

**Otay Ranch Village 14 and Planning Area 16/19  
Proposed Project Amendment  
Responses to Late Comment Letters**

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### I. INTRODUCTION

The County has received late comment letters and attachments submitted by the public after the Board of Supervisor docketing the Proposed Project Amendment (PPA) on June 3, 2020. Under CEQA Guidelines Section 15162, the Proposed Project Amendment would not result in new or substantially greater impacts than the Approved Project Final EIR; therefore, an EIR Addendum was prepared to address the impacts of the PPA. The County was not legally required to provide a public review period on the Village 14 and Planning Area 16/19 EIR Addendum to the Final EIR. However, the County afforded 45 days for public review in association with the circulation of the Otay Ranch Village 14 and Planning Area 16/19 Specific Plan Amendment and Revised Tentative Map. The public comment period for the Specific Plan Amendment and Revised Tentative Map began on January 9, 2020, and ended on February 23, 2020. No comment letters were received on the contents of the Specific Plan Amendment and Revised Tentative Map; however, comments were received on the EIR Addendum. These comments were addressed by the County prior to the April 3, 2020 hearing of the San Diego County Planning Commission and are available on the County website. Subsequently, submitted additional comments on the Proposed Project Amendment these are considered late comments.

When a comment letter is received after the close of the public comment period, a lead agency does not have an obligation to respond. (Pub. Resources Code, §21091(d)(1); Pub. Resources Code, §21092.5(c).) Accordingly, the County is not required to provide a written response to late comment letters. (See, CEQA Guidelines, §15088(a)). For information purposes, the County has elected to respond to late letters, but without waiving its position that written responses to late comment letters are not required by law.

### II. RESPONSES

The comment letter and its various attachments raise issues pertaining to greenhouse gas (GHG) emissions, biological resources, fire-safety, energy use, and visual effects. Although CEQA does not require the County to address late letters as explained above, the County, with the assistance of experts in various technical disciplines including consultants from the County's Approved Consultant List, has prepared responses to the issues raised therein. The following responses are provided:

Response to Shute, Mihaly and Weinberger, LLP

Response to Reax Engineering

Response to Griffin Cove Transportation Consulting, PLLC

Response to Hamilton Biological

Response to Osborne and Ballmer

## A. RESPONSE TO SHUTE, MIHALY AND WEINBERGER, LLP

### Wildfire

The commenter criticizes the Fire Safety Memorandum for asserting that the PPA will not increase ignition sources or frequency in the project area. The comment calls this assertion “far-fetched” and claims it ignores or misinterprets scientific studies that show new development within the Wildland Urban Interface (WUI) increases the risk of fire ignition. As it happens, however, the technical literature does not show a simple or direct correlation between new development in the WUI and increases in fire ignition or acres burned. For example, Syphard and Keeley, in a recent article not included among the commenter’s letter attachments, found that fire frequency in California increased through most of the 20<sup>th</sup> century, peaking in 1980, but has since decreased steadily through 2016, despite significant population growth and more development in the WUI. (Keeley and Syphard, “Historical Patterns of Wildfire Ignition Sources in California Ecosystems,” *International Journal of Wildland Fire*, 2018, Vo. 27, pp. 781-799. Here are some of the article’s key findings:

- “Particularly striking about California ignitions is the steady increase in the number of fires since the early 1900s until a peak c. 1980, followed by a marked drop in fire frequency up to 2016” (p. 793).
- “Factors that may have played a role in these historical patterns of ignitions and area burned are changes in: population density, infrastructure development, fire-prevention success, fire-suppression effectiveness, vegetation-management practices, climate, and possibly record-keeping accuracy” (p. 794).
- “Not directly related to changing demography is the significant decline in fires in the last several decades – while population continued to grow after 1980, fire frequency was negatively related to population density. This is consistent with the pattern of fire activity peaking under intermediate population density” (p. 796).
- “Decreasing ignitions over the last 4 decades is potentially reflective of increasing efficiency of fire prevention. However, it also likely reflects changes in human infrastructure; new roads in this area were tied to development projects that required demonstration of adequate fire response capabilities” (p. 796).
- “In addition, an important factor behind declining ignitions is quite possibly the emergence of the California Fire Safe Council in the early 1990s, which made significant contributions to fire-safety education” (p.796).

Keeley and Syphard also found that since 1980, arson fires had decreased substantially, both in terms of number and area burned (p. 797). They noticed the same downward trend with respect to fires caused by smoking, children playing with fire, and motor vehicles. (p. 797.) The only ignition source that resisted this trend was electrical powerlines; fires from this source continued to increase between 1980 and 2016. (p. 797.) According to the article, “[a]lthough powerlines do not account for many fires, they often account for substantial area burned . . . .” (p. 797). With regard to the PPA, however, power line ignitions are less of an issue, since all such lines will be buried. Note

also that San Diego Gas & Electric, which is the power provider in the project area, has embarked on an aggressive program to fire-harden its transmission line infrastructure and initiate systems that will enable it to predict (or quickly detect) dangerous wind events and adjust grid-power accordingly. These and other measures are set forth in SDG&E's 2020 Wildfire Mitigation Plan: [https://www.sdge.com/sites/default/files/regulatory/SDG%26E%202020%20Wildfire%20Mitigation%20Plan%2002-07-2020\\_0.pdf](https://www.sdge.com/sites/default/files/regulatory/SDG%26E%202020%20Wildfire%20Mitigation%20Plan%2002-07-2020_0.pdf) (Section 5, pages 37 through 182).

