Attachment D

Key Correspondence

Viejas Tribal Government	March 13, 2013
Endangered Habitats League	March 18, 2013
United States Forest Service, Cleveland National Forest	March 18, 2013
Ewiiaapaayp Tribal Office	October 2, 2013
Endangered Habitats League	October 11, 2013
Shute, Mihaly & Weinberger on behalf of Cleveland National Forest Foundation	October, 15, 2013

VIEJAS
TRIBAL GOVERNMENT

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Robert "Cita" Welch, Vice-Chairman
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March 13, 2013

Mindy Fogg
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 310
MS O-650
San Diego, CA 92123

Re: Forest Conservation Initiative: Proposed Land Designation – Willows Road Area

Dear Ms. Fogg;

This correspondence is in response to the proposal land designations which were forwarded by the Alpine Planning Group to the County's Department of Planning & Development Services. The Viejas Band of Kumeyaay Indians (Viejas Band) has a significant land management responsibility as a native sovereign nation over the trust lands of the Viejas Indian Reservation. In addition, the Viejas Band owns a substantial amount of fee simply land holdings in the east portion of the Alpine Planning Group's area. The Viejas Band facilitated community meetings and workshops with neighboring land owners regarding the land designations for the area of and surrounding Viejas Valley.

The Viejas Bands encouraged and supported the community collaborative approach of consensus generated from the meetings and workshops. The Viejas Band does have some concerns regarding changes injected during the review of the proposed community designation at the presentation to the Alpine Planning Group.

The Viejas Bands supports the following:

1. The residential designation (Red Oak properties) on the north east side of the reservation. The land use designation is consistent with adjacent land use on the reservation.

2. The rural commercial land use designation at the East Willows Road off ramp (both north and south side of the freeway). This designation places the higher volume traffic land use closer to the off ramp and reducing traffic impact on the east end of Willows Road.

3. Viejas envisions the rural land use designation as being zoned rural freeway commercial to support business opportunities for the commuting and traveling public.

4. The village core designation on the south side of Willows Road from the Outlet Center to Alpine Springs RV Park. Viejas supports this land use designation because:
    a. It is compatible with the adjacent land use,
    b. Allows for mixed residential and commercial use,
    c. Compatible with existing land use of residential,
    d. Follows land use planning principle of lower density as you move further from the East Willows Road off ramp.

5. The rural commercial land use designation at the West Willows Road off ramp (both north and south side of the freeway). This designation places the higher volume traffic land use closer to the off ramp and reducing traffic impact on roadways which are remote from the off ramp. Viejas envisions the rural land use designation as being zoned rural freeway commercial to support business opportunities for the commuting and traveling public. The West Willows off ramp will also serve as a secondary main exit for the east end of the Alpine community due to the close proximity of the Alpine High School, Albertson's shopping center and other future commercial development along Alpine Boulevard near the Alpine High School.

6. The designating of general commercial along the north side of Alpine Boulevard from West Willows off ramp to the Albertson's shopping center. This land use designation supports and compliments the High School location and connects the center of town to the east end of the community.

7. The residential designation on Otto Avenue properties (APN 406-051-09 & 10). The land use designation is consistent with land use along Otto Avenue.

The Viejas Band would like to clarify:

1. The residential area designated on the northwest corner of the reservation (APN 405-120-01 & 02 and 406-010-01 & 02) has been transferred to trust status.

The Viejas Band opposes the following:

1. The rural commercial land use designation for the parcel located west of 4651 Willows Road (APN 406-050-08 – 5.07 Acres) which is currently surrounded by residential land use designation. This is a text book example of spot zoning.

2. The rural commercial land use designation of the parcel located on the south side of the 4200 block of Willows Road (referred to as the Willows Cottages). This is spot zoning as the area is currently designated and developed as semi-rural residential land use.

3. The rural commercial land use designation of the parcel located on the south side of Alpine Boulevard (Walker parcel). This is spot zoning as the area is currently designated and developed as semi-rural residential land use. To access this parcel as a commercial property would require traffic to transverse roads in a residential neighbor.

The Viejas Band appreciates the opportunity to express our position regarding the proposed land designation for the eastern portion of Alpine. If there are any questions, please feel free to contact Robert Scheid, Director of Public and Community Relations (rscheid@viejas-nsn.gov or 619-659-5410) or Don Butz, Fire Chief (dbutz@viejas-nsn.gov or 619-659-2376).

Sincerely,

THE VIEJAS BAND OF KUMEYAAY INDIANS

Hon. Anthony R. Pico
Chairman

March 18, 2013

VIA ELECTRONIC MAIL

Mindy Fogg
Dept. of Planning and Development Services
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5510 Overland Avenue, Suite 110
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mindy.fogg@sdcounty.ca.gov

RE: GPA 12-004; Forest Conservation Initiative (FCI) Lands General Plan Amendment (GPA) – *Map Comments*

Dear Ms. Fogg:

The Endangered Habitats League (EHL) appreciates the opportunity to supplement its main comment letter (submitted under separate cover) with these comments on specific map issues. For your reference, EHL is Southern California's only regional conservation group and has been a stakeholder in County of San Diego planning efforts since 1993, serving on advisory committees for the MSCPs and the General Plan Update.

As a rule, the *lowest* rural densities should be applied to former FCI lands. Because these forest inholdings are often the most remote, most poorly served by infrastructure and services, most hazardous for fire, most GHG-intensive for auto use, and most ecologically intact, the Guiding Principles[1] direct development elsewhere. The

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. Support a reasonable share of projected regional population growth.
. Promote health and sustainability by locating new growth near existing and planned infrastructure, services, and jobs in a compact pattern of development.
. Reinforce the vitality, local economy, and individual character of existing communities when planning new housing, employment, and recreational opportunities.
. Promote environmental stewardship that protects the range of natural resources and habitats that uniquely define the County's character and ecological importance.
. Ensure that development accounts for physical constraints and the natural hazards of the land.
. Provide and support a multi-modal transportation network that enhances connectivity and supports community development patterns and, when appropriate, plan for development which supports public transportation.
. Maintain environmentally sustainable communities and reduce greenhouse gas emissions that contribute to climate change.

former FCI lands exemplify the need to strictly limit "rural residential" subdivision so that the Guiding Principles are achieved and taxpayer subsidies for far-flung scattered housing are minimized. That said, the GPA has to respect areas of *existing* parcelization with appropriate designations. But additional subdivision outside of established rural residential enclaves should be avoided.

We are also concerned that development – commercial or residential – not "leapfrog" outside of existing villages and water and sewer boundaries. For example, casino facilities – sited without regard to the Guiding Principles – should not trigger such leapfrog.

In general, EHL supports the Environmentally Superior ("Modified') Alternative. The purpose of these comments is to highlight those select areas where we find the Modified Alternative is deficient in meeting the Guiding Principles. Narrative comments below refer to enclosed exhibits.

Alpine

We generally concur with the approach of the Modified Alternative except for a major defect south of I-8 and surrounding Star Valley Road on the south, east, and west. Due to large, un-subdivided parcels of up to 80 acres in size and the Guiding Principles goals referenced above, this area should be RL40 rather than SR2. Subdivsion of intact, relatively remote land into dispersed estate lots would place more residences at fire risk, fragment habitat, increase service costs, and increase GHG emissions for the resulting long-distance commuters. Of note is that the Conservation Subdivision, which could in a limited way mitigate the damage, is not required for SR2.

In regard to the East Willows Village in the proposed project, it not needed to meet population or housing targets and would produce adverse traffic impacts. Nor is there any evidence that it is needed for nearby casino employees. It is outside of village and water and sewer boundaries and inconsistent with LU-1.2. Any intensified development here should await a demonstrable need for additional General Plan capacity.

While the County lacks the power to stop development on Tribal lands that undermines the County's planning goals contained in the Guiding Principles, it *does* have the power to limit the damage by not using casino development as a rationale for permitting growth patterns that undermine these goals. Letting casino development dictate inconsistent land uses for adjacent areas will result in a vicious cycle as the adjacent development will eventually serve as an even *stronger* rationale for even *more* inconsistent development. Particularly where, as here, new growth-inducing urban

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. Preserve agriculture as an integral component of the region's economy, character, and open space network.
. Minimize public costs of infrastructure and services and correlate their timing with new development.
. Recognize community and stakeholder interests while striving for consensus.

infrastructure is introduced to accommodate this inconsistent growth, the character of the entire area risks being irrevocably altered in a manner that is fundamentally inconsistent with the County's overall planning principles. Even worse, a disastrous precedent would be set for justifying casino-adjacent General Plan amendments that are inconsistent with the Guiding Principles in remote rural areas *throughout* the County.

But if, despite these compelling reasons, the final plan includes any intensification (residential or commercial) outside of water and sewer boundaries, it must only do so as a logical contiguous extension of existing development on lands under County jurisdiction.

Central Mountain - Cuyamaca

There is a remote area which, on the basis of consistency with nearby parcels *alone*, should be RL80 rather than RL40.

North Mountain

Near the Palomar Mountain community, an area now split on the Modified Alternative between RL10 and RL40 should be reconfigured based upon existing parcelization as a split between RL20 and RL40, or less preferably, the whole reconfigured at RL20.

We look forward to continuing to work with the Department on this very important General Plan amendment.

Yours truly,

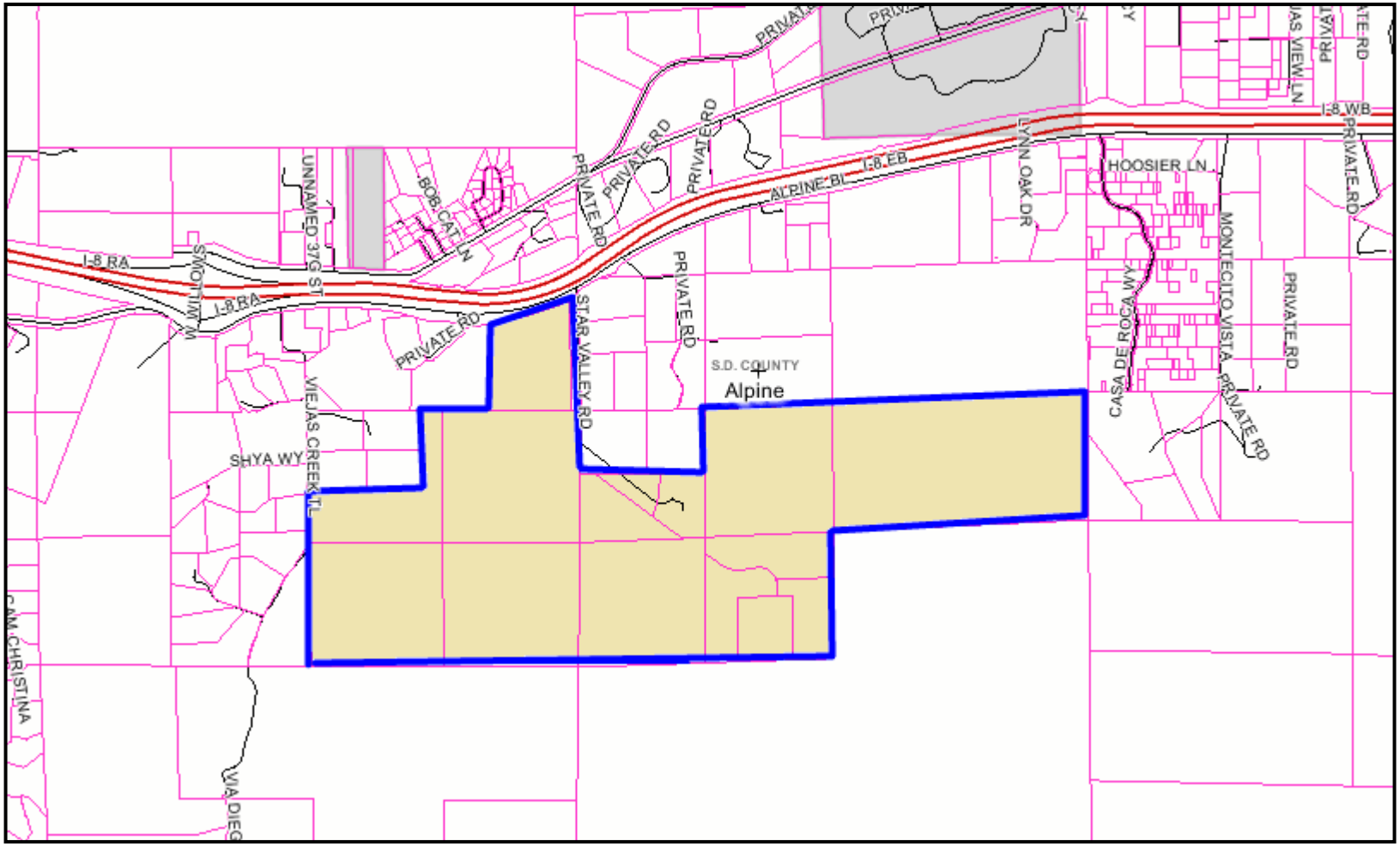
Dan Silver, MD
Executive Director

Enclosed

Maps of Alpine, Central Mountain, North Mountain

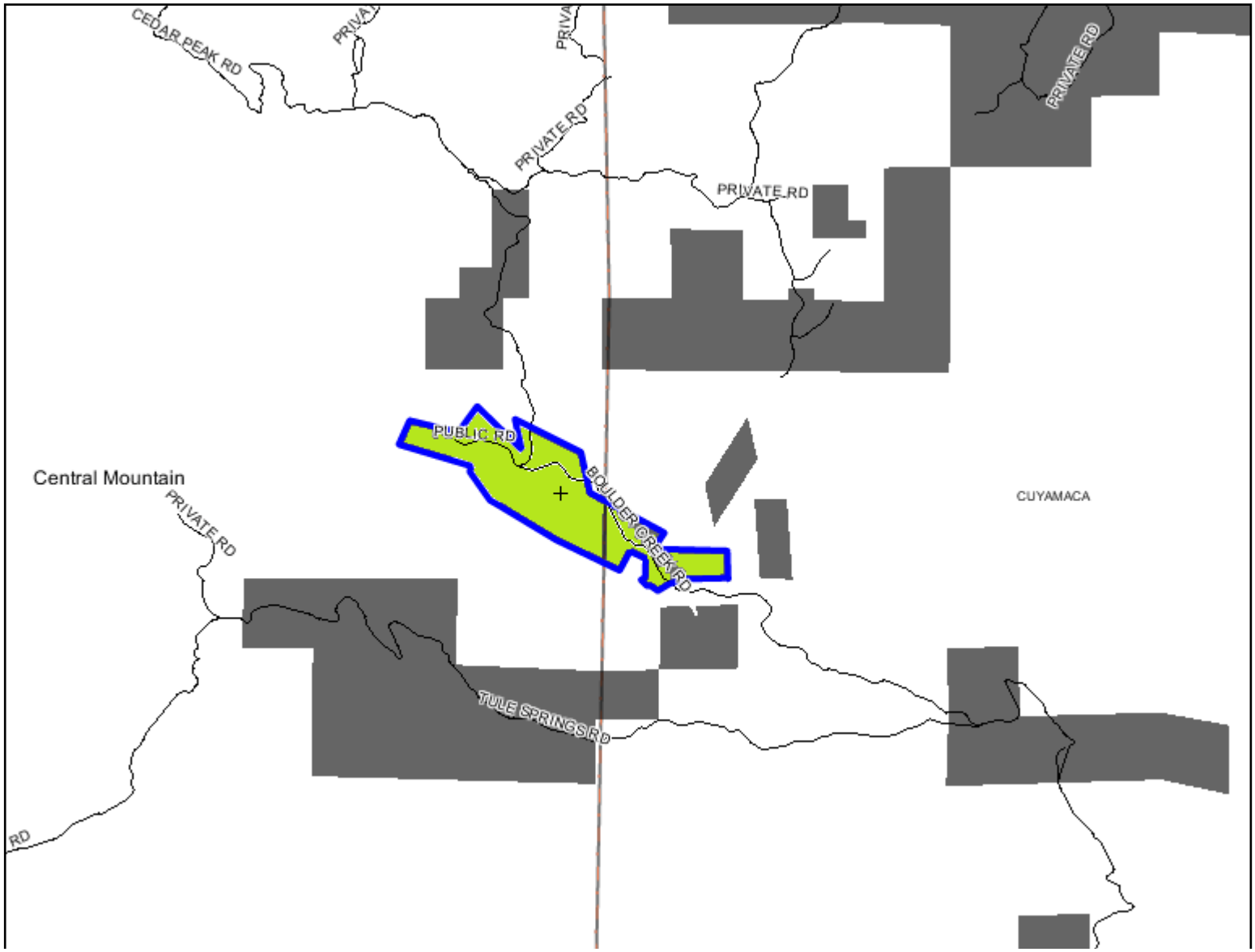
Alpine

South of I-8, surrounding Star Valley Road, both the proposed project and the Modified Project Alternative show SR2. The existing lots are 40 to 80 acres in size, and the proper designation is RL40.



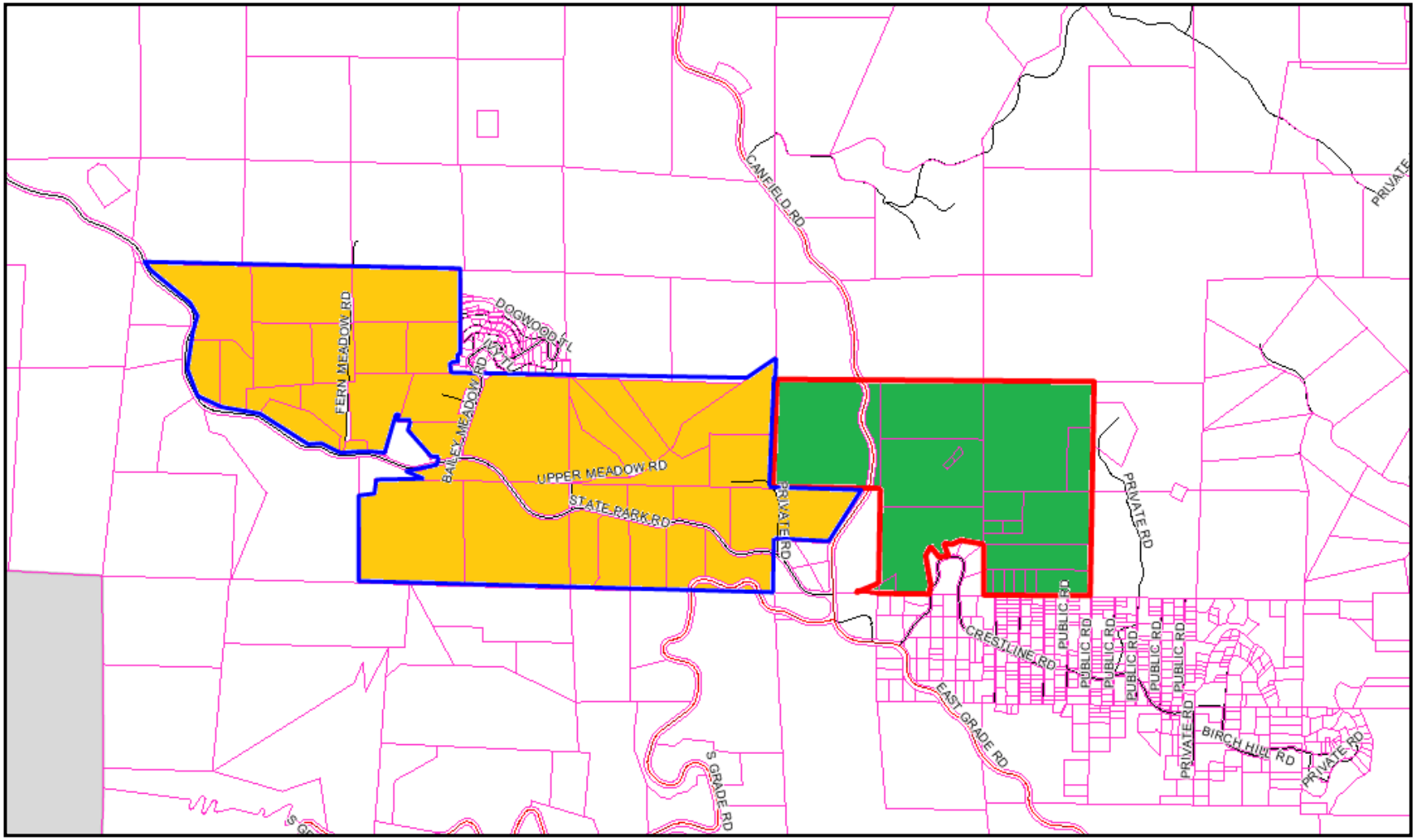
Central Mountain-Cuyamaca

This land, located along Boulder Creek Road, is shown as RL40 in the proposed project and the Modified Project Alternative. However, the Modified Project Alternative has the surrounding FCI projects as RL80, which should also be the case here.



North Mountain

This area near the Palomar Mountain community is along State Park Road and Canfield Road. The entire area is proposed for SR10 in the proposed project. In the Modified Project Alternative, the easterly area (in green) was reduced to RL40, but the westerly area (in orange) was inappropriately left as SR10. The orange portion should be changed to RL20 (or alternatively, the entirety could be designated as such).



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File Code: 1560
Date: March 18, 2013

Mindy Fogg
County of San Diego, Planning and Development Services
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To the County of San Diego:

The Cleveland National Forest appreciates the opportunity to comment on the potential impacts of the proposed General Plan Amendment for the former Forest Conservation Initiative (FCI) lands. The Forest's comments include comments previously submitted during the scoping period, on the basis of a meeting with San Diego County staff and review of the proposed land use maps, as well as comments on the recently released Draft Supplemental Environmental Impact Report (SEIR). We will begin by highlighting key issues and management challenges related to urbanization that were described in detail in our 2005 Forest Land Management Plan. These issues are common to all former FCI lands and are central to the potential environmental and public health and safety issues associated with increasing population density within and adjacent to the Cleveland National Forest. Next, issues particular to specific mapped areas of the plan are addressed. Finally, comments specific to the SEIR are addressed at the end of this letter.

Altogether, we are concerned about the potential environmental and public health and safety impacts that would be associated with increases in population density on former FCI lands, and we feel that these impacts are neither adequately disclosed in the Draft SEIR nor consistent with the objectives of the County of San Diego General Plan. Finally, we feel that the best way to protect both the environment and public health and safety on these lands would be to select the Modified Project Alternative along with a provision that buffer zones be set aside between private lands and the Cleveland National Forest.

Comments Addressing all FCI Lands

The rapidly increasing population of Southern California, the growing level of development adjacent to the Cleveland National Forest, and the resulting effects on the National Forest System (NFS) lands present some of our main management challenges. Higher density development in more remote areas leads to more Wildland/Urban Interface area that is at risk of and in need of protection from wildland fire. The combination of increased development and the need to protect these developed areas from fire and other natural events, such as flooding, will put increasing pressure on National Forest managers to alter landscape character to accommodate these uses. In the case of fire, suppression efforts to protect communities can lead to the buildup of fuels and eventually to higher severity, more damaging fires than would occur naturally.

Furthermore, increasing the number of homes in an area increases the likelihood of human-caused fires, which can increase fire frequency to levels that harm ecosystems, wildlife, and waterways. Finally, we have concerns about the potential difficulty of evacuating people from remote subdivisions when wildland fires occur nearby on the Cleveland National Forest.

