

**O-7 CENTER FOR BIOLOGICAL DIVERSITY, PRESERVE WILD SANTEE, CALIFORNIA CHAPARRAL INSTITUTE**

Comment Letter O-7



April 16, 2018

*via email and FedEx (w/exhibits and references)*

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**Re: Otay Ranch Village 14 and Planning Areas 16 & 19 Draft Environmental Impact Report SCH# 2016121042**

Dear Mr. Mattson,

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”), Preserve Wild Santee and The Chaparral Institute (collectively, the “Conservation Groups”) regarding the Draft Environmental Impact Report (“DEIR”) for the Otay Ranch Village 14 and Planning Areas 16/19 Project (“the Project”). The proposed Project is anticipated to build new residential communities in undeveloped areas of southeast San Diego County and result in significant environmental impacts. The Project will degrade the current ecosystem on the Project site as well as negatively impacting sensitive biological resources in the area surrounding the Project. The Project will also place residents far away from regional job centers, necessitating a car culture that will generate significant greenhouse gas (“GHG”) emissions. The proposed Project will require exorbitant amounts of potable water, further stressing state and regional water resources. For these reasons, detailed below, we urge that the DEIR be revised to better analyze and avoid the Project’s significant environmental impacts.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has 1.6 million members and supporters throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, wildlife connectivity, open space, air and water quality, and overall quality of life for people in San Diego County.

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Comments on Otay Ranch Village DEIR

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Preserve Wild Santee is a volunteer community environmental organization that has worked to protect and enhance the quality of life and preserve natural resources in the City of Santee and adjoining areas since 1994. Preserve Wild Santee's members offer input into local land use decisions in an effort to produce better development projects with fewer environmental and fire safety impacts.

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The Chaparral Institute is a 501(c)(3) nonprofit education, research, and advocacy organization dedicated to the preservation of native shrubland habitats throughout the West and supporting the creative spirit as inspired by nature.

**I. The DEIR Analysis of Impacts to Biological Resources is Inadequate**

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**A. The DEIR does not Adequately Disclose, Evaluate, and Avoid the Project's Significant Impacts to Vernal Pools and Vernal Pool Species.**

The DEIR appears to evaluate impacts to vernal pools features only if the features are occupied by special status species or are considered jurisdictional wetlands, but most of the vernal pool features on the Project site meet neither criterion. As a result, the DEIR understates the Project's significant vernal pool impacts. Direct, indirect, and cumulative impacts to pools that are not occupied by special status species and are not jurisdictional wetlands must still be considered potentially significant under CEQA.

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Relatedly, the DEIR's criteria for classifying a vernal pool feature as a "vernal pool" or an "ephemeral basin" are not consistent with either scientific or state and federal regulatory definitions. For example, the U.S. Fish and Wildlife Service's 1998 *Vernal Pools of Southern California Recovery Plan* defines vernal pools primarily in terms of their hydrology, not their occupancy. As defined in the EIR, vernal pools must support both vernal pool indicator plant species and vernal pool branchiopods. (See Biological Resources Technical Report at p. 205.) This definition is overly narrow, and fails to capture important vernal pool resources that the Recovery Plan estimated had been reduced by 95 to 97 percent in San Diego County prior to extensive additional losses over the last 20 years.

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The Recovery Plan states calls for existing pools and their associated watersheds to be secured and for pool habitat to be reestablished to the historic structure when necessary. (See Recovery Plan, pp. v-vi.) This recovery objective is not dependent on pool occupancy, but anticipates that even unoccupied pools must be protected to promote species recovery. The DEIR must address vernal pool species recovery, including the Project's effects on vernal pool habitat independent of species occupancy, and consideration of whether the Project may impair recovery of vernal pool species.

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Possibly as a result of its inappropriately narrow vernal pool criteria, the DEIR appears to omit a number of important vernal pool areas on Otay Ranch, some of which were documented in a 1992 document, *Report on the Flora of Otay Ranch Vernal Pools, 1990 - 1991* prepared by Dudek and Associates (excerpts attached). The DEIR and Biological Resources Technical Report also appear to fail to access the results of several protocol surveys conducted for San Diego fairy shrimp in Proctor Valley that are available from the U.S. Fish and Wildlife Service and that in turn show the locations of many more vernal pools supporting this species than identified in the DEIR.

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In particular, the DEIR fails to evaluate the Project's impacts on the "R2+" and "R4+" vernal pool areas identified in the 1992 Dudek report. The report identified nine basins in the R2+ vernal pool area and these are still relatively undisturbed vernal pools on Otay Ranch just east of the current proposed western development area in Village 14 identified for construction of "Semi-Rural Ranchettes (4 ac min.)." The 1992 report also identified three basins in the R4+ vernal pool area located on Otay Ranch in the western portion of the western development area of Villages 16/19. Some of the R2+ pools and associated watersheds could be directly or indirectly impacted by development of the western portion of the Village 14 development area and associated rural residential road. And all three R4+ pools would be lost with development of Plann Area 16/19.

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The 1992 Dudek report also identified three "R3+" vernal pools in the same area as seven "features" identified in the DEIR on the Rancho Jamul Ecological Reserve just east of the northern portion of the northern Village 14 development area. According to the DEIR, two of these features support San Diego fairy shrimp (*Branchinecta sandiegonensis*) and one supports Western spadefoot toads (*Spea hammondi*). But the 1992 report also identified a population of San Diego button-celery (*Eryngium aristulatum* var. *parishii*) at this site. These pools could be subject to indirect edge effects from the nearby northern development area of Village 14 as well as from construction of the realigned Proctor Valley Road.

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**B. The Project Will Result in Significant Impacts to Wetlands in Violation of the MSCP County Subarea Plan and Biological Mitigation Ordinance.**

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Alteration of the hydrology of Proctor Valley Creek and tributaries and resulting impacts to wetlands and restriction of important wildlife movement corridors are interrelated and potentially significant impacts that should be addressed with project design to avoid impacts and/or mitigation. Impacts to wetlands must be avoided according to the MSCP County Subarea Plan and Biological Mitigation Ordinance.

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The Project would realign and construct Proctor Valley Road to cross the ephemeral Proctor Valley Creek on the City of San Diego's Otay Lakes Cornerstone Lands preserve southwest of the southern Village 14 development area. This area is important to the hydrologic function of Proctor Valley Creek, supports several unique floodplain scour pool wetlands, and is an important wildlife movement corridor. The realigned Proctor Valley Road would directly and indirectly impact several flood plain scour pool wetlands (map). And culvert or bridge construction that spans just a primary creek channel can result in constriction of high flows upstream as water backs up behind the structure constricting the floodplain as well as in accelerated scouring flows downstream as water is forced through the constricting structure. At this road crossing, the entire floodplain of Proctor Valley Creek and not just the primary creek channel should be bridged to prevent alteration of hydrology, resulting channel modification, scouring, and erosion, and other significant impacts to Proctor Valley Creek and wetlands upstream and downstream of the road crossing. The entire floodplain of the Creek should also be bridged to reduce significant impacts and maintain the function of this important wildlife corridor. The proposed realigned Proctor Valley Road crossing of Proctor Valley Creek should also be realigned to avoid any impacts to the unique scour pool wetlands.

