cannot simply assume that necessary improvements would magically appear when needed in the future, and that there would not be any environmental impacts associated with constructing them.

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(b) Cumulative Impacts

The DEIR also fails to analyze the cumulative impacts associated with providing water for the Project. The DEIR admits that "[f]uture growth in the cumulative area in conjunction with the Proposed Project . . . would incrementally increase the long-term demand for wastewater, water, and solid waste services, similar to the Proposed Project." DEIR at 3.1.8-45. But the DEIR then dismisses the potential for cumulative impacts to occur because cumulative projects "would be required to contribute fees, as applicable, to reduce and minimize potential cumulative impacts on such services and facilities" and new facilities would "undergo separate environmental review and would comply with all applicable County ordinances and laws and regulations regarding the protection of environmental resources." *Id.*

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This analysis does not discuss the "reasonably foreseeable impacts of supplying water to the project." *Vineyard Area Citizens for Responsible Growth*, 40 Cal.4th at 434. The DEIR must disclose what effect the development of the cumulative projects would have on the water entitlements and other facilities that would serve the Project. The DEIR cannot simply assume that applying laws and regulations to future projects obviates the potential for cumulative impacts. *Communities for a Better Environment*, 103 Cal.App.4th at 111-14 (compliance with an environmental regulatory program cannot displace an agency's *separate* obligation to consider whether a project's environmental impacts are significant); *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-17 (same). Here, the DEIR provides no basis for assuming that unspecified fee payments, regulatory compliance, or future environmental review would ameliorate any potential cumulative impacts.

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In fact, it is foreseeable that cumulative water supply impacts will be much greater than the DEIR assumes. SDCWA's water demand projections are tied to development assumptions in general plans, as they existed during preparation of the 2015 Urban Water Management Plan. *See* SDCWA 2015 Urban Water Management Plan, excerpted and attached as Exhibit 33. Since then, the County has adopted or is considering numerous general plan amendments that would add growth in SDCWA's service territory but were not considered in the 2015 Urban Water Management Plan. *See, e.g.*, Exhibit Summary Newland-Sierra DEIR, excerpted and attached as Exhibit 34. Thus, cumulative development in San Diego County will require expansion of existing water supplies beyond SDCWA's projections.

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A revised EIR must undertake an analysis of cumulative impacts associated with the Project and other development that would rely on the same water sources. This analysis must include facts supported with substantial evidence. CEQA Guidelines § 15064(b) (significance determinations must reflect "careful judgment . . . based to the extent possible on scientific and factual data"). O-6-298

6. The DEIR Lacks and Adequate Analysis of and Mitigation for the Project's Hydrological and Water Quality Impacts. O-6-299

The DEIR's evaluation of the Project's hydrological and water quality impacts is flawed because it lacks necessary facts and analysis to support its conclusions that the Project would not create significant impacts. A thorough analysis of these issues is critical because the Project area is especially susceptible to potential hydrologic and water quality impacts from development. The Project site is spread across an area of undeveloped steep slopes, many of which would be graded by the Project. The site naturally drains into Proctor Valley Creek and Jamul Creek, which are tributaries of the Upper Otay and Lower Otay Reservoirs. DEIR at 3.1.2-22. These reservoirs provide drinking water to residents of the City of San Diego. DEIR at 3.1.2-23. O-6-300

(a) Hydrology Impacts

The DEIR recognizes that altering upland topography to construct the Project could negatively affect hydrology in the Otay Ranch area. As a result, the DEIR's thresholds of significance recognize that the Project would have a significant hydrology impact if it would increase flows from the Project site in a manner that would (1) "cause flooding downstream or exceed the stormwater drainage system capacity serving the site," or (2) "substantially alter the existing drainage pattern of the site or area . . . in a manner which would result in substantial erosion or siltation on or off site." DEIR at 3.1.2-14. But the DEIR lacks the data and analysis necessary to determine whether the Project would exceed either of these thresholds. O-6-301

A review of the DEIR by Dr. Richard Horner, who has specialized in research, teaching, and consulting in storm water runoff and surface water management and has over 50 years in the field, revealed serious deficiencies in the DEIR's stormwater analysis. *See* Exhibit 3 (Horner Report). Most significantly, the DEIR lacks data regarding the steepness of slopes and permeability of soils on the portions of the Project site that would be developed. *Id.* at 3-5. For example, the DEIR maps locations where slopes exceed 25 percent with a single color (rather than clearly delineate the extent of slopes throughout the site) and fails to describe the actual steepness of any slope over 25 percent. DEIR at Figures 1-14a, 1-14b. Providing this information is critical because a relatively modest increase in slope can dramatically increase the potential for higher O-6-302 O-6-303 O-6-304 O-6-305

velocity flows and soil erosion. *See* Exhibit 3 at 5-6 (Horner Report). Without accurate slope data, it is impossible to evaluate the Project's potential erosion, flooding, and siltation impacts.

Similarly, the DEIR relies solely on the U.S. Department of Agriculture's Natural Resources Conservation Service ("NRCS") soil survey to define soils onsite. But this soil data was commonly gathered through more remote sensing (instead of onsite testing) and can therefore be "wrong or misleading." *Id.* at 4. Soils can vary extensively in short distances and not knowing local conditions impairs the ability to prepare a proper construction-phase stormwater control assessment. *Id.* Slope and soil data are two of the most important variables in hydrological modeling, and without first collecting this information and providing it to the public, the DEIR cannot support its conclusion that the Project's potential hydrologic impacts would not be significant. *Id.* at 8

The DEIR compounds these omissions by failing to perform *any* analysis of potential hydrological impacts during the Project's construction phase. Instead, the DEIR assumes that implementation of unspecified best management practices ("BMPs") from a Construction General Permit and a required Stormwater Pollution Prevention Plan[9] (neither of which the applicant currently possesses) would prevent any potential significant impacts during the Project's construction. DEIR at 3.1.2-15.

It is entirely inappropriate to defer this analysis until after Project approval. An EIR's explicit purpose is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights II*, 6 Cal.4th at 1123. To accomplish this purpose, an EIR must contain facts *and* analysis, not just an agency's bare conclusions some later activities will prevent significant environmental impacts. *Citizens of Goleta Valley*, 52 Cal.3d at 568. Here, the public and decisionmakers deserve to understand the risk of downstream hydrologic impacts that could occur during the Project's construction and the specific measures that the applicant proposes to mitigate those potential impacts. This information is especially critical for evaluating construction impacts because "30 to more than 1000 times as much soil loss can occur [from construction-related] vegetation clearing" compared to pre-construction conditions. Exhibit 3 at 5 (Horner Report). Given this high potential for erosion and

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[9] To the extent that the DEIR relies on future preparation of the SWPPP to mitigate potential hydrology and water quality impacts, the DEIR further violates CEQA because it does not set forth sufficient specific, measurable performance standards for the SWPPP that could justify later formulation of mitigation methods targeted to meet water quality and hydrologic standards.

siltation during the Project's construction, the DEIR must disclose what measures are necessary to prevent significant construction-related impacts.