Urban development also puts pressure on public lands to provide urban support facilities (i.e. infrastructure) through special-use authorizations as private land options for development are exhausted. In the past, subdivisions have been established with the expectation that adjacent National Forest land can accommodate necessary water tanks, utilities, and defensible space to protect homes from wildfire. Instead, we now request that private lands be required to serve these purposes for future subdivisions through the blanket incorporation of buffer zones for new development projects on FCI lands. Along the same lines, where water delivery systems are not in place, the installation of wells for household use will lower the groundwater table beneath adjacent NFS lands, thereby degrading habitats for native plant and animal species. To avoid these impacts, we request that water delivery systems be established before enabling increased density on former FCI lands.

Road access presents several primary issues associated with increasing population density within or adjacent to the National Forest. The narrow, winding National Forest road system was built in the 1930s to support fire protection and does not meet typical County access standards. Moreover, the greater the population density of an area, the wider a suitable road would need to be. The National Forest roads generally lack rights-of-way where they cross private lands, which would need to be obtained in order to widen them or convey utilities. Furthermore, any improvements to Forest or County roads on the National Forest would require substantial planning and environmental compliance to be borne by project proponents, if permitted. Widening roads, building new roads, and increasing traffic to accommodate increasing population density in remote County areas would negatively impact plants and animals in a variety of ways, including direct mortality and habitat loss and fragmentation, and would also increase erosion and sedimentation of waterways.

Increased interface between developed private lands and National Forest boundaries also increases boundary management challenges including addressing occupancy trespass, clearly posting boundaries, and retaining clear title to NFS land. For example, in re-marking forest boundary after the 2007 fires, we discovered major encroachments adjacent to some subdivisions.

Another challenge associated with urbanization is the complex problem of National Forest access. For example, traditional points of public and administrative access to the National Forest have been lost as private land is subdivided. New landowners are often reluctant to accommodate access across their land. At the same time, residents living adjacent to the National Forests want convenient access, often resulting in the development of unplanned roads and trails. Unauthorized motorized vehicle use occurs and tends to be more of a management challenge on National Forest lands near private developments. As an example, illegal motor vehicle use of the Pacific Crest Trail has been reported from the Lake Morena area in the midst of the federally designated Hauser Wilderness.

Population growth within and surrounding the National Forests will probably be the single largest impact on National Forest recreation management in the foreseeable future. This growth has pushed urban development closer to and within the National Forest, in some cases directly adjacent to National Forest boundaries. Where NFS lands are or will be the boundary to this development, there will be pressure on these adjacent lands to provide diverse kinds of recreation. Higher density development would be expected to increase this pressure. Recreation on the National Forest is managed according to Recreation Opportunity Spectrum (ROS) to provide choices for people to recreate in settings that vary from urban to primitive. In general, the Forest Service would prefer zoning on adjacent private lands to be complementary with the land use zone and ROS on the NFS land. For example, where there is interface between private lands and NFS lands within a designated wilderness area or Inventoried Roadless Area, lower density County zoning would be the more complementary. Solitude, an increasingly rare opportunity, is a desirable feature in wilderness, but would be difficult or impossible to retain in the face of the increasing population and high density development.

Extensive habitat conservation planning efforts led by local government and conservation organizations have identified the need to maintain an inter-connected network of undeveloped areas or landscape linkages, which retain specific habitats and allow for maintenance of biodiversity and wildlife movement across the landscape and led to development of several multi-species habitat conservation plans. National Forest System lands are a core element of this natural open space network and will play an increasingly important role as additional habitat fragmentation occurs on surrounding private lands. Fragmentation is the breaking up of contiguous blocks of habitat by urban development features into progressively smaller patches that are increasingly isolated from one another and of less value for conservation. Higher density zoning allows for a higher level of development and, accordingly, fragmentation. Habitat loss and fragmentation are the leading causes of species extinctions, and the Cleveland National Forest has many populations of federally-listed threatened and endangered species that could be affected by increasing population density on former FCI lands. Meanwhile, invasive species generally enter new areas through human activity in those areas, and so increasing population density would result in the introduction of new infestations that would damage Forest resources and be costly to manage.

Comments Specific to Particular Locations

- **Alpine Community Planning Area (CPA).** The Forest is concerned about the density increases proposed for areas at the eastern end of Alpine, both south and north of Interstate 8. Road and water systems should be planned before enabling such increases, and the severe risk of fires starting along the freeway corridor and blowing westward into these areas should be addressed. In addition, Viejas Mountain was designated a Critical Biological Area of the National Forest by our Land Management Plan due to its unique botanical resources. The dense developments proposed for its perimeter and northeast of the Viejas Reservation, shown in yellow (SR-1) on the proposed maps, would be unlikely to effectively buffer this sensitive area from the impacts of residential development. This zoning also appears to be inconsistent with similar areas on the west side of Viejas Mountain, which are designated as RL-40. For the parcels that were re-designated as RL-

20 since the last maps were made available, we would prefer that the RL-40 designation be retained instead to prevent the environmental and public health and safety impacts described above.

- **Jamul CPA – Skye Valley Ranch.** The Forest would recommend continuing the RL-80 zoning on these parcels. The bridge over Pine Creek near Barrett Honor Camp is insufficient for any traffic, even in an emergency, and will not be improved or replaced since it falls within the Pine Creek Wilderness. Additionally, these parcels border two existing federally designated wilderness areas (Pine Creek Wilderness and Hauser Wilderness) and are completely surrounded by NFS lands. Further improvement of infrastructure to this area, such as utilities and road access, required for a smaller lot size zoning would have a negative impact on wilderness values, increase the need for fuels treatments, and raise potential for the issues and impacts described above.

- **Areas west of Cuyamaca CPA.** The Forest supports RL-80 zoning for parcels adjacent to the Cuyamaca CPA along Boulder Creek Road. These parcels are located in a very undeveloped and fire prone part of the Cleveland National Forest and are adjacent to Inventoried Roadless Areas (IRAs) that are proposed for recommended wilderness status in the Southern California National Forests Land Management Plan Amendment project.

- **Descanso CPA.** The Forest supports the mix of zoning as mapped for the Descanso planning area and encourages the County to retain the lower density RL-80 zoning that is currently proposed. The northern part of the Descanso CPA abuts two IRAs (Sill Hill and No Name) that are proposed for recommended wilderness status in the Southern California National Forests Land Management Plan Amendment project. Also adjacent to the north Descanso CPA is the King Creek Research Natural Area, which contains a rare population of Cuyamaca cypress, a Forest Service sensitive species. All of the King Creek stands burned in a fire in 1950 and most of the area re-burned in the 2003 Cedar Fire. Post-Cedar Fire regeneration is expected to be adequate to repopulate the stands because trees were old enough to have substantial cone banks at the time of the fire; however, it is important to protect the stand from overly frequent fire especially at this vulnerable time. For these reasons, the Forest supports a minimum of RL-40 adjacent to these IRAs and research natural area on the NFS land.

- **Pine Valley CPA.** The Forest supports the current extent of RL-80 zoning proposed for the Pine Valley CPA in the Draft Land Use Plan. This area contains many of the highest recreational and scenic values to be found on the Cleveland National Forest. Parcels in this CPA south of Interstate 8 are directly adjacent to the federally designated Pine Creek Wilderness. Parcels along Sunrise Highway are adjacent to the Mount Laguna National Recreation Area. The Forest also supports maintaining the proposed RL-40 zoning adjacent to Buckman Springs Road because the NFS land to the east is zoned as Back Country Non-Motorized, which is the most restrictive zoning other than recommended

wilderness and designated wilderness. In addition, the Pacific Crest Trail, a 2,650-mile national scenic trail that runs from Mexico to Canada through California, Oregon and Washington, traverses this area before moving onto the National Forest. The low density proposed would help maintain the recreational and scenic values.

- **Central Mountain CPA.** We recommend RL-80 zoning for parcels in the Central Mountain CPA where RL-40 zoning in the adjacent Julian CPA was extended into parcels within the Cleveland National Forest. This recommendation affects two contiguous parcels that are adjacent to the Upper San Diego River Canyon. The Upper San Diego River is an area of rugged topography and high fire danger. In addition, this undeveloped area is proposed for recommended wilderness status in the Southern California National Forests Land Management Plan Amendment project.

- **Pendleton – De Luz CPA.** The Forest recommends reducing the allowable density to RL-80 for RL-40 in areas surrounded by NFS lands in the Pendleton - De Luz CPA. These parcels are directly adjacent to the federally designated San Mateo Canyon Wilderness area. The parcels on Miller Mountain contain unique botanical resources and would require major road improvements across NFS lands if developed.

- **North Mountain CPAs.** The Forest supports the current extent of RL-80 zoning in the North Mountain CPA and encourages the county to retain this zoning through the planning process. We are uncertain of the proposed density for the triangular parcel on the north side of Warner Springs, which abuts the Caliente Inventoried Roadless Area proposed for wilderness designation in the Southern California National Forests Land Management Plan Amendment project. Reducing the density for this parcel to the RL-80 zoning would better buffer the proposed recommended wilderness area from adjacent land uses.

Comments on the Draft Supplemental Environmental Impact Report

The Draft SEIR should clearly make the case that the objectives presented in Chapter 1.3, as drawn from the County of San Diego General Plan, are met by the proposed project. In our view, the document fails to demonstrate that the proposed project meets the majority of the objectives and instead includes evidence that objectives will not be met. Other than stakeholder participation, the only objective that the proposed project could meet is the first one listed – "Support a reasonable share of projected regional population growth;" – and we feel that it fails to meet even this objective, because the failure to meet the remainder of the objectives renders the share of growth unreasonable. The proposed project clearly conflicts with 6 of the 10 objectives, as the rationale beneath each objective below demonstrates:

- Promote sustainability by locating new development near existing infrastructure, services, and jobs.

- Remote parcels within and adjacent to the Cleveland National Forest are far from infrastructure, services, and jobs.

- Promote environmental stewardship that protects the range of natural resources and habitats that uniquely define the County's character and ecological importance.
  - Increased development on remote parcels within and adjacent to the Cleveland National Forest threatens many of the natural resources and habitats that uniquely define the County's character and ecological importance.
- Ensure that development accounts for physical constraints and the natural hazards of the land.
  - Remote parcels within and adjacent to the Cleveland National Forest experience severe risk of wildland fire incursion.
- Provide and support a multi-modal transportation network that enhances connectivity and supports community development patterns.
  - Remote parcels within and adjacent to the Cleveland National Forest are accessible only by passenger vehicle and road access is substandard for general residential use.
- Maintain environmentally sustainable communities and reduce greenhouse gas emissions that contribute to climate change.
  - Remote parcels within and adjacent to the Cleveland National Forest would not be environmentally sustainable for numerous reasons cited throughout this letter, and the development and access would increase greenhouse gas emissions that contribute to climate change.
- Minimize public costs of infrastructure and services and correlate their timing with new development.
  - Remote parcels within and adjacent to the Cleveland National Forest would maximize public costs of infrastructure and services.

The assumption is made throughout the analysis of potential impacts that "regulations, implementation programs, and mitigation measures from the General Plan Update EIR" will result in impacts that fall below the threshold of significance. This assumption is flawed in that it fails to recognize the irretrievable losses to natural and cultural resources involved when subdividing new areas of an already densely populated region. The Draft SEIR presents numerous plans and projects considered in evaluating cumulative impacts, but it fails to include the impacts of the past development of San Diego County, as represented by the existing condition of the region. When viewed through this lens, further increases of population density in remote areas of the County will necessarily have significant impacts, regardless of "regulations, implementation programs, and mitigation measures." The scope of the cumulative impacts section needs to be broadened to include development that has occurred up to the current time.

While the Draft SEIR considers many topics, it fails to offer the level of detail that would be needed to evaluate the environmental impacts of its alternatives. We feel that as a result of the vague nature of the analysis presented, environmental and public health and safety impacts have

not been sufficiently analyzed or disclosed. Examples of these deficiencies are provided below by topic.

Biological Resources

With regard to description of the impacts of the FCI Lands project on biological resources, there is no description of the actual impacts, as no inventory, identification, or evaluation of such resources has been completed and the actual impacts are unknown. Instead, there is only a general discussion of potential project impacts on general plant and wildlife species. These are assumed to be significant and unavoidable for special status species, riparian habitat, and wildlife movement corridors (Table S-2). However, there is no identification of effects on individual species even though the project will adversely affect or is likely to adversely affect a number of federally-listed species including Arroyo Toad, California Gnatcatcher, and San Diego Thornmint as well as candidate species for listing such as Hermes Copper butterfly. The proposed alternatives will also adversely affect many of our Regional Forester's list of Sensitive Species through direct mortality and habitat loss and fragmentation, creating difficulties for conserving their populations on NFS lands. The blanket approach taken by the Draft SEIR does not adequately describe and disclose effects on these species, effectively leaving this analysis to later piecemeal analyses that will be done for individual projects. This does not allow for meaningful protection and conservation of these species across broader areas. This is not consistent with the purpose and intent of CEQA.

Given the lack of detail in the SEIR, it is not possible to perform a meaningful comparison of the effects of the different alternatives. The analysis does not provide enough information to determine which alternative would best conserve key resources.

Cultural and Paleontological Resources

Section 15123(b)(3) of the CEQA Guidelines requires that an EIR address the issues to be resolved, which includes the choices among alternatives and whether or how to mitigate significant impacts. As stated in the Draft FCI Lands SEIR, the major issues to be resolved regarding the project include decisions by the Lead Agency as to whether or not the Draft SEIR adequately describes the environmental impacts, whether the recommended mitigation measures identified for the proposed Project should be adopted or modified, or if additional mitigation measures should be required.

In regard to adequate description of the impacts of the FCI Lands project on historic or archaeological resources, there is no description of the actual impacts, as no inventory, identification, or evaluation of such resources has been completed and the actual impacts are unknown. Instead, there is only a general discussion of potential project impacts, which are assumed in advance to be less than significant through the implementation of various policies and mitigation measures contained in the General Plan Update.

Table S-2, "Summary of Project Impacts" and various sections of the Draft FCI Lands SEIR contain information indicating that implementation of the Proposed Project would result in new development that would have the potential to result in substantial adverse changes to the

significance of historical resources and cause a substantial adverse change in the significance of archaeological resources, including the destruction or disturbance of archaeological sites that contain or have the potential to contain information important to history or prehistory. However, with the application of various policies and mitigation measures, impacts to historic and archaeological resources are assumed to be "less than significant." It is unclear from the analysis that cultural resources will actually be protected by such policies and measures to the extent that they would not be significantly affected by the Proposed Project.

In Section 2.5 "Cultural Resources" of Table S-3 and various other sections of the Draft SEIR contain information indicating that the "Modified Project" alternative is likely to result in less impacts to historical and archaeological resources when compared to Proposed Project, and that implementation of the "No Project" alternative is likely to result in greater impacts when compared to the Proposed Project. However, under the mitigation process proposed in the Draft SEIR, impacts to historic and archaeological resources would be "less than significant" with the implementation of mitigation measures for the Proposed, Modified, and No Action alternatives. This assumption is based on the assumption in advance that historic and archaeological resources are distributed evenly throughout the FCI lands. Depending on the actual distribution of these resources within the FCI lands, the differences in potential impacts between the implementation of the Proposed, Modified, and No Action alternatives could be substantially different than those assumed in the Draft SEIR. The only real difference between the implementation of any one of these three scenarios would be the potential for significant impacts, not actual impacts, assuming the implementation of policies and mitigation measures always result in "less than significant" impacts. As a result, the comparison of these three scenarios is of no actual quantitative or qualitative value for the purposes of identifying an "Environmentally Superior" course of action.

Page 12 of the "County Cultural Guidelines" states that "Determining what is an important cultural resource worth preserving [sic] is a subjective and interpretive process; therefore, it is useful to utilize a standard assessment approach to evaluate cultural resources. In order to evaluate cultural resources, a comprehensive assessment must be conducted, including measuring the resource against the State CEQA Guidelines provisions and criteria established by the National Register of Historic Places, the California Register of Historical Resources, and the San Diego County Local Register of Historical Resources, and the Resource Protection Ordinance as well as assessing the integrity of the resource." Without any actual assessment or evaluation of historic and archaeological resources within the FCI Lands project area, there is no quantitative or qualitative basis for comparing the various courses of action, selecting an "Environmentally Superior" alternative, determining whether the recommended mitigation measures identified for the proposed Project should be adopted or modified, or determining if additional mitigation measures should be required for this project, as the Draft FCI Lands SEIR does not adequately describe the impacts of the Proposed Project on historic and archaeological resources.

Hazards and Hazardous Materials

The section that deals with Wildland Fire (2.6.3.7) concludes that the Proposed Project would have significant impacts related to wildland fire, while suggesting that regulations, implementation programs, and mitigation measures would reduce those impacts. In the

Mitigation Measures section (2.6.4.7), several mitigation measures are deemed infeasible that would dramatically reduce losses of homes and lives through restricting development in areas with more than a moderate fire hazard or requiring extensive fuel modification around development. Instead, the analysis determines that "one of the primary objectives of the project which is to accommodate a reasonable amount of growth" renders these mitigation measures infeasible. Apart from the fact that this conclusion disregards the remainder of project objectives, it also suggests that it is more valuable to allow growth in high and very high fire hazard areas than to protect those homes and people from the very hazards that the mitigation measures were designed to prevent. The end result of increasing population density on the former FCI lands will be greater losses of lives and property to recurrent wildland fire.

On a related note, the sections that Deal with Emergency Response and Evacuation Plans (2.6.3.6 and 2.6.4.6) conclude that significant impacts will be avoided through regulations, implementation programs, and mitigation measures. Three of the four measures presented, however, do not reflect the reality of the roads that would provide access to many of the FCI lands. These roads generally lack an interconnected road network, multiple ingress and egress routes, and suitability for use as rural roads serving residential subdivisions. The hazards of unsuitable escape routes resulting from these conditions along with the above-mentioned permission to develop in areas with high to very high fire hazards makes the likelihood even greater that implementation of the proposed project would lead to tragic losses of life and property.

Land Use

Given that the FCI lands are by definition in close proximity to the Cleveland National Forest, it is surprising to find no mention of our Land Management Plan in Section 2.8.3.2, which considers "Conflicts with Land Use Plans, Policies, and Regulations." As described in the beginning of this letter, increasing population density on FCI Lands would lead to numerous environmental and public health and safety issues on the Cleveland National Forest, as described in our 2005 Land Management Plan, and would accelerate problems that our Plan directs us to remedy. As a result, we call into question the determination that project impacts with regard to land use plans, policies, or regulations would be below a level of significance. The conflict of this project with our Land Management Plan should be investigated and disclosed as part of this analysis.

Nowhere is the disconnect between this project and our Land Management Plan greater than where the FCI lands are adjacent to or within designated or recommended wilderness areas. There is no mention of designated or recommended wilderness on the Cleveland National Forest or other federal lands managed by the Department of Interior. As such, there is no basis provided for evaluating the potential for the project to impact wilderness areas adjacent to FCI Lands. Potential project impacts on the wilderness resource could be significant and unavoidable, although it is not possible to perform a meaningful comparison of the effects of the different alternatives due to the lack of mention of wilderness in the Draft SEIR.

Section 2(c) of the Wilderness Act of 1964 (Public Law 88-577) defines wilderness: "A wilderness, in contrast with those areas where man and his own works dominate the landscape, is

hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation..."

In summary, the key elements of wilderness include its natural state (biological and other natural processes operating unimpaired, uninhibited, and unchanged by humans), opportunities for solitude and primitive recreation opportunities, undeveloped character, and untrammeled (unmanaged) nature.

Increased density and development near or adjacent to designated or recommended wilderness areas would likely adversely affect the wilderness resource in a number of ways. Increased population in the County, particularly in rural areas, may result in increased use of wilderness, therefore impacting opportunities for solitude and primitive recreation opportunities. The visual impact of subdivisions on the wilderness user is also due consideration. Development in the vicinity of wilderness increases the likelihood that non-native, invasive species would be introduced into wilderness, thereby disrupting natural processes within the wilderness. Development upstream within watersheds shared by wilderness increases the likelihood of impaired water quality or decreased stream flows in wilderness due to runoff, impoundments, and/or groundwater use. Similarly, development adjacent to wilderness increases the likelihood that landowners build trespass structures, roads, or trails in wilderness, or use motorized or mechanized equipment in wilderness, thereby impacting its undeveloped character. Finally, increased development and density near wilderness increases the likelihood that fire management activities would impact the wilderness resource during wildfire events, which impacts the natural and untrammeled characteristics of wilderness.

Recreation

While the SEIR presents a very broad analysis of the effects of the project on recreation facilities, it does not contain any discussion or analysis of recreation activities in undeveloped, backcountry areas accessed by trail or cross-country travel. Increased recreation in undeveloped, backcountry areas can have substantial adverse effects on the environment, including litter, graffiti, impaired water quality, erosion, increased risk of wildfire, and various impacts to vegetation, wildlife, and cultural resources.

Increased population in the County would likely lead to an increase in recreation in both developed facilities and undeveloped, backcountry areas. While this increased use could have beneficial recreational impacts, the SEIR should include an analysis of environmental impacts that result from recreation in undeveloped backcountry areas, as it does for developed facilities.

Conclusion

We appreciate the development and consideration of the Modified Project (Environmentally Superior) Alternative as described in Chapter 4.3. The sacrifice of less than 10% of the residential dwelling units of the proposed project would certainly be worth the resultant protection of resource conditions and reduction of wildfire risk to communities. Moreover, the areas where the lower densities would be located, as specified in the Modified Project Alternative, are precisely the areas where resource and wildfire concerns are greatest. As a result, we strongly support the adoption of the Modified Project Alternative rather than the Proposed Project. In addition, we encourage the County to set aside buffer zones between private and NFS lands to protect the environment and public health and safety and reduce conflict between adjacent land uses.

To conclude, we appreciate the consideration that you have given to our past concerns about this project and hope that you give similar consideration to our concerns about the Draft SEIR. We are very interested in working with the County of San Diego to achieve the objectives of the project that address environmental sustainability and risk avoidance. Thank you for the opportunity to comment on the potential impacts of the proposed project for the former FCI lands in the unincorporated areas of San Diego County. If you have any questions about these comments, please contact Jeff Heys, Forest Planner, at (858) 674-2959.

Sincerely,

William Metz

WILLIAM METZ
Forest Supervisor

cc: Gloria Silva

Ewiiaapaayp Tribal Office

Ewiiaapaayp Band of Kumeyaay Indians

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October 2, 2013

Adam Day, Chairman
Peder Norby, Vice Chairman
David Pallinger, Commissioner
John Riess, Commissioner
Bryan Woods, Commissioner
Michael Beck, Commissioner
Leon Brooks, Commissioner
San Diego County Planning Commission
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123

re: Approval of Land Use Designation; Ewiiaapaayp Band of Kumeyaay Indians Fee-Patented Parcel

Dear Chairman Day, Vice Chairman Norby, and Commissioners:

By my letter dated September 24, 2013, the Ewiiaapaayp Band of Kumeyaay Indians requested the San Diego County Planning Commission approve the land use designation of Rural Commercial for the fee-patented parcel with APN 4040802600. This Tribe's request for Planning Commission's approval of the San Diego County Planning & Development Services recommendation for a Rural Commercial land use designation for the Tribe's fee parcel as agreed upon by the County and the Tribe in 2012 and documented by the County in its Supplemental Environmental Impact Report and Notice of Public Review of a General Plan Amendment dated February 1, 2013, and as shown on the Alpine Community Land Use Maps entitled, "September 2012 Draft Land Use Map." The Tribe commented on the County SEIR and Alpine Community Map, and affirmed the agreed upon Rural Commercial land use designation, by the Tribe's letter to the County dated February 8, 2013.