The findings set forth in "Historical Patterns of Wildfire Ignition Sources in California Ecosystems" indicate that the mere presence of new development in the WUI does not equate to increases in fire ignition or acres burned. Rather, the arrangement of the development within the landscape, as well as the fire-resistant features of the community and the homes themselves, will determine whether a given development will or will not add to the local or regional fire risk.

On page 3 of its May 27 letter, the commenter asserts that, according to the Addendum and Fire Safety Memorandum, "the PPA would not result in an increase in ignition because it contemplates 'higher density' housing." The commenter then states that the Fire Safety Memorandum, in drawing this conclusion, cited a 2015 study by Alexandra D. Syphard and Jon E. Keeley. Then the commenter indicates that, Ms. Syphard, in an email to the commenter disagreed with the Fire Safety Memorandum/Addendum's statement: "Syphard explains that, contrary to the Addendum's assertion, 'dense' projects within a wildlands interface context may actually create the highest risks of ignition." The comment, however, mischaracterizes the Addendum and the Fire Safety Memorandum, and does not faithfully or fully represent positions taken by Ms. Syphard in her published materials. For example, Ms. Syphard has consistently maintained in her various studies that low to medium density developments that are interspersed or inter-mixed with wildland vegetation have the highest risk of fire-related damage. Here are some examples:

- Alexandra D. Syphard and Jon E. Keeley, "Why Are So Many Structures Burning in California," *Fremontia*, 2020, p. 30 ["Data show that fires tend to be most frequent at low to intermediate housing and population densities."]
- Alexandra D. Syphard, Teresa J. Brennan, and Jon E. Keeley, "The Importance of Building Construction Materials Relative to Other Factors Affecting Structure Survival During Wildfire," *International Journal of Disaster Risk Reduction*, Vo. 21 (2017), p 141 ["These [low to medium density] exurban housing developments are also located within complex terrain and may be more difficult to access by fire suppression crews; thus, low housing density has shown to be a major factor contributing to structure destruction in the [San Diego County] region."]
- Patricia M Alexandre, Susan I. Stewart, Miranda H. Mockrin, Nicholas S. Keuler, Alexandra D. Syphard, Avi Bar-Massada, Murray K. Clayton, and Volker C. Radeloff, "The Relative Impact of Vegetation, Topography and Spatial Arrangement on Building Loss to Wildfires in Case Studies of California and Colorado," *Landscape Ecol.* 2016) Vo. 31, p. 416 ["The probability that a building is lost is highest in small, isolated building clusters with low to intermediate building density and few roads."]



- Alexandra D. Syphard, Avi Bar Massada, Van Butsic, and Jon E. Keeley, “Land Use Planning and Wildfire: Development Policies Influence Future Probability of Housing Loss,” *PLoS ONE* Vol 8, Issue 8 (2013), doi:10.1371/journal.pone.0071708.

Thus, the Addendum and Fire Safety Memorandum accurately reflect Ms. Syphard’s long-held position, which is that low-density development, when inter-mixed with wildland fuels, are at the high risk of fire damage, while higher-density development, such as that contemplated in the PPA fare much better. Higher-density communities tend to perform well because they are closer to roads and fire suppression services, and because they are designed to minimize fuel loads between structures. Such communities also tend to be newer and thus benefit from upgraded fire-resistant building materials.

In her email to the commenter, Ms. Syphard states that high-density housing located within a matrix of wildland vegetation is especially dangerous “because at very high densities, the relationship can switch to where houses closer than 50 m to each other are more likely to have structure to structure spread (of course, depending on the building materials).” (Shute Mihaly, p. 4.). This statement, however, is not consistent with the positions Ms. Syphard has taken in her published work. At the very least, it is incomplete, in that it reveals she was not provided PPA fire safety specifics and her statement does not account for the importance of modern, fire-resistant building materials in contemporary, higher-density housing developments. For example, in an article titled, “The Importance of Building Construction Materials Relative to Other Factors Affecting Structure Survival During Wildfire,” *International Journal of Disaster Risk Reduction*, Vol. 21 (2017), pp. 143-144, Ms. Syphard states that the results of her study “confirm the expectation that building construction and design play important roles in structure survival during large wind-driven fires events in San Diego County, CA.” In this same article, Ms. Syphard recommends that owners of older homes retrofit them with modern fire-hardening components, such as double-paned windows (p. 145). Ms. Syphard then draws the following conclusion:

The data in our study show that newer buildings are more likely to be constructed using the materials and design that our data show to be empirically associated with structural survival. This is an encouraging sign for new construction in the region, and it helps to explain why structure age was one of the most important variables in the landscape analysis. Clearly, building ordinances adopted by [San Diego] county are effectively changing the design of new housing to become more fire resilient (p. 146).

In this same article, Ms. Syphard explains why San Diego County is at the forefront of mandating fire-resistant housing materials:

The County of San Diego has been enforcing fire codes for building construction in the WUI since 1997, when it adopted a requirement for class “A” residential roof covering on new construction; which means that the roofing material must pass a relatively stringent series of fire tests. Adopted in 2001 and made a requirement in 2002, the first comprehensive WUI code in the county required, in addition to the above, dual glazed/tempered windows, residential fire sprinklers, rated exterior construction, fire resistant decks and patios, no eave vents, no paper-backed insulation in attics, and 30 m (100 ft) vegetation modifications around structures. The WUI fire code has undergone minor revisions in 2004 and 2008 in response to the large fire events of 2003 and

2007. These regulations for fire-safe building construction are enforced through the issuance of building construction permits and approval of new subdivisions and thus they do not apply to older homes (p.141).

