary report and the full documentation of the San Diego Greenhouse Gas Inventory project, go to www.sandiego.edu/epic/ghginventory.</p>	
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1. Key Findings

- Estimated emissions in San Diego County in 2010 were 32 million metric tons of carbon dioxide equivalent (MMT CO₂e) – about 9% more than in 1990.
- In 2010, per-capita emissions for San Diego County were approximately 10 MMT CO₂e.
- In 2010, emissions from cars and light duty trucks represented about 44% of total greenhouse gas emissions in San Diego County, approximately the average of the years 2005-2010.
- The projection in 2020 – assuming no change in policy from 2009 – is about 37 MMT CO₂e, significantly lower than the previous (2008) projection of 43 MMT CO₂e, due in large part to the economic downturn.
 - » If reductions from state Pavley I standards (implemented 2010) and the state Renewable Portfolio Standard (RPS, 33% in 2020) were included, the projection for 2020 would be approximately 31.5 MMT CO₂e, about 7% above 1990 levels.
 - » If reductions from the Low Carbon Fuel Standard (LCFS) were also included, the projection for 2020 would be approximately 30 MMT CO₂e, about 3% above 1990 levels.
- State and federal policies would account for more than 70% of the total greenhouse gas emissions reductions needed for the San Diego region to reach 1990 levels of emissions by 2020.
 - » The Pavley I standards are expected to reduce emissions by an estimated 2.4 MMT CO₂e in 2020.
 - » The RPS is expected to reduce emissions by an estimated 3.1 MMT CO₂e reduction in 2020.
 - » The LCFS is expected to reduce emissions an estimated 1.1 CO₂e reduction in 2020.



2. Total Greenhouse Gas Emissions in San Diego County (2010)

In 2010 San Diego County emitted an estimated 32.1 million metric tons of carbon dioxide equivalent (MMT CO₂E), 3.1 MMT CO₂E (9%) more than 1990 emissions¹. Figure 1 shows San Diego County greenhouse gas emissions from 1990 through 2010. San Diego County greenhouse gas emissions by category is shown in Figure 2.

Figure 1. Net San Diego County Emissions, Revised Estimates (1990-2010)

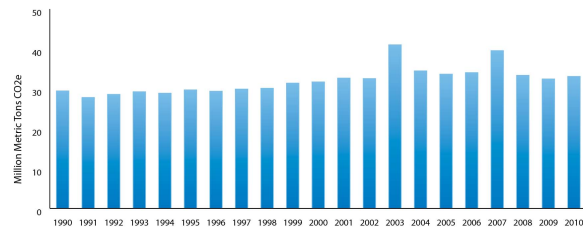
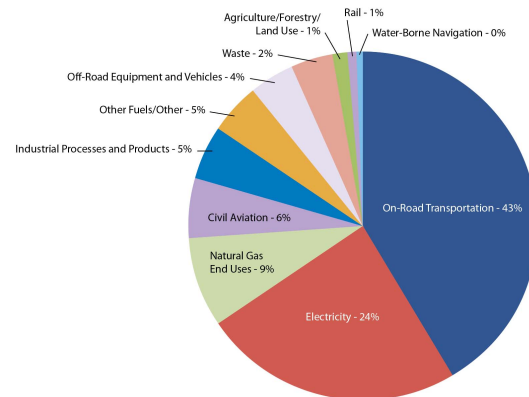


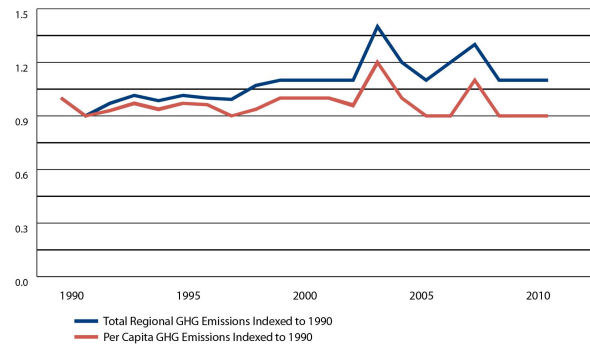
Figure 2. San Diego County Greenhouse Gas Emissions by Sector (2010)



1. Carbon dioxide equivalent includes the sum of all greenhouse gases converted to the global warming potential (GWP) of carbon dioxide. For example, the GWP for methane is 21. This means that 1 million metric tons of methane is equivalent to emissions of 21 million metric tons of carbon dioxide.