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Ultimately, the Project would require extensive grading and an increase in impervious surface coverage, changes that would likely cause increased runoff from the Project site. The DEIR asserts that once built, the Project's stormwater drainage system would contain peak flows from the site. But the DEIR fails to consider whether peak discharges from the Project site would cause downstream erosion in either Jamul or Proctor Valley Creeks. As Dr. Horner observes, even though the environmental document lacks complete topographic maps and site plan elevations, it reveals that "that some quite steep slopes will remain within the finished development." *Id.* at 8. During peak events, water conveyed from these steep, newly impermeable surfaces could cause significant erosion in the natural channels downslope. Apparently aware of this risk, the DEIR's technical appendix asserts that impacts from "changes [to drainage patterns] will be mitigated by the proposed storm drain system consisting of inlets, pipes, cleanouts, energy dissipation, and basins." *Id.* But this is a wholly unacceptable way of presenting decisionmakers and the public with essential information regarding , and it renders the EIR legally inadequate. As we explained above, whatever is required to be in the EIR must be in the EIR text, not buried in an appendix. *See Santa Clarita Organization for Planning the Environment*, 106 Cal.App.4th at 722-23; *San Joaquin Raptor*, 27 Cal.App.4th at 727. Moreover, the technical appendix lacks any description of the proposed drainage system that would be needed to conclude that the Project would be properly designed to prevent downstream erosion. Without this information, it is impossible for the public and decisionmakers to determine whether discharges from the Project would avoid erosion into Jamul or Proctor Valley Creek.

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(b) Water Quality Impacts.

As discussed above, water from the Project site drains into Upper Otay and Lower Otay Reservoirs, which provide drinking water to the City of San Diego. Additionally, the Lower Otay Reservoir and Jamul Creek are listed as impaired water bodies under the Clean Water Act. DEIR 3.1.2-23; Exhibit 3 at 20 (Horner Report). Despite the sensitivity of these receiving waters, the DEIR fails to take steps to ensure that the Project would not result in significant water quality impacts.

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For instance, the DEIR does little to control pollution sources associated with residential and commercial development. As Dr. Horner notes, "[f]ertilizers, lawn and garden pesticides, pet wastes, and washing vehicles at home are all common and significant sources of pollutants in stormwater flowing from urban communities." Exhibit 3 at 8 (Horner Report). While it acknowledges some of these pollution sources, the DEIR entirely ignores others (e.g. pet wastes).

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The DEIR further relies on vaguely-stated and unenforceable measures to control urban pollution at these sources. For instance, the DEIR proposes reducing impacts from pest-control pollutants by including undefined "pest management strategies," providing pest management information to occupants of the site, and designing landscaping to "minimize the use of fertilizers and pesticides." DEIR at 3.1.2-21. The DEIR also asserts that "[p]lazas, sidewalks, and parking lots would be swept regularly to prevent accumulation of litter and debris" and that wash water would be collected before it can be discharged. *Id.* But DEIR does not specify what any of these measures would entail, how they would be implemented, or how they would enforced. Without evidence that these strategies are enforceable and feasibly implemented to reduce pollution from the Project, the DEIR cannot rely on them to assume that the Project's impacts would be less than significant. *See Sacramento Old City*, 229 Cal.App.3d at 1027 (record must include substantial evidence that mitigation is effective and enforceable). O-6-328 O-6-329 O-6-330 O-6-331

Moreover, Dr. Horner's review of the Project's proposed stormwater treatment system reveals that it is inadequate to effectively remove pollutants contained in runoff from the Project site. Most glaringly, the stormwater system's design would only capture approximately 62 percent of the runoff from the Project site, leaving the other 38 percent to bypass the system without any treatment. Exhibit 3 at 9 (Horner Report). Even for the water that is collected in the applicant's proposed treatment system, only a fraction of the pollutants of concern would be removed from the stormwater leaving the residual pollutants to discharge into the downstream water bodies. For instance, the Project's biofiltration basins would only be expected to remove roughly 50 percent of discharged e-coli, and only 25 percent of discharged nitrogen. *Id.* at 11. In the case of the Project's phosphorus discharge, it "would actually be expected to increase after treatment" in the proposed stormwater system. *Id.* at 11. O-6-332 O-6-333 O-6-334 O-6-334 O-6-336

Discharging of pollutants from the Project would result in significant impacts to human health and the environment downstream. Among the many foreseeable impacts Dr. Horner identifies, the risk of eutrophication from nutrients (nitrogen and phosphorus) discharged into the watershed is particularly significant. Nutrients spur algal growth in the water bodies like the Upper Otay and Lower Otay reservoirs, which can impair their use for drinking water and negatively impact habitat for aquatic species. *Id.* at 14-18 For all of the aforementioned reasons, the DEIR lacks the evidentiary support that the Project would not further degrade water quality downstream from the Project. O-6-337 O-6-338 O-6-339 O-6-340

(c) Cumulative Impacts O-6-341

Finally, as with other sections, the DEIR's analysis of cumulative hydrologic and water quality impacts is wholly inadequate. Although it acknowledges that other planned urban development would further increase impermeable surfaces in the Project area and O-6-342

have the potential to discharge pollutants into the same water basin, the DEIR makes no attempt to determine which of these cumulative projects could create a cumulative impact when combined with the Project's potential discharges. *See* DEIR at 3.1.2-27 through 3.1.2-28. Instead, the DEIR asserts that no cumulative impacts would occur because the other projects would be required to undergo CEQA review and would have to comply with County, state, and federal stormwater and water quality regulations. *Id.* For the reasons explained above, the DEIR cannot simply assume that regulatory compliance would occur and be adequate to prevent hydrologic and water impacts. Without presenting any analysis of cumulative projects, there is no basis for concluding that these projects would not themselves create significant hydrologic and water quality impacts. Even if the DEIR did contain this information, it must further determine whether impacts from multiple projects, even if insignificant in isolation, could combine to create a cumulatively significant impact. The DEIR makes no such effort.

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7. The DEIR's Analysis of the Project's Energy Impacts Is Incomplete and Inadequate.

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CEQA requires agencies to analyze whether their projects will result in the wasteful or inefficient use of energy. Pub. Resources Code § 21100(b)(3); Guidelines, Appendix F. "Under CEQA, an EIR is 'fatally defective' when it fails 'to include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy.'" *Cal. Clean Energy Com.*, 225 Cal.App.4th at 209 (quoting *People v. County of Kern* (1976) 62 Cal.App.3d 761, 774). In order to demonstrate that a project will not result in the wasteful use of energy, agencies must show that the project has decreased per capita energy consumption, decreased reliance on fossil fuel use, and increased reliance on renewable energy sources. *Id.*

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The majority of fuel consumption resulting from the proposed Project would be attributable to motor vehicles traveling to and from the Project. DEIR at 3.1.9-18. Petroleum fuel consumption associated with motor vehicles traveling to and from the Project area is a function of VMT. DEIR at 3.1.9-19. As discussed above, the Project is expected to result in more than 50 million VMT each year. Based on this VMT assumption, which is likely underestimated, the Project would consume about 1,718,084 gallons of gasoline and 123,215 gallons of diesel every year beginning in 2028. DEIR at 3.1.9-19. Despite the Project's massive gasoline and diesel fuel consumption, the DEIR concludes that any impacts would be less than significant because the Project would not be considered inefficient or wasteful. DEIR at 3.1.9-20. The DEIR lacks the evidentiary basis for this conclusion.