This passage indicates that San Diego County is, and has been, at the forefront of requiring state-of-the-art fire-resistant construction for new homes. It also shows that the County, in response to the Cedar and Harris fires, has improved those fire-safety requirements and made them even more robust and protective. The Village 14 homes will be subject to these updated requirements. This was not the case with the homes that were destroyed in the Cedar Fire (2003), the Harris Fire (2007), the Tubbs Fire (Santa Rosa 2017), and Camp/Paradise Fire (Butte 2018).

The PPA is required to comply with the County's stringent housing material requirements, as listed above in the quoted passage from Ms. Syphard's article. The Final EIR and Addendum include the full list. In addition, the homes at the project will have closed eaves, and the roofs will be fitted with state-of-the-art ember-resistant vents. This last element – the ember-resistant vents – is a newer product not found in the homes that were featured in Ms. Syphard's studies. They are critically important, however, as they are designed to prevent the most dangerous source of structure ignition during wildfires – namely, embers penetrating the interior of homes.

In addition, the PPA community will have large Fuel Management Zones (FMZs) between the project perimeter and the outlying vegetation. The FMZs not only protect the homes, they protect fire-fighters as well, allowing more fire-fighting personnel to move to other, more vulnerable areas. The project will also construct its own fully staffed fire station, complete with a fire engine and related fire-fighting equipment. Further, the project includes new and/or improved roads that will make it easier for fire crews to access and attack any fire that may threaten the community. Note also that none of the proposed homes in the PPA will be placed in topographically risky locations, such as at the top of steep, naturally vegetated slopes or in canyon bottoms where wind-blown fire is a particular problem.

It does not appear that Ms. Syphard, in her email to the commenter, had been apprised of these Project elements or took them into account. Her reference to the homes lost in Julian during the 2003 Cedar Fire is indicative. Those homes were of an earlier vintage and did not have the benefit of modern fire-resistant construction or ongoing landscape fuel management that is inspected twice per year. Thus, they cannot be compared to the PPA homes which must comply with the County's update and stringent fire-hardening requirements. Moreover, the Julian homes were interspersed with vegetative fuel, something not permitted in modern developments such as that contemplated in the PPA.

### *HOA Fire Safety Measures*

The comment states that the Proposed Project's proposed Homeowners' Association's (HOA) fire safety measures are not assured, claiming the record lacks evidence that the HOA will be established or that the HOA will effectively implement and maintain fire safety measures assigned to it under the Proposed Project Amendment documents. The comment cites the Revised Fire Protection Plan, pages 16, 22, 25, and 35, and the EIR Addendum, pages 25-26; and states that neither the EIR nor the EIR Addendum provides any information on the Proposed Project's HOA, stating the EIR documents lack the required evidentiary support that the HOA would undertake

these fire safety measures. The comment goes further, stating, “[i]n fact, it is unclear whether an HOA would be formed at all.”

In addition, the comment states the EIR Addendum “makes no attempt” to identify the funding needed to ensure that the Proposed Project’s fire safety measures assigned to the HOA can be undertaken in perpetuity. Further, the comment states the EIR cannot assume that the eventual establishment of the HOA will be effective because it does not exist and neither the EIR nor the EIR Addendum evaluate how it would operate and whether it can or will effectively implement and maintain the fire safety role and responsibilities assigned to it.

Lastly, the comment states that the County has not provided any “reason or basis” for why it could not have developed the HOA fire safety “program” prior to Project approval.

Neither the County nor the Proposed Project Amendment applicant concur with these comments for the reasons provided below.

### *The HOA Process*

At the outset, EHL misunderstands the Proposed Project Amendment and the HOA process. The Proposed Project Amendment is a planned community or “common interest development (CID),” with a regulatory Specific Plan Amendment, Vesting Revised Tentative Subdivision Map, and other project documents that the County of San Diego (County) may conditionally approve in June 2020. The fundamental purpose behind a planned community or a CID is to allow individual homeowners the use of common area property and facilities and provide for a system of self-governance through an association of homeowners (*i.e.*, an HOA) within the community. Membership in the HOA is automatic. When a person buys a lot, home, townhouse, or condominium in an approved planned community, the person automatically becomes a member of the HOA and is subject to the HOA’s “Declaration of Covenants, Conditions, and Restrictions” (CC&Rs).

The CC&Rs describe the rights and obligations of the property owners/association members within the subdivision and the association itself. The CC&Rs run with the land, that is, the rights and obligations contained in the CC&Rs remain with the land, regardless of ownership, and pass from deed to deed as the land is transferred from one owner to another because the CC&Rs are recorded in the chain of title to each property within the subdivision. Buyers of property subject to the CC&Rs are presumed to accept them, having received constructive notice of them when they purchased the property (along with the deed and title report showing the CC&Rs recorded as an encumbrance on title).

The conditions, covenants, and restrictions contained in the CC&Rs are enforced by the HOA and the common facilities within the subdivision are generally owned by the HOA. In this regard, the HOA is considered quasi-governmental. That is, the CC&Rs supplement, and in some cases substitute for, the facilities and services that may otherwise be provided by local governmental agencies (cities and counties). Indeed, under California law, HOAs function almost ‘as a second municipal government, regulating home ownership on behalf of the community. In *Villa Milano Homeowners’ Assn. v. Il Devorge* (2000) 84 Cal.App.4th 819, 836, the Court of Appeal stated, “one clearly sees the association as a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government. As a ‘mini-government,’ the

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association provides to its members, in almost every case, utility services, road maintenance, street and common area lighting, and refuse removal. In many cases, it also provides security services and various forms of communication within the community. There is, moreover, a clear analogy to the municipal police and public safety functions...." ' [Citation.]" In short, homeowners' associations, through their enforcement of the CC&Rs, provide many services that permit a common interest development to flourish.

