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February 17, 2020

Via Electronic Mail

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Planning & Development Services
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Re: Otay Ranch Village 14 and Planning Area 16/19 – Proposed Project
Amendment

Dear Mr. Mattson:

This firm represents Endangered Habitats League (EHL) regarding the Otay Ranch Village 14 and Planning Areas 16/19 development proposal, which the County initially approve in June 2019. Because approval of the Village 14 Project (“Approved Project”), including its certified EIR, violated the California Environmental Quality Act, State Planning and Zoning Law, and other legal requirements, it is currently being challenged by three separate lawsuits.

The Proposed Project Amendment (“PPA”) does not remedy any of the legal inadequacies that plague the Approved Project. Rather, the PPA contemplates constructing 1,266 residential units, an increase of 147 units over what the Approved Project contemplated (1,119 units), within an ecologically sensitive area of Proctor Valley. Environmental Review Update Checklist Form for Projects with Previously Approved Environmental Documents (“Addendum”) at 6. Indeed, the PPA calls for developing hundreds of acres of the state-owned Rancho Jamul Ecological Preserve, which the California Department of Fish and Wildlife (“CDFW”) acquired with public funding to permanently protect and preserve sensitive and endangered habit and species, in addition to other natural and cultural resources.

Notably, adopting an addendum cannot cure the numerous legal inadequacies in the certified Village 14 EIR. *See Ukiah Citizens for Safety First v. City of Ukiah* (2016)

248 Cal.App.4th 256, 265-67. Invalidating that CEQA document will necessarily invalidate any administrative approval based upon it, including any County or responsible agency approvals intended to effectuate the PPA. Nor does the Addendum address or cure any of the new severe environmental impacts expected to occur by intensifying in Proctor Valley or developing a State ecological preserve.

To the contrary, the only legal path forward for the County and the applicant is to decertify the Village 14 EIR, rescind the project approvals, and proceed with a new project proposal and environmental review that does not violate state law.

I. Approving the PPA with an Addendum Would Violate CEQA.

A. The Addendum Is Defective as an Informational Document.

Like any component of an EIR, an addendum must effectuate CEQA's fundamental purpose to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Ass'n v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123. The CEQA Guidelines highlight an addendum's important informational role in the EIR process: "The *decision-making body shall consider the addendum* with the final EIR . . . *prior to making a decision on the project.*" CEQA Guidelines § 15164(d) (emphasis added). If an addendum contains a misleading or inadequate discussion of environmental impacts, or fails "to include relevant evidence," it is "inadequate as an informational document." *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.

Here, and as described further below, the Addendum is fundamentally flawed as an informational document. It repeatedly fails to include information necessary for decisionmakers to meaningfully compare the PPA's impacts to impacts from the Approved Project. For example, although the Addendum states that the PPA's operational emissions of air pollutants will be significant and unavoidable, it does not disclose whether PPA emissions are *greater* than operational emissions from the Approved Project. *See* Addendum at 22-23. Rather, the Addendum states in vague and conclusory fashion these emissions would be "similar to the Approved Project." But without *actually comparing* PPA emissions to the Approved Project, it is impossible for decisionmakers to determine the gravity of the PPA's emissions, or whether their severity requires the County to prepare an SEIR to better assess and mitigate these impacts.

Similarly, the Addendum reveals the presence of an ancient landslide on the proposed development site area that was not previously disclosed or analyzed in the Final EIR. The Addendum concedes that the presence of this landslide poses a "potentially

significant impact[],” but it fails to disclose the location or size of the landslide, or the planned uses for that portion of the project site. Addendum at 42. Although, the Addendum asserts that the landslide debris will be removed as part of the project—not as an enforceable mitigation measure as CEQA requires (see *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656, 658)—without describing the scope of the landslide, or the amount of earthwork required to remediate it, it is impossible for decision makers to determine whether the PPA can adequately mitigate the risk of future landslides, or to understand the scope and impacts from any earthwork that would be necessary to stabilize soils in this landslide areas.

Similar cursory conclusions pervade the Addendum. While the document repeatedly asserts that the PPA will have impacts that are similar to or less than the Approved Project’s, it repeatedly fails to provide comparative *evidence* to support that conclusion. As a result, the County’s decisionmakers lack necessary information to determine whether the County may proceed with an Addendum, or instead must prepare and SEIR.