In 2010, per-capita greenhouse gas emissions for the San Diego region were 10.1 metric tons of CO₂e, less than the 1990-2006 average of 11.2 metric tons. This decrease is explained partly by the economic downturn.

Figure 3. Greenhouse Gas Emissions, Indexed to 1990, San Diego County



2.1. Emissions Projections to 2020

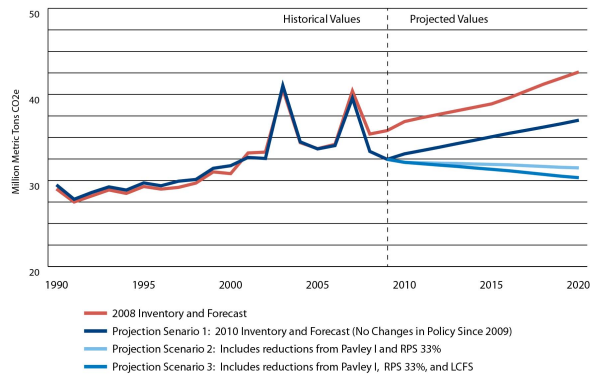
At the time of the first (2008) regional greenhouse gas inventory, the state Pavley I standards were not in force and the Low Carbon Fuel Standard (LCFS) had not yet been adopted. By 2010, the Pavley I standards were being implemented and the Renewable Portfolio Standard (RPS) target was increased to 33% renewable electricity by 2020. For purposes of projecting emissions to 2020, we therefore present three scenarios:

- **No Policy Changes** - The first projection scenario is based on the policies in existence in 2009 and does not include reductions expected from the Pavley I standards and the increased RPS target. In this scenario, greenhouse gas emissions from San Diego County are estimated at 37 MMT CO₂e in 2020.
- **Pavley I + RPS 33%** - The second projection includes reductions expected from implementation of Pavley I and the RPS 33%. In this scenario, San Diego County greenhouse gas emissions are estimated at 31.5 MMT CO₂e in 2020.
- **Pavley I + RPS 33% + LCFS** - The third projection scenario includes reductions expected from Pavley I, the RPS of 33%, and the LCFS. In this scenario, greenhouse gas emissions from San Diego County are estimated to be approximately 30.3 MMT CO₂e in 2020. Note that although the LCFS was adopted in 2010, its future is uncertain at this time due to litigation.²

2. Two cases challenge the LCFS. In *Poet, LLC v. California Air Resources Board*, (2009), Poet, the largest ethanol producer in the world, challenges the LCFS on the basis that CARB failed to comply with the California Environmental Quality Act. Poet's petition for writ of mandate was denied and has been appealed to the California Court of Appeals in November 2011. No further dates have been set. *Rocky Mountain Farmers Union v. Goldstone* (2010) challenges the LCFS rule as violating the Commerce Clause of the United States Constitution. In December 2011 the Eastern District of California invalidated parts of the LCFS rule. Federal district court stayed enforcement upon appeal in April 2012. The parties are now awaiting a decision.

Figure 4 shows the emissions levels in 2020 under the three projection scenarios, as well as the previous (2008) forecast.