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Proctor Valley Road would also be realigned and constructed to cross a major ephemeral tributary to Proctor Valley Creek on the Otay Lakes Cornerstone Lands preserve (Cornerstone Lands) between the southern and central Village 14 development areas. This tributary is important to the hydrologic function of Proctor Valley Creek and the valley in which the tributary is located is another important wildlife movement corridor. At this road crossing, the entire floodplain of this tributary should be bridged to prevent alteration of hydrology, resulting channel modification, scouring, and erosion, and other significant impacts to this tributary and nearby Proctor Valley Creek. The entire floodplain of the Creek should also be bridged to reduce significant impacts and maintain the function of this important wildlife corridor.

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A "Rural Residential Road" would also be constructed to cross Proctor Valley Creek to access the western development area of Village 14 identified for construction of "Semi-Rural Ranchettes (4 ac min.)." This area is important to the hydrologic function of Proctor Valley Creek and is an important wildlife movement corridor. At this road crossing, the entire floodplain of Proctor Valley Creek and not just the primary creek channel should be bridged to prevent alteration of hydrology, resulting channel modification, scouring, and erosion, and other significant impacts to Proctor Valley Creek and wetlands upstream and downstream of the road crossing. The entire floodplain of the Creek should also be bridged to reduce significant impacts and maintain the function of this important wildlife corridor.

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#### C. Trespass Impacts on Biological Resources

Unauthorized public recreation and vehicle access from Otay Ranch development areas, roads, and legitimate trails is a potentially significant impact that should be addressed with project design and/or mitigation. Unauthorized off-road vehicle use is a long-standing problem in the area and is expected to worsen with the addition of thousands of new residents seeking recreational activities and construction of several new roads bordering the Otay Lakes Cornerstone Lands preserve, Otay Ranch open space, and the Rancho Jamul Ecological Reserve. Unauthorized mountain biking is also increasing and significant additional mountain bike use is expected with the addition of thousands of new residents to Otay Ranch.

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In particular, the height of the conceptual "5' Tubular Steel Perimeter Fence" at several "Public Parks" should be raised to 6ft. to reduce the likelihood that developed parks are used as gateways for unauthorized public recreation access to sensitive habitat and other closed areas of the Cornerstone Lands and Otay Ranch open space. For example, the height of perimeter fence along the western edge of Scenic Park (P-3) should be raised to limit unauthorized, direct public access to the adjacent vernal pool restoration projects on Cornerstone Lands as well as to open space on Otay Ranch that could in turn be used to access the nearby vernal pool restoration projects on Cornerstone Lands.

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Tall tubular steel fence should also be used to prevent unauthorized public access from the "Community Pathway", "Park to Park Loop", and "DG Walkway" onto Cornerstone Lands, Otay Ranch open space, and the Rancho Jamul Ecological Reserve except where this would interfere with important wildlife movement corridors in which case more wildlife-friendly fencing should be used.

Fencing strong enough to resist vehicle access should also be used to prevent unauthorized vehicle access from Proctor Valley Road and any other roads bordering Cornerstone Lands, Otay Ranch open space, and the Rancho Jamul Ecological Reserve. In these areas, two layers of fencing may be necessary including tubular steel fence to limit non-motorized vehicle access (except where this would interfere with important wildlife movement corridors in which case more wildlife-friendly fencing should be used) and larger diameter tube steel vehicle barriers (similar to existing vehicle barriers along Proctor Valley Road) installed along the realigned Proctor Valley Road crossing the Cornerstone Lands and the Rancho Jamul Ecological Reserve and on Otay Ranch roads bordering the Cornerstone Lands, Rancho Jamul Ecological Reserve, and Otay Ranch open space.

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All motorized off-road vehicles including electric mountain bikes should be prohibited on the “Community Pathway”, “Park to Park Loop”, “DG Walkway” and any other legitimate Otay Ranch paths or trails.

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#### D. Impacts to the Rancho Jamul Ecological Reserve

Construction of two segments of the realigned Proctor Valley Road and one segment of “rural residential road” along with utilities in all three road segments on the Rancho Jamul Ecological Reserve would result in significant impacts to reserve design among other impacts to several sensitive biological resources, would trespass on the Rancho Jamul Ecological Reserve, and are not authorized under the MSCP County Subarea Plan.

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According to the DEIR, “Proctor Valley Road is an approved County General Plan Mobility Element road, and an approved facility in the MSCP County Subarea Plan...”. Also, according to the DEIR, “There are also public off-site road segments within Planning Area 16. These roads are located primarily within CDFW managed lands and are approved in the Otay Ranch GDP/SRP as facilities within designated development or LDA land use, and are also approved facilities per the MSCP County Subarea Plan Section ... .”

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These DEIR statements misrepresent provisions in the MSCP County Subarea Plan applicable only to Proctor Valley Road on City of San Diego Otay Lakes Cornerstone Lands and disregard significant changed circumstances that these portions of the former Otay Ranch “take authorized area” are now preserved as the Rancho Jamul Ecological Reserve. Just as portions of previously planned residential development areas in Otay Ranch take authorized areas are no longer available for residential development following purchase of these properties by the California Department of Fish and Wildlife for the Rancho Jamul Ecological Reserve, so too are portions of two segments of Proctor Valley Road within the take authorized area no longer available for construction through the Rancho Jamul Ecological Reserve where these road segments can be realigned and constructed to provide all necessary access within the development footprint of the current Otay Ranch project.

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The MSCP County Subarea Plan is explicit that Proctor Valley Road may be constructed across City of San Diego Otay Lakes Cornerstone Lands because the unimproved Proctor Valley Road currently crosses these lands and there are no alternatives to reach Otay Ranch Villages 14 and Planning Area 16/19 from the current terminus of the improved Proctor Valley Road in Chula Vista. The same rationale may be applied to some segments of Proctor Valley Road where

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construction across the Rancho Jamul Ecological Reserve, established since adoption of the MSCP County Subarea Plan is the only alternative to access Otay Ranch property. But this rationale does *not* apply to two other segments of Proctor Valley Road located between the central and northern development areas of Village 14 and west of the western development area of Planning Area 16/19 where Proctor Valley Road can be realigned and constructed on Otay Ranch property as part of the project rather than on the Rancho Jamul Ecological Reserve. The same is true for the one segment of rural residential road between the middle and eastern development areas of Planning Area 16/19 where a redundant proposed road is not necessary to provide access across the Rancho Jamul Ecological Reserve to either development area. Further, realignment of these segments of Proctor Valley Road onto current Otay Ranch private property is not barred by the MSCP County Subarea Plan as indicated by the Otay Ranch project proposal to realign other segments of the road to avoid or minimize impacts to resources.