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The document offers three reasons why the Project's fuel consumption should not be considered inefficient or wasteful. Each of these reasons is unavailing. First, the DEIR explains that the Project proposes the inclusion of electric-vehicle charging stations in one-half of the residential units and 10 electric-vehicle charging stations in the Village Core's parking areas. DEIR at 3.1.9-19. We acknowledge this effort as a step in the right direction, but it is not sufficient to overcome the massive increase in VMT and fuel consumption that would accompany the Project. The fact that up to 50 percent of houses might be equipped with charging stations does not mean that 50 percent of residents' vehicles will be electric. After years of being on the market, electric vehicle sales made up less than 3% of new auto registrations in California in the first half of 2017 (less than 5% if you include plug in hybrids).

Second, the DEIR looks to increased fuel efficiency of vehicles over the lifetime of the Project to suggest that this Project should not be considered inefficient or wasteful. DEIR at 3.1.9-19. While true that fuel efficiency is expected to improve over time, this Project is doing nothing to facilitate increased fuel efficiency. Moreover, the DEIR attempts to minimize the magnitude of the Project's fuel consumption by comparing it to California's annual fuel consumption, which is about 19 billion gallons of petroleum per year. DEIR at 3.1.9-19. This is disingenuous. The more applicable statistic would be to compare annual per capita fuel consumption in Otay Valley to per capita consumption in a more urbanized location such as the City of San Diego.

If this analysis were undertaken, it would provide further indication that it is the Project's remote location that is causing the wasteful use of energy. Moreover, courts have rejected this "drop-in-the-bucket" approach to impact analysis. In *Kings County*, the court invalidated an EIR that concluded that increased ozone impacts from the project would be insignificant because it would emit relatively minor amounts of precursor pollutants compared with the large volume already emitted by other sources in the county. 221 Cal.App.3d at 717-18. The *Kings County* court aptly stated, "The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin." *Id.* at 718. Likewise, here, the DEIR may not minimize the Project's substantial fuel consumption by comparing it to California's fuel consumption, which is obviously substantial.

The DEIR's third reason as to why the Project should not be considered to be energy inefficient is the most illogical. The document looks to SANDAG's RTP/SCS's goal of reducing per capita GHG emissions by reducing VMT through the integration of land use and transportation planning. DEIR at 3.1.9-19. Yet, it is land use projects exactly like the Otay Ranch Village which SANDAG's RTP/SCS is intended to discourage. As

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discussed above, the RTP/SCS calls for achieving GHG emission reduction goals using land in a way that makes development more compact, conserving open space and reducing VMT throughout the region. Here, the Project's remote location will ensure that the majority of residents will be forced to rely on automobiles for virtually all of their transportation needs. Indeed, the Project's travel-related statistics speak for themselves: 6,600 vehicular trips every day resulting in 112,000 VMT every day, or more than 50 million VMT each year.

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In sum, this Project epitomizes the definition of a wasteful use of energy. The DEIR's failure to acknowledge this significant impact is an egregious flaw.

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8. The DEIR Lacks and Adequate Analysis of the Project's Visual/Aesthetic Impacts.

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It is essential that an EIR fully analyze and mitigate a Project's aesthetic impacts; CEQA requires careful review of harms to a visual landscape. Indeed, under CEQA, it is the State's policy to "[t]ake all action necessary to provide the people of this state with . . . enjoyment of *aesthetic*, natural, scenic, and historic environmental qualities." Pub. Resources Code § 21001(b) (emphasis added). "A substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA." *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401. No special expertise is required to demonstrate that the Project will result in significant aesthetic impacts. *Id.* at 402 ("Opinions that the [project] will not be aesthetically pleasing is not the special purview of experts."); *Pocket Protectors*, 124 Cal.App.4th at 937 ("[N]o special expertise is required on this topic.").

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Here, the Project would be developed within a broad area of open space. In and around the Project site are scenic vistas of undisturbed chaparral and sage- scrub-covered hills and valley landscape of Proctor Valley and prominent mountainous terrain, including the rugged Jamul Mountains and San Miguel Mountain. DEIR at 2.1-7. The Specific Plan for the proposed Project recognizes this beautiful setting, stating that "[the Project's] physical separation and relative isolation from the remainder of Otay Ranch provides a unique opportunity to create home sites with *expansive views* to natural permanent open space areas surrounding Proctor Valley. Upper Otay Reservoir and surrounding mountains *provide a dramatic backdrop* for [the Project]." *See* Specific Plan Village Design Plan at 7 (emphasis added)

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While the DEIR clearly acknowledges the area's stunning setting it relies on a vague and misleading impact analysis—and flawed photographic visual simulations—to conclude, incorrectly, that the Project's impacts to scenic vistas would be less than significant.

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(a) Impacts to Proctor Valley Road, a Designated Scenic Highway

Although the Project would replace a bucolic open valley with more than 1,100 homes, other structures and infrastructure, the DEIR concludes that the Project's impact on scenic vistas would be less than significant. The analysis is crippled, in large part, because it fails to provide a proper evaluation of: (1) the stark visual changes that would result from development of the Project site, and (2) how the Project would affect views of the mountains that provide a stunning backdrop to the Project site. Consequently, the DEIR lacks the evidentiary support for its conclusion that the Project would not significantly impact scenic vistas. O-6-369

The DEIR focuses the vast majority of its analysis on scenic views from locations along Proctor Valley Road, a roadway designated as a scenic highway by the San Diego County General Plan, the Jamul/Dulzura Subregional Plan, and the Otay Ranch GDP/SRP. O-6-370 The DEIR aptly acknowledges that views from the roadway are scenic and encompass the undeveloped broad, gentle hillsides of Proctor Valley, San Miguel Mountain to the northwest, the Jamul Mountains to the southeast, other distant mountainous peaks to the north, and dense trees and shrubs along the northern shore of Upper Otay Reservoir to the south. O-6-371 DEIR at S.0-4, 2.1-6, 2.1-22. The DEIR also explains that slow travel speeds along the roadway *increase* viewer exposure to the surrounding landscape. *Id.* O-6-372

Although the DEIR explicitly acknowledges that the change and resulting visual contrast associated with the Project would be most evident from Proctor Valley Road (at 2.1-27), the DEIR offers a litany of reasons why the Project would not impact scenic vistas. O-6-373 Each of these reasons is unavailing. First, the document suggests that the Project would generally not be visible from Proctor Valley Road due to intervening terrain that would screen development. O-6-374 DEIR at 2.1-22. The DEIR relies on Key View 4 to make its case. Key View 4, however, is taken from a location well to the south of —and looking away from—the Project site. If a simulation were prepared using a photo taken near the Project site, current unobstructed views of the highly scenic Proctor Valley and surrounding mountains would clearly be obstructed. O-6-375

Second, the DEIR concludes that views of the site would be visible from Proctor Valley Road, but the roadway would be realigned from its current alignment, suggesting that current pristine views would be maintained. O-6-376 Here the DEIR refers to Key Views 1 and 2. Due to the composition of these photo-simulations, the Project's structures appear as nothing more than a narrow line of brown shadows on the ridge. Indeed this, and almost every other photo simulation, would have us believe that this Project would be all but invisible. *See e.g.*, DEIR Figures 2.1-4, 2.1-5, 2.1-6, 2.1-7, 2.1-10, 2.1-12, 2.1-14. O-6-377

Moreover, Key Views 1 and 2 show a substantial amount of Project-related landscaping on the hillside between the Project and the roadway. What none of the simulations show, however, is what the site would look like once the existing vegetation is removed and the site is graded. This transformation will involve the grading of 8.9 million cubic yards of cut and fill and a massive amount of rock blasting.[10] Mass grading and rock removal will cause significant aesthetic degradation as the Project is developed. The DEIR never discloses whether the entire site will be graded even if development lags behind. If so, graded land that is not developed, or only partially developed, is a source of blight. The revised EIR must evaluate the visual effects of this very real scenario.