Figure 4. Projection Scenarios to 2020 for San Diego County



2.2. Emission Reduction Targets

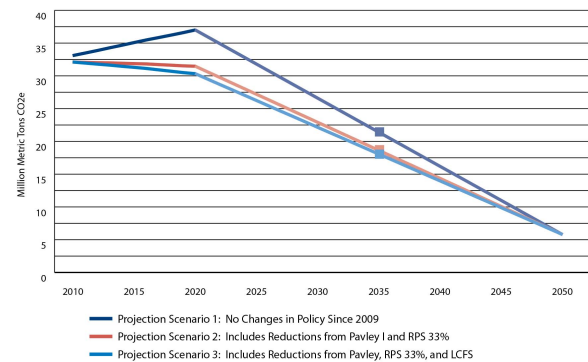
In 2006, California Governor Arnold Schwarzenegger signed the Global Warming Solutions Act (AB 32), establishing statutory limits on greenhouse gas emissions in California. AB 32 seeks to reduce statewide emissions to 1990 levels by the year 2020. While AB 32 does not specify reduction targets for specific sectors or jurisdictions, this study calculated theoretical reductions targets for San Diego County based on AB 32.

In 2005, Governor Schwarzenegger signed Executive Order S-3-05, which establishes long-term targets for greenhouse gas emissions reductions to levels 80% below 1990 levels in 2050. While this reduction target is not mandatory, it is generally accepted as the long-term target of California regulations. Like AB 32, Executive Order S-3-05 is intended to be applied statewide, but if applied hypothetically to San Diego County, total emissions would have to be 5.8 MMT CO₂e in 2050.

In 2009, California Senate Bill 375 came into effect as another regulatory tool to help California achieve its AB32 target. SB 375 requires regional planning agencies to achieve greenhouse gas emissions reductions through land use and transportation policy, specifically requiring a target for these emissions in 2020 as well as in the 2035 planning year. The year 2035 has therefore become another planning horizon year for cities and the region.

Figures 5 illustrates the theoretical decrease in emissions needed if San Diego County were required to meet both AB 32 and Executive Order S-3-05 targets along a linear trajectory. The 2035 planning year and its theoretical goals are also shown and depend on the projection chosen for 2020. The emissions goal for 2035 based on this linear trajectory varies, depending on the projection scenario, between 18.1 MMT CO₂e and 21.4 MMT CO₂e in order to achieve the 2050 target of 5.8 MMT CO₂e.

Figure 5. Applying Statewide Greenhouse Gas Reduction Targets in San Diego County



3. Summary Methodology

EPIC updated historical greenhouse gas emissions to 2010 using the best available data and made revised estimated projections for future emissions to 2020 for San Diego County based on the updated information. To be consistent with revisions and refinements in methodology at the California Air Resources Board (CARB), EPIC revised some historical data used to calculate the 2008 inventory. For example, the electricity sector data were revised back to 1990. On-road transportation emissions were revised from 2008 based on revised vehicle miles traveled data from the regional transportation agency SANDAG. Waste emissions were revised from 2008 based on refined emissions factors obtained from CARB. The "Other Fuels", and "Industrial Processes" sectors were adjusted according to economic activity data through 2008. Civil aviation was updated using departure air miles through 2008. For the wildfire category, an average of emissions based on fires occurring since 1990 was used to project 2020 emissions levels. The "Off-road" and "Waterborne" category projections to 2020 remain the same as in the previous forecast of 2006. A summary of the methods is provided in Table 1. For a detailed presentation of the methods used, please see documents published in support of the 2008 inventory.³