For the reasons explained below, the HOA is formed only after the "planned community or CID" project is approved by the local land use agency (city/county), and after the California Department of Real Estate (DRE) has processed and approved the HOA formation documents. (For further information responsive to EHL's comments, please see the Attachment 1, Letter from Nancy T. Scull, Sheppard, Mullin, Richter & Hamilton LLP, dated June 2, 2020.)

Aside from certain inapplicable exemptions, the Davis-Sterling Common Interest Development Act (DSA; Civil Code, § 4000, et seq.) requires common interest developments/subdivisions to be governed by an HOA. Therefore, by law if the proposed Project is approved, it must have an HOA. Accordingly, contrary to EHL's assertion, it is not "unclear" whether an HOA will be formed. The "planned community or CID" project, if approved, is required by law to form an HOA; it is not unclear, uncertain, or optional.

Once formed, the HOA has the powers enumerated by the "Declarations of Covenants, Conditions, and Restrictions (CC&Rs), its articles of incorporation, bylaws, and adopted rules and regulations. The most significant powers of the HOA are to enter contracts, assume obligations, and levy regular and special assessments on its members. The general purpose of the HOA, governed through its board of directors, is to maintain the common areas on behalf of the membership and to enforce the governing documents, including the CC&Rs. The CC&Rs are not prepared until the proposed "planned community or CID" is approved by the local land use jurisdiction (in this case, the County). The CC&Rs contain the ground rules for the operation of the HOA, including identifying the HOA's common area responsibilities, explaining the HOA's obligations to collect assessments, and enabling the HOA to sue homeowners to enforce the CC&Rs and pay assessments.

Importantly, once the land within a planned community is subdivided pursuant to the Subdivision Map Act, the second law governing subdivision developments in California is the Subdivided Land Act. This law governs the process by which property, once it has been subdivided, may be initially marketed, and sold to members of the public. The Subdivided Lands Act's primary purpose is to protect homeowners in the public sale, lease, or financing of "subdivisions" by, among other things, ensuring home buyers within new subdivisions are provided with adequate information on all matters affecting the property prior to making their purchase decision.

The California Department of Real Estate (DRE) is responsible for administering and enforcing the Subdivided Lands Act. Such administration generally consists of reviewing applications for public reports and issuing them. As stated, the DRE's role is to ensure that initial prospective home buyers receive adequate information about the subdivision. Toward that end, the public report application requires a substantial amount of information to be submitted by the "subdivider."

The DRE's involvement begins when the public report application is submitted and ends once the subdivider or developer conveys the last lot or unit in the subdivision covered by the public report. As part of the public report process, the DRE reviews the local land use agency's project approval documents, such as the approved specific plan, tentative map, conditions of approval, and other regulatory approval documents governing the subdivision. Of primary concern in the DRE's review of approved planned communities or CIDs is the way common area improvements will be owned, operated, and maintained. This review includes the assurance provided by the subdivider that improvements will be completed, and the way ownership of the improvements will be transferred to the HOA.

As required by law, the developer or subdivider forms the HOA to own, operate, and maintain the common area improvements in perpetuity. The DRE reviews and approves HOA formation and management documents, including the CC&Rs, the bylaws, the operating budget, and the provisions for transfer and control of the residential subdivision interests and common areas to the purchasers (HOA members) and the HOA. The DRE public report process discloses significant conditions and obligations that the home buyer or HOA is responsible to satisfy, such as those found in agency-approved conditions, project design features, environmental mitigation measures, regulatory requirements in the project-approval documents, and other significant restrictions or adopted policies, including fire safety requirements imposed on the homeowner or HOA.

The DRE's critical area of focus is operation of the HOA and the project during the selling stage of the new community, *i.e.*, that interim period from the times the HOA is formed until the last lot or unit is conveyed by the developer. During this period, the developer controls the HOA and is a major financial contributor to the HOA as the owner of unsold lots or units in the subdivision.

The DRE review focuses on, among other things: (a) the HOA budget (on standardized forms using DRE published cost and reserve data, or other justifiable cost data); (b) special arrangements for maintenance (and during the interim period, the developer will bear a large assessment burden, so the DRE ensures that the developer or subdivider actually contributes to the HOA as required); and (c) the CC&Rs (including the requirement that virtually every lot/unit will become subject to the CC&Rs when the developer makes the first conveyance to the purchaser, and this requirement ensures that the CC&Rs will be enforceable against the lots/units in the subdivision).

For further information regarding planned communities/subdivisions and the regulatory process, which follows approval of a planned community or CID project, please see DRE, "Guide to Understanding Residential Subdivisions in California," by Alberto Esquivel and Jaime R. Alvayay (DRE 2014). DRE 2014 is incorporated by reference and available for public review upon request to the County. (See also the DRE Subdivision Public Report Application Guide at <https://www.dre.ca.gov/files/pdf/sprag.pdf>).

### *The Project's HOA will be Established as Required by Project Approval Documents*

The Specific Plan Amendment, a regulatory document of the County, and the Vesting Revised Tentative Map, also a regulatory document required by the Subdivision Map Act, identify the improvements, facilities, maintenance, ownership, and access responsibilities of the Project's HOA. These HOA requirements will require Project CC&Rs as part of the mandatory Subdivided

Lands Act public report process overseen by DRE (see above), a process that is only initiated if the County decides to approve the proposed Project and adopts the Project approval documents by resolution or ordinance (e.g., Specific Plan Amendment; Public Facilities and Financing Plan [Appendix 4 to Specific Plan]; Village 14 and Planning 16//19 Vesting Revised Tentative Map; Fire Protection Plan; Wildland Fire Evacuation Plan; Preserve Edge Plan; etc.) Further, County conditions 102/107 and Mitigation Measure M-BI-19 require compliance with the Proposed Project's Fire Protection Plan, which references the Wildland Fire Evacuation Plan. If approved by the County, both the Fire Protection Plan and Evacuation Plan (regulatory documents) call for the Project's HOA and assign responsibilities to the HOA consistent with applicable law, including the Subdivided Lands Act and the DRE regulatory process for implementing that law.