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#### E. Effects on Designated Critical Habitat

While the EIR discloses that the Project would have direct and indirect effects on areas designated as critical habitat for federally-listed species, including California gnatcatcher, Quino checkerspot butterfly, spreading navarretia, and Otay tarplant, it does not acknowledge any potentially significant associated with the destruction or adverse modification of hundreds of acres of designated critical habitat. These areas were designated as critical habitat because they are either occupied habitat that contain the “physical or biological features ... essential to the conservation of the species” or are unoccupied areas deemed essential to the conservation of the species. (16 U.S.C. § 1532(5)(A).) “Conservation” means the recovery and eventual de-listing of federally-listed species. (16 U.S.C. § 1532(3).)

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Accordingly, areas designated as critical habitat were designated to recover species. The DEIR fails to evaluate the effect of lost or modified critical habitat on the conservation and recovery of the California gnatcatcher, Quino checkerspot butterfly, spreading navarretia, and Otay tarplant. Indeed, although the DEIR acknowledges that Guideline 4.5J asks whether the Project “would reduce the likelihood of survival and recovery of listed species in the wild,” the DEIR largely fails to evaluate the Project’s effects on the recovery of these species, or even to reference their recovery plans and recovery criteria.

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The EIR further fails to propose any mitigation to compensate for the permanent loss of designated critical habitat deemed essential to the conservation of the listed species.

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For the Otay tarplant, the DEIR attributes the presence designated tarplant critical habitat in the Village 14 development footprint to a “likely ... mapping registration error.” If the applicant believes the designation is the result of a mapping error, it may petition the Fish and Wildlife Service to revise the designation. However, the DEIR provides no evidence that the putative error excuses the County from its obligation to evaluate and mitigate the Project’s impacts to Otay tarplant critical habitat.

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#### F. Impacts to Narrow Endemic Species *Dudleya variegata*

The Project will result in significant impacts to *Dudleya variegata* in violation of the MSCP County Subarea Plan and Biological Mitigation Ordinance.

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According to the DEIR, approximately 35 *Dudleya variegata* individuals were recorded within the southern portion of the Village 14 development footprint. Also according to the DEIR, the project would mitigate impacts to *Dudleya variegata* to below a level of significance by following the guidelines of the Otay Ranch RMP, conveying the agreed-upon acreage to the Otay Ranch RMP Preserve, and transplanting this population.

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These measures violate County requirements to protect narrow endemic species. Narrow endemic species must be avoided to the maximum extent practicable *in addition* to conveying required land to the Otay Ranch RMP Preserve. Yet here, the project applicant provides no rationale for why impacts are unavoidable. Not only will impacts to *Dudleya variegata* be significant, the project would violate the MSCP County Subarea Plan and Biological Mitigation Ordinance by allowing any impacts to this species.

#### G. Invasive Plants

The origin and spread of invasive plant weeds from Otay Ranch development areas is inevitable and poses a significant threat to the ecology of the Otay Lakes Cornerstone Lands preserve, Rancho Jamul Ecological Reserve, and Otay Ranch open space without perpetual active control. To address this potentially significant impact, an endowment should be established for use by the California Department of Fish and Wildlife and City of San Diego Public Utilities Department adequate to fund in perpetuity at least one full-time staff position and expenses for each agency to control invasive plant weeds on preserve lands in Proctor Valley. A similar endowment should be established to fund invasive weed control (and any other necessary stewardship management) by the Otay Ranch Preserve Owner/Manager on Otay Ranch open space in Proctor Valley.

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#### II. The Project's GHG Analysis & Mitigation is Inadequate

The DEIR's analysis of the proposed Project's GHG emissions is inadequate to the public and decision-makers. (See DEIR Sec. 2.7.) The proposed Project would result in significant amounts of GHG emissions during construction and operation of the Project. (See 2.7-47 [total construction emissions 21,845.22 MT per year; annual operational emission 16,384 MT per year].) The DEIR's approach violates CEQA requirement that an EIR fully analyze and attempt to mitigate all significant direct and indirect impacts of a project. (CEQA Guidelines § 15126.2; Pub. Res. Code § 21002.)

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#### A. Climate Change is a Catastrophic and Pressing Threat to California

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and that climate change threats are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change (IPCC), the leading international scientific body for the assessment of climate change, concluded in its 2014 Fifth Assessment Report that: "[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen," and further that "[r]ecent climate changes have had

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widespread impacts on human and natural systems.”<sup>1</sup> These findings were echoed in the United States’ own 2014 Third National Climate Assessment and 2017 Climate Science Special Report, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The Third National Climate Assessment concluded that “[m]ultiple lines of independent evidence confirm that human activities are the primary cause of the global warming of the past 50 years”<sup>2</sup> and “[i]mpacts related to climate change are already evident in many regions and are expected to become increasingly disruptive across the nation throughout this century and beyond.”<sup>3</sup> The 2017 Climate Science Special Report similarly concluded:

[B]ased on extensive evidence,...it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.

In addition to warming, many other aspects of global climate are changing, primarily in response to human activities. Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor.<sup>4</sup>

The U.S. National Research Council concluded that “[c]limate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems.”<sup>5</sup> Based on observed and expected harms from climate change, in 2009 the U.S. Environmental Protection Agency found that greenhouse gas pollution endangers the health and welfare of current and future generations.<sup>6</sup>

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<sup>1</sup> IPCC [Intergovernmental Panel on Climate Change], Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, [Core Writing Team, R.K. Pachauri & L.A. Meyer (eds.)], IPCC, Geneva, Switzerland (2014), [http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf) at 2.

<sup>2</sup> Melillo, Jerry M, Terese (T.C.) Richmond & Gary W. Yohe (eds.), Climate Change Impacts in the United States: The Third National Climate Assessment, U.S. Global Change Research Program (2014), <http://nca2014.globalchange.gov/downloads> at 7.

<sup>3</sup> Melillo, Jerry M, Terese (T.C.) Richmond & Gary W. Yohe (eds.), Climate Change Impacts in the United States: The Third National Climate Assessment, U.S. Global Change Research Program (2014), <http://nca2014.globalchange.gov/downloads> at 10.

<sup>4</sup> USGCRP [U.S. Global Change Research Program], Climate Science Special Report: Fourth National Climate Assessment, Volume I [Wuebbles, D.J. et al. (eds.)], U.S. Global Change Research Program, Washington, DC (2017), <https://science2017.globalchange.gov/> at 10.