3. See <http://www.sandiego.edu/epic/ghginventory>

Table 1. Summary of Inventory Methods and Data Sources

Inventory Category	Method	Data Sources
ON-ROAD TRANSPORTATION	CARB EMFAC2007 Model for San Diego County	1990-2008 CO ₂ e Emissions from CARB On-Road EMFAC2007 Model, based on Series 12 Input data from SANDAG, and VMT forecast data from SANDAG for 2020, 2035
ELECTRICITY	Fuel-based, CARB emissions factors (lbs/MWh) and average emissions for power suppliers used where fuel data unavailable (CARB Method); 2020-2035 projection based on CEC forecast trend	FERC FORM 1, CEC Energy Forecast 2010-2020, SEC Form 10-K, EIA Form 861
NATURAL GAS END USES	Fuel-based (CARB Method); 2020-2035 projection based on CEC forecast trend	FERC FORM 1, CEC Energy Forecast 2010-2020
OFF-ROAD EQUIPMENT AND VEHICLES	CARB OFFROAD Model for San Diego County; linear projection from 2020 to 2035	CO ₂ e Emissions from CARB OFFROAD Model
CIVIL AVIATION	Fuel-based (Average of jet fuel sold and passenger miles traveled methods), interstate emissions included (Modified CARB Method); linear projection from 2020 projection to 2035	Two main jet fuel and aviation gas suppliers to San Diego Int'l Airport, Bureau of Transportation Statistics Department (BTS RITA), San Diego Air Pollution Control District (natural gas)
WASTE	IPCC Mathematically Exact First Order Decay Model (CARB Method); linear projection from 2020 to 2035	CARB (waste water factors), City of San Diego (waste disposed), San Diego County Public Works Department, CARB (waste disposed), CWMB, USD EPA
INDUSTRIAL PROCESSES AND PRODUCTS	Source-based, some scaled from statewide inventory data (CARB Method); projection based on US Census Bureau economic forecast data to 2035	CARB, US EPA, US Census Bureau, US Geological Survey, CA Dept. of Transportation, CEC
WATER-BORNE NAVIGATION	Based on CARB estimate (CARB Method); linear projection to 2035	CARB estimate, adjusted by local port business plan to 2020
RAIL TRANSPORTATION	Scaled from statewide inventory (CARB Method); linear projection from 2020 to 2035	CARB statewide GHG inventory, US Census Bureau (economic data)
OTHER/OTHER FUELS	Scaled from statewide inventory (CARB Method); linear projection from 2020 to 2035	CARB statewide GHG inventory, US Census Bureau (economic data)
AGRICULTURE (LIVESTOCK)	Scaled from statewide inventory (CARB Method); linear projection from previous 2020 value to 2035	CARB statewide GHG inventory, US Department of Agriculture, and San Diego County (crop reports)
EMISSIONS FROM DEVELOPMENT (Loss of Vegetation)	GIS analysis of developed areas from 1990-2007 (Modified CARB); linear projection from previous 2020 value to 2035	SANDAG and CA Dept of Forestry and Fire Protection (GIS data), Winrock International and C. Wiedemeyer paper (biomass data)
WILDFIRES	GIS analysis of burned areas from 1990-2007 (Modified CARB); annual projections from previous 2020 value to 2035 based on average annuals from 1990-2010.	SANDAG and CA Dept of Forestry and Fire Protection (GIS data), Winrock International and C. Wiedemeyer paper (biomass data), SANGIS (GIS burn areas)
SEQUESTRATION FROM LAND COVER	GIS analysis of San Diego County vegetation 1990-2007 (Modified CARB); linear projection from previous 2020 value to 2035	SANDAG and CA Dept of Forestry and Fire Protection (GIS data), Winrock International and C. Wiedemeyer paper (biomass data), SANGIS (GIS burn areas), H. Luo paper (carbon uptake by chaparral)

4. Conclusion

San Diego County emitted approximately 32 million MMT CO₂e in 2010 – about 9% above the 1990 level. This increase is not as large as previously projected due largely to the economic recession. Transportation remains the top emitting category, followed by electricity and natural gas. These highest emitting categories are significantly associated with activities by individuals (e.g., driving and home electricity and natural gas use); thus more than 70% of total regional emissions are associated with individual activities.

For 2020, we presented three projection scenarios. In the first, we projected emissions without changes to policy as of 2009. In the second projection scenario, we accounted for the reductions expected from Pavley 1 and the RPS 33%. In this second projection scenario, greenhouse gas emissions would be approximately 2 MMT CO₂e above the 1990 level, meaning that San Diego County would have to decrease emissions by about 2 MMT CO₂e in 2020 to reach the AB 32 target. In the third projection scenario, we included reductions expected from Pavley 1, the RPS 33% standards reductions and the LCFS reductions by 2020. In this third projection scenario, San Diego County would need about 0.8 MMT CO₂e additional reductions to meet the AB 32 target in 2020.