### *Specific Plan Amendment and Public Facilities and Financing Plan*

The HOA responsibilities are discussed and identified in the Specific Plan Amendment, pages 61, 117, and Table 8. The Project's Public Facilities and Financing Plan (Appendix 4 to Specific Plan) also depicts on Table 2, page 5, the HOA construction and responsibilities for facilities and infrastructure with the proposed Project. The Specific Plan Amendment and its appendices are recommended for adoption by the County's Board of Supervisors as part of an approving resolution enforceable by the County. (Likewise, the Project's Revised Vesting Tentative Map is recommended for adoption by the County's Board as part of an approving resolution (which includes the County's adopted conditions of approval). The Tentative Map approval and conditions are also enforceable by the County.

### HOA Maintenance and Ownership of Facilities/Infrastructure

Examples of HOA responsibilities designed into the proposed Project include:

Private Roads: All internal roads other the Proctor Valley Road are private roads as designed on the Revised Tentative Map and as referenced in the Specific Plan Amendment, Table 8; and the HOA is assigned the maintenance, ownership, and access responsibilities for such roads. (See, e.g., Specific Plan Amendment, Table 8, page 118.)

Gated community - The Specific Plan Amendment states that all residential areas except areas R-7 (Multifamily) and R-13 (PA 19) are gated communities with eight private gates designed on the Revised Tentative Map and as referenced in the Specific Plan Amendment. Therefore 1,103 (87%) of the 1,266 homes are in private gated HOA communities. Multifamily common areas are also HOA per Department of Real Estate requirements in California, so 1,253 or 99% of the 1,266 homes require an HOA. (See Specific Plan Amendment, Pages 85-86.)

Specialty Village Lighting: This is in the Village Core and identified in the Specific Plan Amendment's related Design Guidelines. The HOA is assigned the maintenance and ownership responsibilities for such lighting. (See Specific Plan Amendment, Table 8, page 118.)

Mixed Use Parking Lot: The HOA is assigned responsibility to maintain and own this overflow parking lot, which is accessible to the public (for Park P1 and the Private Park PP). (See Specific Plan Amendment, Table 8, page 118, Table 8.)

Internal Open Space (HOA): There are 55 internal open space HOA lots (approximately 98.6 acres), designed on the Revised Tentative Map (see TM, Statistics, Sheet 17) and as referenced in the Specific Plan Amendment (see Table 8, page 118.) The HOA is assigned the responsibility to maintain and own the internal open space lots, which is accessible to the public. (See Specific Plan Amendment, Table 8, page 118.)

Private Parks: There are six swim clubs and private recreation facilities (9.5 acres) and 11 private pocket parks (2.1 acres total), designed on the Revised Tentative Map (see TM, Statistics, Sheet 17) and as referenced in the Specific Plan Amendment (see Table 8, page 118). The HOA is assigned the responsibility to maintain and own the private parks. (See Specific Plan Amendment, Table 8, page 118.)

Other: The Specific Plan Amendment provides that the Project's HOA may be assigned other responsibilities for facilities and infrastructure within the Project site and that they can be divided among the applicant, homebuilder, the HOA, the County, and existing and future public financing districts. Examples are on site trails and landscaped parkways. (See Specific Plan Amendment, page 117 and Table 8, page 118). As to on site trails and landscaped parkways, the HOA, County, or public financing district are all options for the maintenance and ownership of these public use facilities. This built-in flexibility is designed to accommodate the use of the best available funding mechanisms and provide home builder options — all of which is Department of Real Estate reviewed and approved prior to implementation as part of the subsequent public report process, if the Project's tentative subdivision map is approved.

### *The HOA is Assigned Fire Safety Measures to be Implemented Over the Life of the Project*

The Project's HOA is also assigned fire safety measures to be implemented over the life of the Project. Such measures are part of the Project regulatory documents which, if approved, govern Proposed Project Amendment implementation and are to be reviewed by the Department of Real Estate as part of the subsequent public report process. Examples are provided below.

#### Project Preserve Edge Plan (March 2020)

The Project's Preserve Edge Plan (March 2020) provides information about homeowner and HOA responsibilities on wall/access controls, fuel modification zones, invasive non-native plants, brush management, and manufactured slopes.

For example, walls and fences will be constructed outside the Resource Management Plan Preserve, within the Preserve Edge/Fuel Modification Zone and be maintained by the HOA or the County landscape monitoring firm. Homeowners may be responsible for maintaining the interior of perimeter walls and fences, pursuant to the CC&Rs. (See Preserve Edge Plan, pp. 28-29.)

Fuel Modification Zones (FMZs) are provided throughout the Project area, and in Zone 1a, the Proposed Project's HOA will include an architectural/landscape committee responsible for review and approval of landscape plans and be required to provide ongoing education to homeowners regarding fire adapted landscape maintenance. (See Preserve Edge Plan, pp. 35.) In Zone 2, all manufactured slopes will be serviced by a temporary, above-ground automatic irrigation system that will be turned off by the HOA or the County's landscape monitoring firm once the plantings are established but will remain in place. (See Preserve Edge Plan, p. 36.)