However, on October 2, 2013 the Tribe received a letter dated September 26, 2013 (see Attachment 1) from Mr. Robert Citrano, Project Manager for County Planning & Development Services, wherein the County acknowledged the Tribe's letter dated February 8, 2013 (see Attachment 2) "commenting on the County's draft SEIR for the Forest Conservation Initiative General Plan Amendment and the Tribe's request for Rural Commercial designation." The

County letter informed the Tribe that County staff had received other comment letters along with a recommendation from the Alpine Planning Group, and that County staff will be recommending land use designations for all parcels that were part of the former FCI at an October 18th County Planning Commission hearing, and that proposed land use designation changes that are being recommended by County staff are provided on notifications attached to the letter. The notification for the Tribe's parcel with APN 4040802600 listed a proposed designation not of Rural Commercial, as had been agreed upon by the Tribe and County in consultation, but changed to Village Residential. This is the first and only notice of the County's intent to change the land use designation since the County and Tribe entered into consultation at the County's invitation in 2012.

The County's Advance Planning Chief for the County's former Department of Planning and Land Use, Devon Muto, invited the Tribe to enter into consultation for the Tribe's parcel by letter dated January 27, 2012. In this letter "the County of San Diego formally request[ing] the opportunity to consult with your Tribe regarding the General Plan Amendment." The County letter described the GPA purpose was "to change the land use and zoning designations of lands formerly subject to the Forest Conservation Initiative (FCI)." By my letter dated April 11, 2012 (Attachment 3), the Ewiiaapaayp Band of Kumeyaay Indians accepted the County's invitation to enter into tribal consultation and clearly expressed its request for the Rural Commercial land use designation for its parcel APN 4040802600. Between April 2012 and September 2012 the Tribe worked with the County in determining the appropriate land use designation for this parcel was, indeed, Rural Commercial, which received the support of the County. The Rural Commercial land use designation became the County recommendation and was indicated for the Tribe's parcel on the County's webpage for "Forest Conservation Initiative Lands (FCI) General Plan Amendment (GPA) in its Alpine Community Land Use Maps entitled, "September 2012 Draft Land Use Map." This map is unchanged on today's date of October 2, 2013 at the URL http://www.sdcounty.ca.gov/pds/advance/docs/FCI/alpine_draft_lu.pdf.

Following the County's recommendation for a Rural Commercial designation, the Tribe's CEO, Mr. Will Micklin, was contacted by County Project Manager Mr. Robert Citrano but once by telephone in August 2013. Mr. Citrano advised the Tribe to attend the August 19, 2013 meeting of the Alpine Planning Group that would hear the County's recommendations for land use designations under the FCI GPA; however, Mr. Citrano but did not inform the Tribe that the County would change its recommendation for Rural Commercial designation for the Tribe's parcel or that the County would recommend to the Alpine Planning Group an alternative designation. The Tribe planned to attend this meeting, but could not due to severe flight delays in returning from meetings in Washington, D.C.. The Tribe received no information and no written communication from the County of their change in land use designation from the previously agreed upon Rural Commercial designation or to another designation until the notice enclosed in the County's September 26th letter received by the Tribe on October 2nd.

Upon receipt of the County's notice, the Tribe viewed the County FCI GPA – Staff Recommendations at the webpage http://www.sdcounty.ca.gov/pds/advance/FCI_staff_rec.html and found two preliminary staff recommendations as handouts presented to the Alpine Planning Group on August 19th (Attachment 4) and September 22nd (Attachment 5). The Attachment 4 excerpted from the County August 19th presentation shows the Tribe's parcel in Alternative 4 (AL-4) and again in Alternative 5 (AL-5). The Attachment 5 excerpted from the September 22nd

presentation shows the Tribe's parcel as AL-4 and AL-5, and explains the County rationale for the staff recommendations that results in a change from the agreed upon land use designation of Rural Commercial in AL-4.

The County's first reason is spot designation. The requested land use designation of Rural Commercial could not reasonably be interpreted as a spot designation or spot zoning. The Tribe's parcel is within 1,000 to 1,500 feet of four parcels that County maps show the proposed changes to property specific zoning would result in FCI Lands GPA to commercial land use designations of C40 or C44, and another four parcels designated C40 within one half mile. Five additional such commercial designations are proposed on Willows Road within one to two miles. These proposed commercial designations for nearby parcels are shown in the County's FCI Specific Property Zoning Changes at URL http://www.sdcounty.ca.gov/pds/advance/docs/FCI/FCIZoning_1Map_UR1_Alpineusereg.pdf (Attachment 6).

These commercial designations for nearby properties also invalidate the second reason given by the County, which is the parcel is surrounded by semi-rural residential. The parcel has direct access to Alpine Boulevard and, again, is within a short distance of eight parcels with commercial designations proposed by the County.

The third reason given is the parcel is groundwater dependent. The Tribe's parcel benefits from a well that is proven to produce over 130 gallons per minute, which is a production rate that would support a Rural Commercial designation.

The fourth reason is the Tribe's parcel is one-third of a mile from the I-8 interchange. There is no reasonable argument why the one-third of a mile distance from a major interstate freeway interchange is not a reason in support of a Rural Commercial designation.

Finally, the County sites the Tribe's pending fee-to-trust application for this parcel. There is no possible association between the Tribe's fee-to-trust application and the County land use designation proposed, except to conjure an argument for the County to use in its appeal of the Tribe's fee-to-trust application. In the County's appeal to the Tribe's fee-to-trust application, the County argues as a reason to disapprove the application that the proposed use is not compatible with the County's land use designation for this parcel. "Under current zoning, the [parcel] is classified as a commercial use that is not an allowed use and therefore is not consistent with current zoning." (Attachment 7, page 3) The Tribe took up the County's recommendation to apply for a Rural Commercial land use designation that would support its proposed use of the parcel in fee status should the fee-to-trust application be disapproved. In formal consultation with the County the Tribe and County collaborated with the result of the County's recommendation for a Rural Commercial designation for the Tribe's parcel under the FCI GPA. The County should not, as a matter of fairness, disregard the tribal consultation process and overrule its own staff recommendation for a Rural Commercial designation for the Tribe's parcel in order to strengthen its appeal to the Tribe's fee-to-trust application.

Additionally, in Attachment 5 an AL-4 map show a habitat evaluation model that shows a "very high" sensitivity and potential impact area on the Tribe's parcel. However, this habitat area (Attachment 8) was previously protected by a consensual memorandum of agreement between the Tribe and the U.S. Fish & Wildlife Service (Attachment 9), which protects the habitat in this same area in perpetuity through the Tribe's Resolution 2-14 (Attachment 10). The

Ewiiaapaayp Band entered into a Memorandum of Agreement (MOA) with the FWS to minimize potential effects on designated critical habitat. The MOA is pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531-1544). The enacted Tribal Ordinance, along with the MOA, is the legal means to ensure the adequate conservation of the Tribe's parcel habitat area in furtherance of the terms and conditions of the FWS Biological Opinion. The MOA and the Tribal Ordinance implement on-site preservation measures for a Creek-Side Buffer Zone of approximately 4.5-acres of upland and riparian habitat, and other preservation measures including a buffer zone between development on the parcel and the nearby creek. The preservation area and the preservation measures remain in effect in perpetuity or until modified or terminated by mutual written consent of both the FWS and the Ewiiaapaayp Band.

The Tribe is aware of but one letter opposing the Tribe's requested Rural Commercial designation for this parcel, and that by the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California) by a letter dated March 13, 2013 (see Attachment 11). Their express concern about traffic in a semi-rural area lacks credibility when they are the largest source of unmitigated traffic impacts in the Alpine community that has resulted in a level F for West Willows Road. The Tribe's parcel is on Alpine Boulevard east of the West Willows Interstate 8 interchange, and this road segment between West and East Willows Road I-8 Interchanges is a Level of Service (LOS) of A at 1,300 average daily trips (ADT) (see Attachment 12). The Viejas Group also requests a Rural Commercial designation for the parcels on both the north and south sides of the West Willows Road interchange. The Viejas Group argues the use of Alpine Boulevard to access the Tribe's parcel is a reason to oppose the Rural Commercial designation. Please remember, Alpine Boulevard is a Level of Service (LOS) A road at 1,300 average daily trips (ADT) (The FCI GPA proposes to increase the capacity of this segment of Alpine Boulevard from a Community Collector to a Boulevard). The Viejas Group requires their tribal casino patrons to traverse Willows Road with a Level of Service (LOS) F at 27,200 average daily trips (ADT) (see Attachment 12), which is a failed road. The Viejas Group's argument is disingenuous at best, self-dealing in truth, and is without merit as opposition to the Tribe's request for Rural Commercial designation for its parcel.

Until now, Tribe appreciated the efforts of the County Advance Planning Division in working together to achieve a consensus on the land use designation for the Tribe's parcel of Rural Commercial. The Tribe previously offered to negotiate and enter into a cooperative agreement with San Diego County in letters to San Diego County Supervisor Dianne Jacob dated July 19, 2002 (Attachment 13) and the San Diego County Board of Supervisors dated August 9, 2002 (Attachment 14), however, both letters went unanswered. The only response came from County Deputy Chief Administrative Officer Mr. Robert Cooper by his letter dated November 27, 2002, which stated the County had no interest in collaborating with the Tribe and that he would not direct his staff to open or continue discussions on agreements with the Tribe (Attachment 15). The Tribe's invitation to work with San Diego County remains open, as proven by our collaboration with Planning & Development Services in achieving a Rural Commercial designation for the Tribe's parcel; however, the County's last minute change of its recommendation with no communication to the Tribe or opportunity for the Tribe to respond makes a shambles of the both County's tribal consultation process. Tribal consultation assumes fairness and open communication between the Tribe and the County. Further, this is inequitable treatment of any owner of private property under County jurisdiction.

The decision by the County to change the long agreed upon Rural Commercial designation for the Tribe's parcel should not deter the Planning Commission from approving a Rural Commercial land use designation for the Tribe's parcel. In this letter I conclusively refuted each and every one of the County staff's rationale for overruling it's the long-standing County recommendation for the Rural Commercial designation. The County received only one letter opposing the designation from the tribe that is self-interested and self-dealing, which proposed reasons for opposition that are devoid of a factual basis or any semblance of credibility.

Remember, the Tribe accepted the County's invitation for formal consultation, and accepted the County's recommendation to seek a land use designation for its fee parcel that is compatible with the proposed use. The Tribe did so in formal consultation with the County and the County's recommendation for a Rural Commercial designation was the outcome. The County held that position until August of 2013, whereupon, without notice to the Tribe, the County staff apparently overruled the County recommendation and, without notice to the Tribe, presented the changed recommendation to the Alpine Planning Group. The Tribe did not receive notice of the County's change in position until October 2, 2013. On October 2nd Mr. Joseph Farace of the County Planning & Development Services took the Tribe's call, in place of Mr. Robert Citrano who is on extended medical leave, and advised us that there was no possible change to the County's recommendation. The Tribe finds it incredible that it was not afforded the opportunity to make its arguments to preserve the previously agreed upon Rural Commercial designation upon the earliest occasion that the County decided to change the designation previously agreed upon with the Tribe. The Tribe must now petition the Planning Commission to overrule the County recommendation. This is a sad day for San Diego County and County tribes if this is to be the process for tribal consultation. The Planning Commission can do much to rectify this injustice by approving the land use designation requested by the Tribe.

Therefore, on behalf of the Ewiiaapaayp Band of Kumeyaay Indians, I request the Planning Commission approve the County's former recommendation and this Tribe's request for a land use designation of Rural Commercial for parcel APN 4040802600. Should you have any questions, please contact the Tribe's Chief Executive Office, Mr. Will Micklin, by telephone at (619) 368-4382 or by email at wmicklin@leaningrock.net. Thank you.

Sincerely,

Robert Pinto Sr

Robert Pinto, Sr.
Tribal Chairman
Ewiiaapaayp Band of Kumeyaay Indians

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ENDANGERED HABITATS LEAGUE
DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE

VIA ELECTRONIC MAIL

October 11, 2013

Adam Day, Chair
San Diego County Planning Commission
5510 Overland Ave. Suite 110
San Diego, CA 92123

RE: Forest Conservation Initiative Lands General Plan Amendment (October 18, 2013)

Dear Chairperson Day and Commission Members:

The Endangered Habitats League (EHL) appreciates the opportunity to participate in the Forest Conservation Initiative Lands Amendment process. As you know, EHL is a long-term stakeholder in County planning efforts. The Staff Recommendation is on the right track but still needs substantial improvement to achieve consistency with the General Plan and to uphold its integrity.

It is no surprise that the Draft Map is far off course. The Draft Map reflects *unfiltered* input from community planning groups and landowners. It is a "wish list." Your task is to apply the necessary filters and achieve consistency with General Plan and its Guiding Principles and Policies.

Former FCI lands, as National Forest inholdings, are among the most remote, fire prone, and biologically valuable in the County. Providing infrastructure and services to these locations costs the taxpayer dearly. As a rule, FCI lands should be assigned the *lowest* Rural or Semi-Rural densities. Again as a rule, only where existing parcelization would create spot zoning should other than the low end of the range be used.

We commend staff for clearly formulating "Planning Criteria" for assigning densities, as enumerated in the Staff Report.[1] Although improvement is needed in how

[1] The primary planning criteria for staff's recommendation is summarized below.

a) *Consistency with the Community Development Model*

. Expansion of Alpine Village is recommended in response to the Alpine CPG's desire for a larger population base to support a new high school. The Staff Recommendation proposes an extension of the existing linear pattern of the Alpine Village. The GPA would extend this linear pattern by applying higher land use intensities along the existing transportation corridors of Interstate 8 and Alpine Boulevard.

. In most communities, FCI lands are located well outside of villages. Rural Lands 40 or 80 land use designations are assigned in these areas consistent with the Community

the Staff Recommendation implements these rules—such as in an egregious case (AL-5) that violates virtually all the rules—the Staff Recommendation goes a long way in applying these fairly and equitably. Such consistent treatment of landowners is essential. The Draft Map, on the other hand would treat some properties differently, and create inequities and unfairness. In detailed enclosed comments, we examine each Area of Consideration and discuss where the Staff Recommendation should be altered.

A word on the expansion of the linear Alpine Village: This expansion of Village boundaries accords with the Community Development Model. While the expansion is not based upon a deficiency in community-wide housing capacity, it does respond to the changed circumstance of the new high school. The proposal also shows that housing capacity can increase using the Village model, rather than through an unsustainable increase in dispersed, high impact, high fire risk estate lots.

In our comments on the Draft EIR, EHL noted that the environmentally superior or "Modified Alternative" would better or equally meet every stated project objective and cause substantially less impacts in *all* issue areas evaluated.[2] This creates a substantive

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Development Model so that areas of very low density provide for a separation between communities

b) *Consistency with existing parcel size* – Outside of villages and the County Water Authority boundary, Semi-Rural 10 or Rural Lands 20 land use designations are assigned only when the predominant parcel size is similar (10 to 20 acres) and would result in little to no additional subdivision potential.

c) *Reduced development adjacent to CNF lands* – Lower land use designations are assigned adjacent to the CNF lands to reduce density in the Wildland/Urban Interface. Additional development in this area increases the likelihood of human- caused wildland fires, requires a greater commitment of resources to manage buffers between the CNF and developed areas, and increases the need for additional infrastructure and services in CNF lands.

d) *Reduced development in areas with sensitive biological resources* – Lower density residential designations are assigned in areas with high value biological resources to avoid these sensitive resources.

e) *Reduced development in areas without adequate access* – Lower densities are assigned in areas that are one-half mile or more from public roads.

f) *Reduced development in areas with physical constraints* – Lower densities are assigned in areas dominated with slopes greater than 25%.

g) *Avoid spot designations* – Avoid assigning a single commercial designation outside of villages and away from transportation nodes.

[2] According to the SEIR, the Project (Draft Map) would produce numerous significant unavoidable impacts. These include on Visual Character or Quality, Light or Glare, Direct Conversion of Agricultural Resources, Indirect Conversion of Agricultural Resources, Direct and Indirect Loss or Conversion of Forestry Resources, Air Quality Violations, Non-Attainment Criteria Pollutants, Sensitive Receptors, Special Status Species, Riparian Habitat and Other Sensitive Natural Communities, Wildlife Movement Corridors and Nursery Sites, Wildland Fires, Water Quality Standards and Requirements, Groundwater Supplies and Recharge, Mineral

mandate under CEQA to adopt the superior alternative, a mandate that cannot be overcome through "overriding considerations." It is well settled that "[i]f there are feasible alternatives or feasible mitigation measures that would accomplish *most* of the objectives of a project and substantially lessen the significant environmental effects of a project subject to CEQA, *the project may not be approved without incorporating those measures*." (*Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1371 fn 19, emphasis added, [citation to Pub. Resources Code §§ 21000(g), 21002, Guidelines § 15091].)

This same exact analysis applies to an improved Staff Recommendation. With about a thousand fewer dwelling units than the Draft Map, and with 25 *fewer* Commercial acres, 2,826 *fewer* Semi-Rural acres, and 1,441 *more* Rural acres, it will *also* "substantially lessen" significant impacts across a wide range of categories—Fire, Species, Agriculture, Traffic, etc.—within the meaning of CEQA's substantive mandate. (See Pub. Resources Code § 21002; Guidelines §§ 15021(a)(2), 15126.6(b); (*City of Marina v. Bd. of Trustees of the California State Univ.* (2006) 39 Cal. 4th 341, 350.) An improved Staff Recommendation that better follows the Planning Criteria will also more fully meet every stated Project objective and therefore more faithfully implement the adopted General Plan's Guiding Principles.[3] ***To comport with CEQA, an improved Staff Recommendation must therefore be adopted.***

Resources Recovery Sites, Permanent Increase in Ambient Noise Level, Public Services, Schools and Libraries, Traffic and LOS Standards, Rural Road Safety, and Sufficient Landfill Capacity.

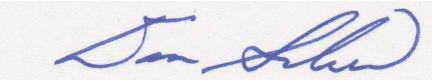
[3] The Project objectives are the same as those of the County of San Diego General Plan:

- Support a reasonable share of projected regional population growth;
- Promote sustainability by locating new development near existing infrastructure, services, and jobs;
- Reinforce the vitality, local economy, and individual character of existing communities while balancing housing, employment, and recreational opportunities;
- Promote environmental stewardship that protects the range of natural resources and habitats that uniquely define the County's character and ecological importance;
- Ensure that development accounts for physical constraints and the natural hazards of the land;
- Provide and support a multi-modal transportation network that enhances connectivity and supports community development patterns;
- Maintain environmentally sustainable communities and reduce greenhouse gas (GHG) emissions that contribute to climate change
- Preserve agriculture as an integral component of the region's economy, character, and open space network;
- Minimize public costs of infrastructure and services and correlate their timing with new development; and
- Recognize community and stakeholder interests while striving for consensus.

In conclusion, we urge the improvements noted below to the Staff Recommendation. This would create a legally valid, fair, consistent, and equitable map that is true to the Guiding Principles and the Planning Criteria while being flexible enough to adapt to new circumstances. Our specific recommendations for each community are enclosed.

Thank you for considering our views and for being able to participate in the County's open and deliberative planning efforts.

Yours truly,



Dan Silver, MD
Executive Director

Enclosure

EHL Analysis and Recommendations for Areas of Consideration

Endangered Habitats League

Analysis and Recommendations for Areas of Consideration

SUMMARY

	Concur with staff	Recommended Changes
AL-1	YES	
AL-2A	YES	
AL-2B	YES	
AL-3	NEUTRAL	
AL-4	YES	
AL-5	NO	RL-20 or RL-40 (portions)
AL-6	NO	RL-20 or RL-40 (portions)
AL-7	YES	
AL-8	YES	
AL-9	YES	
AL-10	YES	
AL-11	YES	
CM-1	YES	
CU-1	YES	
DE-1	NO	RL-80
DE-2	NO	RL-20 or RL-40 (portions)
DE-3	NO	RL-20
JD-1	YES	
LM-1	YES	
NM-1	YES	
NM-2	NO	RL-20 (portions)
NM-3	YES	
PD-1	YES	

AL-1

Support staff recommendation for SR-10 (vs Draft Map SR-1) over 286 acres

Consistent with the Planning Criteria, and due to remote location with limited access only through National Forest or Tribal lands, lack of infrastructure and services and water, high fire risk, high biological values, density should be lowest possible consistent with existing parcelization.

AL-2A

Support staff recommendation for SR-4 (vs Draft Map RC) over 4 acres

As dictated by the Planning Criteria, the site is inappropriate for commercial due to incompatibility with surrounding residential on and off site ("spot zone"), lack of water and access for fire protection, extensive wetlands, and traffic.

AL-2B

Support staff recommendation for SR-4 (vs Draft Map RC) over 5 acres

As dictated by the Planning Criteria, the site is inappropriate for commercial due to incompatibility with surrounding residential ("spot zone"), lack of water, fire hazard, and traffic.

AL-3

Not opposed to staff recommendation for Village designations over 249 acres

EHL does not support adding housing capacity that is not justified by an objectively measured deficiency in the capacity of the current General Plan to meet growth projections and targets. However, due to the consistency of the revised Village proposal with key Land Use Element policies and with the Planning Criteria, our previously stated concerns have been addressed well enough so that we *do not oppose* the proposed Village expansion. An analysis follows:

> *LU-1.1 Assigning Land Use Designations. Assign land use designations on the Land Use Map in accordance with the Community Development Model and boundaries established by the Regional Categories Map.*

The Alpine community has a unique *linear* configuration allowing consistency with the Community Development Model

> *LU-1.2 Leapfrog Development. Prohibit leapfrog development which is inconsistent with the Community Development Model. Leapfrog Development restrictions do not apply to new villages that are designed to be consistent with the Community Development Model, that provide necessary services and facilities, and that are designed to meet the LEED-Neighborhood Development Certification or an equivalent. For purposes of this policy, leapfrog development is defined as Village densities located away from established Villages or outside established water and sewer service boundaries.*

Because the revised Village boundaries are *contiguous* with the existing Village boundaries, the leagfrog prohibition is not applicable.

LU-1.3 Development Patterns. Designate land use designations in patterns to create or enhance communities and preserve surrounding rural lands.

The proposal comports with community needs, such as the new high school.

LU-1.4 Village Expansion. Permit new Village Regional Category designated land uses only where contiguous with an existing or planned Village and where all of the following criteria are met:

Potential Village development would be compatible with environmental conditions and constraints, such as topography and flooding

Potential Village development would be accommodated by the General Plan road network

Public facilities and services can support the expansion without a reduction of services to other County residents

The expansion is consistent with community character, the scale, and the orderly and contiguous growth of a Village area

In accord with LU-1.4, the revised Village proposal is contiguous with the existing Village, and public facilities, water and sewer can be feasibly extended.

LU-1.5 Relationship of County Land Use Designations with Adjoining Jurisdictions. Prohibit the use of established or planned land use patterns in nearby or adjacent jurisdictions as the primary precedent or justification for adjusting land use designations of unincorporated County lands. Coordinate with adjacent cities to ensure that land use designations are consistent with existing and planned infrastructure capacities and capabilities.

The revised proposal is not justified upon uses or conditions in the neighboring Tribal jurisdiction but rather by the needs of the existing County community of Alpine. It does *not* set the adverse precedent of allowing casino uses to drive County planning.

AL-4

Support staff recommendation for VR2 (vs RC in Draft Map) over 17 acres

As dictated by the Planning Criteria, the site is inappropriate for commercial. It is surrounded by VR2 and has poor access.