San Diego County GHG Inventory Executive Summary

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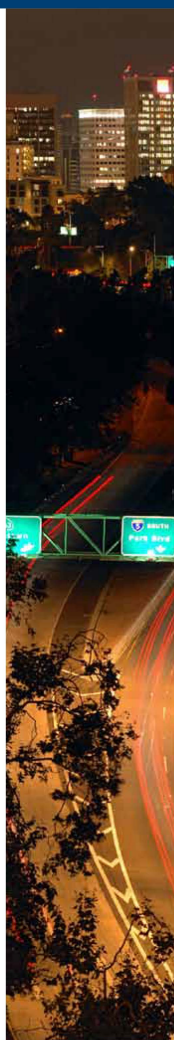
5. Appendix

Table 2. San Diego County GHG Inventory and Emissions Projections (MMT Co2e)


	1990	1995	2000	2005	2010	2015	2020	2025	2030	2035
<i>Projected Values</i>										
ON-ROAD TRANSPORTATION	14.3	13.3	13.9	15.9	14.4	15.0	15.7	16.8	18.0	18.3
Passenger Vehicles	7.4	6.5	6.3	6.2	5.9	6.1	6.4	6.7	7.1	7.3
Light Duty Vehicles	5.1	5.1	5.9	7.8	7.0	7.2	7.4	7.8	8.3	8.6
Heavy Duty Trucks and Vehicles	1.8	1.6	1.7	1.9	1.5	1.7	1.9	2.3	2.6	2.4
Motorcycles	0.04	0.03	0.02	0.06	0.04	0.05	0.05	0.05	0.05	0.05
ELECTRICITY*	6.8	7.5	8.5	7.7	8.3	8.9	9.5	10.0	10.6	11.2
Residential	2.5	2.8	2.9	2.8	3.1	3.4	3.7	3.9	4.1	4.3
Commercial	2.6	3.0	3.8	3.4	3.6	3.9	4.1	4.4	4.6	4.9
Industrial	0.7	0.7	0.8	0.6	0.6	0.7	0.7	0.7	0.8	0.8
Mining	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Agricultural	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
TCU	0.6	0.7	0.8	0.7	0.7	0.7	0.8	0.8	0.8	0.9
Street lighting	0.03	0.04	0.04	0.04	0.05	0.05	0.05	0.05	0.06	0.06
NATURAL GAS END USES*	3.9	2.8	3.1	2.8	2.9	3.1	3.3	3.5	3.7	3.9
Residential	1.9	1.7	1.8	1.7	1.7	1.8	1.9	2.0	2.1	2.2
Commercial	0.9	0.6	0.5	0.9	0.8	0.9	1.0	1.1	1.2	1.3
Industrial	0.9	0.3	0.7	0.1	0.2	0.2	0.2	0.2	0.2	0.2
Mining	0.04	0.02	0.01	0.03	0.02	0.02	0.02	0.02	0.02	0.02
Agricultural	0.03	0.03	0.02	0.03	0.02	0.02	0.02	0.02	0.02	0.02
Other**	0.2	0.1	0.0	0.1	0.1	0.1	0.1	0.1	0.2	0.2
OFF-ROAD EQUIPMENT AND VEHICLES	1.8	1.8	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9
Construction and Mining Equipment	0.4	0.5	0.6	0.6	0.7	0.7	0.8	0.9	0.9	1.0
Pleasure Craft†	0.1	0.1	0.1	0.2	0.2	0.2	0.3	0.3	0.3	0.3
Industrial Equipment	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Agriculture Equipment	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Other	0.2	0.2	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4
CIVIL AVIATION	1.2	1.4	1.6	1.8	1.9	2.0	2.1	2.2	2.4	2.5
Intrastate	1.0	1.1	1.4	1.7	1.69	1.83	1.86	2.07	2.30	2.32
Interstate	0.2	0.2	0.2	0.2	0.17	0.16	0.15	0.16	0.16	0.17
WASTE	0.9	1.1	0.4	0.4	0.6	0.7	0.7	0.9	1.0	1.1
Landfills	0.3	0.5	0.2	0.2	0.4	0.5	0.5	0.6	0.7	0.8
Wastewater Treatment	0.6	0.6	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.3
INDUSTRIAL PROCESSES AND PRODUCTS	0.5	0.7	1.6	1.9	1.8	1.9	1.9	2.0	2.1	2.12
HFCs	0.0	0.3	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2