<sup>5</sup> NRC [National Research Council], Advancing the Science of Climate Change, National Research Council (2010), [www.nap.edu](http://www.nap.edu) at 2.

<sup>6</sup> U.S. EPA [U.S. Environmental Protection Agency], Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule, 74 Federal Register 66496 (2009).

These authoritative climate assessments decisively recognize the dominant role of greenhouse gases in driving climate change. As stated by the Third National Climate Assessment: “observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases.”<sup>7</sup> The Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the course of this century.<sup>8</sup>

The impacts of climate change will be felt by humans and wildlife. Climate change is increasing stress on species and ecosystems—causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes—in addition to increasing species extinction risk.<sup>9</sup> Climate-change-related local extinctions are already widespread and have occurred in hundreds of species.<sup>10</sup> Catastrophic levels of species extinctions are projected during this century if climate change continues unabated.<sup>11</sup> In California, climate change will transform our climate, resulting in such impacts as increased temperatures and wildfires, and a reduction in snowpack and precipitation levels and water availability, as we detail below.

Therefore, immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Fifth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO<sub>2</sub> must remain below about 1,000 GtCO<sub>2</sub> from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO<sub>2</sub> from 2011 onward for a 66 percent probability of limiting warming to 1.5°C.<sup>12</sup> These carbon budgets have been reduced to

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<sup>7</sup> Melillo, Jerry M, Terese (T.C.) Richmond & Gary W. Yohe (eds.), *Climate Change Impacts in the United States: The Third National Climate Assessment*, U.S. Global Change Research Program (2014) at 2. See also Report Finding 1 at 15: “The global warming of the past 50 years is primarily due to human activities, predominantly the burning of fossil fuels.”

<sup>8</sup> Melillo, Jerry M, Terese (T.C.) Richmond & Gary W. Yohe (eds.), *Climate Change Impacts in the United States: The Third National Climate Assessment*, U.S. Global Change Research Program (2014) at 13, 14, and 649. See also Report Finding 3 at 15: “Human-induced climate change is projected to continue, and it will accelerate significantly if global emissions of heat-trapping gases continue to increase.”

<sup>9</sup> Warren, Rachel et al., Increasing impacts of climate change upon ecosystems with increasing global mean temperature rise, 106 *Climatic Change* 141 (2011).

<sup>10</sup> Wiens, John J., Climate-related local extinctions are already widespread among plant and animal species, 14 *PLoS Biology* e2001104 (2016).

<sup>11</sup> Thomas, Chris. D. et al., Extinction risk from climate change, 427 *Nature* 145 (2004); Maclean, Ilya M. D. & Robert J. Wilson, Recent ecological responses to climate change support predictions of high extinction risk, 108 *PNAS* 12337 (2011); Urban, Mark C., Accelerating extinction risk from climate change, 348 *Science* 571 (2015).

<sup>12</sup> IPCC [Intergovernmental Panel on Climate Change], 2013: Summary for Policymakers. In: *Climate Change 2013: The Physical Science Basis, Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F. et al. (eds.)], Cambridge University Press (2013) at 25; IPCC [Intergovernmental Panel on Climate

850 GtCO<sub>2</sub> and 240 GtCO<sub>2</sub>, respectively, from 2015 onward.<sup>13</sup> Given that global CO<sub>2</sub> emissions in 2016 alone totaled 36 GtCO<sub>2</sub>,<sup>14</sup> humanity is rapidly consuming the remaining carbon budget needed to avoid the worst impacts of climate change. As of early 2018, climate policies by the world's countries would lead to an estimated 3.4°C of warming, and possibly up to 4.7°C of warming, well above the level needed to avoid the worst dangers of climate change.<sup>15</sup>

The United States has contributed more to climate change than any other country. The U.S. is the world's biggest cumulative emitter of greenhouse gas pollution, responsible for 27 percent of cumulative global CO<sub>2</sub> emissions since 1850, and the U.S. is currently the world's second highest emitter on an annual and per capita basis.<sup>16</sup> Nonetheless, U.S. climate policy is wholly inadequate to meet the international climate target to hold global average temperature rise to well below 2°C above pre-industrial levels to avoid the worst dangers of climate change. Current U.S. climate policy has been ranked as "critically insufficient" by an international team of climate policy experts and climate scientists which concluded: "These steps represent a severe backwards move and an abrogation of the United States' responsibility as the world's second largest emitter at a time when more, not less, commitment is needed from all governments to avert the worst impacts of climate change."<sup>17</sup>

In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement and compliance with these steps is essential to help stabilize the climate and avoid catastrophic impacts to our environment. . California has a mandate under AB 32 to reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code § 38550.) Based on the warning of the Intergovernmental panel on Climate Change and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emission reduction 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05

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Change], Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)], IPCC, Geneva, Switzerland (2014) at 63-64 & Table 2.2.

<sup>13</sup> Rogelj, Joeri et al., Differences between carbon budget estimates unraveled, 6 Nature Climate Change 245 (2016) at Table 2.

<sup>14</sup> Le Quéré, Corinne, et al., Global Carbon Budget 2017, Earth Syst. Sci. Data Discuss., <https://doi.org/10.5194/essd-2017-123> (2017), <http://www.globalcarbonproject.org/carbonbudget/17/data.htm>.

<sup>15</sup> Climate Action Tracker, Improvement in warming outlook at India and China move ahead, but Paris Agreement gap still looms large (November 2017), <http://climateactiontracker.org/publications/briefing/288/Improvement-in-warming-outlook-as-India-and-China-move-ahead-but-Paris-Agreement-gap-still-looms-large.html>.

<sup>16</sup> World Resources Institute, 6 Graphs Explain the World's Top 10 Emitters (November 25, 2014).

<sup>17</sup> Climate Action Tracker, USA (last updated 6 November 2017), <http://climateactiontracker.org/countries/usa>.

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(2005).) In enacting SB 375, the state has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California.<sup>18</sup>

The state Legislature has found that failure to achieve greenhouse gas reduction would be “detrimental” to the state’s economy. (Health & Saf. Code § 38501(b).) In his 2015 Inaugural Address, Governor Brown reiterated his commitment to reduce greenhouse gas emissions with three new goals for the next fifteen years:

- Increase electricity derived from renewable sources to 50 percent;
  - Reduce today’s petroleum use in cars and trucks by 50 percent;
  - Double the efficiency of existing buildings and make heating fuels cleaner.
- (Brown 2015 Address.)

Although some sources of GHG emissions may seem insignificant, climate change is a problem with cumulative impacts and effects. (*Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, (9th Cir. 2008) 538 F.3d 1172, 1217 (“the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis” that agencies must conduct).) One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California’s climate as a whole. Therefore, project-specific GHG emission disclosure, analysis and mitigation is vital to California meeting its climate goals and maintaining our climate.