AL-5

Oppose staff recommendation for Semi-Rural densities over large portions of 696 acres

While EHL does not oppose the strip of VR2 along I-8 as part of the comprehensive Village expansion, the rest of the staff recommendation gets it, with all due respect, all wrong. These

lands are constrained by prime agriculture, National Forest adjacency, high fire risk, lack of water and access, high biological value, and adjacency to National Forest. Existing parcelization does not justify Semi-Rural categories, and similarly unparcelized lands just to the east (and indeed, throughout the County) are designated Rural, creating inequities. Numerous General Plan Guiding Principles and Land Use Policies are violated. The land recommended as SR-1 and SR-10 contains existing lots of 40 to 80 acres in size, and **the proper designation is RL-20 or RL-40**. Subdivision of intact, relatively remote land into dispersed estate lots would place more residences at fire risk, fragment habitat, increase service costs, and increase GHG emissions for the resulting long-distance commuters. We also note that the Staff Recommendation differs from the Response to Comments in this case.

The proposed SR-1 and particularly the proposed SR-10 blatantly ***violate*** the following Planning Criteria:

- b) Consistency with existing parcel size – Outside of villages and the County Water Authority boundary, Semi-Rural 10 or Rural Lands 20 land use designations are assigned only when the predominant parcel size is similar (10 to 20 acres) and would result in little to no additional subdivision potential. **The proposed SR-1 and SR-10 are not similar in size to the predominant parcels in these outside-Village and outside-CWA locations.**

- c) Reduced development adjacent to CNF lands – Lower land use designations are assigned adjacent to the CNF lands to reduce density in the Wildland/Urban Interface. Additional development in this area increases the likelihood of human- caused wildland fires, requires a greater commitment of resources to manage buffers between the CNF and developed areas, and increases the need for additional infrastructure and services in CNF lands. **The proposed SR-10 places Semi-Rural adjacent to CNF.**

- d) Reduced development in areas with sensitive biological resources – Lower density residential designations are assigned in areas with high value biological resources to avoid these sensitive resources. **Significant portions of the proposed SR-1 and SR-10 have "high" biological value.**

- e) Reduced development in areas without adequate access – Lower densities are assigned in areas that are one-half mile or more from public roads. **Most of the proposed SR-10 is more than one-half mile from public roads.**

- f) Reduced development in areas with physical constraints – Lower densities are assigned in areas dominated with slopes greater than 25%. **Portions of the proposed SR-1 and particularly the SR-10 are slope constrained.**

AL-6

Oppose the staff recommendation to designate SR-10 over portions of 427 acres

These lands are constrained by very high fire risk, biology, wetlands, slope, and adjacency to public lands. Rural densities are appropriate unless already parcelized. In a portion of the area, staff has erred in designating unparcelized land as SR-10 when it should be **RL-20 or RL-40**. *Planning Critieria b, c, d, e, and f are all violated to various extents, particularly placing Semi-Rural in unparcelized land adjacent to the Cleveland National Forest.* Indeed, such special treatment would create inequities compared to other property owners. Subdivsion of intact land into estate lots would place more residences at fire risk, fragment habitat, increase service costs, and increase GHG emissions for the resulting long-distance commuters.

AL-7

Support staff recommendation of RL-40 (Draft Map SR-10) over 360 acres

Consistent with the Planning Criteria, and due to numerous constraints including high fire risk, slope, biology, wetlands, water, and limited access, these properties should be RL-40.

AL-8

Support staff recommendation of RL-40 (Draft Map RL-20) over 1,748 acres

Consistent with the Planning Criteria, and due to numerous constraints including high fire risk, National Forest adjacency, biology, agriculture, slope, water, and limited access, these unparcelized properties should given densities near the bottom of the range, namely, RL-40 or RL-80. Dead-end road lengths for fire safety are also exceeded.

AL-9

Support staff recommendation of RL-40 (Draft Map SR-10) over 1,458 acres

Consistent with the Planning Criteria, and due to numerous constraints including high fire risk, biology, slope, National Forest adjacency, water, agriculture, and limited access, these properties should be RL-20. Dead-end road lengths are for fire safety also exceeded. If not for the level of existing parcelization, densities should be lower still.

AL-10

Support staff recommendation of RL-20 (Draft Map SR-10) over 247 acres.

Consistent with the Planning Criteria, and due to numerous constraints including high fire risk, biology, wetlands, slope, National Forest adjacency, water, and limited access, these properties should be RL-20. If not for the level of existing parcelization, densities should be lower still.

AL-11

Support staff recommendation of RL-40 (Draft Map SR-2) over 200 acres.

Consistent with the Planning Criteria, and due to numerous constraints including very high fire risk, biology, wetlands, slope, National Forest adjacency, water, and limited access, these properties should be RL-40.

CM-1

Support staff recommendation of RL-80 (Draft Map RL-40) over 120 acres

Consistent with the Planning Criteria, and due to numerous constraints for this remote parcel including high fire risk, biology, slope, agricultural preserve, National Forest adjacency, water, and poor access, this unparcelized property should be RL-80 at the lowest end of the range.

CU-1

Support staff recommendation of RL-80 and limited RL-40 (Draft Map RL-40) over 2,634 acres

Consistent with the Planning Criteria, and due to numerous constraints for this remote parcel including high fire risk, biology, wetlands, slope, National Forest adjacency, water, and limited access, these properties should in great part be RL-80. Dead-end road lengths for fire safety are also exceeded.

DE-1

Oppose staff recommendation of RL-40 (Draft Map RL-40) over 321 acres

Due to numerous constraints for this remote parcel including high fire risk, biology, wetlands, slope, agriculture, extensive National Forest adjacency, water, and limited access, these large properties should be **RL-80**. *Planning Critieria b, c, d, e, and f are violated to various extents by not using the lowest density in the category.*

DE-2

Oppose staff recommendation for SR-10 (Draft Map SR-10) on portions of 384 acres

Due to numerous constraints for area including high fire risk, biology, slope, agriculture, National Forest adjacency, water, and limited access, this area fits the *Rural Lands* category as opposed to *Semi-Rural* estates. The proper regional category should be used even if slope constraints in SR-10 result in limited new development. *Using the Rural category of **RL-20 or RL-40** over the unparcelized portions would better fit Planning Critieria b, c, d, possibly e, and f.*

DE-3

Oppose staff recommendation of SR-10 (Draft Map SR-10) over 171 acres

Due to numerous constraints for this remote parcel including high fire risk, biology, slope, agriculture, National Forest adjacency, water, and limited access, this area fits the *Rural Lands* category as opposed to *Semi-Rural* estates. The proper regional category should be used even if slope constraints in SR-10 result in the same amount of new development. *Using the Rural category of **RL-20** would better fit Planning Critieria b, c, d, and f.*

JD-1

Support staff recommendation for RL-80 (Draft Map RL-40) over 730 acres

This remote location is constrained by high fire risk, biology, slope, floodplain, agriculture, National Forest adjacency, and water. Access is very poor and dead end road lengths would preclude fire safety. Consistent with the Planning Criteria and with the treatment of similar parcels in the area, RL-80 is the proper designation

LM-1

Support staff recommendation of RL-20 (Draft Map SR-10) over 134 acres

Consistent with the Planning Criteria and due to numerous constraints for this remote parcel including high fire risk, biology, slope, National Forest adjacency, and water, this area should be RL-20 or RL-40.

NM-1

Support staff recommendation of RL-40 (Draft Map SR-10) over 120 acres

Consistent with the Planning Criteria and due to numerous constraints for these remote, large parcels including high fire risk, biology, slope, National Forest adjacency, and water, the designation should be RL-40. Access is also very poor.

NM-2

Oppose staff recommendation of SR-10 (Draft Map SR-10) over portions of 440 acres

These parcels are surrounded by RL-40 and are constrained by high fire risk, biology, slope, National Forest adjacency, access, and water. We concur with the use of SR-40 where staff recommends, but differ in the assignment of SR-10 to the remainder. Rather, **RL-20** is supported by the lot sizes and better reflects the surrounding designations. RL-20 is more consistent with Planning Criteria b, d, and f. We also note that the Staff Recommendation differs from the Response to Comments in this case.

NM-3

Support staff recommendation of SPA reflecting the Warner Springs Specific Plan

PD-1

Support staff recommendation of RL-80 (Draft Map RL-40) over 1,003 acres

Consistent with the Planning Criteria and due to numerous constraints for these remote, large parcels including high fire risk, agriculture, biology, slope, National Forest adjacency, and water, the designation should be RL-80. With very poor access, dead end road lengths would preclude fire safety. Using the lower end of the range is consistent with similar parcels in the vicinity.

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October 15, 2013

Via E-Mail and U.S. Mail

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Re: Forest Conservation Initiative (FCI) Lands GPA
October 18, 2013 meeting Agenda Item #1

Dear Planning Commissioners:

I am writing on behalf of the Cleveland National Forest Foundation to urge the Commission to recommend approval of the project alternative called the Forest Conservation Initiative Condition, which would extend the life of the overwhelmingly successful Forest Conservation Initiative. The FCI Condition is the only alternative that adequately protects the County's most precious resource: the Cleveland National Forest. In this age of global warming, water scarcity, and resource constraints, the FCI Condition makes even more sense than it did in 1991 when FCI was endorsed by all of the cities and passed with a resounding two-thirds of the vote.

I am also writing to alert the Commission that the Final Supplemental EIR ("FEIR") prepared for the project falls so woefully short of complying with CEQA that is essentially a lawsuit waiting to happen. While we are still reviewing the final document, which was released a week ago, we note the following glaring deficiencies:

- ***The FEIR's analysis and mitigation of climate change impacts has already been invalidated—twice—by the Superior Court.*** As set forth in our comment letters, which are attached for your convenience, the FEIR fails to analyze climate change impacts past 2020, an approach labeled as "kicking the can down the road" and invalidated in *Cleveland National Forest Foundation, et al. v. SANDAG* (Case No. 37-2011-00101593) (Attachment 1). Making matters worse, the FEIR relies on the County's now-defunct Climate Action Plan to mitigate these significant impacts,

which the Superior Court invalidated on the grounds that it had no enforceable deadlines. *See Sierra Club v. County of San Diego* (Case No. 37-2012-00101054), Attachment 2.

- ***The FEIR's "No Project" alternative presents a false and misleading baseline.*** Despite overwhelming authority to the contrary (see Attachment 1), the FEIR clings to its position that, upon the expiration of FCI, the land use designations reverted back to their pre-FCI designations. The "No Project" alternative, the FEIR concludes, would result in an onslaught of development and a slew of additional significant environmental impacts. The FEIR's analysis is not only legally incorrect—it is blatantly deceptive and designed to make the project and the EIR's alternatives look like compromise positions. They are not; the only environmentally defensible alternative is the FCI Condition, which is the true "No Project" alternative.

- ***CNFF's Infill Study demonstrates that growth may be accommodated in the cities.*** As discussed in the attached March 18, 2013 comment letter, CNFF commissioned an infill study (see Attachment 3) to determine whether the County's anticipated growth in the backcountry could be accommodated in the cities. The answer is a resounding *yes*. The FEIR does not dispute the Infill's Study conclusion but instead faults it for being out-of-scope since the County is re-designating only the FCI lands. The FEIR is wrong. Under CEQA the County may not segment the General Plan Update in such a way as to render certain potentially feasible alternatives infeasible; such a result violates CEQA's rules against piecemealing. Moreover, the County misunderstands our point. Contrary to statements in the FEIR, the Infill Study demonstrates that the FCI Condition is feasible since it shows that growth can and should be accommodated in the cities, not in the Forest.

- ***The FEIR fails to analyze and mitigate the project's growth inducing impacts.*** FCI lands are located in remote areas, east of the County Water Authority line, and far from infrastructure, public services, and jobs. The project recommended by staff puts us on a slippery slope toward developing these lands since it would require extending water and sewer services from the west to the Alpine area. While the FEIR recognizes that the project would be growth inducing, it fails to analyze how much additional growth might occur. CNFF recognizes and appreciates that the

County has maintained 40-acre zoning in several community areas, but the planned extension of urban services places these communities on a precarious slope towards potential future development. The County must consider placing additional restrictions—a Forest indicator, for example—to mitigate against these potential growth inducing impacts.

Thank you for your consideration of this important matter. The voters spoke loudly when they overwhelmingly approved FCI in 1991: The Cleveland National Forest is our County's legacy. We sincerely hope that you will hear the call to protect it.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Catherine C. Engberg

Attachments:

1. CNFF's March 18, 2013 letter (Exhibits A and B omitted)
2. CNFF's May 3, 2013 letter
3. CNFF's Infill Study "An Alternative Development Scenario for San Diego County" (prepared by GreenInfo Network, July 2, 2010)

516570.1

ATTACHMENT

1

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March 18, 2013

Via Electronic Mail Only

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mindy.fogg@sdcounty.ca.gov

Re: Draft Supplemental Environmental Impact Report on the Forest Conservation Initiative Lands GPA 12-004 (SCH No. 2012081082)

Dear Ms. Fogg:

We submit this letter on behalf of the Cleveland National Forest Foundation ("CNFF") to provide comments on the proposed Forest Conservation Initiative Lands ("FCI Lands") General Plan Amendment 12-004 ("Project") and the accompanying draft Supplemental Environmental Impact Report ("DSEIR"). The purpose of this letter is to provide comments on the DSEIR for the proposed Project and to inform the County that the document fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("Guidelines"). For the reasons set forth below, we request that the County delay further consideration of this Project until such time as a legally adequate EIR is prepared that fully complies with CEQA.

I. Introduction

CNFF and Save Our Forest and Ranchlands ("SOFAR") submitted comments to the County on the Draft EIR ("DEIR") for the General Plan Update, identifying legal inadequacies in that EIR. *See* letter from CNFF and SOFAR dated October 15, 2010, attached as Exhibit A. Those comments explained that the County's approach to land use in the County's back country would facilitate sprawling growth throughout the region;

would undermine any attempt to ensure smart, city-centered growth; and would set the region on a course that is inconsistent with the State's climate objectives. CNFF's DEIR comment letter set forth a detailed infill development alternative ("Infill Alternative") that would have substantially reduced or avoided the significant impacts of the General Plan, yet the comments were dismissed out of hand. Because the County again failed to include analysis of an Infill Alternative in the DSEIR, the comments presented in the CNFF/SOFAR letter in 2010 are still relevant. For this reason, we incorporate those comments by reference and refer to those comments here and throughout this letter.

As discussed in more detail below, the DSEIR perpetuates the failure of the General Plan EIR. The DSEIR identifies myriad unmitigable impacts, including significant/unavoidable impacts on aesthetics, agricultural resources, air quality, biological resources, wildland fire hazards, water quality, mineral resources, noise, school services, transportation, water supply, and landfill capacity. But rather than providing a meaningful analysis of alternatives for land uses on former FCI lands that would avoid or lessen these impacts, the DSEIR provides only a superficial alternatives analysis. In addition, the DSEIR presents a flawed analysis of the Project's contribution to climate change and fails to identify feasible mitigation measures for several significant impacts, including water supply and wildfire risk. In short, the DSEIR fails to remedy the General Plan EIR's deficiencies and fails to analyze alternatives that prevent sprawl and impacts associated with it. As a result, we conclude, once again, that the County would violate CEQA were it to certify this fatally flawed EIR.

II. The DSEIR Fails to Adequately Analyze Alternatives to the Proposed Project.

Every EIR must describe a range of alternatives to a proposed project, and to its location, that would feasibly attain most of the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(c). A proper analysis of alternatives is essential for the County to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126.6(a); *see Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-65. As stated in *Laurel Heights Improvement Ass'n. v. Regents of the University of Cal.*, "[w]ithout meaningful analysis of alternatives in the EIR, 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." (1988) 47

Cal.3d 376, 404. The DSEIR's discussion of alternatives fails to live up to these standards.

The DSEIR does not comply with the requirements of CEQA because it fails to undertake a legally sufficient study of alternatives to the Project. CEQA provides that "public agencies should not approve projects as proposed if there are feasible alternatives . . . which would substantially lessen the significant environmental effects of such projects." Pub. Resources Code § 21002. As such, a major function of the EIR "is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official." To fulfill this function, an EIR must consider a "reasonable range" of alternatives "that will foster informed decision making and public participation." Guidelines § 15126.6(a). "An EIR which does not produce adequate information regarding alternatives cannot achieve the dual purpose served by the EIR . . . ." *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 733.

A. The DSEIR Does Not Analyze a Reasonable Range of Alternatives.

A reasonable range of alternatives includes options that will avoid or substantially lessen the Project's significant environmental impacts. In light of the Project's extensive significant and purportedly unavoidable impacts, it is incumbent on the County to carefully consider a range of feasible alternatives to the Project. The DSEIR fails to do so. In addition to the No Project alternative, which it claims will have *greater* impacts, the DSEIR offers only two alternatives: No New East Willows Village Alternative ("Alpine CPA" Alternative) and the Modified Project Alternative. The DSEIR concedes that the Alpine CPA would have greater environmental impacts than the Project in the vast majority of impact categories. The DSEIR does not remotely suggest that the Alpine CPA Alternative will avoid or substantially reduce any significant environmental impacts. DSEIR at Table 4-1. Rather, Table 4-1 suggests that the Alpine CPA Alternative will result in fewer impacts to only 3 of roughly 60 impact categories: airport noise, parking and alternative transportation. Because the Project would not result in significant and unavoidable impacts in any of these three impact areas, the Alpine CPA Alternative does nothing to remedy the significant impacts of the Project. In short, the CPA Alternative fails to contribute to the DSEIR's "reasonable range."

The Modified Project Alternative incrementally reduces several of the Project's significant impacts, however, the Modified Project Alternative fails to "substantially reduce or avoid" a single one of the Project's significant and unavoidable impacts. The Modified Project alternative would reduce densities on approximately 8,000 acres of FCI lands, which amounts to a mere 11 percent of all FCI lands. DSEIR at 4-25. The DSEIR's analysis of this alternative concludes that it would result in fewer impacts, but

in most cases, the impacts of this alternative would still be significant and unavoidable. *See, e.g.*, SDEIR 4-27 through 4-48. As such, the DSEIR does not meet CEQA's mandate that an EIR "must consider a reasonable range of potentially feasible alternatives." Guidelines § 15126.6(a). Such an approach violates the letter and spirit of CEQA. To ensure that the public and decision-makers have adequate information to consider the effects of the proposed Project, the County must prepare and recirculate a revised EIR that considers additional meaningful alternatives to the Project.

B. The DSEIR Must Consider Other Feasible Alternatives Capable of Avoiding or Substantially Reducing the Project's Significant Environmental Impacts.

The DSEIR must consider alternatives that actually avoid or substantially reduce the Project's significant environmental impacts. For instance, the County should consider an Infill Alternative that directs development to areas inside or immediately adjacent to the limits of the County's 18 incorporated cities. It cannot be seriously disputed that such an alternative would not substantially reduce the proposed Project's environmental impacts. For example, an Infill Alternative would: reduce the need for new infrastructure and associated costs because services can be provided more efficiently to clustered development in areas that are already urbanized; reduce vehicle dependency, and in turn reduce air pollution and greenhouse gas emissions, by locating people in walkable and transit-oriented environments; reduce demand for water; conserve wildlife habitat and biodiversity; conserve agricultural lands; and protect water quality. Exhibit A at 7-16.

CNFF and SOFAR presented the County with an Infill Alternative, along with a study that confirmed the feasibility of such an alternative, more than two years ago, giving the County ample time to perform such an analysis. The DSEIR provides no reasonable explanation as to why the Infill Alternative and additional alternatives that offer features necessary to reduce the inevitable impacts from the proposed Project were not analyzed. Moreover, given that such an alternative is feasible, the DSEIR will remain inadequate if it is not carefully considered. *See San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984)155 Cal. App. 3d 738, 751; *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal. App. 4th 587, 603.

C. The No Project Alternative Would Result in Fewer—Not Greater—Impacts Than the Project.

CEQA requires that an EIR evaluate a No-Project alternative that discusses the existing conditions as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved. Guidelines §15126.6(e)(2). The

DSEIR's evaluation of the No Project Alternative erroneously assumes that the land designations on FCI lands would revert back to land use designations applicable under the pre-FCI General Plan. Based on this false assumption, the document concludes that the No Project Alternative would have greater impacts than the Project. There is no basis for the County's assumption or its false and misleading conclusion. Rather, as detailed in a letter from CNFF to the County Board of Supervisors in 2010, the Elections Code, the text of the initiative and the legislative history all dictate that the December 31, 2010 sunset date refers to the date that the County Board of Supervisors may amend the FCI designations without seeking voter approval. *See generally* letter from Shute, Mihaly & Weinberger on behalf of CNFF to the County Board of Supervisors, dated December 7, 2010, attached as Exhibit B.

First, although the FCI Initiative does not state what will happen after 2010, the Elections Code fills the gap. Specifically, Elections Code section 9125 states:

> No ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.

Absent a sunset clause, FCI's land use designations would continue eternally unless the voters enacted a change in the measure. The sunset clause simply "provides otherwise" for this default rule, specifying that the voter approval requirement will disappear in 2011.

Second, the FCI expressly states that the former designations, to the extent they are inconsistent with "National Forest and State Parks (23)" designation, are "repealed". Courts refuse to read reversionary clauses into to statutes where they are not expressly stated in the text of the measure. *See, e.g.*, *Stott Outdoor Advertising v. County of Monterey* (2009) 601 F.Supp.2d 1143, 1150-51 (finding no factual support for plaintiff's assertion that County would revert back to existing outdoor sign regulations following the expiration of a temporary interim urgency ordinance). Accordingly, rather than providing that the land use designations would be reinstated in 2011, FCI expressly provides that they are repealed.

Third, FCI's legislative history confirms that the measure did not intend to reinstate the previous land use designations in 2011. County Counsel's Impartial Analysis states that the pre-FCI land use designations are "repealed", and does not suggest that this repeal would somehow be nullified after the Initiative sunsets. Even the opponents of the Initiative did not believe the land use designations would revert back in

2011. The "con" ballot argument states that FCI "is a dangerous precedent – wiping out careful planning guidelines." The voters who thought they were "wiping out" planning guidelines could not possibly have imagined that these planning guidelines would be reinstated. *See Robert L. v. Superior Court* (2003) 30 Cal.4th at 901 (the court's "task is simply to interpret and apply the initiative's language so as to effectuate the electorate's intent").

Finally, the County's theory that the pre-FCI land use designations will be reinstated after FCI's sunset undermines the long-term purpose of land use planning and sound planning principles. General plans do not terminate when they reach their scheduled horizon year. *See* Gov't Code § 65300 *et seq*. FCI's land use designations will simply continue until such time, if ever, that the County adopts new designations.

In summary, there is nothing in the text of the FCI or the applicable statutes and case law that suggests that the land uses "reverted back" to pre-FCI designations on January 1, 2011. To the extent the County claims otherwise means it took a discretionary action to amend the General Plan without complying with CEQA.

The County must correct this flaw in a revised SEIR that properly describes and evaluates the No Project alternative as retaining FCI land use designations.

D. The DSEIR Provides Inadequate Justification for Rejecting the FCI Density Alternative.

If there is a feasible alternative to a project that meets most of the project objectives and would reduce or avoid significant impacts, then the lead agency may not approve the project as proposed. See *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal. App. 4th 587, 603. To reject environmentally favorable alternatives, the agency must find that they either do not meet the project's objectives or that they are infeasible—that is, they are not "capable of being accomplished in a successful manner . . . taking into account economic, environmental, social, and technological factors." Pub. Res. Code §21061.1. Such a conclusion must be supported by substantial evidence in the record. The DSEIR dismisses the FCI Density Alternative without sufficient justification and therefore does not meet this standard.