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Moreover, the DEIR indicates in reference to Key Views 1 and 2 that the Project, and specifically the Proctor Valley Road realignment, would *seek* to preserve significant rock outcroppings, landforms, and views to the Upper Otay Reservoir. DEIR at 2.1-23. Yet seeking to preserve important landforms is not the same as preserving the landforms. Would these landforms be preserved or not? The DEIR does not tell us. Given the massive amount of rock blasting contemplated by the Project, it seems likely that the Project site's significant rock outcroppings would not be preserved. Nor does the DEIR include any key view locations or photo-simulations showing these rock outcroppings or other significant landforms, or demonstrating what these landforms would look like upon completion of the Project.

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Third, the DEIR asserts that although the Project would clearly be visible from Proctor Valley Road, vistas would not be obstructed because the Project's houses and other structures would exhibit a low vertical profile; the Project's earth-tone colors would be compatible with existing terrain and vegetation; and the low density of the development would offer only a scattered appearance on the landscape. DEIR at 2.1-23. The DEIR directs the reader to several simulations (Figures 2.1-3, 2.1-4, 2.1-5, 2.1-9, 2.1-13, 2.1-14) but the vast majority of these photo-simulations show the Project off in the distance so that the development is again, almost invisible. The visual simulations are extraordinarily misleading. Most of the homes will be developed immediately adjacent to Proctor Valley Road, not off in the distance (*see* Village Design Plan at 8, showing areas R-9; DEIR Figure 2.1-2). If simulations were prepared north of View Points 1 and 2 and

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[10] The DEIR's noise chapter estimates that approximately 5,354,227 cubic yards of rock would be blasted during the early stages of excavation and mass grading for Phase 1 (January 2018 through December 2024) and that approximately 1,778,632 cubic yards of rock would be blasted during the early stages of excavation and mass grading for Phase 2 (December 2020 through November 2027). DEIR at 2.8-22.

south of View Point 11, for example, the Project would be in the foreground and therefore appear substantially larger in scale and more prominent. From such vantage points along Proctor Valley Road, motorists' views of the mountains and Proctor Valley would undoubtedly be obstructed by houses and other Project-related development.

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The DEIR further acknowledges that as motorists pass through the Project area, newly planted street trees would interrupt views to the rugged ridgelines of mountainous terrain in the surrounding area. Yet here too, the DEIR casts aside this impact, suggesting that any obstruction and interruption of Proctor Valley and the scenic mountains would be experienced only temporarily by motorists, as views to mountainous terrain would be restored after passing through landscaped segments of Proctor Valley Road. DEIR at 2.1-23. Therefore, the DEIR concludes, due to the relatively short duration of obstruction and interruption of views, and the prevalence of these views in the visual environment, impacts to existing views along the central segment of Proctor Valley Road associated with the planting of street trees would not be substantial. *Id.* The impacts to views caused by the Project would be permanent and would be experienced by thousands of motorists. The fact that views would be ultimately be restored after the motorist drives through the Project site is irrelevant; it is the change in visual integrity during a scenic drive that affects the integrity of the vista.

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Finally, the DEIR downplays obstruction of views of the Valley's grasslands and of the rugged Jamul Mountains, claiming that the residential development would be dispersed on ranchettes with 2-acre minimum lots, and that this style of low density development "would not be visible" due to the houses scattered appearance in the landscape. DEIR at 2.1-23. Here, the DEIR relies on View Points 8 and 12. View Point 8 shows a location where the Project would, in fact, have low-density development. The DEIR ignores those vantage points in Village 14, however, where development would be considerably more dense.[11] Had the photos and simulations been taken north of View Points 1 and 2 and south of View Point 11, the Project's the mass and scale of the Project would be far more apparent. It is also important to note that View Point 8 does not even afford a view of the Project. *See* DEIR Figure 2.1-2 (showing a section of the Project site that would remain untouched). The DEIR preparers' selection of specific viewpoints appears designed to substantially understate the Project's significant visual effects. This approach undermines CEQA's core purpose: to disclose a project's adverse impacts.

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[11] Lots in Village 14 would be as dense as 8 dwelling units per acre. *See* DEIR Figure 1-5. In addition, the Project calls for the construction of a school immediately adjacent to Proctor Valley Road.

(b) Impacts to Trails and Recreation Areas

The only trail the DEIR addresses is Centennial Trail. This multi-use path occurs along the eastern perimeter of the Eastlake development in Chula Vista. DEIR at 2.1-24. The DEIR explains that northerly views from the trail include the Lower and Upper Otay Reservoirs and extend to San Miguel Mountain and the Jamul Mountains. *Id.* The document asserts that due to the presence of ridges and hills located immediately north of Proctor Valley Road and rising mountainous terrain located east of the Upper Otay Reservoir, the majority of the Otay Ranch Village 14 proposed developed area is screened from the view of trail users. *Id.* The DEIR fails to provide any evidentiary support for this assertion as it provides no simulation from the point of view of users along Centennial Trail. The closest the DEIR comes is View Point 4, but the photograph and simulation taken from this location are from Proctor Valley Road (not Centennial Trail) and provide a view of the Upper Otay Reservoir, not the Project itself. *See* DEIR at 2.1-18, Figure 2.1-6.

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The DEIR downplays the Project's impact on trail and recreational uses, asserting there are not many trail users/hikers in the area due its remote location and lack of hiking opportunities. DEIR at 2.1-6. The document does not provide any explanation as to how it determined the area lacks hiking opportunities. A quick scan of documents in the record reveals otherwise. In addition to Centennial Trail, there are numerous wilderness and recreational areas in the Project vicinity that would appear to afford views of the site. For example, the Project site is adjacent to the San Diego National Wildlife Refuge. *See* Specific Plan at 9; Village Design Plan at 3. Portions of the Project Area are also interspersed within the 5,600-acre Rancho Jamul Ecological Reserve. *Id.* The Otay Valley Regional Park is located southwest of the Project Area. In fact, the Specific Plan anticipates trails serving the Proposed Project will be integrated into the Regional Park trail system. *Id.* Other publicly owned open space areas surround the Project Area, including the State of California Hollenbeck Canyon Wildlife Area; City of San Diego's MSCP Cornerstone Properties; U.S. Department of the Interior Bureau of Land Management Otay Mountain Wilderness Area; the undeveloped foothills southeast of McGinty Mountain; the U.S. Fish and Wildlife Services San Diego-Sweetwater National Wildlife Refuge; and other City and County ownerships. *Id.*; DEIR at S.0-5. The DEIR's Executive Summary also notes that there are dirt trails that crisscross the Project area and that these trails are used for hiking and mountain biking. *Id.*

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The DEIR's visual impact analysis fails to acknowledge the proximity of these wildlife and recreational areas to the Project site, let alone evaluate how views from these natural areas would change once the Project is developed. One need look no further than DEIR Figures 2.1-15 and 2.1-16 (Viewshed Analysis Maps) to understand the extent of views to the Project site from locations in the surrounding area. The revised EIR must

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include a series of figures showing the wildlife and other recreational areas overlaid on the DEIR's Viewshed Analysis Maps. It also must provide visual simulations showing how views of the Project site would change from appropriate trail and picnic locations within each of the aforementioned areas.