#### B. The DEIR’s Analysis of the Project’s GHG Emissions is Flawed

One of the key sources of GHG emissions resulting from the Project is vegetation removal. (DEIR 2.7-47.) The Project anticipates clearing 1,370.80 acres of land currently covered in a variety of different vegetation, including forest and grassland. (*Id.*) The anticipated loss of sequestered carbon is 10,382 MT of CO<sub>2</sub> and is included as a one-time, construction related GHG emission. (*Id.*) Later the DEIR claims that the Project will result in an estimate gain of sequestered carbon of 5,664 MT of CO<sub>2</sub> by planting 8,000 trees. This approach is flawed in several ways.

First, the DEIR uses generic CO<sub>2</sub> Emissions factor to estimate emissions without providing details on the specific type of vegetation found on the acres being converted. The age, density and type of vegetation all can impact the amount of carbon sequestered and using generic factor for hundreds of acres of vegetation provides incomplete baseline data. CEQA requires that an “EIR’s discussion of impacts must “provide[] sufficient information and analysis to allow the public to discern the basis for the agency’s impact findings.” (*Sierra Club v. Tahoe Reg’l Planning Agency* (2013) 916 F. Supp. 2d 1098, 1146-1147.)

Second, the DEIR assumes a one-time loss of existing vegetation. However, the emissions estimates fail to include any estimate of forgone future sequestration associated with continuing growth of existing vegetation. Removing vegetation not only eliminates existing carbon stock at the time of removal, but also eliminates the capacity of existing vegetation to continue growing and sequestering additional carbon into the future. This omission results in a

<sup>18</sup> See <http://www.arb.ca.gov/cc/sb375/sb375.htm>.

potential undercounting of emissions associated with vegetation change. This approach also directly contradicts the approach the DEIR takes when calculating the emissions *gained* from planting 8,000 trees. In that instance, the DEIR includes over 20 years of anticipated carbon sequestration from 8,000 trees to count an estimated 5,664.00 MT of CO<sub>2</sub>. (DEIR 2.7-48.) The DEIR cannot on one hand assume a one-time loss of GHG emissions from removing over 800 acres of vegetation while also taking credit for 20 years of carbon sequestration from new trees being planted.

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Third, the DEIR estimates total loss of sequestered carbon using a net loss figure by relying on initial and final number of vegetated acres lost because of the Project. (DEIR 2.7-47.) However, the DEIR provides no explanation on where the initial and final acres estimates come from or how the loss of vegetation will be recovered. To the extent the DEIR is relying on the 8,000 trees being planted to make up for the initially lost acreage, the DEIR would be double counting its emission reduction estimates. If the DEIR is assuming that some of the lost vegetation will return or be replanted, it provides no evidentiary basis for that assumption. The difference between the initial and final acres of lost vegetation is substantial (approximately 810.15 acres) and the evidence underlying those assumptions should be made clear. (DEIR 2.7-47.) An “EIR should set forth specific data, as needed to meaningfully assess whether the proposed activities would result in significant impacts.” (*Sierra Club v. Tahoe Reg’l Planning Agency* (2013) 916 F. Supp. 2d 1098, 1146-1147 (*Sierra Club*).)

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Lastly, the DEIR estimates of sequestration from new tree growth similarly lack support. The document does not describe the basis for the estimated number of new trees, nor does it explain the methodology by which emissions reductions from new trees were determined. There is no detail on what types of trees will be planted or where they will be planted. The CalEEMod output files attached to the greenhouse gas technical report provide no meaningful information. (See App. 2.71 at 87 [stating the estimated sequestration comes from generic list of 10 tree species].) Appendix 2.7-1 refers to Intergovernmental Panel on Climate Change (IPCC) recommendations in computing sequestration from new tree growth, but no specific source is identified nor is the applicability to this Project fully explained. There is seemingly no evidence that generic IPCC recommendations are applicable to the particular mix of trees and other vegetation likely to be planted, and to grow, in this particular portion of San Diego County. The DEIR includes no information on the mix of tree species that will be used or where the 8,000 trees will be planted. The DEIR assumes a 20 year growing period again with no evidentiary support for that assumption. (DEIR 2.7-48.) Additional questions that remain unanswered are: will the trees be irrigated or fertilized? Were N<sub>2</sub>O emissions from fertilizer factored into the estimates? What planting success/mortality/replanting rates are assumed? Without site-specific answers to these questions, any estimate of future sequestration from vegetation growth lacks an evidentiary basis and fails to comply with CEQA.

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#### C. The DEIR Reliance on Offsets as Mitigation Measures for the Project’s GHG Emissions is Flawed

The DEIR states that “additional on-site and off-site mitigation can further reduce impacts from GHG emissions to less-than-significant level through implementation of GHG reduction strategies and through the purchase of carbon offsets.” (DEIR 2.7-31.) The DEIR goes on to state that Project anticipates using offsets up to “100% of its construction and operation emissions.” (*Id.*) This approach however raises significant concerns.

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A mitigation measure requiring the purchase of offset credits operates as a kind of mitigation fee. But CEQA allows for mitigation fees only where there is evidence of a functioning, enforceable, and effective implementation program. For example, courts have found mitigation fees inadequate where the amount to be paid for traffic mitigation was unspecified and not “part of a reasonable, enforceable program” (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189); where a proposed urban decay mitigation fee contained no cost estimate and no description of how it would be implemented (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 198 (*Woodland*)); and where there was no specific traffic mitigation plan in place that would be funded by mitigation fees. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122 (*Gray*).)

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The DEIR falls short these standards in two key ways. One, the DEIR fails to specify the sources of offsets credits. The DEIR includes examples of some offset credit registries from which credits might be purchased, it does not provide evidence that these or other “comparable” registries are functioning and will continue to function in a manner that will result in actual, effective mitigation. (DEIR 2.7-31.) Second, the EIR fails to provide evidence that a sufficient quantity of GHG offset credits is available from existing, functioning programs to mitigate the Project’s emissions. A substantial number of offset credits will be required to mitigate the Project’s GHG emissions to “net zero.” Second, the EIR fails to provide evidence that a sufficient quantity of GHG offset credits is available from existing, functioning programs to mitigate the Project’s emissions. A substantial number of offset credits will be required to mitigate the Project’s GHG emissions to “net zero.”

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The DEIR also provides no enforcement mechanism to ensure that the offsets purchased to mitigate the Project’s impacts will come from local, regional or state level GHG reduction projects. While the DEIR claims the offsets will have a geographic priority on local projects and on-site measures (DEIR at 2.7-32, 2.7-35), the DEIR gives broad leeway for the applicant to rely on the global offset market. More financially competitive global offsets (with potentially dubious effectiveness and weak enforcement mechanisms) can be used to offsets the Project emissions rather than local projects. The DEIR fails to include the necessary measures to ensure that offsets are real, enforceable, additional, and otherwise consistent with CEQA’s mitigation requirements.