The DSEIR excludes the FCI Density Alternative despite the fact that this alternative would reduce impacts to many of the significant unavoidable impacts identified by the DSEIR. DSEIR at 4-3. The DSEIR concludes that the FCI Density Alternative would not fulfill the Project objectives. DSEIR at 4-4. However, the document provides no evidence to support this conclusion. Instead, it vaguely states that

this Alternative would be inconsistent with the "Guiding Principles and Policies of the adopted General Plan." *Id.* The DSEIR fails to specify the particular principles and policies that would be violated.

To the contrary, our review of the General Plan Guiding Principles reveals that the opposite is true. For example, General Plan Guiding Principle 2 directs the County to "promote health and sustainability by locating new growth near existing and planned infrastructure, services, and jobs in a compact patterns of development." General Plan at 2-7. Retaining FCI Lands at current densities and directing growth into existing urbanized areas would be consistent with this principle by locating growth near existing infrastructure and jobs. Guiding Principle 5 directs the County to "ensure that development accounts for physical constraints and the natural hazards of the land." Maintaining current FCI densities would comply with this principle by locating growth in urbanized areas away from wildfire prone areas, thus reducing impacts related to wildland fire hazards. Guiding Principle 7 directs the County to "maintain environmentally sustainable communities and reduce greenhouse gas emissions that contribute to climate change." As discussed throughout this letter, maintaining FCI land use designations and directing new growth to existing urbanized areas would locate people to areas that are walkable and served by transit, thus reducing vehicle miles traveled and related greenhouse gas emissions. Guiding Principle 8 directs the County to "preserve agriculture as an integral component to the region's economy, character, and open space network." Given that the Project as proposed would result in a direct loss of 6,000 acres of agricultural lands, retaining existing densities and preserving these agricultural lands would obviously be consistent with this principle. In fact, had the DSEIR conducted a proper analysis of this Alternative, it would likely have found that retaining FCI densities and locating growth to urbanized areas directly responds to and complies with *all* of the General Plan Guiding Principles.

Having concluded, without supporting evidence, that the Alternative would not comply with the General Plan, the DSEIR then asserts that the Alternative would result in significant land use compatibility conflicts because several FCI parcels are located within urban areas and are better suited for intense development. DSEIR at 4-4. Once again, the DSEIR fails to provide any evidence to support this statement.

In sum, the DSEIR offers only unsupported conclusions instead of any legitimate justification for rejecting the FCI Density Alternative. Under CEQA, an agency may not approve a proposed project if a feasible alternative exists that would meet most of the project's objectives and would diminish or avoid its significant environmental impacts. *See* Pub. Res. Code § 21002; *Kings County,* 221 Cal.App.3d at 731. Given the extensive environmental impacts this Project will have, the consideration of alternatives will not be

complete until the County prepares a revised DSEIR that presents decision-makers and the public with a rigorous, good-faith assessment of options that reduce the environmental consequences of the Project.

III. The DSEIR Fails to Disclose the Project's Long-Term Contribution to Climate Change.

The DSEIR's evaluation of the Project's contribution toward climate change is severely flawed because it: (a) omits consideration of the Plan's impacts beyond 2020; and, (b) obscures the Plan's dramatic conflict with both science and long-term climate policy. Consequently, the DSEIR fails to disclose information essential to intelligently evaluate the Plan's consequences for the climate.

The FCI Project is a long-range planning document that addresses growth over the next forty or so years. Consequently, the DSEIR must identify and analyze the environmental impacts from the FCI Project over its entire expected timeframe. CEQA defines a "project" as "the whole of an action, which has a potential for resulting in either a direct physical change" or "a reasonably foreseeable indirect change in the environment." Guidelines §15378(a) (emphasis added); *see also* Guidelines §15378(c) (term "project" means the whole of the "activity which is being approved"). Thus, CEQA requires that an agency take an expansive view of any particular project as it conducts the environmental review for that project. *See McQueen v. Bd. of Directors* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570) (term "project" is interpreted so as to "maximize protection of the environment"). Furthermore, according to CEQA, evaluation of an impact's significance calls for "careful judgment . . based to the extent possible on scientific and factual data" and must reflect the project's "setting." Guidelines §§15064(b), 15064.4(a).

The DSEIR relies largely on the GHG emission inventory prepared as part of the GPU EIR for the years 1990, 2006, and 2020. DSEIR Climate Change Exhibit at 12 . By the year 2020, GPU GHG emissions are projected to increase to 7.1 million metric tons carbon dioxide equivalent (MMT CO2e) (from 5.3 MMT CO2e in 1990) without incorporation of any GHG-reducing policies or mitigation measures. This amount represents an increase of 24 percent over 2006 levels, and a 36 percent increase from estimated 1990 levels. This is considered a potentially significant impact. *Id.* The DSEIR explains that the proposed FCI Project would result in an increase in development that would further add to the GHG emissions projected for the region. The DSEIR appropriately determines that the proposed Project's contribution to this significant cumulative impact would be cumulatively considerable, prior to mitigation. *Id.*

Critically, the GPU DEIR and the FCI DSEIR only analyze GHG emission levels through 2020 despite the fact that the horizon year for the GPU may be as far out as 2050. GPU DEIR at 2.17-13. By ignoring the Project's impacts between 2020 and 2050, the DSEIR improperly hides the Plan's climate impacts. This period is precisely when both climate science and California policy—specifically, Executive Order S-3-05—require emissions to decrease rapidly and remain low permanently to avoid unacceptable climate change.

Science establishes that in order to stabilize the climate and avoid the most catastrophic outcomes of climate change, we must substantially reduce our annual GHG emissions over time, achieving a low-carbon future by mid-century. See California Air Resources Board Scoping Plan at 4. California climate policy, as reflected in Executive Order S-3-05, requires reducing emissions 80 percent below 1990 levels by 2050 so as to avoid extreme climate impacts. The AB 32 Scoping Plan incorporates this goal, establishing a "trajectory" for reaching it over time. That trajectory requires continuing and steady annual reductions in both total and per capita emissions.

The Attorney General and air districts have also concluded that an assessment of GHG impacts from long-range planning documents such as the GPU or FCI Project should be based on whether the planning document functions to achieve reductions consistent with AB 32 and Executive Order S-3-05. For example, in "Climate Change, the California Environmental Quality Act, and General Plan Updates," the Attorney General stated:

> Governor Schwarzenegger's Executive Order S-3-05, which commits California to reducing its GHG emissions to 1990 levels by 2020 and to eighty percent below 1990 levels by 2050, is grounded in the science that tells us what we must do to achieve our long-term climate stabilization objective. The Global Warming Solutions Act of 2006 (AB 32), which codifies the 2020 target and tasks ARB with developing a plan to achieve this target, is a necessary step toward stabilization. Accordingly, the targets set in AB 32 and Executive Order S-3-05 can inform the CEQA analysis.

One reasonable option for the lead agency is to create community-wide GHG emissions targets for the years governed by the general plan. The community-wide targets should align with an emissions trajectory that reflects aggressive GHG mitigation in the near term and California's interim (2020) and long-term (2050) GHG emissions limits set forth in AB 32 and the Executive Order.

In developing GHG thresholds, the Bay Area Air Quality Management District similarly determined that when analyzing the impacts of long-range plans, significance criteria should be based on AB 32 for the 2020 planning year and that, given the additional reductions needed beyond 2020, lead agencies should look to the more aggressive reductions set forth in Executive Order S-3-05 for later planning horizons.

A California court recently ruled on this exact issue. In *Cleveland National Forest Foundation, et. al., v San Diego Association of Governments* (Case No. 37-2011-00101593-CU-TT-CTL), the Court ruled that the San Diego Association of Governments ("SANDAG") impermissibly dismissed E-O S-03-05:

> This position [SANDAG's failure to identify its plan's inconsistency with the Executive Order as a significant effect] fails to recognize that Executive Order S-3-05 is an official policy of the State of California, established by a gubernatorial order in 2005, and not withdrawn or modified by a subsequent (and predecessor) governor. Quite obviously it was designed to address an environmental objective that is highly relevant under CEQA (climate stabilization). … SANDAG thus cannot simply ignore it. This is particularly true in a setting in which hundreds of thousands of people in the communities served by SANDAG live in low-lying areas near the coast, and are thus susceptible to rising sea levels associated with global climate change. The court in *Association of Irritated Residents v. State Air Resources Board* (2012) 206 Cal. App. 4th 1487, 1492-93, recognized the importance of the Executive Order in upholding the ARB's Scoping Plan. The court agrees with petitioners that the failure of the EIR to cogently address the inconsistency between the dramatic increase in overall GHG emissions after 2020 contemplated by the RTP/SCS and the statewide policy of reducing same during the same three decades (2020-2050) constitutes a legally defective failure of the EIR to provide the SANDAG decision makers (and thus the public) with adequate information about the environmental impacts of the SCS/RTP." *See* Judgment, attached as Exhibit C.

In sum, because the DSEIR does not evaluate the FCI Project's impacts beyond 2020 and because it ignores the Project's dramatic conflict with both science and long-term climate policy, it omits information essential to intelligently evaluate the Project's consequences for the climate. The DSEIR must be revised to examine the contribution to climate change throughout the entire period the Project is expected to be in effect.

IV. The DSEIR Fails to Identify Feasible Mitigation Measures to Lessen Significant Unavoidable Impacts on the Environment.

CEQA's central mandate is that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91 Cal.App.4th 1344,1354 (quoting Pub. Res. Code § 21002). CEQA requires lead agencies to identify and analyze all feasible mitigation, even if this mitigation will not reduce the impact to a level of insignificance. CEQA Guidelines, § 15126.4(a)(l)(A) (discussion of mitigation measure "shall identify mitigation measures for each significant environmental effect identified in the EIR"); see also *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724 ("The EIR also must describe feasible measures that could minimize significant impacts.").

Here, the DSEIR concedes that the Project will result in many significant unavoidable impacts, but then fails to identify feasible mitigation to reduce these impacts. DSEIR at Table S-2. In one of the more egregious examples, the DSEIR explains that the proposed Project would result in increases in population and housing in areas that may not have been accounted for in the most current water planning documents. DSEIR at 2.14-8. It goes on to state that there "may be uncertainties surrounding the implementation of future water supply projects, such as difficulty obtaining permits for desalination projects, unexpected water quality contamination of supply sources, erratic weather patterns associated with climate change, and competing demands for water supply." *Id.* The Project would also result in "groundwater dependent districts having inadequate water supply to serve the projected demand of the proposed Project." *Id.*

Based on this analysis, the DSEIR rightly concludes that implementation of the proposed Project would result in significant and unavoidable direct and cumulative impacts related to water supplies. DSEIR at 2.14-8. The DSEIR points to one mitigation measure to address impacts related to water supply; a Countywide moratorium on building permits and development applications in any areas of the County that would have an inadequate imported water supply to serve future development until adequate supplies are procured. DSEIR at 2.14-17. However, the DSEIR claims implementation of this measure is not feasible because such a moratorium would conflict with the Project objective to support a reasonable share of projected regional population growth. *Id.* As explained, throughout this letter, the County can, and should, consider mitigation measures and alternatives that retain FCI land designations and direct growth to infill areas in urbanized communities. As explained in Exhibit A, the Infill Scenario Study demonstrates that there is ample vacant land within the incorporated cities. The fact that

implementation of such an alternatives would entail development in the incorporated cities, outside of the County's jurisdiction, does not render the alternative infeasible. See *Goleta v. Board of Supervisors* (1990) 52 Cal. 3d at 576 n.7 (holding that "jurisdictional borders are simply a factor to be taken into account and do not establish an ironclad limit on the scope of reasonable alternatives."); *Placer Ranch Partners v. County of Placer* (2001) 91 Cal App. 4th 1336, 1339-40 (upholding County's General Plan Update where the County analyzed a city-centered growth alternative similar to CNFF's Infill Alternative).

V. Conclusion

For the foregoing reasons, CNFF urges the County to delay further consideration of this FCI General Plan Amendment unless and until the City prepares and recirculates a revised draft SEIR that fully complies with CEQA and the CEQA Guidelines.

Very truly yours,

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Pine Valley CPG, Vern Denham
Potrero CPG, William Crawley
Rainbow CPG, Dennis Sanford
Ramona CPG, Jim Piva
San Dieguito CPG, Bruce Liska
Spring Valley CPG, James Comeau
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Exhibit List

Exhibit A Letter from CNFF and SOFAR to County Board of Supervisors, dated October 15, 2010.

Exhibit B Letter from Shute, Mihaly & Weinberger on behalf of CNFF to the County Board of Supervisors, dated December 7, 2010.

Exhibit C *Cleveland National Forest Foundation, et. al., v San Diego Association of Governments* (Case No. 37-2011-00101593-CU-TT-CTL) Ruling on Petitions for Writ of Mandate.

464910.2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CLEVELAND NAT'L FOREST FOUNDATION, et al.,

Petitioners,

v.

SAN DIEGO ASS'N OF GOVERNMENTS,

Respondent;

And CONSOLIDATED CASE and COMPLAINT IN INTERVENTION BY the ATTORNEY GENERAL OF CALIFORNIA

Case No. 2011-00101593

RULING ON PETITIONS FOR WRIT OF MANDATE

Judge: Timothy B. Taylor
Dept.: 72

Hearing: November 30, 2012

1. Overview and Procedural History.

In this CEQA case, the petitioners and the Attorney General claim SANDAG abused its discretion when it decided to certify an EIR and adopt a Regional Transportation Plan (RTP) which for the first time included a "Sustainable Communities Strategy" (SCS) ostensibly designed to meet a greenhouse gas emission reduction target as required by Senate Bill 375, Stats. 2008, Ch. 728. The parties agree this is the first RTP in California to be adopted following the 2008 legislation [AR2075; AR 04465], but they fundamentally disagree about the reach and requirements of that statute as it interfaces with the requirements of CEQA. No court has heretofore interpreted SB 375; the RTP/SCS at issue is meant to provide a blueprint for transportation planning for the next

40 years; and entities like SANDAG up and down the State are looking for guidance from this case regarding how to implement SB 375 in the context of an EIR. Thus, this court is but a way station in the life of this case, which is clearly headed for appellate review regardless of the outcome at the trial level. The case arises against a backdrop of intense scientific and political debate over what one counsel referred to as the signal issue of our time: global climate change.

Petitioners Cleveland Nat'l Forest Foundation ("Cleveland") and the Center for Biological Diversity ("CBD") filed the petition on November 28, 2011. The case was assigned to Judge Hayes, but Cleveland challenged her and the case was reassigned. Petitioners CREED-21 and the Affordable Housing Coalition ("AHC") filed a substantially similar petition, also on November 28, 2011 (ROA 42). This case, No. 2011-00101660, was initially assigned to another department, but the parties later stipulated to (and the court ordered) consolidation with the low-numbered case (ROA 41).

Cleveland and CBD filed an amended petition on 1/23/12, adding the Sierra Club as a petitioner (ROA 17). The AG sought and obtained leave to intervene on 1/25/12, and filed her petition in intervention the same day on behalf of the People (ROA 22-25).

At a CMC on 2/24/12, the parties advised the court that the Administrative Record in this case exceeds 10,000 pages in length (as it turned out, it is over 30,000 pages). In light of this, the court adopted a party-proposed briefing schedule, granted relief from brief page limits imposed by the Rules of Court, and set the matter for a merits hearing (ROA 38). SANDAG subsequently filed answers to both the Cleveland/CBD/Sierra Club amended petition and the CREED-21/AHC petition (ROA 48, 49). SANDAG also filed its answer to the AG's petition in intervention.

The Administrative Record, which is contained on a CD, was lodged on June 27 (ROA 53), having been certified by SANDAG on May 3 (ROA 45). Joint excerpts are contained in two binders, which were lodged 10/25/12. On November 19, the parties lodged a "Corrected Joint Appendix" (ROA 80); but by this time, the court had done the lion's share of its review using the joint excerpts lodged in October.

The briefing has been extensive, and as will be explained below, might have been even more extensive. On June 27, the AG filed an opening brief, an amended opening brief, and (a few days later) an errata to the amended opening brief (ROA 52, 56). Also on June 27, CREED-21/AHC filed their opening brief (ROA 54), and Cleveland/CBD/Sierra Club filed their opening brief (ROA 55). This was a total of 81 pages of briefing (not counting the AG's amendments and corrections). On Sept. 10, SANDAG filed its responsive briefs: one in response to the AG's amended brief (ROA 62), and a second in response to the Cleveland and CREED-21 briefs (ROA 61). This was a total of 95 pages of briefing.

On September 25, 2012, the court had the unpleasant experience of denying several requests for leave to file *amicus* briefs. ROA 68. Respondents recruited several *amici*

who spent time and energy preparing extensive briefs. See ROA 59, 64. The parties and the proposed *amici* appeared on September 25 to ask the court to allow the filing of these briefs, and to set a briefing schedule for joinders and responses thereto. The court was constrained to exercise its discretion to deny all such requests; it explained its decision in two ways. First, the court is aware of its limited role here: to ensure a complete record, and to provide the parties with a timely decision so that the case may proceed promptly to appellate review. The court was concerned that allowing *amicus* briefing, joinders and responses would retard rather than advance the latter goal (particularly given that the trial court's decision will not affect the others statewide with an interest in this topic, but rather only the parties – and then only for the limited period between the decision set forth below and the issuing of a learned opinion from the 4th DCA, Div. 1).

Second, and in a related vein, the court noted that Brobdingnagian budget cuts recently suffered by the Judicial Branch have caused the San Diego Superior Court to lay off hundreds of staff, stop providing court reporters in civil cases, restrict office hours, and, most recently, close a county-wide total of seven civil independent calendar courtrooms (with a consequent re-distribution of the caseload among the "surviving" departments). Again, the court was concerned that 100+ pages of additional briefing (on top of the lengthy party/intervenor briefs) could not be properly addressed by the court in a timely fashion, given these harsh fiscal and workload realities. Fortunately, the work done by *amici* will not have been wasted; they remain free to polish their briefs in light of this court's decision and seek leave to file them as the case proceeds to review before courts with broader authority.

Finally, reply briefing was filed by the AG on October 12; petitioners filed their consolidated reply that same day (ROA 72, 73). This was an additional 50 pages of briefing. The court has reviewed the opening, opposition and reply briefing, as well as the Administrative Record and the Supplement thereto filed October 22 (ROA 74).

The court notes that the briefing was accompanied by lodgments of non-California authorities. The court asks the parties to forebear from routinely lodging copies of federal or foreign authorities in the future. These are ordinarily available to the court on Westlaw. Counsel are encouraged to review the Summer 2011 amendments to CRC 3.1113(i) in this regard. The former rule made such lodgments mandatory; the current rule permits judicial discretion in this area. The court will advise counsel if it needs a lodgment of a non-California authority. Many trees will be saved if counsel will honor this request. Also, recent budget cuts imposed on the court make the clerk time for the handling of these lodgments quite problematic.

On November 16, 2012, the court published a lengthy tentative ruling. The court did so early, in order to facilitate counsel's preparation in light of the intervening Thanksgiving holiday. The court entertained well-prepared and very thoughtful argument on November 30 from Mr. Seymour on behalf of SANDAG, Mr. Selmi on behalf of petitioners, and by Mr. Patterson and Ms. Durbin on behalf of the AG. Petitioners and the AG used a Powerpoint presentation, which the court marked as Ex. 1 to the hearing for record purposes. Following argument, the court took the matter under submission. The court

now renders its decision. Record references below are to the excerpts lodged by the parties in October, except where stated. The court notes that, near the end of her comments during the 1 hour 45 minute hearing, Ms. Durbin requested a Statement of Decision. This is not required, as there was no "trial" of this matter as contemplated by CCP section 632. There was no testimony or cross examination; the matter proceeded, as most if not all CEQA cases do, in the manner of a complex motion argument. The court hopes that the following discussion will be deemed by the parties and the reviewing court to be an adequate specification of the grounds for non-compliance as required by Pub. Res. Code section 21005(c), and an adequate setting forth of the court's decision and the reasons therefor.

2. Overview of the CEQA Process.

A. The Court's Role in CEQA Cases.

In *Mira Mar Mobile Community v. City of Oceanside,* 119 Cal.App.4th 477, 486 (2004) (*Mira Mar Mobile Community*), the court explained that "[i]n a mandate proceeding to review an agency's decision for compliance with CEQA, [courts] review the administrative record *de novo* [citation], focusing on the adequacy and completeness of the EIR and whether it reflects a good faith effort at full disclosure. [Citation.] [The court's] role is to determine whether the challenged EIR is sufficient as an information document, not whether its ultimate conclusions are correct. [Citation.]" An EIR is presumed adequate. Pub. Res. Code § 21167.3, subd. (a).

Courts review an agency's action under CEQA for a prejudicial abuse of discretion. Pub. Res. Code § 21168.5. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." *Id.;* see *Mira Mar Mobile Community, supra,* 119 Cal.App.4th at 486; *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* ("*Grossmont*"), 141 Cal. App. 4th 86, 96 (2006)(same).

In defining the term "substantial evidence," the CEQA Guidelines state: " 'Substantial evidence' ... means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made ... is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion[,] narrative [or] evidence which is clearly erroneous or inaccurate ... does not constitute substantial evidence." CEQA Guidelines, § 15384(a). "In applying the substantial evidence standard, [courts] resolve all reasonable doubts in favor of the administrative finding and decision. [Citation.]" *Mira Mar Mobile Community, supra,* 119 Cal.App.4th at 486; *Grossmont, supra,* 141 Cal. App. 4th at 96.

Although the lead agency's factual determinations are subject to the foregoing deferential rules of review, questions of interpretation or application of the requirements of CEQA are matters of law. While judges may not substitute their judgment for that of the decision

makers, they must ensure strict compliance with the procedures and mandates of the statute. *Grossmont, supra*, 141 Cal. App. 4th at 96.

B. The Three Steps of CEQA.

CEQA establishes "a three-tiered process to ensure that public agencies inform their decisions with environmental considerations." *Banker's Hill, et al v. City of San Diego*, 139 Cal. App. 4th 249, 257 (2006)("*Banker's Hill*"); see also CEQA Guidelines, § 15002(k)(describing three-step process).

First Step in the CEQA Process.

The first step "is jurisdictional, requiring that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity." *Banker's Hill, supra,* 139 Cal. App. 4th at 257; see also Guidelines, § 15060. The Guidelines give the agency 30 days to conduct this preliminary review. (Guidelines, § 15060.) The agency must first determine if the activity in question amounts to a "project." *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380. "A CEQA ...project falls into one of three categories of activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (§ 21065.)" *Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) 47 Cal.4th 902, 907.

As part of the preliminary review, the public agency must also determine the application of any statutory exemptions or categorical exemptions that would exempt the proposed project from further review under CEQA. See Guidelines, § 15282 (listing statutory exemptions); Guidelines, §§ 15300–15333 (listing 33 classes of categorical exemptions). The categorical exemptions are contained in the Guidelines and are formulated by the Secretary under authority conferred by CEQA section 21084(a). If, as a result of preliminary review, "the agency finds the project is exempt from CEQA under any of the stated exemptions, no further environmental review is necessary. The agency may prepare and file a notice of exemption, citing the relevant section of the Guidelines and including a brief 'statement of reasons to support the finding.' " *Banker's Hill, supra*, 139 Cal.App.4th at 258, citing Guidelines, §§ 15061(d), 15062(a)(3).

Second Step in the CEQA Process.