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(c) Cumulative Impacts on Scenic Vistas

The DEIR provides only a cursory discussion of cumulative impacts on scenic vistas before concluding such impacts would be less than significant. DEIR at 2.1-40. One of the first steps in the process of determining visual impacts is to describe the environmental setting. 14 Cal. Code Regs. § 15125. A description of the setting is very important in order to determine the baseline, which is itself critical to a meaningful assessment of the impacts of a project. *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal. 4th 99, 119. The description of physical environmental conditions must include a local and regional perspective. Guidelines § 15125. The description should also place special emphasis on environmental resources that are rare or unique to the region and that would be affected by a project. *Id.* § 15125(a). Here, the DEIR fails to describe the environmental setting from a regional perspective for the purposes of visual impacts.

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The DEIR mentions a few other land use development projects but it never describes the setting of these other projects. While the DEIR (Figure 1-16) shows the location of each of the cumulative projects, there is no explanation of how these projects would impact scenic vistas. In particular, the DEIR should have evaluated how the Project, together with cumulative development, would impact views from scenic Proctor Valley Road and from the trails and other recreational areas in the area.

O-6-405

This analysis is particularly needed because San Diego County's backcountry is growing quickly, with development and roads being built rapidly. Cumulative impacts on scenic vistas must be analyzed in reference to the greater region. Without a description of the surrounding areas and the planned development there, it is impossible to know what impact the Project, especially in conjunction with other development and highway projects, will have on views in the area. In any event, the DEIR lacks any basis, let alone substantial evidence, to conclude that the Project's cumulative impact on scenic vistas would be less than significant.

O-6-406

(d) The DEIR's Analysis of Nighttime Views Is Legally Deficient.

O-6-407

Perhaps one of the DEIR's most egregious deficiencies relates to the document's analysis of impacts to nighttime views. Dark skies are a very valuable commodity and

O-6-408

worthy of preservation. Maintaining dark skies is of critical importance in this area of San Diego's back country. Because cities and suburban locations are fraught with light pollution, this is one of the dwindling number of locations where one is able to gaze at stars . In this area, the experience of natural darkness at night and seeing the stars above is still possible on cloudless evenings. Preservation of this resource not only benefits visitors and residents alike but also the region's wildlife. Reducing light pollution is especially critical here given that the Project is interspersed within the 5,600-acre Rancho Jamul Ecological Reserve. *See* Specific Plan at 9; Village Design Plan at 3.

O-6-408 Cont.

The Project would introduce new light sources throughout approximately 1,000 acres that currently have no existing light sources. These new sources of light would be clearly visible from surrounding areas, yet the DEIR ultimately concludes that the Project would not be a significant source of light. DEIR at 2.1-33. This conclusion defies common sense, as the amount of lighting generated by a massive subdivision, and its roadways, would certainly cause additional lighting of the dark sky. Despite these potential impacts, the DEIR fails to undertake the comprehensive analysis that CEQA requires.

O-6-409

O-6-410

In order to accurately evaluate light and glare impacts, one must take into account three aspects of lighting: (a) amount of light; (b) shielding of fixtures; and (c) spectrum of light sources. *See* Flagstaff Dark Skies and Pattern Outdoor Lighting Ordinance, Dark Sky Coalition, attached as Exhibit 35. Unfortunately, the DEIR fails to include any information on these three aspects of lighting. These light aspects are discussed further below.

O-6-411

(i) Amount

According to the Dark Sky Coalition, reasonable limitations on a project's total lighting (lumen) amount can reduce the frequency and degree of careless and/or competitive over-lighting. *See* Exhibit 35 (Flagstaff Dark Skies). Here, the DEIR does not identify the amount of lighting that the Project would generate. Nor does the document include photo-simulations that show the Project's impact on the night skies, particularly on night-glow. The revised DEIR must provide this analysis.

O-6-412

According to the Dark Sky Coalition, caps of 50,000 – 100,000 lumens per acre have been shown to reduce average lighting amounts (and thus all light pollution impacts) by 25% to 70% compared to average un-capped commercial lighting practice. Consequently, in order to protect dark skies, the revised EIR should include a mitigation measure that commits the Project to place a lighting cap of no more than 50,000 – 100,000 lumens per acre. If the EIR rejects the placement of a lighting cap as infeasible, it must support its findings with substantial evidence.

O-6-413

(ii) Shielding

Research shows that full shielding of lighting sources can reduce sky glow by 50% to over 90% when compared to a typical mix of partially shielded and unshielded lighting. *See* Exhibit 35 (Flagstaff Dark Skies). Full shielding is defined as emitting no light rays from the fixture at angles above the horizontal plane. *Id.* As shielding dramatically reduces glare and light trespass as well, it is and should be, the highest priority in a project's lighting plan. Although the DEIR asserts that the Project would conform to shielding requirements in the County's Light Pollution Code, the DEIR fails to provide *any* detail about the Project's shielding of light sources. *See* DEIR at 2.1-33. Rather, the DEIR indicates that light would be shielded only to the extent that no light is transmitted across property lines. *Id.* Moreover, the Preserve Edge Plan prepared in association with the Project indicates that light spillage into the preserve is to be avoided "*to the greatest extent possible*." Preserve Edge Plan at 59 (emphasis added). The revised EIR must disclose the details about the Project's light shielding and then analyze the effect that partially shielded light would have on sky glow. Here too, the revised EIR must provide visual simulations showing existing sky glow in the area and sky glow once the Project is fully built out. Finally, the revised EIR must mitigate the Project's impact on sky glow with a commitment to fully shield light sources. To achieve this, lights should be aimed straight down, but under no circumstances at an angle higher than 45 degrees above straight down. *Id.* If the EIR rejects a mitigation measure calling for full light shielding, it must support its findings with substantial evidence.