B. The County Cannot Adopt the PPA Without Preparing an SEIR.

Even if the Addendum did provide adequate information to decisionmakers, as discussed below, under these circumstances CEQA requires the County to prepare a subsequent or supplemental EIR (“SEIR”). An SEIR is required where:

- (1) “Substantial changes are proposed in the project which will require major revisions to the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) “Substantial changes occur with respect to the circumstances under which the project is to be undertaken which will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) “New information of substantial importance” emerges which shows any of the following:
 - a. The project will result in a previously undiscussed significant effect;

- b. Previously studied significant effects will be substantially more severe;
- c. The agency declines to adopt feasible mitigation measures or alternatives previously rejected as infeasible; or
- d. The agency rejects new mitigation measures or alternatives that would substantially reduce a significant impact.

Pub. Res. Code § 21166; Guidelines § 15162. “If any of these events occur prior to project approval, *a subsequent EIR must be prepared* before approval is granted.” *Mira Monte Homeowners Ass’n v. County of Ventura* (1985) 165 Cal.App.3d 357, 363-66 (emphasis added). The agency’s determination that none of the events has occurred must be supported by substantial evidence in the light of the whole record. CEQA Guidelines § 15162(a). As discussed below, this standard requires that the County prepare an SEIR before approving the PPA.

The Final EIR for the Approved Project found that the Approved Project would result in significant and unavoidable impacts to transportation and air quality (in addition to other impacts). Addendum at 2. The Final EIR erred in its determination that the Approved Project’s impacts relating to biological resources, land use, greenhouse gas emissions, energy, and other areas would be less than significant. Addendum at 2; 38. As discussed below, the increase in units proposed by the PPA and the location of those units would result in substantially more severe transportation, air quality, greenhouse gas emissions, and energy impacts than identified in the Approved Project Final EIR. Grading and developing a large portion of the Rancho Jamul Ecological Preserve would also cause significant impacts that the Final EIR did not address. Consequently, the County erred by not analyzing these impacts in a subsequent EIR.

1. Biological Resources

As detailed in the Hamilton Biological analysis of the proposed Addendum, new information regarding impacts from developing CDFW’s land shows that the PPA would cause previously undisclosed and more severe impacts to biological resources than described in the certified EIR. A recent biological analysis prepared by CDFW confirms that the PPA would develop habitat that is currently occupied by the endangered Quino Checkerspot Butterfly, despite contrary assertions in the Village 14 EIR. CDFW’s data also show new significant habitat features, including a new vernal pool area, on the CDFW land proposed for development, which were not considered in the County’s environmental review of the Approved Project.

Moreover, like the Approved Project, the PPA proposes to develop areas that the County's MSCP and Subarea Plan (and associated federal and state take permits) designate as "No Take Authorized" and "Preserve." Specifically, the PPA would develop all of PV 2 and a portion of PV 3, even though the MSCP designates these areas as both Preserve and mitigation for other development allowed by the MSCP. Although the PPA asserts that the County is pursuing an MSCP amendment to allow take in these preserve areas, that amendment has not been adopted by the County or approved by the wildlife agencies. Thus, approving the PPA as proposed would violate the MSCP and County's associate take permits, and would result in significant impacts to biological resources and land use inconsistency.

2. Transportation Impacts

The PPA would generate an additional 195 average daily trips compared to the Approved Project. Addendum at 58. The Addendum suggests that a 1.5 percent increase in average daily trips would not result in a new significant impact or substantially increase the severity of the impacts identified in the Final EIR. *Id.* This is incorrect. California courts have explicitly rejected this "drop-in-the-bucket" approach to environmental impact analysis. In *Kings County Farm Bureau*, the court invalidated an EIR that concluded that increased ozone impacts from a project would be insignificant because it would emit relatively minor amounts of precursor pollutants compared with the large volume already emitted by other sources. 221 Cal.App.3d at 717-18. The *Kings County Farm Bureau* court aptly stated, "The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin." *Id.* at 718.

Likewise, here, the County may not minimize the PPA's transportation impacts by suggesting that the volume of traffic would be nominal compared to the Approved Project. The Final EIR determined that the Project's transportation impacts would be significant and unavoidable even after mitigation measures are implemented. Addendum at 2. Clearly, traffic congestion on intersections and local and regional roadways will be severe once the Village 14 Project is built out. The addition of 195 vehicular trips would exacerbate traffic congestion on these intersections and roadways. These adverse conditions weigh in favor of a finding of significance. *Kings County Farm Bureau*, 221 Cal.App.3d at 718. An EIR must be prepared to analyze this serious impact.