If the project does not fall within an exemption, the agency proceeds to the second step of the process and conducts an initial study to determine if the project *may* have a significant effect on the environment. (Guidelines, § 15063.) If, based on the initial study, the public agency determines that "there is substantial evidence, in light of the whole record ... that the project may have a significant effect on the environment, an environmental impact report [(EIR)] shall be prepared." [CEQA, § 21080(d).] On the other hand, if the initial study demonstrates that the project "would not have a significant effect on the environment," either because "[t]here is no substantial evidence, in light of whole record" to that effect or the revisions to the project would avoid such an effect, the

agency makes a "negative declaration," briefly describing the basis for its conclusion. (CEQA, § 21080(c)(1); see Guidelines, § 15063(b)(2); *Banker's Hill, supra*, 139 Cal.App.4th at 259.)

The Guidelines and case law further define the standard that an agency uses to determine whether to issue a negative declaration. "[I]f a lead agency is presented with a *fair argument* that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." (Guidelines, § 15064(f)(1), italics added.) This formulation of the standard for determining whether to issue a negative declaration is often referred to as the "fair argument" standard. See *Laurel Heights Improvement Assn. v. Regents of University of California,* 6 Cal.4th 1112, 1134–1135 (1993). Under the fair argument standard, a project "may" have a significant effect whenever there is a "reasonable possibility" that a significant effect will occur. *No Oil v. City of Los Angeles*, 13 Cal.3d 68, 83-84 (1974). Substantial evidence, for purposes of the fair argument standard, includes "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." § 21080, subd. (e)(1). Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts unrelated to physical impacts on the environment. § 21080, subd. (e)(2).

If the initial study reveals no substantial evidence that the project may have a significant environmental effect, the agency may adopt a negative declaration. Pub. Res. Code § 21080, subd. (c)(2); Guidelines, § 15070, subd. (b); *Grand Terrace, supra,* 160 Cal.App.4th at 1331; *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155, 175 (2011)(holding common sense is part of the substantial evidence analysis). "Alternatively, if there is no substantial evidence of any net significant environmental effect in light of revisions in the project that would mitigate any potentially significant effects, the agency may adopt [an MND]. [Citation.] [An MND] is one in which '(1) the proposed conditions "avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, *and* (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (§ 21064.5 . . . .)' [Citations.]" *Grand Terrace, supra,* at 1331-1332. The MND allows the project to go forward subject to the mitigating measures. Pub. Res. Code §§ 21064.5, 21080, subd. (c); see *Grand Terrace, supra,* 160 Cal. App. 4th at 1331.

Third Step in the CEQA Process.

If no negative declaration is issued, the preparation of an EIR is the third and final step in the CEQA process. *Banker's Hill, supra*, 139 Cal. App. 4th at 259; Guidelines, §§ 15063(b)(1), 15080; CEQA, §§ 21100, 21151.

C. The Environmental Impact Report.

Central to CEQA is the EIR, which has as its purpose informing the public and government officials of the environmental consequences of decisions before they are made. [Citation.] "An EIR must be prepared on any 'project' a local agency intends to approve or carry out which 'may have a significant effect on the environment.' Pub. Res. Code §§ 21100, 21151; Guidelines, § 15002, subd. (f)(1). The term 'project' is broadly defined and includes any activities which have a potential for resulting in a physical change in the environment, directly or ultimately. Pub Res. Code § 21065; Guidelines, §§ 15002, subd. (d), 15378, subd. (a); [Citation].) The definition encompasses a wide spectrum, ranging from the adoption of a general plan, which is by its nature tentative and subject to change, to activities with a more immediate impact, such as the issuance of a conditional use permit for a site-specific development proposal." *CREED v. City of San Diego*, 134 Cal. App. 4th 598, 604 (2005).

"To accommodate this diversity, the Guidelines describe several types of EIR's, which may be tailored to different situations. The most common is the project EIR, which examines the environmental impacts of a specific development project. (Guidelines, § 15161.) A quite different type is the program EIR, which 'may be prepared on a series of actions that can be characterized as one large project and are related either: (1) Geographically, (2) As logical parts in the chain of contemplated actions, (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.'" Guidelines, § 15168, subd. (a); *CREED, supra*, 134 Cal. App. 4th at 605. As the court held in *CREED*, a program EIR may serve as the EIR for a subsequently proposed project only to the extent it contemplates and adequately analyzes the potential environmental impacts of the project. *CREED, supra,* 134 Cal. App. 4th at 615.

The EIR at issue in this case is of the latter variety, a program EIR. Cleveland/CBD/ Sierra Club accuse SANDAG of attempting to use the "programmatic" nature of the EIR as an invalid attempt to excuse it from fully analyzing the health impacts of the RTP. [ROA 55 at 15] The AG joins in this criticism. [ROA 52 at 29]

Under CEQA, an EIR is presumed adequate (Pub. Resources Code, § 21167.3), and the plaintiff in a CEQA action has the burden of proving otherwise. (*Preserve Wild Santee v. City of Santee*, 210 Cal. App. 4th 260, 275 (4th DCA Div. 1 Oct. 19, 2012, internal quotation marks omitted), quoting *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 836.) Courts review an agency's determinations and decisions for abuse of discretion. An agency abuses its discretion when it fails to proceed in a manner required by law or there is not substantial evidence to support its determination or decision. [§§ 21168, 21168.5; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426-427 (2007) ("*Vineyard*")]. "Judicial review of these two types of error differs significantly: While [courts] determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA

requirements' [citation], [courts] accord greater deference to the agency's substantive factual conclusions." (*Vineyard, supra*, 40 Cal. 4th at 435.)

Consequently, in reviewing an EIR for CEQA compliance, courts adjust "scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard, supra*, 40 Cal.4th at 435.) For example, where a petitioner claims an agency failed to include required information in its environmental analysis, the court's task is to determine whether the agency failed to proceed in the manner prescribed by CEQA. Conversely, where a petitioner challenges an agency's conclusion that a project's adverse environmental effects are adequately mitigated, courts review the agency's conclusion for substantial evidence. (*Vineyard, supra*, 40 Cal. 4th at 435.)

4. Issues Raised in This Case.

SANDAG is a council of local governments, and is one of 18 Metropolitan Planning Organizations ("MPO") in California. Each MPO is charged under law with the development of the region's RTP, which must be updated every four years. SANDAG began its work in April of 2010, released drafts of the RTP/SCS for public comment on 4/22/11, and released the draft EIR for public comment on June 7, 2011 [AR225-1580]. Petitioners and the AG's office criticized the drafts. [AR4430, 12696-12699, 17972-75, 18053-55] The final EIR was released on October 18, 2011 [AR1969-3401], and was certified after a public hearing on October 28, 2011. Inasmuch as the petitions were filed on November 28, there is no issue in this case regarding the timeliness of the legal challenges to the EIR. Nor are any issues raised by SANDAG with regard to exhaustion of administrative remedies or standing.

There is substantial overlap in the attacks on the EIR leveled by petitioners and the AG. Both sets of petitioners assert that the EIR fails to adequately analyze air quality impacts [ROA 54 at 3-6; ROA 55 at 12-20]. The AG joins in this assertion [ROA 52 at 7-29]. Both petitioners add that the EIR failed to analyze a reasonable range of alternatives [ROA 54 at 6; ROA 55 at 38].

CREED-21/AHC's brief focuses on the failure of the EIR to properly analyze air quality impacts in two specific areas: greenhouse gas emissions and sensitive receptors [ROA 54 at 4-6]. The Cleveland/CBD/Sierra Club brief carefully analyzes the deficiencies of the EIR in relation to greenhouse gas emissions (ROA 55 at part III), while the AG provides extensive discussion on both sensitive receptors and greenhouse gas emissions [ROA 52 at 14-18 and 22-29]. The Cleveland/CBD/Sierra Club brief raises several other issues which neither the AG nor CREED-21/AHC discuss in any detail (mass transit ridership, agricultural land, growth-inducing impacts, parking management, etc.).

5. Ruling.

The court finds that the real focal point of this controversy is whether the EIR is in conformance with a series of state policies enunciated by the legislative and executive branches since 2005 relating to greenhouse gases. Governor Schwarzenegger issued, in

2005, Executive Order S-03-05, which for the first time set a state goal of reducing greenhouse gas emissions. This Executive Order gave rise to the Global Warming Solutions Act of 2006 (AB 32), which is codified at H&S Code section 38500 *et seq.* Section 38550 provides:

"By January 1, 2008, the [Air Resources Board] shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions."

It is undisputed that the ARB has established greenhouse gas targets for the SANDAG region for 2020 and 2035.

In 2008, the Legislature passed SB 375, which amended both the Public Resources Code and the Government Code in several respects. In section 1 of the statute, the Legislature found and declared:

"(a) The transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California; automobiles and light trucks alone contribute almost 30 percent. The transportation sector is the single largest contributor of greenhouse gases of any sector.

(b) In 2006, the Legislature passed and the Governor signed Assembly Bill 32 (Chapter 488 of the Statutes of 2006; hereafter AB 32), which requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020. According to the State Air Resources Board, in 1990 greenhouse gas emissions from automobiles and light trucks were 108 million metric tons, but by 2004 these emissions had increased to 135 million metric tons.

(c) Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32.

(d) In addition, automobiles and light trucks account for 50 percent of air pollution in California and 70 percent of its consumption of petroleum. Changes in land use and transportation policy, based upon established modeling methodology, will provide significant assistance to California's goals to implement the federal and state Clean Air Acts and to reduce its dependence on petroleum.

(e) Current federal law requires regional transportation planning agencies to include a land use allocation in the regional transportation plan. Some regions have engaged in a regional "blueprint" process to prepare the land use allocation. This process has been open and transparent. The Legislature intends, by this act, to build upon that successful process by requiring metropolitan planning organizations to develop and incorporate a sustainable communities strategy which will be the land use allocation in the regional transportation plan.

(f) The California Environmental Quality Act (CEQA) is California's premier environmental statute. New provisions of CEQA should be enacted so that the statute encourages developers to submit applications and local governments to make land use decisions that will help the state achieve its climate goals under AB 32, assist in the achievement of state and federal air quality standards, and increase petroleum conservation.

(g) Current planning models and analytical techniques used for making transportation infrastructure decisions and for air quality planning should be able to assess the effects of policy choices, such as residential development patterns, expanded transit service and accessibility, the walkability of communities, and the use of economic incentives and disincentives.

(h) The California Transportation Commission has developed guidelines for travel demand models used in the development of regional transportation plans. This act assures the commission's continued oversight of the guidelines, as the commission may update them as needed from time to time.

(i) California local governments need a sustainable source of funding to be able to accommodate patterns of growth consistent with the state's climate, air quality, and energy conservation goals."

Section 4 of SB 375 added Government Code section 65080, which provides, in relevant part:

"(a) **Each transportation planning agency** designated under Section 29532 or 29532.1 **shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system**, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall be an internally consistent document and shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:
(A) Measures of mobility and traffic congestion, including, but not limited to, daily vehicle hours of delay per capita and vehicle miles traveled per capita.
(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.
(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:
(i) Single occupant vehicle.
(ii) Multiple occupant vehicle or carpool.
(iii) Public transit including commuter rail and intercity rail.
(iv) Walking.
(v) Bicycling.
(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).
(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.
(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(2) A sustainable communities strategy prepared by each metropolitan planning organization as follows:
(A) No later than September 30, 2010, the State Air Resources Board shall provide each affected region with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035, respectively.

***

(B) **Each metropolitan planning organization shall prepare a sustainable communities strategy,** subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the most recent planning assumptions considering local general plans and other factors. The sustainable communities strategy shall (i) identify the general location of uses, residential densities, and building intensities within the region, (ii) identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over

the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth, (iii) identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584, (iv) identify a transportation network to service the transportation needs of the region, (v) gather and consider the best practically available scientific information regarding resource areas and farmland in the region as defined in subdivisions (a) and (b) of Section 65080.01, (vi) consider the state housing goals specified in Sections 65580 and 65581, (vii) **set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the state board,** and (viii) allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).

Section 14 of SB 375, among other revisions, amended Pub. Res. Code section 21155.3 to provide as follows:

"(a) The legislative body of a local jurisdiction may adopt traffic mitigation measures that would apply to transit priority projects. These measures shall be adopted or amended after a public hearing and may include requirements for the installation of traffic control improvements, street or road improvements, and contributions to road improvement or transit funds, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of those transit priority projects.

(b)(1) A transit priority project that is seeking a discretionary approval is not required to comply with any additional mitigation measures required by paragraph (1) or (2) of subdivision (a) of Section 21081, for the traffic impacts of that project on intersections, streets, highways, freeways, or mass transit, if the local jurisdiction issuing that discretionary approval has adopted traffic mitigation measures in accordance with this section.
(2) Paragraph (1) does not restrict the authority of a local jurisdiction to adopt feasible mitigation measures with respect to the effects of a project on public health or on pedestrian or bicycle safety.

(c) The legislative body shall review its traffic mitigation measures and update them as needed at least every five years."

As already noted, the centerpiece of this case is the parties' fundamental disagreement over implementation of these statutory requirements within the framework of CEQA. In all the statutory quotations immediately above, **bold type** has been added by the court.

The court agrees with the points made in section III of the Cleveland brief (ROA 55), part II of the AG's brief (ROA 52), and pp. 4-5 of the CREED-21 brief (ROA 54) regarding the inadequate treatment of greenhouse gas emissions in the EIR. This failure is not, as SANDAG would have it, merely a debate over "editorial control" of the EIR (ROA 62 at 32:24). Rather, the issue is whether the EIR fails to carry out its role as an informational document to inform the public about the choices made by its leaders. The court finds that this failure is manifest in several ways.

First, although SANDAG acknowledges SB 375 mandates a "sharper focus on reducing GHG emissions" (AR 13091, Excerpt Tab 190), the EIR is impermissibly dismissive of Executive Order S-03-05. SANDAG argues that the Executive Order does not constitute a 'plan' for GHG reduction, and no state plan has been adopted to achieve the 2050 goal. [ROA 62 at 34] The EIR therefore does not find the RTP/SCS's failure to meet the Executive Order's goals to be a significant impact. This position fails to recognize that Executive Order S-3-05 is an official policy of the State of California, established by a

gubernatorial order in 2005, and not withdrawn or modified by a subsequent (and predecessor) governor. Quite obviously it was designed to address an environmental objective that is highly relevant under CEQA (climate stabilization). See AR 17622 (Excerpt Tab 216). SANDAG thus cannot simply ignore it. This is particularly true in a setting in which hundreds of thousands of people in the communities served by SANDAG live in low-lying areas near the coast, and are thus susceptible to rising sea levels associated with global climate change. The court in *Association of Irritated Residents v. State Air Resources Board*, 206 Cal. App. 4th 1487, 1492-93 (2012), recognized the importance of the Executive Order in upholding the ARB's Scoping Plan. The court agrees with petitioners that the failure of the EIR to cogently address the inconsistency between the dramatic increase in overall GHG emissions after 2020 contemplated by the RTP/SCS and the statewide policy of reducing same during the same three decades (2020-2050) constitutes a legally defective failure of the EIR to provide the SANDAG decision makers (and thus the public) with adequate information about the environmental impacts of the SCS/RTP. Moreover, as was pointed out in oral argument, having chosen to develop a plan for 15 years beyond that which was required under law, SANDAG was obligated to discuss impacts beyond the 2020 horizon. The ARB's scoping plan adopts the Executive Order, and SANDAG failed to extend the analysis to 2050.

Second, SANDAG's response has been to "kick the can down the road" and defer to "local jurisdictions." See, e.g. AR 31-0064, 32-0065, 33-0066, 34-0067, 35-0068, 117-0090, 118-0091 (Excerpts Vol. 1, Tab 3); 4.8-36, 0790 (Excerpts Tab 7); AR G-63-64, 03825-3826 (Excerpts Tab 8B); AR 27734 and 8A:2588 (Nov. 19 Appx.). This theme is repeated in SANDAG's brief at page 38 (arguing mitigation is the responsibility of other agencies). This perverts the regional planning function of SANDAG, ignores the purse string control SANDAG has over TransNet funds, and more importantly conflicts with Govt. Code section 65080(b)(2)(B) quoted above. As the AG argues, it is certainly feasible for SANDAG to agree to fund local climate action plans, yet the EIR does not adopt or even adequately discuss this form of mitigation (AR 2588, Excerpt Tab 8A). And as argued by petitioners in their consolidated reply brief, "encouraging" an optional local plan that "should" incorporate regional policies falls well short of a legally enforceable mitigation commitment with teeth. This is what the CEQA Guidelines require at subsections 15126.4(a)(1)(B), (a)(2) and (c)(5) in a setting in which SANDAG controls the funding for at least some of the projects contemplated by the SCS/RTP. Contrary to SANDAG's assertion (Oppo. at 38:21), it does have the legal power -- indeed, the obligation – to see to it that TransNet funds are spent in a manner consistent with the law. SANDAG conceded (even embraced) this at the November 30 hearing.

Resolution No. 2012-09, adopted by SANDAG, finds that the RTP/SCS "achieves the regional greenhouse gas reduction targets established by CARB" (AR 239-0219, Excerpts Tab 4) when in fact it either does not (AR 118-0091-92, Excerpts Tab 3; AR 4.8-21-23, 0775-0777, Excerpts Tab 7; AR 4.8-15-17, 02567-2569, 2578, Excerpts Tab 8A; AR08242-8245, Excerpts Tab 111) or does so based on questionable inputs [AR 30143, 30187 *et seq.* (Supp. filed 10/22/12); compare AR 14550 (Excerpt Tab 190). The shortcomings of the **EIR** in this regard (for petitioners do not contend, nor does the court

find, that SB 375 was violated) were called to SANDAG's attention as evidenced by what it called "Master Response # 20-23," discussed at AR G-55, 03817 *et seq.* (Excerpts Tab 8B); see also AR 19685 (Excerpts Tab 296); AR 25640 *ff* (Excerpts Tab 311). SANDAG erroneously and peremptorily states in response to these comments that the "upward trajectory" in per capita GHG emissions "does not present an SB 375 or CEQA compliance issue." AR G-59. CEQA requires further discussion, not a one sentence dismissal. Nor is the court convinced that SANDAG may avoid examination of GHG reduction due to "modeling constraints." AR G-68, 003830 (Master Response #23).

In light of the foregoing, the court finds that the petitioners and intervenor have overcome the presumption of validity and have established a prejudicial abuse of discretion. The court does not reach this conclusion lightly, as it is evident from section 9.0 of the EIR that it involved thousands of hours of effort by numerous talented professionals. No doubt the EIR is a satisfactory informational document in many respects; being the first in the state to tackle something as important to future generations as reduction of greenhouse gases in a regional transportation setting carried some risk, and the court, after reviewing the Administrative Record independently, finds that the EIR is inconsistent with state law as described above. Thus, it is the court's duty under *Vineyard, supra*, to sustain the positions advanced by petitioners and the petitioner in intervention.

Had they been permitted to file briefs, *amici* would no doubt have argued that the court's interpretation of CEQA's interface with Executive Order S-03-05 and the statutory scheme of SB 375 (which the Legislative Counsel's Digest filed with Secretary of State September 30, 2008 concedes is an "unfunded mandate") will retard growth, harm California's efforts to attract jobs and create economic activity, and slow down the state's recovery from the recession. All of this may very well be true, but these are arguments properly presented to the political branches of the government which adopted the Executive Order and enacted SB 375 in the first place.

Because the court finds it can resolve the case solely on the inadequate treatment in the EIR of the greenhouse gas emission issue, it finds that it need not address the other issues raised by the parties. *Compare Natter v. Palm Desert Rent Review Comm'n.,* 190 Cal. App. 3d 994, 1001 (1987); *Young v. Three for One Oil Royalties*, 1 Cal. 2d 639, 647-648 (1934).

Let a writ of mandate issue forthwith, directing respondent SANDAG to set aside its October 28, 2011certification of the EIR for the RTP/SCS. Counsel for petitioners is directed to forthwith submit same to the court for signature.

IT IS SO ORDERED.

Dated: December 3, 2012

TIMOTHY B. TAYLOR
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Cleveland National Forest Foundation vs. San Diego Association of Governments [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: **37-2011-00101593-CU-TT-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the Ruling on Petitions for Writ of Mandate dated December 3, 2012 was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 12/03/2012.

Clerk of the Court, by: Andrea Taylor A. Taylor, Deputy

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ATTACHMENT

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May 3, 2013

Via Electronic Mail Only

Mindy Fogg, Environmental Planner
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Re: Draft Supplemental Environmental Impact Report on the Forest Conservation Initiative Lands GPA 12-004 (SCH No. 2012081082)
Comments re Invalidated Climate Action Plan

Dear Ms. Fogg:

I am writing on behalf of the Cleveland National Forest Foundation ("CNFF") to supplement our comment letter dated March 18, 2013 regarding the proposed Forest Conservation Initiative Lands draft Supplemental EIR ("DSEIR"). Specifically, I am writing to alert you that the primary mitigation for the project's significant climate change impacts has recently been invalidated by the San Diego Superior Court. *See Sierra Club v. County of San Diego*, San Diego Superior Court Case No. 37-2012-00101054 (April 19, 2013), attached as Exhibit 1. As a result, the project's climate change impacts will remain significant and unavoidable unless the County adopts additional mitigation and/or the Infill Alternative described in our March 18 letter.

In *Sierra Club*, Judge Timothy Taylor found that the County's Climate Action Plan or "CAP" fails to ensure that the County will meet greenhouse gas emission reduction goals and targets. *Id.* at 7. Because the CAP consists of mere recommendations—and contains no actual enforcement mechanism—the County failed to comply with required Mitigation Measure CC-1.2. *Id.*

The FCI DSEIR suffers from the same fatal flaw. The DSEIR states: "The CAP is the mechanism in which the County will utilize to ensure that the proposed project is consistent with AB 32 [the Global Warming Solutions Act of 2006]." DSEIR at 2.15-2 and 2.15-8. Pursuant to Mitigation Measure CC-FCI-1, the CAP would apply to "all future development in the County of San Diego." *Id.* at 2.15-8. The DSEIR relies on Mitigation Measure CC-FCI-1 and the CAP to conclude that the project's global climate change impacts would be less than significant. *Id.* at 2.15-9.

As explained in our March 18 letter, the DSEIR's global climate change analysis is severely flawed because it: (a) omits consideration of the Plan's impacts beyond 2020; and, (b) obscures the Plan's dramatic conflict with both science and long-term climate policy. Moreover, even if the County had conducted a proper analysis, its less-than-significant conclusion is based on the same mitigation measure invalidated by Judge Taylor in the *Sierra Club* case.

As a result of the *Sierra Club* case, the County must recirculate the DSEIR. CEQA Guidelines section 15088.5(a) requires recirculation when, among other things:

> (1) A new significant impact would result from the project or from a new mitigation measure proposed to be implemented.
>
> . . .
>
> (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

Here, both (1) and (3) are met. Judge Taylor's rejection of the CAP means that climate change impacts will be significant, in contrast to the DSEIR's less than significant conclusion. Moreover, for the reasons stated in our March 18 letter, CNFF's Infill Alternative would reduce these climate change impacts to less than significant levels by directing growth to the County's 18 incorporated cities. Yet, inexplicably, the County has refused to consider it.

Please include these comments in the record for this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Catherine C. Engberg, P.E., Esq.