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(iii) Spectrum

The DEIR also fails to addresses the type of light spectrum that would be implemented with the Project. According to the Dark Sky Coalition, using yellow light sources, e.g., high-pressure sodium and PC-amber LED, or low-pressure sodium and AlInGaP "narrow-band" amber LED, for the majority of lighting uses can reduce sky glow by 70% to almost 90% when compared to white sources such as metal halide, fluorescent, and LED. *See* Exhibit 35 (Flagstaff Dark Skies). The DEIR never mentions the concept of spectrum in its analysis of impacts on dark sky. Nor does it disclose the amount of white light sources that would be used by the Project. The revised EIR must provide this information. In addition, the revised EIR should include a measure that requires the use of high-pressure sodium and PC-amber LED, or low-pressure sodium and AlInGaP "narrow-band" amber LED. If the EIR rejects this spectrum of lighting as infeasible, it must support its findings with substantial evidence.

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In addition, the DEIR fails to analyze cumulative light and glare impacts. Rather, the document simply mentions a few projects in the area and asserts that since these projects would be designed to adhere to the County's regulations, light impacts would be

O-6-423

less than significant. DEIR at 2.1-41, 2.1-42. To conclude, as the DEIR does, that the Project's light sources would not be cumulatively considerable, the document must identify facts and analyses to support this conclusion. Guidelines § 15130(a)(3). The revised EIR must provide this analysis. In addition, in order to ensure that lighting from cumulative development would not contribute to further light pollution, the County must require the adoption of the mitigation measures discussed previously.

O-6-423 Cont.
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For the reasons set forth above, the DEIR's failure to properly assess the Project-specific and cumulative impacts to visual resources, and to identify enforceable mitigation for them, is fatal. The revised EIR must include a comprehensive evaluation of impacts and this analysis must be supported with substantial evidence as required by CEQA. The revised EIR must also include additional mitigation measures to ensure that the scenic beauty and night skies of the County's back country are protected.

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O-6-428

C. The DEIR's Analysis of Project Alternatives is Inadequate.

O-6-429

Under CEQA, a proper analysis of alternatives is essential to comply with the Act's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Resources Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. As stated in *Laurel Heights I*, "[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.3d at 404.

O-6-430

1. The DEIR Fails to Consider a Reasonable Range of Alternatives.

Critically, an EIR must consider a "reasonable range" of alternatives "that will foster informed decision-making and public participation." CEQA Guidelines § 15126.6(a); *Laurel Heights I*, 47 Cal.3d at 404 ("An EIR's discussion of alternatives must contain analysis sufficient to allow informed decision-making."). While there is no "magic number" for how many alternatives an EIR should examine to present a "reasonable range," at a minimum CEQA requires an agency to examine at least one potentially feasible alternative to try to avoid or substantially lessen significant environmental impacts that are central to the Project. *See Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089-90 (EIR was deficient for failing to include reduced development alternative that would avoid or substantially lessen the project's primary growth-related significant impacts); *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1285, 1305 (invalidating EIR that

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failed to discuss any feasible alternative addressing the project's primary water supply impact). Further, for a large development project in a sensitive region such as this one, the agency should evaluate more than one such alternative in order to help inform the decisionmakers and the public of the potential ways to avoid the short and long-term consequences of this Project.

Critical to an adequate alternatives analysis is an evaluation of the impacts of a project itself so that decisionmakers can assess the relative costs and benefits of a project and its alternatives. Here, however, the DEIR fails to reveal numerous significant environmental impacts. As a result, the alternatives are evaluated against an inaccurate representation of the Project's impacts. Proper identification and analysis of alternatives is impossible until Project impacts are fully disclosed. Thus, the DEIR must be recirculated to analyze the entire Project's full environmental impacts and any alternatives that could feasibly avoid or minimize those impacts.

Moreover, even for those significant impacts that the DEIR acknowledges, the document's analysis of alternatives is deficient. The DEIR identifies the Project's primary significant and unavoidable impacts as those on visual resources, agricultural resources, air quality, noise, and traffic. DEIR at S.0-16—S.0-29. Yet, except for the "no project" alternative, which "would not meet any of the project objectives," none of the examined alternatives would reduce any of these impacts to a less than significant level.[12] DEIR at 4-23, DEIR Table 4-1. Moreover, the DEIR concedes that the GDP/SRP Proctor Valley Road Alternative would *increase* many environmental impacts compared to the proposed Project. DEIR at 4-102—104. Alternatives that would increase the Project's environmental impacts do not contribute to the "reasonable range" of alternatives required by CEQA. *See* Pub. Resources Code § 21100(b)(4); Guidelines § 15126.6(a) & (b).

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[12] The DEIR asserts that the Off-Site Alternative and the Land Exchange Alternative's noise impacts would be reduced to less-than-significant levels (*see* DEIR at 4-103), but the DEIR's alternatives analysis explains that traffic noise on Proctor Valley Road, west of Melody would remain significant (*id.* at 4-41, 4-72, 4-73). Moreover, it is notable that the Land Exchange Alternative would result in a greater noise increase compared to the proposed Project because it would result in greater traffic volumes. *Id.*

2. The DEIR's Flawed Assumption that the Project Can Include Development Within MSCP Preserve Infects the Entire DEIR, Including the Alternatives Analysis. O-6-439

As discussed above, development may not occur within MSCP preserve areas without major regulatory actions by FWS and DFW. Both the Subarea Plan and the Implementing Agreement prohibit the applicant's proposed development in the areas designated PV-1, PV-2, and PV-3. Consequently, if approved, the applicant's proposal to develop about 340 homes on nearly 200 acres of open space that have been set aside as preserved land would violate the Subarea Plan, the associated Implementing Agreement, and state and federal law. Because the applicant cannot actually build 1,119 homes like the DEIR claims, it is improper to compare alternatives to this oversized version of the Project. The proposed Project includes only 779 homes within Proctor Valley on lands not already set aside for preservation. Because the MSCP restrictions substantially reduce the legally permitted development footprint (and thus the number of units) of the Project, any Project alternatives that exceed 779 units would actually *increase* development compared to the proposed Project, contrary to CEQA's directive that alternatives should *reduce* project impacts. Rather the DEIR should consider only alternatives that have fewer than 779 units. Reducing the scale of the Project and alternatives also provides greater flexibility to design alternatives that minimize environmental impacts. O-6-440 O-6-441 O-6-442 O-6-443 O-6-444

For example, the Land Exchange Alternative—which would remove development from Planning Areas 16 and 19 and would add development to preserve areas in the middle of Proctor Valley—relies on the false premise that development in the preserve areas is currently permitted. A valid exchange alternative would need to start from the premise that those areas are off limits absent an exchange, and that the exchange will replace any portion of the preserve areas in kind *and additionally* be designed to reduce the impacts of the Project. Thus, any alternative that relies on exchanging land to avoid impacts must be reduced in scale to account for the existing preserve designation of PV-1, PV-2, and PV-3. O-6-445 O-6-446 O-6-446

3. The DEIR's Land Exchange Alternative Would Worsen the Project's Environmental Impacts. O-6-448

Although the DEIR does not acknowledge it, the Land Exchange Alternative is far more environmentally damaging than the proposed Project—exactly the opposite of what an alternative should accomplish. This alternative would cluster development in the center of Proctor Valley, which contains prime, undisturbed habitat for multiple special status species. While the Land Exchange Alternative would destroy this key habitat, it would preserve land with far inferior habitat value. As noted in a letter on the Conservation Biology Institute, which contains comments on the proposed land swap that O-6-449 O-6-450 O-6-451

the DEIR now labels the Land Exchange Alternative,[13] this alternative would develop a former section of Village 14 that DFW acquired for preservation in 2003. *See* May 21, 2016 Conservation Biology Institute Letter to Ed Pert, DFW at 5, May 21, 2016, attached as Exhibit 25. DFW invested in the land for the "*permanent* protection of important biological, scenic, cultural and historic resources to maintain wildlife movement corridors between Proctor Valley and nearby public lands." *Id.* This and other areas surrounding Village 14 are critical to the "east-west and north-south habitat linkages across Proctor Valley." *Id.* at 7. They also support "a seasonal drainage within the watershed of downstream conserved vernal pools, riparian habitat, and Otay Lakes." *Id.* at 6.