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Most troubling is the DEIR approach sets a dangerous precedent for the County. The DEIR heavy reliance on offsets to reduce the Project’s GHG emissions sets the stage for more sprawling development projects that shift their GHG emission reduction requirements elsewhere. If the County continues to approach isolated, sprawling land developments far from existing communities, the County will never be able to reduce its overall GHG emissions locally. Relying time and time again on dubious international offsets undermines California’s goals of reducing GHG emissions and combating climate change. It is for these reason agencies typically permit offsets to constitute only a very small part of an overall emission reduction program because of known problems with enforcement and efficacy. (*See Health & Safety Code § 38562(c)(2)(E)*) [California’s cap and trade program allows no more than eight percent of GHG reductions to come from offsets, which will drop to four percent in 2021, at which point at least half of the offsets used “provide direct environmental benefits in state”]; Climate Action Reserve, Voluntary Offsets. Scoping Plan at 102 [CARB’s 2017 Scoping Plan also prioritizes onsite measures: “[t]o the degree a project relies on GHG mitigation measures, CARB recommends that lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and

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direct investments in GHG reductions within the project's region that contribute potential air quality, health, and economic co-benefits locally"].) The DEIR's approach to addressing its significant GHG emissions not only violates CEQA but it is an irresponsible step in the wrong direction for the County.

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#### D. The DEIR Fails to Adopt all Feasible Mitigation Measures

In the DEIR quickness to rely on offsets, it fails to adopt many feasible mitigation measures. It is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." (Pub. Res. Code § 21002.) Adoption of additional feasible mitigation measures during construction and operation of the Project would lower the Project's overall GHG emissions and contribution to climate change.

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Potential feasible mitigation measures include but are not limited to car sharing programs, a transportation center that bring together various modes of public transport, build additional bus stops earlier on in the project construction, mandate building construction take advantage of natural features that improve energy efficiency including shade and prevailing winds, mandate cool roofs and pavements, limit hours of operation of outdoor lighting and heating/cooling systems, mandate water-efficient irrigation systems, mandate building be water-efficient with water-efficient fixtures and appliances, build additional pedestrian and bike pathways.

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Here, the DEIR fails to include substantial evidence demonstrating it has adopted all feasible mitigation measures to reduce its GHG emissions. This failure violates CEQA and must be rectified either through the adoption of all feasible mitigation measure or explanation from the County on why it is infeasible to mitigate the Project's significant GHG emissions. Additionally, the County's failure to take all feasible steps to reduce emissions from this proposed project undermines California's ability to meet its GHG reduction target. Mitigation of a project's environmental impacts is one of the "most important" functions of CEQA. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.) The County's abandonment of its responsibility here will only hasten the impacts of climate change and further imperil California's wildlife, water, communities and ecosystems.

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#### III. The DEIR Fails to Adequately Analyze the Project's Impacts on Water Supplies.

California faces immense challenges in its effort to allocate and conserve its limited water resources in the face of climate change and population growth. The Project would further exacerbate regional and statewide supply issues by constructing water intensive residential communities in arid San Diego County. In light of these, and other, underlying concerns, the DEIR's analysis of the Project's water supply fails to adequately consider all potential significant impacts, and fails to include adequate mandatory or enforceable water conservation strategies.

O-7-73

**A. The Thresholds of Significance Used in the DEIR Improperly the Limit Water Supply Analysis**

The DEIR does not analyze the Project's effects on state and regional water supplies. The water supply analysis was inappropriately narrow in scope because the chosen thresholds of significance only address the ability to supply the Project, without assessing the wisdom of allocating such quantities in this manner, or the implications for state and regional supply regimes. The DEIR used two criteria provided by the CEQA Guidelines to determine the significance of the Project's water supply impacts. (DEIR at 3.1.8-31.) The two thresholds dictate analysis of whether current entitlements are sufficient to supply the Project, and if the Project would require the construction of new facilities or the expansion of existing facilities, and if such construction would have significant environmental impacts. (DEIR at 3.1.8-31, CEQA Guidelines Appendix G, XVIII (b), (c).) Analysis under these thresholds does not inform the public or decision-makers about the long-term sustainability of Project supplies, or how supplying this water-intensive project will affect other users reliant on finite water resources.

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The DEIR's water supply analysis should be revised, using thresholds of significance that take into account the Project's impact on the water supply system, not simply its paper-water entitlements. While it is within the County's discretion to use the Appendix G checklist questions in the significance determination, the checklist may "not necessarily cover all potential impacts that may result from a particular project. (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.4<sup>th</sup> 677, 689.) Therefore, thorough impact analysis may require the changes to the checklist questions in order to fully address all of a project's potentially significant impacts. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4<sup>th</sup> 1099, 1111.) In light of the water supply challenges facing California and the Western United States, the DEIR should analyze whether this Project represents a wise allocation of water resources, and what its allocation would mean for other users within the system.

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**B. The DEIR Fails to Clearly State, or Explain, the Project's Demand for Potable Water**

The DEIR's value as an informational document is undermined by its failure to clearly project the Project's potable use demand. The Project as proposed anticipates residential water use ranging from 435 to 1000 gallons per day per unit (gpd/unit), depending on the type of single family lot. (DEIR at 3.1.8-48.) When considering the distribution of lot sizes and the assumed use for each type, the average residential lot will use approximately 676 gpd. Using the 2.80 persons per household used in the DEIR Housing and Population section, this means that per capita use in the Project will average 240 gpd. (DEIR at 3.1.5-13.) The average residential water use in California in 2016 was 85 gpd per person.<sup>19</sup> The DEIR should explain the projected residential use numbers upon which the demand totals are based, and why it is planning a residential community that will use three times more water than the state average.

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<sup>19</sup> Legislative Analyst's Office, Residential Water Use Trends and Implications for Conservation Policy, 3/8/2017, <http://www.lao.ca.gov/Publications/Report/3611>

In addition to the lack of reasoning behind the projected use rates, the DEIR contains internal inconsistencies regarding its projected water demand. As referenced above, the water use demand is based on a scale of use/acre dependent on dwelling unit density. (DEIR at 3.1.8-48.) Table 3.1.8-6 contains estimates of use reduction related to proposed conservation measures. (DEIR at 3.1.8-52.) In calculating a given measure's reduction as a percentage of total usage, the DEIR uses 300 gpd/unit for densities over 8 dwelling units per acre, and 500 gpd/unit for single-family residential units. (DEIR at 3.1.8-52, see table 3.1.8-6 footnote.) This is the only time in the document that these totals are used to estimate average usage, conveniently increasing the percentage reduction for the proposed conservation measures. The DEIR must be internally consistent in order to properly inform the public and decision-makers of the Project's water supply impacts.