Exhibit: *Sierra Club v. County of San Diego*, San Diego Superior Court Case No. 37-2012-00101054-CU-TT-CTL

475696.1

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/19/2013 TIME: 03:36:00 PM DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor
CLERK: Patricia Ashworth
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2012-00101054-CU-TT-CTL** CASE INIT.DATE: 07/20/2012
CASE TITLE: **SIERRA CLUB vs. County of San Diego [E-FILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

APPEARANCES

The Court, having taken the above-entitled matter under submission on 04/19/2013 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

1. Overview and Procedural Posture.

In this CEQA case, this court for the second time in the last 6 months is required to address the controversial topic of global climate change. The court last addressed this subject in Cleveland Nat'l. Forest Foundation v. SANDAG, Case No. 2011-00101593; that case is now on appeal (D063288). As noted in its December 2012 ruling, this court recognizes it is but a way station in the life of most CEQA cases, and it seems this one will likely fit this pattern.

Because the trial courts are not final, it is important that they be prompt, and the court has done its best in that regard. The petition was filed on July 20, 2012. The case was assigned to Judge Hayes, but the Sierra Club challenged her, and the case was reassigned to Dept. 72. ROA 9, 11. The petition was promptly served. ROA 10.

The parties were first before the court on November 6, 2012, when they sought a hearing date and supplied the court with a stipulated briefing schedule. The court granted the requests. ROA 15, 16. The County filed its answer on January 9, 2013 (ROA 19), and the briefing began in February, 2013. ROA 21-25. The 4300+ page Certified Administrative Record (AR) is contained on a compact disk which was lodged on April 4 (the CD lodged with the opening brief, ROA 22, was either blank or incompatible with the court's aging desktop computers). The court has reviewed the briefing and the record.

Sierra Club contends that the County's June 20, 2012 "Climate Action Plan" (CAP), which is AR 002-126, is insufficient and violates CEQA in several respects: it does not comply with mitigation measures spelled out in the County's 2011 Program EIR (PEIR), adopted in connection with the 2011

General Plan Update (GPU)(AR 0441 ff); it fails to satisfy the requirements for adopting thresholds of significance for greenhouse gas emissions (GHG); and it should have been set forth in a stand-alone environmental document rather than in an addendum to the PEIR. The County denies these claims, and asserts the CEQA challenge is time-barred, the CAP complies with all legal requirements, the use of an addendum was appropriate, and that all relief is barred by the Sierra Club's failure to notify the AG as required by Pub. Res. Code section 21167.7. Although briefed by Sierra Club, neither standing nor exhaustion are challenged by the County.

Following publication of a tentative ruling on April 16, the case was argued on the afternoon of April 19 by Cory Briggs, Esq. on behalf of Sierra Club, and Ellen Pilsecker, Deputy County Counsel, on behalf of the County. The arguments were focused and thoughtful. Following the arguments, the court took the matter under submission. The court's ruling follows.

2. Overview of the CEQA Process.

A. The Court's Role in CEQA Cases.

In Mira Mar Mobile Community v. City of Oceanside, 119 Cal.App.4th 477, 486 (2004) (Mira Mar Mobile Community), the court explained that "[i]n a mandate proceeding to review an agency's decision for compliance with CEQA, [courts] review the administrative record de novo [citation], focusing on the adequacy and completeness of the EIR and whether it reflects a good faith effort at full disclosure. [Citation.] [The court's] role is to determine whether the challenged EIR is sufficient as an information document, not whether its ultimate conclusions are correct. [Citation.]" An EIR is presumed adequate. Pub. Res. Code § 21167.3, subd. (a).

Courts review an agency's action under CEQA for a prejudicial abuse of discretion. Pub. Res. Code § 21168.5. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." Id.; see Mira Mar Mobile Community, supra, 119 Cal.App.4th at 486; County of San Diego v. Grossmont-Cuyamaca Community College Dist. ("Grossmont"), 141 Cal. App. 4th 86, 96 (2006)(same).

In defining the term "substantial evidence," the CEQA Guidelines state: " 'Substantial evidence' ... means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made ... is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion[,] narrative [or] evidence which is clearly erroneous or inaccurate ... does not constitute substantial evidence." CEQA Guidelines, § 15384(a). "In applying the substantial evidence standard, [courts] resolve all reasonable doubts in favor of the administrative finding and decision. [Citation.]" Mira Mar Mobile Community, supra, 119 Cal.App.4th at 486; Grossmont, supra, 141 Cal. App. 4th at 96.
Although the lead agency's factual determinations are subject to the foregoing deferential rules of review, questions of interpretation or application of the requirements of CEQA are matters of law. While judges may not substitute their judgment for that of the decision makers, they must ensure strict compliance with the procedures and mandates of the statute. Grossmont, supra, 141 Cal. App. 4th at 96.

B. The Three Steps of CEQA.

CEQA establishes "a three-tiered process to ensure that public agencies inform their decisions with

environmental considerations." Banker's Hill, et al v. City of San Diego, 139 Cal. App. 4th 249, 257 (2006)("Banker's Hill"); see also CEQA Guidelines, § 15002(k)(describing three-step process).

First Step in the CEQA Process.

The first step "is jurisdictional, requiring that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity." Banker's Hill, supra, 139 Cal. App. 4th at 257; see also Guidelines, § 15060. The Guidelines give the agency 30 days to conduct this preliminary review. (Guidelines, § 15060.) The agency must first determine if the activity in question amounts to a "project." Muzzy Ranch Co. v. Solano County Airport Land Use Com. (2007) 41 Cal.4th 372, 380. "A CEQA ...project falls into one of three categories of activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (§ 21065.)" Sunset Sky Ranch Pilots Assn. v. County of Sacramento (2009) 47 Cal.4th 902, 907.

As part of the preliminary review, the public agency must also determine the application of any statutory exemptions or categorical exemptions that would exempt the proposed project from further review under CEQA. See Guidelines, § 15282 (listing statutory exemptions); Guidelines, §§ 15300–15333 (listing 33 classes of categorical exemptions). The categorical exemptions are contained in the Guidelines and are formulated by the Secretary under authority conferred by CEQA section 21084(a). If, as a result of preliminary review, "the agency finds the project is exempt from CEQA under any of the stated exemptions, no further environmental review is necessary. The agency may prepare and file a notice of exemption, citing the relevant section of the Guidelines and including a brief 'statement of reasons to support the finding.' " Banker's Hill, supra, 139 Cal.App.4th at 258, citing Guidelines, §§ 15061(d), 15062(a)(3).

Second Step in the CEQA Process.

If the project does not fall within an exemption, the agency proceeds to the second step of the process and conducts an initial study to determine if the project may have a significant effect on the environment. (Guidelines, § 15063.) If, based on the initial study, the public agency determines that "there is substantial evidence, in light of the whole record ... that the project may have a significant effect on the environment, an environmental impact report [(EIR)] shall be prepared." [CEQA, § 21080(d).] On the other hand, if the initial study demonstrates that the project "would not have a significant effect on the environment," either because "[t]here is no substantial evidence, in light of whole record" to that effect or the revisions to the project would avoid such an effect, the agency makes a "negative declaration," briefly describing the basis for its conclusion. (CEQA, § 21080(c)(1); see Guidelines, § 15063(b)(2); Banker's Hill, supra, 139 Cal.App.4th at 259.)

The Guidelines and case law further define the standard that an agency uses to determine whether to issue a negative declaration. "[I]f a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." (Guidelines, § 15064(f)(1), italics added.) This formulation of the standard for determining whether to issue a negative declaration is often referred to as the "fair argument" standard. See Laurel Heights Improvement Assn. v. Regents of University of California, 6 Cal.4th 1112, 1134–1135 (1993). Under the fair argument standard, a project "may" have a significant effect whenever there is a "reasonable possibility" that a significant effect will occur. No Oil v. City of Los Angeles, 13 Cal.3d 68, 83-84 (1974). Substantial evidence, for purposes of the fair argument standard, includes "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." § 21080, subd. (e)(1).

Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts unrelated to physical impacts on the environment. § 21080, subd. (e)(2).

If the initial study reveals no substantial evidence that the project may have a significant environmental effect, the agency may adopt a negative declaration. Pub. Res. Code § 21080, subd. (c)(2); Guidelines, § 15070, subd. (b); Grand Terrace, supra, 160 Cal.App.4th at 1331; Save the Plastic Bag Coalition v. City of Manhattan Beach, 52 Cal. 4th 155, 175 (2011)(holding common sense is part of the substantial evidence analysis). "Alternatively, if there is no substantial evidence of any net significant environmental effect in light of revisions in the project that would mitigate any potentially significant effects, the agency may adopt [an MND]. [Citation.] [An MND] is one in which '(1) the proposed conditions "avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (§ 21064.5 . . . .)' [Citations.]" Grand Terrace, supra, at 1331-1332. The MND allows the project to go forward subject to the mitigating measures. Pub. Res. Code §§ 21064.5, 21080, subd. (c); see Grand Terrace, supra, 160 Cal. App. 4th at 1331.

Third Step in the CEQA Process.

If no negative declaration is issued, the preparation of an EIR is the third and final step in the CEQA process. Banker's Hill, supra, 139 Cal. App. 4th at 259; Guidelines, §§ 15063(b)(1), 15080; CEQA, §§ 21100, 21151.

C. The Environmental Impact Report.

Central to CEQA is the EIR, which has as its purpose informing the public and government officials of the environmental consequences of decisions before they are made. [Citation.] "An EIR must be prepared on any 'project' a local agency intends to approve or carry out which 'may have a significant effect on the environment.' Pub. Res. Code §§ 21100, 21151; Guidelines, § 15002, subd. (f)(1). The term 'project' is broadly defined and includes any activities which have a potential for resulting in a physical change in the environment, directly or ultimately. Pub Res. Code § 21065; Guidelines, §§ 15002, subd. (d), 15378, subd. (a); [Citation].) The definition encompasses a wide spectrum, ranging from the adoption of a general plan, which is by its nature tentative and subject to change, to activities with a more immediate impact, such as the issuance of a conditional use permit for a site-specific development proposal." CREED v. City of San Diego, 134 Cal. App. 4th 598, 604 (2005).

"To accommodate this diversity, the Guidelines describe several types of EIR's, which may be tailored to different situations. The most common is the project EIR, which examines the environmental impacts of a specific development project. (Guidelines, § 15161.) A quite different type is the program EIR, which 'may be prepared on a series of actions that can be characterized as one large project and are related either: (1) Geographically, (2) As logical parts in the chain of contemplated actions, (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.'" Guidelines, § 15168, subd. (a); CREED, supra, 134 Cal. App. 4th at 605. As the court held in CREED, a program EIR may serve as the EIR for a subsequently proposed project only to the extent it contemplates and adequately analyzes the potential environmental impacts of the project. CREED, supra, 134 Cal. App. 4th at 615.

As noted in part 1 above, the EIR at issue in this case is of the latter variety, a PEIR.

Under CEQA, an EIR is presumed adequate (Pub. Resources Code, § 21167.3), and the plaintiff in a CEQA action has the burden of proving otherwise. (Preserve Wild Santee v. City of Santee, 210 Cal. App. 4th 260, 275 (2012), internal quotation marks omitted, quoting Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist. (1994) 24 Cal.App.4th 826, 836.) Courts review an agency's determinations and decisions for abuse of discretion. An agency abuses its discretion when it fails to proceed in a manner required by law or there is not substantial evidence to support its determination or decision. [§§ 21168, 21168.5; Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 426-427 (2007) ("Vineyard")]. "Judicial review of these two types of error differs significantly: While [courts] determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' [citation], [courts] accord greater deference to the agency's substantive factual conclusions." (Vineyard, supra, 40 Cal. 4th at 435.)

Consequently, in reviewing an EIR for CEQA compliance, courts adjust "scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (Vineyard, supra, 40 Cal.4th at 435.) For example, where a petitioner claims an agency failed to include required information in its environmental analysis, the court's task is to determine whether the agency failed to proceed in the manner prescribed by CEQA. Conversely, where a petitioner challenges an agency's conclusion that a project's adverse environmental effects are adequately mitigated, courts review the agency's conclusion for substantial evidence. (Vineyard, supra, 40 Cal. 4th at 435.)

D. Further Requirements of CEQA.

In addition to the foregoing public process/decision maker information steps, the Legislature in enacting CEQA also intended to "provide certain substantive measures for protection of the environment. [Citations.] In particular, one court noted [Public Resources Code] section 21002 requires public agencies 'to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects.' [Citation.] (Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1601-1602, citing No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75 and Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1123 . . . .). The Legislature declared its intention in enacting CEQA "that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be interpreted 'to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' " (Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105, 112.)

3. RFJN.

Sierra Club, with its reply briefing, filed a Request for Judicial Notice to which was attached a copy of the AG's letter acknowledging receipt of a copy of the petition in July of 2012 (shortly after it was filed). The court grants the request for judicial notice under Evid. Code section 452(c) and (g). This conclusively eliminates the County's third affirmative defense and the argument under Pub. Res. Code section 21167.7 contained on pp. 14-15 of the County's brief. In fact, this argument was meritless from the outset, as Sierra Club filed a proof of service on the AG last July (ROA 8). In other words, the County's

argument that "the case file contains no indication that [the AG notification requirement] was met" was demonstrably untrue when the County's answer was filed and when it brief was filed. County Counsel forthrightly acknowledged this at the April 19 hearing.

4. Discussion and Ruling.

Former Governor Schwarzenegger issued, in 2005, Executive Order S-03-05, which for the first time set a state goal of reducing greenhouse gas emissions. This Executive Order gave rise to the Global Warming Solutions Act of 2006 (AB 32), which is codified at H&S Code section 38500 et seq. Section 38550 provides:

"By January 1, 2008, the [Air Resources Board] shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions."

In the 2011 PEIR for the GPU, the County concluded that the GHG and climate-change impacts from the County's own operations and from community sources were "potentially significant" both in relation to compliance with AB 32 and with regard to the updated general plan itself. AR 488 (end of first paragraph under "Summary"), 493 (end of "Summary" paragraph). Consequently, the County had to adopt a series of mitigation measures to render these impacts insignificant. AR 494-500. Among those mitigation measures was CC-1.2, which is the focus of Sierra Club's attack:

"Prepare a County Climate Change Action Plan with an update[d] baseline inventory of greenhouse gas emissions from all sources, more detailed greenhouse gas emissions reduction targets and deadlines; and a comprehensive and enforceable GHG emissions reduction measures that will achieve a 17% reduction in emissions from County operations from 2006 by 2020 and a 9% reduction in community emissions between 2006 and 2020. Once prepared, implementation of the plan will be monitored and progress reported on a regular basis." [AR 496]

The County undertook to prepare the CAP, in accordance with Mitigation Measure CC-1.2, within six months [AR 313-314]. The County did not do so; the CAP was not approved until nearly a year after the PEIR was certified.

The central questions in this case are whether the CAP was properly approved, and whether it meets the requirements of Mitigation Measure CC-1.2. Thus, the court rejects the County's first affirmative defense which is addressed on pp. 5-7 of the County's brief. These arguments are premised on the notion that because the GPU and PEIR were adopted in the summer of 2011, an action filed in July of 2012 cannot pass muster under the 180 day limitations period of Pub. Res. Code section 21167. But the court agrees with Sierra Club that the gravamen of its petition is not an attack on the PEIR, but rather an effort to enforce the PEIR's requirement of enforceable mitigation measures. The case law relied on by the County all arose in settings in which the mitigation measures themselves were challenged as inadequate, or the cases are otherwise inapplicable. This case was filed 30 days after the June 20, 2012 approval by the County of the CAP, and it is not time-barred.

Regarding the first central question identified above: the court finds the CAP should have been the subject of a supplemental EIR instead of an addendum to the PEIR that concluded the CAP is within the scope of the PEIR. (AR 16:1372, second sentence of last paragraph.) Thus, the CAP was not properly approved and violates CEQA.

There is no explanation and no substantial evidence to justify why the CAP was not subject to a supplemental EIR with public notice and opportunity for comment. There is no showing that the County properly considered whether the CAP is within the scope of the PEIR; a supplemental EIR would require the Board of Supervisors to confront this issue. Further, environmental review is necessary to ascertain whether the CAP met the necessary GHG emission reductions when considering the CAP is merely hortatory and contains no enforcement mechanism for reducing GHG emissions.

In this regard, the case has some similarities to Center for Sierra Nevada Conservation v. County of El Dorado (2012) 202 Cal.App.4th 1156 (County of El Dorado). That case, like this one, involved a program EIR for a general plan. Id. at 1175. One of the mitigation measures called for implementation of a mitigation fee program. The county later did an initial study for the fee program, and stopped short of a more complete environmental review. The court of appeal held a tiered EIR was required to examine the specific mitigation measures and fee rate, rejecting the argument that the fee program was merely implementation of the general plan. Here, the CAP "provides the specific details associated with the ... General Plan ... strategies and measures for greenhouse gas (GHG) emissions and reductions that were not available during program-level analysis of the General Plan" (AR 16:1357), and as such, the CAP should have been the subject of a supplemental EIR [as opposed to an IS followed by addendum to the PEIR]. Thus, the CAP was not properly approved and violated CEQA.

Turning to the second central question identified above: the court finds that even if the CAP was properly approved, it does not comport with the requirements of Mitigation Measure CC-1.2; thus, the CAP violates CEQA. In this regard, there is no substantial evidence in the AR that the CAP satisfies Mitigation Measure CC-1.2; in fact, the evidence in the AR discloses the reverse is true.

For instance, the AR shows the CAP fails to meet Mitigation Measure CC-1.2 GHG emission reduction goals and targets. The CAP admits "The CAP itself does not itself ensure reductions ..." [AR 2:74]; the CAP regards its goals and strategies as mere recommendations [AR 2:27 - "The goals and strategies recommended in the CAP ..."]; and the CAP describes itself as a "living document," a "working document," and "a platform for the County to build strategies to meet its emission-reduction targets" [AR 2:15, 73.] As the court noted in its December 2012 decision, the County's adoption of the CAP occurs "in a setting in which hundreds of thousands of people in [the County] live in low-lying areas near the coast, and are thus susceptible to rising sea levels associated with global climate change." There is no time for "building strategies" or "living documents;" as the PEIR quite rightly found, enforceable mitigation measures are necessary now.

The AR shows the CAP contains no detailed deadlines for GHG emission reductions. This is borne out by the consultant who prepared the CAP for the County pointing out early on "[t]he Draft CAP neglects to describe how the County will monitor the effectiveness of the plan and its component measures over time" [AR 83:1947, last paragraph]; the County's admission "the CAP did not set such dates" [County's opposition memorandum, page 11:21-22]; and the word "deadline" appears but once in the CAP, in describing Mitigation Measure CC-1.2 [AR 2:76.]

Further, the AR shows the CAP contains no enforcement mechanism for reducing GHG emissions. The

CAP's goals and strategies are mere recommendations [AR 2:27 - "The goals and strategies recommended in the CAP..."]; there is no indication in the CAP how the measures described for community activities (Chapter 3) and the County's operations (Chapter 4) can or will be enforced [AR 2:26-57, 59-63]; the County contends five of the CAP's twenty-seven GHG reduction measures are required under state law and thus enforceable but fails to address the other twenty-two reduction measures [County's opposition memorandum, page 9:1-8; and Exhibit A to County's opposition memorandum]; and no evidence is related in the AR that supports the "belief" of the County staffer that GHG emissions reductions can be achieved through only education and incentives [AR 20:1581 and AR 23:1629 -"It is important to note that, as currently written, none of these measures are mandates. We believe that the emission reduction can be achieved through education and incentives."]

At the April 19 argument, County Counsel suggested that some of the absent benchmarks can be found in the Minutes of the Board reflecting its approval of the CAP. Having reviewed the minutes, the court agrees with Sierra Club that the minutes do not set forth enforceable standards or create any mandatory duty that could later be enforced if not carried out.

As such, the CAP, even if it was properly approved, does not comport with the requirements of Mitigation Measure CC-1.2, and thus violates CEQA.

In view of the foregoing, the court finds it unnecessary to address the subsidiary dispute over whether the guidelines for determining thresholds of significance for GHG were adopted or not. Compare Natter v. Palm Desert Rent Review Comm'n., 190 Cal. App. 3d 994, 1001 (1987); Young v. Three for One Oil Royalties, 1 Cal. 2d 639, 647-648 (1934).

Let a writ of mandate issue forthwith, directing respondent the County of San Diego to set aside its June 20, 2012 approval of the CAP. Counsel for petitioners is directed to forthwith submit same to the court for signature.

IT IS SO ORDERED.

Tim B Taylor

Judge Timothy Taylor

ATTACHMENT

3

An Alternative Development Scenario for San Diego County

A Report Prepared on Behalf of the Cleveland National Forest Foundation

Prepared by Larry Orman, Executive Director

July 2, 2010

Contents

Summary

In order to protect natural systems and rural landscapes, as well as to ensure urban growth occurs primarily in incorporated areas, it is reasonable for the County of San Diego to consider a growth alternative in its General Plan process that reduces by approximately two-thirds the number of housing units current proposed for unincorporated areas and to re-allocate these units to cities within the County. Such a scenario would, by 2030, still leave substantial residential capacity in cities for future growth needs.

1. INTRODUCTION

The purpose of this project is to provide an assessment of whether it is reasonable to shift significant anticipated growth from unincorporated areas of San Diego County into existing cities in the County, in order to lessen pressure on important natural resources, reduce sprawl and foster compact and more sustainable development. This memorandum outlines the findings of this assessment.

The San Diego County proposed General Plan Update has been used, in consultation with CNFF, to determine what growth might be redirected. Data from the San Diego Association of Governments (SANDAG), has been used to assess the feasibility of allocating that increment of growth to existing cities.

GreenInfo Network is a non-profit organization founded in 1996 to support other public interest organizations and public agencies with computer mapping and related information technology. Using Geographic Information Systems (GIS) software and other tools, GreenInfo Network aides approximately 80 groups a year on a wide range of projects, covering environmental protection, land use, social justice, public health and other matters. With its twelve professional staff, GreenInfo Network has assisted over 300 organizations and agencies since its founding.

GreenInfo Network has background in the issues described in this report, including extensive work on a recent infill model for the San Francisco Bay Area and the expertise of its Executive Director, Larry Orman, who has considerable experience in local and regional land use planning.

2. KEY INFORMATION ELEMENTS

San Diego County is fortunate to have a large amount of very competent geographic and demographic data to support land use planning. In particular, SANDAG , uses extremely robust GIS data and growth modeling that allow very effective review and assessment of the type conducted for this project. Their data and other sources used include the following:

1. San Diego County Draft General Plan Update: The draft plan provided the numbers of people and dwelling units proposed for each unincorporated community, or planning area, in the County. Cleveland National Forest Foundation (CNFF) has determined that approximately 66 percent of this growth can be redirected to cities from these unincorporated areas, ensuring that substantial gains would be possible in resource protection, sprawl avoidance and urban sustainability. See Appendix 1, CNFF memorandum dated May 27, 2010.

2. SANDAG Population projections: SANDAG maintains population projections for the entire County. Its most recently adopted version is its 2050 series (February 2010), which was used in determining future projected growth in incorporated areas. An explicit reference to the primary data table used is noted in the Appendix title page at the end of this report. Information and data about the 2050 projections is available thru the SANDAG web site:

http://www.sandag.org/index.asp?projectid=355&fuseaction=projects.detail

It should be noted that SANDAG's 2050 projection series and the County's projections differ somewhat by 2030, with SANDAG showing slightly more growth in the unincorporated area . The County General Plan EIR suggests that the SANDAG 2050 series will be closer to the County's estimate (the SANDAG 2050 projections were published mid-way through the development of this report). However, in this project, we use the County data to define the units to be allocated from the unincorporated areas, and SANDAG for the city data, to better match any data on unincorporated areas to what the County itself is using.