In contrast, as documented in the Hamilton Report, the DEIR actually mislabels much of the land in areas PA 16 and PA 19 as undisturbed coastal sage scrub. Exhibit 1 at 13-17 (Hamilton Report). In fact, disturbed coastal sage scrub and non-native grasses comprise the mislabeled areas in PA 16 and PA 19. *Id.* By failing to accurately document the existing conditions at the Project site, the DEIR fails to accurately portray the relative environmental impacts of the Land Exchange Alternative, which would develop prime habitat while preserving disturbed habitat.

The Land Exchange Alternative would have more severe environmental impacts in other key areas as well. This alternative would create severe habitat connectivity issues for species moving between San Miguel and Otay mountains. For instance, it is likely that constructing the Land Exchange Alternative in the proposed location would lead to extirpation of the Golden Eagle from its habitat in San Miguel mountain. *See id* at 35. Approximately 96-98 percent of the area in Village 14 provides valuable foraging habitat for the Golden Eagle and is highly suited for eagle use due to its isolation from development. The Land Exchange Alternative would actually expand development in this key foraging habitat area. Any benefits from eliminating development in PA 16 and PA 19 – which are much closer to the existing urban edge – would likely be offset by the exchange alternative's expansion of urbanization into Proctor Valley's core foraging habitat. Moreover, as the DEIR admits, this alternative would create "an overall increase in GHG emissions" compared to the proposed Project. DEIR at 4-72. Thus, to avoid increasing environmental impacts compared to the Project, the Land Exchange Alternative should be revised to exchange units from the center of Proctor Valley to areas immediately adjacent to Jamul or Chula Vista.

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[13] Rather than reproduce this entire letter verbatim in these comments, we have attached it as an exhibit for the County's consideration and response in the CEQA process.

Given the substantial effort that the applicant has put into pursuing acquisitions necessary for this alternative, it appears that the true "project" is the Land Exchange Alternative, not the proposed Project. Indeed, apparently in anticipation of the Land Exchange Alternative becoming the preferred alternative, the DEIR asserts that it contains "a project-level analysis" of the Land Exchange Alternative in the technical appendices. But those appendices cannot satisfy CEQA's requirement to prepare an EIR for an environmentally devastating project like the Land Exchange Alternative. As we explain above, CEQA requires that environmental analysis actually occur in an EIR; it cannot be buried in an appendix. *Santa Clarita Organization for Planning the Environment*, 106 Cal.App.4th at 722-23. Nor has the public been given adequate notice of the applicant's intention to pursue the Land Exchange Alternative as the Project. It appears the proposed Project was designed to deflect public scrutiny away from the Land Exchange Alternative, and to prevent meaningful disclosure of the impacts of that alternative. The DEIR must be revised and recirculated to provide a true project-level analysis of the impacts of the Land Exchange Alternative, and to give the public a meaningful opportunity to comment on that analysis. The County may not bury that analysis in technical appendices.

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4. The DEIR's Low Density Alternative Appears to Be Nothing More than a Straw Man Intended to Make the Project Seem Like the Only Possible Choice.

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The DEIR correctly acknowledges that the Project's significant impacts related to aesthetics, agricultural resources, biological resources, cultural resources, geology and soils, paleontological resources, and tribal cultural resources are predominately the result of the proposed Project's development footprint. DEIR at 4-8. Yet, rather than evaluate a low density alternative that substantially reduces the Project's development footprint, the DEIR includes an alternative with what would appear to be an identical footprint.[14] Consequently, those impacts related to the Project's development footprint would be virtually identical to those caused by the Project.

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Moreover, the Low Density Alternative appears to have been developed specifically to allow for a determination of infeasibility. The Alternative calls for the development of just 257 units on about 800 acres. It comes as no surprise then that the DEIR determines the Alternative is infeasible because it would not provide for the most efficient use of the Project Area or provide enough dwelling units to fund services and

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[14] The DEIR never discloses the development footprint acreage for the Low Density Alternative; instead, it states the footprint would be substantially the same as the Project's development footprint. DEIR at 4-26.

utilities. DEIR at 4-35. We can find no logical explanation for why this Alternative did not include a greater number of units on a substantially reduced development footprint. Such a reduced *footprint* development scenario would have used the land far more efficiently and would allow for a sufficient density of dwelling units to fund services and utilities.

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Accordingly, the revised EIR must take a serious look at reduced footprint alternatives that can actually avoid or lessen the Project's significant impacts, rather than designing straw-man alternatives to make this particular Project seem like the only possible choice.

O-6-472

5. The DEIR Fails to Adequately Evaluate Off-Site Alternatives.

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The DEIR properly identifies an off-site alternative—the Alternate Site Location Alternative—intended to reduce impacts caused by the Project's development footprint.[15] This alternative, located south of Village 14, would encompass approximately 273 acres of Otay Ranch RMP/MSCP Preserve land owned and managed by the Preserve Owner/Manager ("POM") and 188 acres of South Village 14 land owned by the Project applicant. DEIR at 4-36. The POM-owned land would have approximately 116 units and the South Village 14 portion would have approximately 352 units for a total of 468 units. *Id.* The total development area would be approximately 171 acres. DEIR at 4-3. The DEIR explains the intent of this off-site alternative is to conserve open space in central and north Proctor Valley and Planning Areas 16/19 while clustering development in the south of Proctor Valley. DEIR at 4-36.

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Given the severe environmental harm that would result from development on the Project site, EHL strongly supports evaluation of off-site alternatives.[16] However, the DEIR errs in rejecting as infeasible the Alternate Site Location Alternative. The DEIR asserts that this alternative is not feasible largely because the applicant neither owns nor controls the land in question, and has no reasonable means of acquiring it. DEIR at 4-49.

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[15] The previously certified Otay Ranch Program EIR apparently considered four additional off-site alternative locations, but each of these would have required extensive development in remote locations in the County's back country and therefore would offer no measurable reduction in the Project's significant environmental impacts. DEIR at 4-11—13, Figure 4-2.

[16] Because this Alternative – like the proposed Project – would develop existing preserve lands, this alternative would likewise require a Subarea Plan amendment, and would need to replace in kind any lands removed from the preserve, *in addition to* providing mitigation for the impacts of the development.

