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Sent via email and U.S. Mail

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Re: Otay Ranch Village 14 and Planning Areas 16 & 19 Project “Amendment” and CEQA Addendum

Dear Mr. Mattson:

The Center for Biological Diversity (“Center”) submits the following comments on the above-referenced matter. The Center has participated extensively in the administrative process leading up to the Board of Supervisors’ approval on June 26, 2019 of the Otay Village 14 Project (“Approved Project”) and the associated environmental review process. The Center submitted comments to the County Planning Department on the Draft Environmental Impact Report for the Approved Project on April 16, 2018, submitted comments to the Board of Supervisors on the Final Environmental Impact Report for the Approved Project on June 21, 2019, and submitted additional comments to the Board regarding changes to the public documents for the project and the “Dispute Resolution Agreement” associated with the project on June 26, 2019. We submit these further comments to object to the County’s proposal to approve a new project in reliance on the prior inadequate environmental review for the Approved Project.

As we explained in our April 16, 2018 and June 21, 2019 comment letters, the Environmental Impact Report (“EIR”) for the Approved Project was deficient in numerous ways. For example, the EIR failed to adequately analyze and mitigate the Approved Project’s wildfire impacts, impacts to biological resources (including the federally listed Quino checkerspot butterfly), greenhouse gas impacts, or analyze water supply to the Approved Project. As the County is aware, upon the Board’s approval of the Approved Project, the Center, along with the

California Chaparral Institute and Preserve Wild Santee, filed a writ action in San Diego County Superior Court detailing, *inter alia*, the County’s violations of the California Environmental Quality Act (“CEQA”) when it approved the Approved Project and certified the EIR. That case, *Center for Biological Diversity et al. v. County of San Diego, et al.*, San Diego County Superior Court Case No. 37-2019-00038747 (filed July 25, 2019) is pending. Two other environmental organizations also brought related lawsuits against the County over its inadequate environmental review for the Approved Project.

The project proponent now seeks approval for a new, alternative project that was not previously presented to the Planning Commission, not previously disclosed to the public, and not described or analyzed in the EIR or any other environmental document that the Center is aware of. The County’s own proposed CEQA Addendum acknowledges that the new project was not analyzed as an alternative in the EIR for the Approved Project. (See January 2, 2020 Addendum and Checklist [“Addendum”] at p. 6.) Yet, the County plans to rely on that EIR to satisfy its obligations under CEQA in conjunction with the approval of the new project. The County may not simply treat various lands in the vicinity of the Proposed Project area as fungible for purposes of environmental review—and, as explained below, the lands in question are *not* fungible.

The EIR for the Proposed Project contains numerous legal flaws and shortcomings, including those that the Center identified in its comments on the Draft and Final EIR, which comments this letter incorporates by reference, including all attachments and exhibits.¹ Because the EIR does not provide a legally adequate environmental analysis for the Approved Project, it cannot do so for the new project. The new project’s reliance on this EIR simply perpetuates its flaws.

Furthermore, even had the EIR been legally adequate—which it was not—substantial evidence demonstrates that as compared to the Approved Project the new project would have substantially more severe significant effects than disclosed in the previously certified EIR. For example, the County acknowledges that under the new project, there would be a net loss of federally designated critical habitat for the endangered Quino checkerspot butterfly compared to the Approved Project. (Addendum at p. 29.) The Addendum also discloses that new project’s development footprint would be located on top of the locations of numerous recorded Quino checkerspot butterfly sightings—whereas the Final EIR asserted that the Approved Project’s impacts to the species were less than significant in part because it claimed there had been no sightings within the development footprint for the Approved Project.² Yet the County wrongly

¹ Because the Center’s April 16, 2018, June 21, 2019, and June 26, 2019 letters were already transmitted to the Board, along with their attachments and exhibits and should already be maintained in the Board’s file for this matter, we do not include duplicates here.

² The Center disputes the accuracy of the EIR’s claims regarding Quino occupancy within the Proposed Project’s development footprint. (See FEIR at 2.4-12 [“[T]he [Approved] Project Area is not currently considered to be occupied by Quino checkerspot butterfly.”].) Nonetheless, taken at face-value, the EIR’s Quino sighting data compel the conclusion that the new project would have a substantially more significant effect on Quino-occupied habitat. According to Appendix B of the *Biological Resources Technical Memorandum for the Proposed Project Amendment – Otay Ranch Village 14 and Planning Areas 16/19*, in 2017, there were zero sightings within the development footprint of the Approved Project, but four sightings within the development footprint of the new project; in 2018, there were zero sightings within the development footprint of the Approved Project, but a sighting

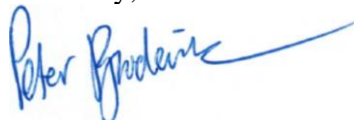
concludes, contrary to this evidence, that the new project's substantially more severe impacts to Quino checkerspot butterfly would not be significant. (Addendum at p. 29.) This alone requires the preparation of a subsequent or supplemental EIR under CEQA Guidelines (14 Cal. Code Regs § 15000 et seq.) sections 15162 and 15163.

We urge the County to deny the project proponent's request to approve a new project. At the very least, the County should prepare and recirculate a subsequent or supplemental EIR that studies the new project and remedies the numerous deficiencies the Center identified in its prior comments on the Draft and Final EIR for the Approved Project.

Please include this letter in the County's file for this matter and as evidence to be considered by the Board. Given the possibility that the Center will be required to pursue legal remedies to ensure the County complies with its legal obligations, including those arising under CEQA, we would like to remind the County of its duty to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the County with respect to the Project, and includes "pretty much everything that ever came near a proposed [project] or [] the agency's compliance with CEQA . . ." (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the County's representatives or employees, that relate to the Project, including any correspondence, emails, and text messages sent between the County's representatives or employees and the Applicant's representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the County (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

Please do not hesitate to contact the Center with any questions.

Sincerely,



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of nine individuals within the development footprint of the new project; in 2019, there were zero sightings within the development footprint of the Approved Project, but nine individuals cited at four locations within the development footprint of the new project. (*Biological Resources Technical Memorandum for the Proposed Project Amendment – Otay Ranch Village 14 and Planning Areas 16/19*, Appendix B at B-1 to B-2.) Appendix B of the *Biological Resources Technical Memorandum for the Proposed Project Amendment – Otay Ranch Village 14 and Planning Areas 16/19* inexplicably provides only three years' worth of Quino checkerspot butterfly sightings (2017, 2018, and 2019), though historical data about such sightings is available as far back as 1990 (see FEIR at 2.4-47). The County should perform the comparison for *all* years for which observation data is available.