3. Residential Land Inventory: The third major source of data used in this assessment was the SANDAG Employment and Residential Land Inventory ("Inventory"), published in September 2009. This Inventory is attached to this report as Appendix 3. This extensive SANDAG project assessed the residential and employment capacity of every parcel ownership in the County, using existing City general plans as the primary factor to determine what each parcel might be capable of holding in the future. Our report relies upon the Inventory's residential capacity data and does not assume any changes in use of land for employment purposes.

The SANDAG Inventory looks only at parcel-based site capacity. Issues of infrastructure, traffic and other factors were not assessed in great detail. However, since the Inventory uses adopted general plans as a key element in defining capacity, it can be reasonably assumed that such constraints and factors have effectively been taken into account.

The Inventory has two major information elements: (a) an estimation of capacity without regard to time frame; and (b) a stratification of that capacity into short, intermediate and longer

term categories based on market timing and related factors. This report does not assess the timing of the growth allocated from the unincorporated areas to the cities (in part because the amount allocated to each city ended up being a relatively small percent of its overall capacity).

The Inventory is extremely detailed and has been extensively reviewed by a multi-interest task force and through map and data review with every city. Most of the future residential capacity the Inventory defines was based on existing City general plans with some adjustments that were agreeable to the cities (information in this paragraph confirmed in phone call with Marney Cox, SANDAG on 2/9/10; see also Page 50 of the Inventory which notes this involvement by local jurisdictions. It is also worth noting that the Employment and Residential Inventory Report was developed by a broadly representative project task force of 37 people from government and the private sector, among them representatives of 13 of the county's 17 cities).

The Inventory was being developed at the same time new projections ("Series 12", the 2050 projections) were being prepared. Because of the many variables involved in both efforts, the Inventory report underscores that its capacity estimates are just that – estimates, and at a particular point in time. The Inventory report also cautions against comparisons of the forecast and the Inventory (page 55), given that different factors are used in each set of numbers. However, the Inventory remains a highly researched data set and is indeed the only resource for any assessment of development capacity in relation to future demands from population growth and change. It is for this reason that the Inventory estimates of future capacity are used in this report to show the approximate scale of how much residential capacity might remain at different growth projections or allocations.

While the Inventory suggests a great deal of capacity for reuse of existing developed areas along with some new, higher densities on vacant land, history shows that many plan-defined densities end up being somewhat reduced when projects are actually built. However, it is also the case that communities generally, and many in San Diego in specific, have been significantly increasing the amount of residential development allowed in many areas in the past few years and it is likely, according to SANDAG staff, that some cities may adopt new plans that allow for even more capacity than indicated in the Inventory. [1]

Finally, it is worth noting that the Inventory report (page 1-2) itself emphasizes the goal of channeling much of the region's future growth into existing incorporated areas:

> The RCP [Regional Comprehensive Plan by SANDAG] contains a long-term vision for the San Diego region, expressed in a malleable framework in which local and regional decisions will be made over time to improve our quality of life. To achieve this goal, the RCP is based on the premise of change; we must plan for our future differently than we have our past for the reasons listed in the elements of the RCP. For example, the vision is to create an urban form comprised of sustainable and balanced communities with a high quality of life.
>
> To help achieve the vision's goals, local jurisdictions, acting together as SANDAG, have endorsed an urban form that channels much of the region's future growth into existing urban (primarily incorporated) communities, preserving and protecting the lifestyle and sensitive environment of our rural (primarily unincorporated) areas. One outcome of this change would be that an increasing

[1] Chula Vista, Oceanside and Vista are a few of the cities that are taking actions to create livable transit oriented communities.

proportion of our growth will likely occur as redevelopment and urban infill. Thus, the data in this report provides a unique snapshot as well as insight into how prepared the region is today to accommodate the RCP vision of a new urban form.

In addition to this data and these analyses, GreenInfo Network made use of a number of other SANDAG GIS data sets, including the parcel layer, transportation system, community planning area boundaries and others. This data was used for visual display and review; no spatial analysis was performed.

Finally, as part of the project, GreenInfo Network reviewed SANDAG meeting agendas and minutes relating to the San Diego County General Plan Update, the Employment and Residential Land Inventory project, and related information posted on the SANDAG web site.

3. ALTERNATIVE COUNTY GROWTH SCENARIO

Is it reasonable to consider redirecting into cities two-thirds of housing unit growth projected for the unincorporated areas?

This is the key question that this report seeks to answer.

The method used in testing whether this growth scenario is reasonable consisted of the following steps:

1. Identify the residential units to be allocated AWAY from each unincorporated planning area (66% of the proposed number of residential units in the County General Plan Preferred Alternative). This calculation was prepared by CNFF; the methodology and assumptions are described in Appendix 1. *Map 1 shows the location of units to be reallocated to cities.*

2. Identify the 2030 projected NEW residential units for all cities (incorporated areas) from the SANDAG 2050 projections (2030 appears to best correlate with the time horizon of the County's draft General Plan).

3. ASSIGN the units in (1) to each city, proportionate to each city's percent of the total unit capacity as identified in the 2009 Residential and Employment Inventory. Note: this capacity is not time dependent; it is simply the total number of units that could be built under the planning and other conditions operative at the time of the Inventory (2008-09).

4. ADD the 2030 city projections and the assigned units to arrive at each city's total 2030 residential unit allotment.

5. SUBTRACT the 2030 total units from each city's CAPACITY, as defined in the Inventory. The inventory capacity used for this analysis is the mid-point of the Inventory High/Low ranges, for both the vacant land units and the units on redevelopable sites.

6. Review the REMAINING Inventory capacity for each city, to determine: (a) the share of total unit capacity represented by the allocation of units from county planning areas; and (b) the remaining capacity after this allocation. *See Map 2 which identifies these capacities.*

CONCLUSION: Applying these steps, as indicated in the three tables that follow, shows that almost all cities* in San Diego County have substantially more residential capacity than demand by 2030, even with the additional allocation of units from the County. Removing 47,500 units from the County and redirecting them to cities still leaves the cities of the County with 158,000 units of residential capacity for future growth beyond 2030.

This strongly indicates that a scenario using this approach would be entirely reasonable in the County's process of developing its general plan. See Map 2, later, which illustrates this conclusion.

**The City of Del Mar is an exception, with no units assigned, due to its very small unit capacity.*

RE-ALLOCATING RESIDENTIAL UNITS PROPOSED IN DRAFT COUNTY GENERAL PLAN FROM COUNTY UNINCORPORATED AREAS

PLANNING AREA	Draft GP 2008 Pop	Draft GP 2008 DUs	Draft GP Buildout* Pop	Draft GP Buildout* DUs	Draft GP Pop Increase	Draft GP DU Increase	New Pop Increase	New DU Increase	Alloc. of DUs to cities
Alpine	17,350	6,444	27,390	10,070	10,040	3,626	3,470	1,289	2,337
Bonsall	9,890	3,837	15,940	5,917	6,050	2,080	1,978	767	1,313
Central Mountain	4,646	2,127	6,100	2,869	1,454	742	465	213	529
County Islands	2,098	619	2,500	742	402	123	402	123	0
Crest-Dehesa	10,211	3,530	11,390	4,071	1,179	541	1,021	353	188
Desert	3,520	3,140	17,890	12,377	14,370	9,237	352	314	8,923
Fallbrook	44,378	15,665	61,080	21,211	16,702	5,546	8,876	3,133	2,413
Jamul-Dulzura	9,915	3,167	17,680	5,711	7,765	2,544	992	317	445
Julian	3,049	1,686	4,280	2,300	1,231	614	305	169	0
Lakeside	75,447	27,411	86,720	31,291	11,273	3,880	11,273	3,880	3,147
Mountain Empire	6,472	2,694	14,720	6,110	8,248	3,416	647	269	9,198
North County Metro	42,639	15,970	82,080	29,160	39,441	13,190	10,660	3,993	2,270
North Mountain	2,416	1,515	7,110	3,936	4,694	2,421	242	152	2,243
Otay**	4,690	5	14,780	2,248	10,090	2,243	469	1	2,201
Pala-Pauma	5,618	1,940	12,930	4,335	7,312	2,395	562	194	183
Pendleton-De Luz	43,792	6,667	36,160	7,033	(7,632)	366	(3,816)	183	479
Rainbow	1,815	683	3,640	1,299	1,825	616	363	137	3,809
Ramona	36,753	11,997	55,500	18,205	18,747	6,208	7,351	2,399	0
San Dieguito	30,489	10,854	33,470	12,588	2,981	1,734	2,981	1,734	0
Spring Valley	62,377	20,512	66,990	21,953	4,613	1,441	4,613	1,441	0
Sweetwater	13,187	4,519	15,490	5,275	2,303	756	2,303	756	0
Valle De Oro	42,743	15,477	45,110	16,235	2,367	758	2,367	758	0
Valley Center	18,269	6,513	39,320	13,577	21,051	7,064	3,654	1,303	5,761
TOTAL UNINCORP'D	**491,764**	**166,972**	**678,270**	**238,513**	**186,506**	**71,541**	**61,527**	**23,876**	**47,665**

Source: San Diego County Draft General Plan Draft EIR, pgs 1-43-44, 2.12-22, 27; Cleveland National Forest Foundation ("CNFF")
*The County General Plan does not define a specific date for its projections – in this report, "buildout" is assumed to be approximately 2030. ** 5 DUs in 2008 is from EIR directly, 1-44.

CITY POPULATION AND DWELLING UNIT PROJECTIONS, 2008 and 2030 (from SANDAG 2050 Projections)

							INCREASES, 2008-2030	
CITY	**2008 POP**	**2008 DUs**	**Pop/DU**	**2030 POP**	**2030 DUs**	**Pop/DU**	**Pop Inc 2030**	**DU Inc 2030**
Carlsbad	103,406	43,496	2.4	123,551	49,851	2.5	20,145	6,355
Chula Vista	230,397	77,484	3.0	289,044	94,858	3.0	58,647	17,374
Coronado	23,030	9,543	2.4	26,800	9,637	2.8	3,770	94
Del Mar	4,561	2,535	1.8	4,916	2,606	1.9	355	71
El Cajon	97,555	35,596	2.7	128,547	45,123	2.8	30,992	9,527
Encinitas	63,615	24,805	2.6	73,052	27,882	2.6	9,437	3,077
Escondido	143,259	47,392	3.0	165,267	52,778	3.1	22,008	5,386
Imperial Beach	28,092	9,851	2.9	30,574	10,510	2.9	2,482	659
La Mesa	56,445	25,019	2.3	65,984	28,104	2.3	9,539	3,085
Lemon Grove	25,511	8,820	2.9	28,171	9,381	3.0	2,660	561
National City	56,144	15,773	3.6	69,306	18,804	3.7	13,162	3,031
Oceanside	178,102	64,456	2.8	209,602	73,425	2.9	31,500	8,969
Poway	50,744	16,313	3.1	57,951	18,221	3.2	7,207	1,908
San Diego	1,333,617	508,436	2.6	1,689,254	629,475	2.7	355,637	121,039
San Marcos	82,419	27,556	3.0	101,298	33,095	3.1	18,879	5,539
Santee	55,850	19,538	2.9	69,868	23,798	2.9	14,018	4,260
Solana Beach	13,447	6,509	2.1	14,924	6,869	2.2	1,477	360
Vista	95,400	30,650	3.1	105,062	32,508	3.2	9,662	1,858
TOTAL for CITIES	**2,641,594**	**973,772**	2.7	**3,253,171**	**1,166,925**	2.8	**601,915**	**191,295**
Unincorporated	*489,958*	*166,882*	2.9	*616,829*	*202,882*	3.0	126,871	36,000
TOTAL ALL	**3,131,552**	**1,140,654**	2.7	**3,870,000**	**1,369,807**	2.8	**738,448**	**229,153**

Source: SANDAG, 2050 projections

ALLOCATION OF UNINCORPORATED GROWTH INCREMENT TO CITIES

CITY	2008-2030 Addl. DUs Projected	TOTAL DU CAPACITY from Inventory*	SURPLUS DU Capacity	% *Allocated Among Cities*	DUs from County allocated to cities	% Surplus Used by County Allocation	Remaining DUs	Remaining DU Capacity
Carlsbad	6,355	9,234	2,879	*2%*	1,102	38%	1,777	62%
Chula Vista	17,374	43,410	26,036	*11%*	5,181	20%	20,855	80%
Coronado	94	783	689	*0%*	93	13%	596	87%
Del Mar**	71	56	(15)	*0%*	-	0%	(15)	100%
El Cajon	9,527	11,038	1,511	*3%*	1,103	73%	408	27%
Encinitas	3,077	3,655	578	*1%*	436	75%	142	25%
Escondido	5,386	14,337	8,951	*4%*	1,711	19%	7,240	81%
Imperial Beach	659	3,828	3,169	*1%*	457	14%	2,712	86%
La Mesa	3,085	5,650	2,565	*1%*	674	26%	1,891	74%
Lemon Grove	561	2,220	1,659	*1%*	265	16%	1,394	84%
National City	3,031	8,103	5,072	*2%*	967	19%	4,105	81%
Oceanside	8,969	12,438	3,469	*3%*	1,484	43%	1,985	57%
Poway	1,908	3,041	1,133	*1%*	363	32%	770	68%
San Diego	121,039	252,855	131,816	*63%*	30,399	23%	101,417	77%
San Marcos	5,539	11,510	5,971	*3%*	1,374	23%	4,597	77%
Santee	4,260	6,738	2,478	*2%*	804	32%	1,674	68%
Solana Beach	360	458	98	*0%*	55	56%	43	44%
Vista	1,858	10,043	8,185	*2%*	1,199	15%	6,986	85%
TOTAL for CITIES	193,153	399,393	206,240	*100%*	47,667	23%	158,573	77%

Source: SANDAG 2050 pop. projs., Emply & Res Land Inventory 2009 (*mid-point calculation); **Del Mar showed less capacity than SANDAG projection.

4. VISUALIZING DEVELOPMENT CALLED FOR INFILL SCENARIO

The SANDAG Employment and Residential Inventory defines many types of residential growth in evaluating capacity. The following is a list of five general residential types that applied to the cities of San Diego in this assessment:

- Infill development of some single family and multi-family sites
- Redevelopment/conversion of some single family sites to multi-family units
- Conversion of some mobile home parks to single family or multi-family unit development
- Conversion of some employment sites to residential or mixed uses
- Development of vacant land – single family, multifamily or mixed use development on "greenfield" sites that are currently undeveloped

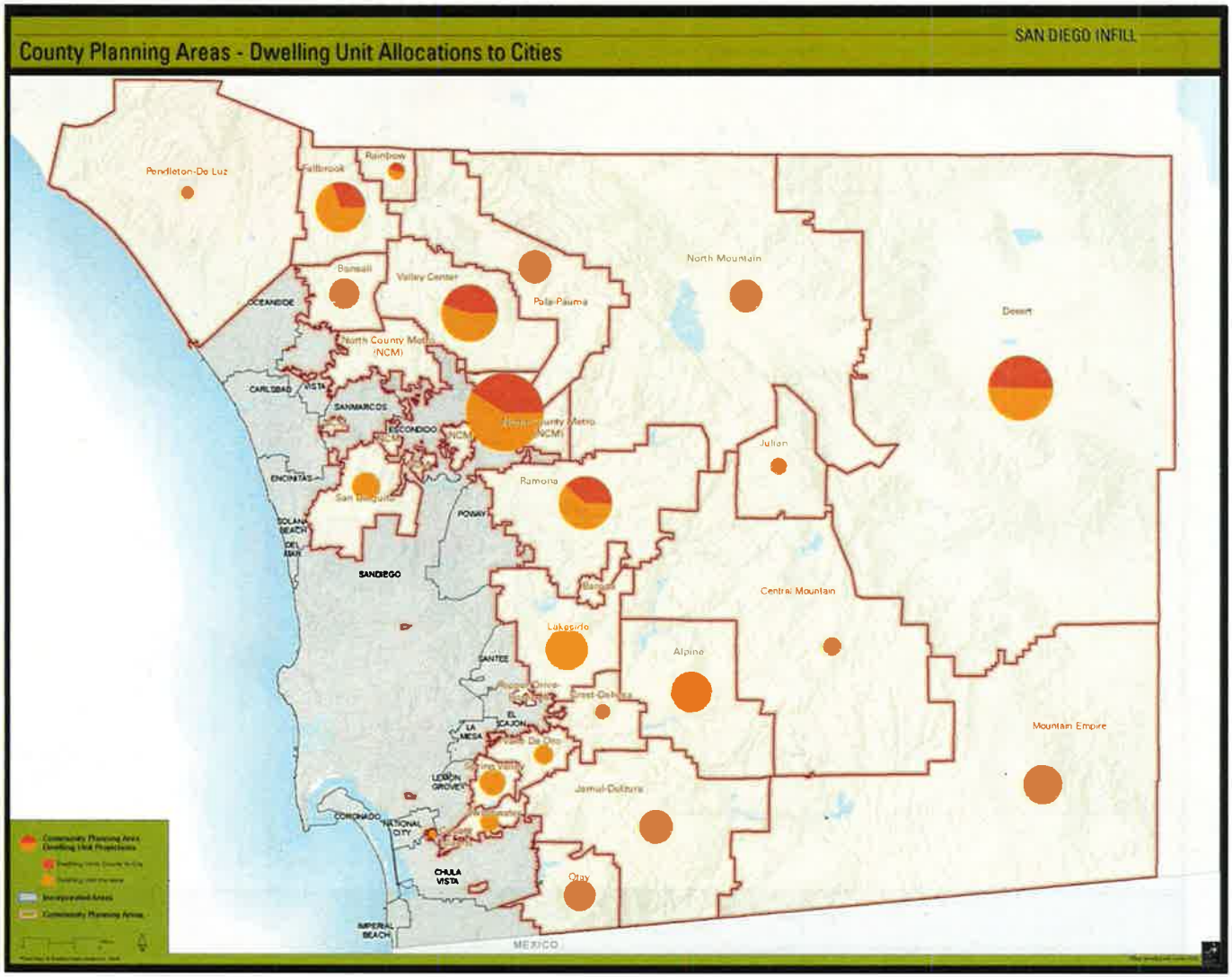
These types of residential development are all common in San Diego and most California metropolitan areas, where urban housing is being built at rising densities.

The Alternative Growth Scenario outlined in this report is, like most of the SANDAG Regional Comprehensive Plan, based on these types of housing growth as defined more fully in the Employment and Residential Inventory report. The adjacent figure, entitled 25th and Commercial Street Station, provides a visual representation of this type of infill development. This graphic shows the particular parcels and their residential capacities, around a potential transit station just east of downtown San Diego.

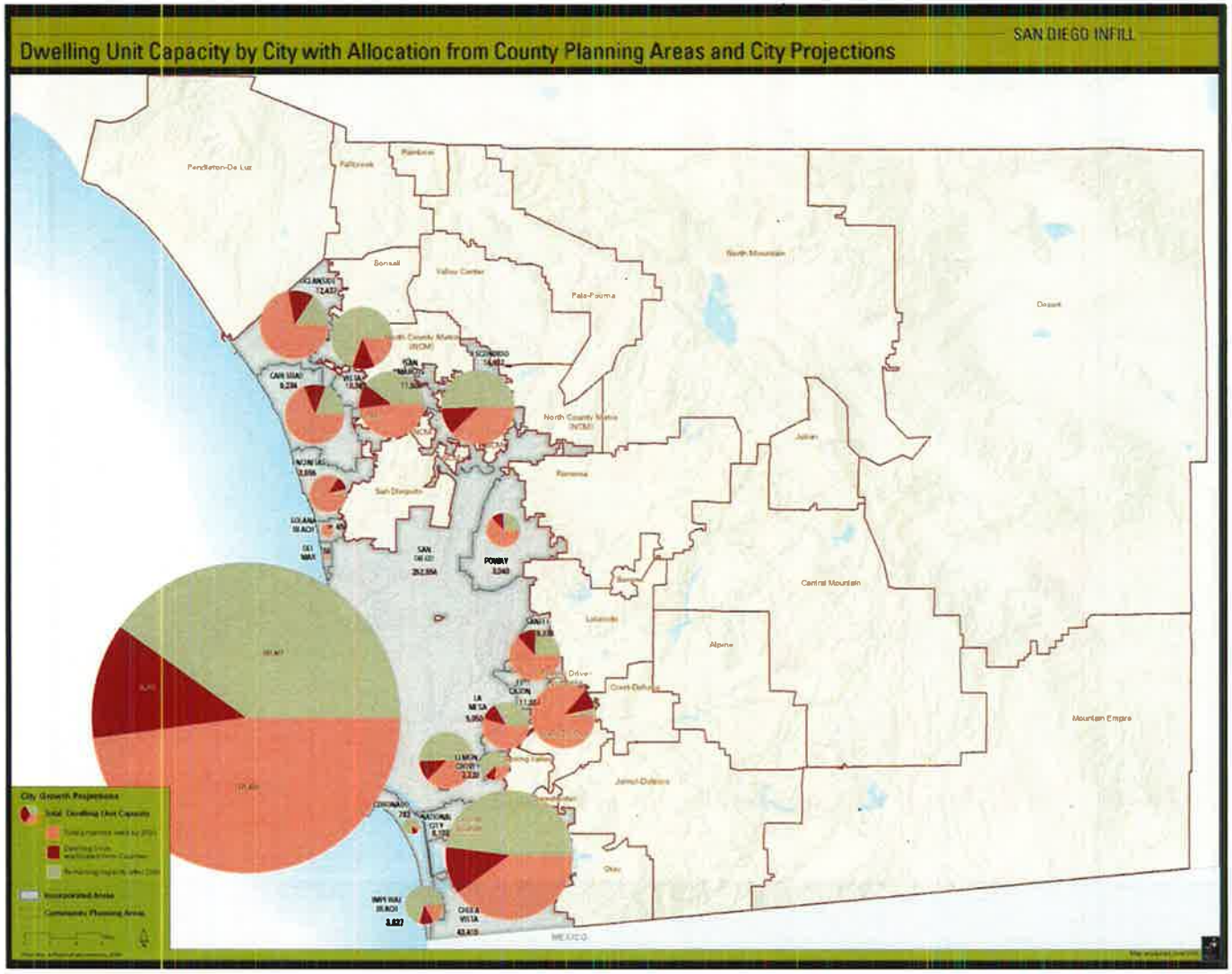
The simulation presented on the following page provides an example of how a typical suburban corridor could be redeveloped with urban scale housing and retail/commercial uses. These simulations are widely used to help policy makers and citizens alike realize the great transformations that can turn currently desolate areas into vibrant urban places.

Simulation of how a commercial street might be developed into an urban center (simulation by Urban Advantage – www.urbanadvantage.com)

MAP 1 – Dwelling Units in County Planning Areas



MAP 2 – Dwelling Unit Capacities in Cities



APPENDICES TO REPORT

(omitted)

Appendix 1:

Method for Re-Allocation of County Residential Units

Prepared by Duncan McFetridge and Crystal Mohr on behalf of the Cleveland National Forest Foundation

May 27, 2010

Appendix 2: (Excel table not included, available for public download as noted)

SANDAG 2050 Growth Projections

Excel data tables from the 2050 projections – available from: http://datawarehouse.sandag.org/

Primary table used: **Cities and the Unincorporated Area.xls**

Prepared by SANDAG staff

February 2010

Appendix 3:

2009 Employment and Residential Land Inventory and Market Analysis

SANDAG

September 30, 2009