Yet, this excuse is disingenuous as the applicant is currently advocating for the Land Exchange Alternative, which also involves development on land the applicant does not own. *See* DEIR at 4-63; *see also*, February 2018 Land Exchange Alternative Technical Appendix (explaining that the Land Exchange Alternative proposes to exchange 278 acres owned by the State of California in Village 14 for 278 acres owned by the Proposed Project applicant in Planning Area 16). If the applicant is willing to acquire new land to pursue one alternative development configuration, it should similarly consider obtaining land for developing less-impactful offsite alternatives like the Alternate Site Location Alternative. O-6-479 O-6-480

Furthermore, the DEIR relies on a flawed premise when it asserts that the Alternate Site Location Alternative would leave one of the Project's objectives unsatisfied. In particular, the DEIR states that this alternative would assist in meeting the regional housing needs identified in the County's General Plan (Objective 1), but not to the same degree as the Proposed Project because it would provide 651 fewer dwelling units. DEIR at 4-48. It is incorrect that this Alternative would provide 651 fewer dwelling units than the proposed Project. As discussed above, once the Project is corrected, 779 homes would be developed on the Project site, not 1,119, reducing the difference to only 128 units. And there is no logical reason why the DEIR could not have increased the number of housing units for this Alternative to provide a comparable number of units as the proposed Project. O-6-481 O-6-482 O-6-483 O-6-484

It is also notable that the DEIR's population and housing chapter explicitly acknowledges that, "based on current growth trends, almost all of the population growth and resultant housing demand will occur in metropolitan areas." DEIR at 3.1.5-2. Based on these growth trends, we question why the DEIR did not include an off-site alternative in, or at least closer to, a metropolitan area. Because many of the Project's significant environmental impacts could be reduced or avoided altogether by developing the Project in another location, the DEIR should have evaluated locations adjacent to an already urbanized area such as the City of Chula Vista or Jamul. The revised EIR should evaluate the feasibility of such an "infill" alternative. O-6-485 O-6-486 O-6-487

A reasonable range of alternatives would include one or more feasible off-site alternatives that meet project goals and preserve the integrity of the prime, in-tact habitat in center of Proctor Valley. Such an alternative, by building in (or clustering development near) the existing urbanized areas to the north or south of the Project site, would also reduce the need for new infrastructure and associated costs because services can be provided more efficiently to development in or near already urbanized areas; reduce vehicle dependency, and in turn reduce VMT, air pollution and GHG emissions, by locating people in walkable and transit-oriented environments; reduce demand for water; conserve agricultural lands; and protect water quality. O-6-488 O-6-489

D. The DEIR Must Be Recirculated.

Under California law, this DEIR 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." CEQA Guidelines § 15088.5. O-6-490

Here, both circumstances apply. Decisionmakers and the public cannot possibly assess the Project's impacts, or even its feasibility, through the present DEIR, which is riddled with errors. Among other fundamental deficiencies, the DEIR repeatedly understates the Project's significant environmental impacts and assumes that unformulated or clearly useless mitigation measures will effectively reduce these impacts. In order to resolve these issues, the City must prepare a revised EIR that would necessarily include substantial new information. O-6-491

III. Conclusion

As set forth above, the DEIR suffers from numerous deficiencies, many of which would independently render it inadequate under CEQA. Taken as a whole, the deficiencies of the DEIR necessitate extensive revision of the document and recirculation for public comment. O-6-492

It is Endangered Habitats League's hope that the Project be reconsidered given the site's extraordinary ecological resources. The County and the applicant should reconfigure the Project to eliminate development in central Proctor Valley, cluster development near existing urbanized areas, and recognize that PV-1, PV-2, and PV-3 are preserved lands under the Subarea Plan that can include no development unless replaced with new preserved lands with equal or greater preserve system functions and values in an approved amendment to the Subarea Plan. The County can comply with its housing objectives without sacrificing its invaluable but rapidly diminishing ecological heritage. O-6-493

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

William J. White
Laurel L. Impett, AICP, Urban Planner
Edward T. Schnexnayder

cc: Dan Silver, Endangered Habitats League (***via email***)

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EXHIBIT LIST

Exhibit No.	Description
1.	Biological Resources Report, Robb Hamilton, Hamilton Biological, April 15, 2018.
2.	Quino Checkerspot Butterfly Report, Ken Osborne and Gregory Ballmer, April 9, 2018.
3.	Hydrological Report, Richard Horner, April 11, 2018
4.	Wildland Fire Report, Dr. Chris Lautenberger, REAX Engineering, April 12, 2018.
5.	Traffic Operations Evacuation Report, Neal Liddicoat, Griffin Cove Transportation Consulting, March 30, 2018.
6.	Letter to R. Copper, County of San Diego, April 14, 1995.
7.	Letter K. Kilkenny, The Baldwin Company, February 22, 1996.
8.	General Plan Amendment Report, April 5, 2001.
9.	1996 Otay Ranch Phase 2 Resource Management Plan (excerpted) Amended 2002.
10.	Email from Glen Laube re Baldwin Agreement Follow-up.
11.	Bloom Biological Report re Ranch San Diego Golden Eagles
12.	Letter to B. Albright and G. Halbert, June 6, 2013.
13.	MSCP Recirculated Draft Joint EIR/EIS, excerpts.
14.	Ikeda Maps.
15.	USGS, Response and Recovery of Animals and Plants to San Diego County Wildfires.

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16.	San Diego Union Tribune, "Sierra Club, others sue San Diego County to block carbon credit plan for new development," March 19, 2018.
17.	How additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives, Institute of Applied Ecology, March, 2016.
18.	Carbon Credits Likely Worthless in Reducing Emissions, Study Says, Inside Climate News, April 19, 2017.
19.	San Diego Forward RTP/SCS EIR GHG Analysis
20.	Review of Safari Highlands Ranch EIR of October 2017, Dr. Joseph B. Zicherman, Berkeley Engineering and Research Inc., December 20, 2017.
21.	Voice of San Diego, December 12, 2017.
22.	Fire history of the San Francisco East Bay region and implications for landscape patterns, J. Keeley, International Journal of Wildland Fire, 2005.
23.	Land Use Planning and Wildfire: Development Policies Influence Future Probability of Housing Loss, Syphard AD, Bar Massada A, Butsic V, Keeley JE, 2013.
24.	Human Influence on California Fire Regimes. Ecological Application 17:1388–1402, Syphard, A. D., V. C. Radeloff, J. E. Keeley, T. J. Hawbaker, M. K. Clayton, S. I. Stewart, and R. B. Hammer, 2007.
25.	Conservation Biology Institute Letter to Ed Pert, DFW, May 21, 2016.
26.	"Alarming failures left many in path of California wildfires vulnerable and without warning," Los Angeles Times, December 29, 2017.
27.	California's Most Significant Droughts.
28.	California Water Year 2014 Among Driest Years on Record.
29.	Assessing the Risk of Persistent Drought Using Climate Model Simulations and Paleoclimate Data.
30.	Anthropogenic Warming Has Increased Drought Risk in California.
31.	Contribution of Anthropogenic Warming to California drought.
32.	SDCWA Report on Carlsbad Desalination Plant Operations for Fiscal Year 2017.
33.	SDCWA 2015 Urban Water Management Plan, excerpted.
34.	Summary Newland-Sierra DEIR, excerpted
35.	Flagstaff Dark Skies and Pattern Outdoor Lighting Ordinance, Dark Sky Coalition.

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