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**C. The DEIR Fails to Properly Assess the Impacts of Climate Change on the Project's Water Supply**

The DEIR fails to adequately consider the impacts of climate change on the availability of increasingly scarce water resources in the western U.S. during the lifespan of the Project. California law requires agencies to discuss and disclose a proposed project's long-term future water supply. (See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430-432; Water Code § 10910.) The DEIR finds the Project will have less than a significant impact on water supply related to sufficiency of water supply. (DEIR at 3.1.8-35.) This finding is based in part on the Water Supply Assessment and Verification Report ("WSA&V") that was prepared by the Otay Water District ("OWD"). The WSA&V report discusses entitlements, water rights, water service contracts, and supply projects that contribute to the supply needs of the Project. (DEIR at 3.1.8-35.) The WSA&V report does not discuss climate change or the dramatic effects it will have on fresh water supplies in the arid West in the near future.

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Significant for the State, as well as the Project area, is climate change's impact on water supply. The Intergovernmental Panel on Climate Change ("IPCC") specifically identified the American West as vulnerable, warning, "Projected warming in the western mountains by the mid-21st century is very likely to cause large decreases in snowpack, earlier snow melt, more winter rain events, increased peak winter flows and flooding, and reduced summer flows . . . ." (IPCC 2007b.) Recently, researchers found that an increase in atmospheric greenhouse gases has contributed to a "coming crisis in water supply for the western United States. . . ." (Barnett 2008.) Using several climate models and comparing the results, the researchers found that "warmer temperatures accompany" decreases in snow pack and precipitation and the timing of runoff, impacting river flow and water levels. (Barnett 2008.) These researchers concluded with high confidence that up to 60 percent of the "climate related trends of river flow, winter air temperature and snow pack between 1950-1999" are human induced. (Barnett 2008.) This, the researchers wrote, is "not good news for those living in the western United States." (Barnett 2008.)

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The California Center on Climate Change has also recognized the problem climate change presents to the state's water supply and predicts that if GHG emissions continue under the business-as-usual scenario, snowpack could decline up to 70-90 percent, affecting winter

recreation, water supply and natural ecosystems. (Cayan 2007.) Climate change will affect snowpack and precipitation levels, and California will face significant impacts, as its ecosystems depend upon relatively constant precipitation levels and water resources are already under strain. (Cayan 2007.) The decrease in snowpack in the Sierra Nevada will lead to a decrease in California's already "over-stretched" water supplies. (Cayan 2007.) It could also potentially reduce hydropower and lead to the loss of winter recreation. (Cayan 2007.) All of this means "major changes" in water management and allocation will have to be made. (Cayan 2007.) Thus, climate change may directly affect the ability to supply clean, affordable water to the residents, or change how the Project will utilize water, and it may also impact other activities outside the Project area, such as agriculture or offsite residential use.

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#### **D. The DEIR Does Not Adequately Account for Supply Shortages in its Significance Determination**

The DEIR concludes there is adequate water supply available to meet the needs of the Project, and thus finds a less than significant impact related to sufficient supply. (DEIR at 3.1.8-35.) The Project's water supply will be provided by OWD, which relies on wholesale supply from the San Diego County Water Authority ("SDCWA"). (DEIR at 3.1.8-34.) SDCWA's projected supply inventory and service area demand are provided for different water-year types for the next 20 years. (DEIR at 3.1.8-50.) The DEIR anticipates demand outpacing supply as soon as 2025 in the single-dry water year assessment, and 2037 for the multiple-dry water year assessments. (DEIR at 3.1.8-51.) The DEIR acknowledges these potential shortages, but claims they will be "offset through carryover storage and management actions." (DEIR at 3.1.8-34.) The analysis contains no explanation of such management actions, nor does it quantify or describe the potential for carryover storage. It is difficult to accept, without further explanation, how carryover storage would be effective in multiple dry year scenarios, as a supply shortage can't be carried over to the next short year. The DEIR must revise its analysis to account for supply shortages, particularly with the increased likelihood of dry years becoming the normal in the Western U.S.

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The Project will be particularly vulnerable to climate change induced water shortages due to SDCWA's increasing reliance on water imports from Metropolitan Water District ("MWD"). The DEIR projects increasing MWD imports from 136,002 ac-ft/yr in 2020 to 248,565 ac-ft/yr in 2040 based on normal/average water year supplies. (DEIR at 3.1.8-50.) The DEIR projects decreased MWD deliveries over time in dry years, which corresponds with decreased local supplies. (DEIR at 3.1.8-51.) In a single-dry year scenario in 2020, the SDCWA will receive nearly 40% of its water from MWD, which in turn relies heavily on water from the Colorado River Aqueduct, as well as the California State Water Project. (DEIR at 3.1.8-51, see also MWD 2015 UWMP.) The DEIR assumes the imported water will continue to flow, without discussing the impacts that the Project's allocation would have on other regions; or contingencies for unexpected decreases in future imports.

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**E. The DEIR is Unclear Regarding the Inclusion of Groundwater in the Project Supply**

The DEIR provides conflicting information regarding the sources of Project water supply. The lack of clarity surrounding certain sources, namely groundwater, makes the accurate assessment of the Project's impacts to local and regional water supplies difficult. While addressing the Project's claimed less-than-significant impacts to groundwater, the DEIR states that "the Proposed Project does not propose use of groundwater for any purpose. (DEIR at 3.1.2-25.) The DEIR bases this assertion on the claim that OWD "obtains water from surface reservoirs and other imported water sources." (DEIR at 3.1.2-25.) This statement is contradicted by the WSA&V report, which outlines potential groundwater sources for OWD, and outlines future capital investments directed toward groundwater development. (DEIR at App. 3.1.8-4 – 47.) The WSA&V report explicitly states that while current monitoring has not found groundwater of sufficient quality or quantity, "local OWD groundwater supply development is currently considered as a viable water supply resource to meet projected demands." (DEIR at App. 3.1.8-4 – 47.) Ground water is also included in the SDCWA supply and demand assessment, providing between roughly 27,000 and 32,500 ac-ft/yr depending on the water year type. (DEIR at 3.1.8-50.) The DEIR must clarify how the groundwater supplies will be allocated by both OWD and SDCWA, and what role groundwater plays in the Project's consumption.

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It is unclear how this inclusion of groundwater in the supply analysis fits with the DEIR's finding that the Project will not have a significant impact on groundwater supplies. The DEIR finds that none of the groundwater thresholds of significance are reached since there will be no groundwater extraction or interference on-site. (DEIR at 3.1.2-25.) The DEIR does not assess the impacts to off-site groundwater since it concludes groundwater will not contribute to its supply from OWD. (DEIR at 3.1.2-25.) In its current state, the DEIR fails to provide any analysis of groundwater impacts related to groundwater development by OWD and SDCWA. At the very least, the DEIR must provide additional information to clarify whether or not the Project will receive groundwater from OWD. If the Project will in fact receive off-site groundwater, or may after future development, then additional analysis of that sourcing is required under CEQA.