SF6	0.2	0.1	1.2	1.3	1.0	0.9	0.7	0.8	0.8	0.9
Other	0.3	0.2	0.3	0.4	0.6	0.8	1.0	1.0	1.0	1.0
WATER-BORNE NAVIGATION	0.04	0.06	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.3
Ocean Going Vessels (OGV)	0.03	0.05	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2
Harbor Craft	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1
RAIL	0.21	0.22	0.17	0.30	0.32	0.39	0.47	0.54	0.61	0.68
OTHER FUELS/OTHER	1.83	1.04	1.41	1.56	1.58	1.63	1.71	1.80	1.89	1.97
Manufacturing	0.71	0.66	0.44	0.45	0.43	0.39	0.38	0.32	0.28	0.25
Transport	0.20	0.13	0.19	0.18	0.12	0.10	0.09	0.08	0.07	0.06
Residential	0.16	0.14	0.13	0.18	0.21	0.25	0.30	0.35	0.39	0.44
Energy	0.01	0.01	0.01	0.02	0.03	0.04	0.05	0.06	0.07	0.08
Commercial	0.30	0.18	0.13	0.15	0.15	0.16	0.18	0.19	0.21	0.22
Agriculture	0.17	0.14	0.12	0.17	0.16	0.17	0.18	0.20	0.21	0.22
Oxygen Adjustment (Thermal)	0.28	0.38	0.30	0.42	0.40	0.51	0.55	0.61	0.65	0.70
AGRICULTURE (Livestock)	0.15	0.12	0.09	0.07	0.05	0.04	0.03	0.02	0.02	0.01
Enteric Fermentation	0.07	0.08	0.05	0.04	0.03	0.02	0.02	0.01	0.01	0.01
Manure	0.07	0.06	0.04	0.03	0.02	0.02	0.01	0.01	0.00	0.00
LAND USE WILDFIRES	0.18	0.09	0.23	0.28	0.28	0.28	0.28	0.28	0.28	0.28
Forest	0.03	0.01	0.05	0.03	0.03	0.03	0.03	0.03	0.03	0.03
Woodland growth	0.01	0.06	0.04	0.02	0.02	0.02	0.02	0.02	0.02	0.02
Chaparral, scrub, and grasslands	0.14	0.03	0.15	0.23	0.23	0.23	0.23	0.23	0.23	0.23
DEVELOPMENT (LOSS OF VEGETATION)	0.06	0.06	0.19	0.20	0.18	0.18	0.18	0.18	0.18	0.18
Loss of farmland	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03
Loss of native vegetation	0.02	0.03	0.17	0.17	0.15	0.15	0.15	0.15	0.15	0.15
SEQUESTRATION FROM LAND COVER	(0.88)	(0.88)	(0.88)	(0.87)	(0.86)	(0.86)	(0.85)	(0.85)	(0.84)	(0.83)
Forest growth	(0.24)	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)	(0.22)	(0.22)	(0.22)	(0.22)
Woodland growth	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.06)	(0.06)	(0.06)
Chaparral, scrub, and grasslands	(0.36)	(0.37)	(0.37)	(0.37)	(0.36)	(0.36)	(0.36)	(0.36)	(0.36)	(0.35)
TOTAL	29	30	32	34	33	35	37	40	42	44

*Historical Electricity and Natural Gas values based on the California Energy Commission 2009 energy forecast. Some values vary from 2008 inventory.

**Natural Gas Other includes consumption from Civil Aviation and Waterborne Navigation categories.



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