3. Air Quality Impacts

Because the PPA would result in increased vehicular trips compared to the Approved Project, it also would result in increased mobile source criteria air pollutant emissions. Indeed, the PM₁₀ emissions generated by the PPA's mobile sources would exceed the County's thresholds of significance even with the implementation of mitigation measures. Addendum Table 6, at 23. The Addendum correctly identifies this impact as significant and unavoidable. *Id.*

The San Diego Air Basin is designated as a nonattainment area for PM₁₀. *See* Approved Project Final EIR at 2.3-9. Given that ambient air quality standards have been established with the explicit intent of protecting human health and welfare, exceedance of the air quality standard is a severe environmental impact. *Id.* at 2.3-4. Consequently, in light of the severe air quality problem plaguing the San Diego Air Basin, the increase in PM₁₀ emissions resulting from the PPA must be considered to be a substantially more severe air quality impact. An EIR must be prepared to analyze this impact.

4. Climate Change Impacts

The PPA would result in an increase in greenhouse gas emissions compared to the Approved Project. Addendum at 44. The Addendum relies on the same greenhouse gas mitigation measures as included in the Final EIR and asserts that with the implementation of these measures, impacts relating to greenhouse gas emissions for the PPA would be less than significant. Addendum at 46. This conclusion does not withstand scrutiny. For the reasons comprehensively discussed in our June 19, 2019 letter to Board of Supervisors, the County lacks evidentiary support that the mitigation measures identified in the Final EIR would mitigate the Approved Project's greenhouse gas impacts. Because the Addendum relies on these same measures for the PPA, it also lacks evidentiary support for the assertion that the PPA's greenhouse gas impacts would be less than significant.

As we explained in our June 19, 2019 letter, humanity is facing a true climate crisis and is rapidly running out of time to confront it. In light of the situation, *any* increase in emissions must be considered a substantially more severe climate change impact. An EIR must be prepared to analyze this serious impact.

5. Energy Impacts

The Addendum asserts that the source of petroleum use from the PPA would be the same as from the Approved Project. Addendum at 38. It also asserts that the PPA

would not cause any new significant environmental effects or a substantial increase in the severity of previously identified significant energy impacts. The Addendum is wrong on both counts.

Due to its remote location, the PPA, like the Approved Project, would result in a substantial increase in VMT and associated gasoline consumption. The Approved Project would result in more than 50 million VMT each year and consume about 1,718,084 gallons of gasoline and 123,215 gallons of diesel every year. Approved Project Final at 3.1.9-21. Because the PPA would result in increased vehicles trips compared to the Approved Project, it would also result in increased petroleum consumption. The Final EIR lacked evidentiary support for its conclusion that the Approved Project's petroleum consumption would not be inefficient and wasteful. Because the Addendum relies on the same flawed assumptions as the Final EIR, it also lacks evidentiary support for its conclusion that the PPA would not result in inefficient and wasteful energy consumption. A subsequent EIR must be prepared to analyze this impact.

II. Approval of the PPA Would Violate State Planning and Zoning Laws and Other County Obligations.

As we informed the County before its original project approval, the Village 14 project suffers from legal flaws beyond the County's deficient CEQA analysis.¹ Rather than remedy these inadequacies, the PPA perpetuates them.

- **Inconsistency with the MSCP/Subarea Plan** – As discussed above, by proposing development on “Preserve” and “No Take Authorized” areas (PV 2 and PV 3), the PPA violates the County's obligations under the adopted MSCP and Subarea Plan.
- **Inconsistency with the County's General Plan** – General Plan Policy H-1.9 “[r]equires developers to provide an affordable housing component when requesting a General Plan amendment for a large-scale residential project when this is legally permissible.” Neither the Approved Project nor the PPA meet this important general plan provision because neither provide an affordable housing component as part of the proposed Village 14 development.

In sum, the County may not proceed with approvals for the PPA on the basis of the proposed Addendum. The County must prepare and circulate a legally adequate EIR, and require the project applicant to redesign the project so that it complies with the law.

¹These comments are contained in the County's project files on the Village 14 project.

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Very truly yours,

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