The Preserve Edge Plan includes guidelines and compliance measures prohibiting invasive non-native plants. The Project also maintains an approved plant list for brush management, prepared in consultation with a qualified biologist (Brock Ortega, Dudek) and an urban forestry and fire protection planning specialist (Michael Huff, Dudek). Proposed changes to the approved plant list must be approved by a qualified biologist and the County's Landscape Architect and the San Diego County Fire Authority. (See Preserve Edge Plan, p. 55.)

Weed monitoring is required during the plant establishment period (typically two to three years for shrubs and up to five years for trees) to prevent weeds on the manufactured slopes from spreading into the adjacent MSCP Preserve. *Either the HOA or the County's landscape monitoring firm will be responsible to check the irrigated slopes during plant establishment to verify that excessive runoff does not occur and that any weed infestations are controlled.* (See Preserve Edge Plan, p. 55.)

The Preserve Edge Plan includes guidelines and compliance measures for brush management, and the Project's HOA has been assigned the responsibility of brush management in the Project's Zone 2 FMZ. (See Preserve Edge Plan, p. 56.)

The Preserve Edge Plan includes guidelines and compliance measures for manufactured slopes. They are established as separate open space lots on the Revised Vesting Tentative Map and will be maintained by the HOA or the County's landscape maintenance firm. (See Preserve Edge Plan, p. 56.)

### Wildland Fire Evacuation Plan (March 2020)

The Proposed Project's Wildland Fire Evacuation Plan (March 2020) provides important HOA requirements related to fire safety. The first three pages of the plan focus on homeowner evacuation educational outreach efforts, primarily by and through the Project's HOA. For example, the HOA website will feature such fire evacuation outreach efforts, and the HOA will organize annual evacuation public outreach and maintain a fire safe page on the community website. The HOA website will include the Proposed Project's Wildland Fire Evacuation Plan and links to important citizen preparedness information. As stated in the plan, the HOA outreach would be used by the HOA to educate community residents as to their evacuation responsibilities and recommended approach during wildfires and other similar emergencies. (See Wildland Fire Evacuation Plan (March 2020), page 1-3.)

The HOA will also coordinate with local fire agencies to hold an annual fire safety and evacuation preparedness information meeting. At that meeting, important fire and evacuation information will be reviewed with the community residents. One focus of such meetings and of the HOA's annual message is for each resident to prepare and be familiar with their own "Ready, Set, Go!"



evacuation plan.” The focus of the “Ready, Set, Go!” evacuation plan is on public awareness and preparedness, especially for those living in the wildland-urban interface areas. (See Wildland Fire Evacuation Plan (March 2020), page 15.)

The HOA provides and distributes to each homeowner a complete copy of the Project’s Fire Protection Plan and the Wildland Fire Evacuation Plan, including materials from the “Ready, Set, Go!” program. The HOA also ensures the distribution of copies of the above materials to those individuals that purchase properties for resales, and to the management of multifamily residential and non-residential properties. The Wildland Fire Evacuation Plan makes it mandatory that the HOA actively participate as a partner with the San Diego County Fire Authority to assist with the coordination and distribution of fire safety information developed by the Fire Authority. (See Wildland Fire Evacuation Plan (March 2020), page 16.)

The Wildland Fire Evacuation Plan builds in flexibility to allow for adjustments and coordination during each construction phase of the Project. (See Wildland Fire Evacuation Plan (March 2020), page 18.) Importantly, the plan’s approach is to maintain the Project’s fuel modification landscape, infrastructure, and ignition resistant construction components according to wildfire and evacuation standards and the County’s Evacuation Annex Plan (Annex Q, 2014), and for residents to embrace the “Ready, Set, Go!” evacuation plan.”

### Fire Protection Plan Information

The Proposed Project’s Fire Protection Plan (December 2019) and Dudek’s earlier technical memorandum (June 24, 2019) titled, “Otay Ranch Village 14 and Planning Areas 16/19 Ignition Resistant Construction” (2019 Technical Memorandum), provide HOA information to the Department of Real Estate in conjunction with the subsequent public report process (if the Proposed Project Amendment is approved by the County’s Board of Supervisors).

For example, the 2019 Fire Protection Plan (Appendix 2 to the Specific Plan Amendment) was evaluated in the Project’s Final EIR and the EIR determined that the County Fire Authority-approved Fire Protection Plan complied with the requirements of the 2017 County Consolidated Fire Code and the 2016 California Fire and Building Codes. The plan’s recommendations, which will be required if the Specific Plan Amendment is approved by the County, include important fire safety requirements for the Project’s HOA, as follows:

1. A Construction Fire Prevention Plan will be prepared, detailing the important construction-phase restrictions and fire safety requirements to be implemented to reduce risk of ignitions and plans for responding to any potential ignitions.
2. Proposed Project buildings will be constructed of ignition-resistant materials based on the latest building and fire codes.
3. Fuel modification zones (FMZs) will be provided throughout the perimeter of the Project Area and will be up to 120 feet wide in most locations, including the rear yard areas, as part of the modified zone. Maintenance will occur as needed, and *the homeowner’s association (HOA) will annually hire a third-party, San Diego County Fire Authority-approved FMZ inspector, to provide annual certification that fuel modification meets the FPP requirements.*

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4. One-acre and larger lots (lots designated as 1, 2, or 3 acres) will include fuel modification equal to 100 feet in width from all combustible buildings of more than 250 square feet in size. The FMZ will begin at the structure and extend outward in all directions (i.e., front, sides, and rear of house). *Homeowners will be responsible for maintaining the FMZs and they will be included in the annual HOA or Approved Management Entity funded third-party inspections.*
5. Large lots in Planning Areas 16/19 would include limited building zones (LBZs) where the properties are adjacent to open space areas. The LBZs would designate buffer areas where no building would be allowed.
6. Fire apparatus access roads would be provided throughout the community, varying in width and configuration, but would all provide at least the minimum required unobstructed travel lanes, lengths, turnouts, turnarounds, and clearances required by the applicable code.
7. Firefighting staging areas and temporary refuge areas would be available throughout the development and along roadways and Project Area green spaces so that firefighters will be able to stage operations and seek temporary refuge from wildfire, if necessary.
8. Water capacity and delivery will provide for a reliable water source for operations and during emergencies requiring extended fire flow.
9. A site-specific evacuation plan has been prepared and includes input and review from [the San Diego County Fire Authority], law enforcement, and [the]San Diego County Office of Emergency Services.