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**F. The DEIR's Discussion of Water Reductions from Proposed Water Conservation Measures is Misleading**

The DEIR claims reduced water consumption will result from implementation of the Water Conservation Plan strategies and project design features ("PDFs"). (DEIR at 3.1.8-33, see also Appendix 3.1.2-3.) The DEIR calculates that Project water consumption would be lowered by 44,613 gpd "with implementations of the Proposed Project's *required* PDFs," resulting in total average consumption of approximately 753,357 gpd. (DEIR at 3.1.8-33, emphasis added.) In reality, PDF-UT-1 through PDF-UT-4 are only proposed, not mandated, conservation measures, as noted in the Water Conservation Plan as well as in table 3.1.8-6 of the DEIR. (DEIR at 3.1.8-51, Appendix 3.1.2-3.) If in fact the PDFs are not mandatory, the DEIR must make this clear so that the Project's potable water demand can be clearly demonstrated to the public and decision-makers.

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The likelihood of actual consumptive reductions is further diminished by the lack of enforcement underlying the proposed PDFs. In particular, compliance with the residential landscaping measure (PDF-UT-4), which provides a 28,000 gpd potential reduction, would be the responsibility of the Home Owners Association (“HOA”). (DEIR at 3.1.8-33.) It is unclear what mechanisms would be available to the HOA to leverage implementation of the landscaping measures. The Project should require water-saving landscape practices, particularly in light of the massive per household consumption the Project will facilitate. Since the DEIR anticipates 50% of household consumption occurring outdoors, it is irresponsible to propose sprawling single-family residential development without mandating all feasible measures to reduce water use. (DEIR at 3.1.8-33.)

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The DEIR further confuses the reader by speculating about the implementation of graywater systems and rainwater harvesting systems in Project residences. The Water Conservation Plan details the multitude of steps that must be taken to realize graywater and rain harvesting supply benefits. (Appendix 3.1.2-3 at 20-22.) As optional measures, discussion of these systems is unnecessary due to the highly attenuated scenario in which they would actually be implemented. At best, this represents a waste of time for readers of the DEIR; at worst it is an attempt to deceive the reader into thinking the Project is committed to meaningful reductions in water consumption. The Project should require that all feasible measures to conserve water be implemented, instead of merely discussing the possible benefits if residents should decide to individually adopt water saving technologies.

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#### G. The DEIR Relies on an Inadequate Cumulative Water Supply Impact Analysis

The DEIR concludes the Project contributes to less-than-significant cumulative impacts to water supply by using an improperly small study area. The cumulative study area for water supply was set within OWD’s boundaries. (DEIR at 3.1.8-45.) This delineation would only be appropriate if OWD operated a closed system, wherein all water supply and demand occurred inside OWD boundaries. But since OWD relies on SDCWA for its water supply, a complete cumulative impacts analysis must also consider future development in SDCWA’s service area. (DEIR at 3.1.8-34.) For this reason, the DEIR’s cumulative water supply impact analysis, based on its cumulative projects list, does not properly address the regional water supply. (DEIR at 3.1.8-45, DEIR at 1-64.) The DEIR must reassess the Project’s contribution to cumulative water supply impacts in light of foreseeable regional demand development and SDCWA’s projected supply capabilities.

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SDCWA’s supply and demand projections also present problems in the context of cumulative impacts analyses. The Urban Water Management Plan (“UWMP”) does not adequately account for new demand within the SDCWA jurisdiction that is likely to occur, but is not currently accounted for in growth projections. In its 2015 UWMP, SDCWA bases its supply and demand projections on the SANDAG Series 13 regional growth projections. (SDCWA 2015 UWMP, 2-4.) The regional growth projections are based on the general plans of SANDAG member governments, including planned-for growth and development provided in the general plan documents. The growth projections identify “accelerated forecasted growth,” which is growth projected to occur outside the 2040 planning horizon, that could potentially move forward sooner due to general plan amendments. (SDCWA 2015 UWMP, 2-6.) The UWMP also

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includes “near-term annexations” in its regional baseline demand forecast, which contains projects anticipated to apply for annexation into the SDCWA service area. (SDCWA 2015 UWMP, table 2-2.) The “near-term annexations” include a list of 13 projects, as well as their projected water supply demand. (SDCWA 2015 UWMP, table 2-2.) However, the UWMP does not explain criteria used to define “near-term,” or discuss the possibility of other projects that might qualify.

The list of “near-term annexations” does not include all development projects currently being considered by San Diego County Planning and Development Services (“Development Services”). Additionally, the UWMP does not assess the impacts on water demand of such projects, despite their potential need for SDCWA water. Many of the current projects listed on the Development Services website, most of which are not included in the “near-term annexation” list, would significantly add to regional water demand. The approval of such projects, that require general plan amendments, is not clearly considered in the UWMP.<sup>20</sup>

For example, the Lilac Hills Ranch project, for which a draft EIR is currently being recirculated, would require approximately 1246 AF/yr from SDCWA if approved and granted its requested general plan amendment.<sup>21</sup> However, it is unclear whether such a project is considered in the SDCWA supply-demand forecasts. As San Diego County continues to push residential development, it is vital that individual projects consider their cumulative impacts, particularly with regards to finite resources such as potable water.

The failure to consider foreseeable upcoming water users yields the cumulative impact analysis incomplete and inadequate. The public and decision-makers must be fully aware of current water availability so that the potential risk of over allocation can be properly analyzed. The Project DEIR should restructure its cumulative water supply impacts analysis to consider other forthcoming users inside the SDCWA service area. Additionally, SDCWA should expand its supply-demand forecasts to consider pending projects whose foreseeable approval is not accounted for in the SANDAG growth projections.

#### IV. Conclusion

Thank you for the opportunity to submit comments on the Project. We look forward to working to assure that the Project and environmental review conforms to the requirements of state law and to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. In light of many significant, unavoidable environmental impacts that will result from the Project, we strongly urge the Project not be approved in its current form. Please do not hesitate to contact the Conservation Groups with any questions. We look forward to reviewing the county’s responses to these comments.

<sup>20</sup> Planning & Development Services, Current Projects, [https://www.sandiegocounty.gov/content/sdc/pds/Current\\_Projects.html#par\\_title](https://www.sandiegocounty.gov/content/sdc/pds/Current_Projects.html#par_title)

<sup>21</sup> Planning & Development Services, Current Projects, Lilac Hills Ranch Recirculation [https://www.sandiegocounty.gov/pds/ceqa/LHR\\_Recirculation\\_2.html](https://www.sandiegocounty.gov/pds/ceqa/LHR_Recirculation_2.html)

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Comments on Otay Ranch Village DEIR

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