The HOA would be responsible for the internal open space lots, including installation of irrigation, the planting of drought tolerant and fire-resistant plants, and the annual maintenance. (See Fire Protection Plan, p. 19.)

Exceeding Code requirements, the HOA is responsible for wildfire education and outreach, including coordinating the with the San Diego Fire Authority, overseeing the HOA landscape committee enforcement of fire safe landscaping, ensuring fire safety measures detailed in the Fire Protection Plan have been implemented, and educating residents on and preparing facility-wide “Ready, Set, Go!” plans. (See Fire Protection Plan, Table 8, p. 25.)

The Fire Protection Plan requires HOA-funded fuel modification and other zones inspected by qualified third-party inspectors and maintenance enforcement measures – measures that exceed Code requirements. (See Fire Protection Plan, Table 8, p. 26.)

Dudek’s earlier 2019 Technical Memorandum (June 24, 2019) provides useful insights into the value of an HOA in ensuring that required fire protection features are maintained as intended. (See 2019 Tech. Memo., pp. 1-6.)

## **Biological Resources**

For responses to claims made by Shute Mihaly regarding biological resources, including Quino checkerspot butterfly, habitat mapping, and Crotch bumble bee, refer to Responses to Hamilton Biological and Osborne/Ballmer.

### **Greenhouse Gas Emissions**

The following discussion responds to aspects of EHL's comment letter that are critical of the Project's GHG emissions analysis. Issues already addressed at length in the Project's record, such as the selection of the 30-year period for offsetting emissions under mitigation measure M-GHG-2 and the County's interpretation of General Plan Goal COS-20, are not discussed again. However, additional information that complements the analysis already provided in the certified EIR and proposed Addendum is included where helpful. The underlying conclusion remains unchanged by this additional, supportive information: The Project's attainment of a "net zero" GHG emissions level following the implementation of numerous on-site and off-site reduction strategies supports a determination that impacts to global climate change would be less than significant.

#### *The Project's Carbon Offsets Shall Be "Additional"*

EHL asserts that "M-GHG-1 and M-GHG-2 do not explicitly require that offset credits be additional." However, as previously explained by the County, when the California Natural Resources Agency (CNRA) adopted CEQA Guidelines section 15126.4(c)(3), it required that offsets be "not otherwise required" in order to establish functionally equivalent verbiage to additionality. During its rulemaking proceedings, CNRA squarely addressed the issue of additionality as follows:

[E]mission reductions that occur without a project would not normally qualify as mitigation ... [T]his interpretation of the CEQA statute and case law is consistent with the Legislature's directive in AB 32 that reductions relied on as part of a market-based compliance mechanism must be 'in addition to any [GHG] emission reduction otherwise required by law or regulation, and any other [GHG] emission reduction that otherwise would occur.' [citation omitted] While AB 32 and CEQA are separate statutes, the additionality concept may be applied analytically in the latter as follows: [GHG] emission reductions that are otherwise required by law or regulation would be appropriately considered part of the existing baseline ... Thus, ... the Natural Resources Agency has revised section 15126.4(c)(3) to state that mitigation includes: 'Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions.'

(CNRA, *Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97* (December 2009), pp. 88-89.)

Finally, note that some of the excerpts provided in **Section B** below from registry program manuals specifically address the criteria used by each registry to evaluate additionality and the other criteria listed in the Health & Safety Code. We highlight this to underscore that the registries are well versed in the Health & Safety Code criteria and have frameworks in place to ensure

achievement of all the Health & Safety Code criteria (i.e., real, permanent, quantifiable, verifiable, enforceable, and additional). The County has reviewed every protocol and methodology currently adopted and available on the websites of each of the registries cited in mitigation measures M-GHG-1 and M-GHG-2, and each protocol and methodology complies with relevant standards listed in Health & Safety Code Section 38562(d)(1) and (d)(2).

*The Project's Carbon Offsets Mitigation Parameters Are Adequate Under CEQA  
And Require Compliance With The Other Referenced Health & Safety Code Standards*

EHL contends that mitigation measures M-GHG-1 and M-GHG-2 fail to satisfy CEQA's mitigation standards because "[n]either measure even authorizes, much less requires, the County to ensure that the offset projects listed and the protocols used by offset registries comply with [California Health & Safety Code] section 38562's standards." EHL relatedly argues that County simply presumes that offsets will be adequate and effective and provides "no evidence the private registries' processes are designed to ensure compliance with these standards."

To begin, in the event the Proposed Project Amendment is approved, the County will need to administer the requirements of mitigation measures M-GHG-1 and M-GHG-2 and all conditions of approval over the course of Project implementation. Accordingly, before accepting an offset under the referenced mitigation, the County would confirm that the GHG reductions resulting from the offset are real, permanent, quantifiable, verifiable, enforceable and additional. That confirmation will be based on County outreach with the registry; discussions with trade organizations; data research; consideration of technology updates; and evaluation of other objective, verifiable sources. If the offset does not meet these other criteria, the offset shall not meet the requirements of this mitigation measure and cannot be used to reduce Project GHG emissions. This oversight is required by CEQA, a routine part of the County's duties as a land use agency, and necessarily includes review of compliance with each enumerated provision of mitigation measures M-GHG-1 and M-GHG-2. As such, it is not correct to conclude that the County has "impermissibly delegate[d] verification and enforcement to private third parties." If the County is unsatisfied with the offsets provided by the Project, the applicant will be notified as to the County's position and grading and/or building permits will not be issued by the County absent a satisfactory resolution. These mitigation measures also cannot be reasonably characterized as an instance of deferred mitigation with inadequate performance standards because mitigation measure M-GHG-1, for construction emissions, contains *seven* enumerated standards; and mitigation measure M-GHG-2, for operational emissions, contains *nine* enumerated standards.

Further, contrary to the comments, the County did not blindly incorporate the use of carbon offsets, as described in CEQA Guidelines section 15126.4(c)(3) as a means to reduce GHG emissions. Instead, the County determined that the registries identified in the mitigation measures are dutifully targeting the environmental integrity of carbon offsets through articulated commitments and measured standards based on the County's review and evaluation of the registries' program manuals, reference documents, guidance materials, and protocols publicly available on the websites of the recognized registries. For example, the excerpts below confirm that the registries expressly contemplate and achieve the criteria referenced in the Health &

Safety Code when developing offset protocols and issuing offset credits.<sup>1</sup> (The excerpts provided below are from generally applicable documents of the registries that guide all aspects of their programming and not specific offset protocols, as the spectrum of offset protocols available changes over time as the regulatory and technology framework evolves.<sup>2</sup>)

### Climate Action Reserve's Reserve Offset Program Manual (dated November 12, 2019)

Page 1: "The Climate Action Reserve is an offsets program working to ensure integrity, transparency, and financial value in the North American carbon market. It does this by establishing regulatory quality standards for the development, quantification, and verification of GHG emission reduction projects in North America; issuing carbon offset credits known as Climate Reserve Tonnes (CRTs) generated from such projects; and tracking the transaction of credits over time in a transparent, publicly-accessible system. ***Adherence to the Reserve's high standards ensures that emission reductions associated with projects are real, permanent, and additional***, thereby instilling confidence in the environmental benefit, credibility, and efficiency of the U.S. carbon market." (Emphasis added.)

Page 2: "The Reserve uses a rigorous, open, and comprehensive process for developing all of its protocols. ***The Reserve's primary focus is on accurate and conservative GHG accounting to ensure that the emission reductions it certifies are real, permanent, additional, verifiable, and enforceable.***" (Emphasis added.)

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<sup>1</sup> The documents referenced below are attached to these responses for ease of reference.

<sup>2</sup> The timeline for a registry's scoping and development of new project concepts that culminate in the adoption of protocols varies, depending on the project type and available information. Generally speaking, registry staff begins by conducting internal research regarding the viability of a project concept, which registry staff may identify on their own or which interested stakeholders may submit. By way of example, the Climate Action Reserve considers the following, non-exclusive list of criteria when assessing the viability of a project concept for protocol development:

- Whether the GHG reductions would occur outside of proposed or adopted caps on GHG emissions (e.g., the Climate Action Reserve does not consider fossil fuel combustion reduction projects in California for protocol development because the State's Cap-and-Trade Program covers fuel refineries);
- Whether the GHG reductions are direct or indirect;
- Whether the GHG reductions are likely to be additional;
- Whether there is significant potential for reducing GHG emissions in the United States;
- Whether well-developed quantification methodologies are available;
- Whether accurate and cost-effective measurement and monitoring techniques are available; and,
- Whether the projects would have positive or negative environmental and social co-effects.

If the concept shows promise and seems suitable for the development of a standardized protocol, the Climate Action Reserve – for example – will host a formal public scoping meeting and a subsequent protocol kickoff meeting. From that point forward, the Climate Action Reserve's process generally takes 6 to 12 months, or more, to reach protocol adoption. (For additional information, please see the Climate Action Reserve's "Criteria for Protocol Development" webpage available at <https://www.climateactionreserve.org/how/future-protocol-development/criteria/> and "Future Protocol Development" webpage available at <https://www.climateactionreserve.org/how/future-protocol-development/>.)

The Reserve's program rules and procedures, eligibility criteria, and quantification and verification protocols are designed to ensure that GHG emission reductions certified by the Reserve are:

- **Real:** Estimated GHG reductions should not be an artifact of incomplete or inaccurate emissions accounting. Methods for quantifying emission reductions should be conservative to avoid overstating a project's effects. The effects of a project on GHG emissions must be comprehensively accounted for, including unintended effects (often referred to as "leakage").
- **Additional:** GHG reductions must be additional to any that would have occurred in the absence of the Climate Action Reserve, or of a market for GHG reductions generally. "Business as usual" reductions – i.e., those that would occur in the absence of a GHG reduction market – should not be eligible for registration.
- **Permanent:** In order to function as offsets to GHG emissions, GHG reductions must effectively be "permanent." This means, in general, that any net reversal in GHG reductions used to offset emissions must be fully accounted for and compensated through the achievement of additional reductions.
- **Verified:** GHG reductions must result from activities that have been verified on an *ex post* basis. Verification requires third-party review of monitoring data for a project to ensure the data are complete and accurate.
- **Owned Unambiguously:** No parties other than the registered project developer must be able to reasonably claim ownership of the GHG reductions."

Pages 6-8: "The Reserve applies a standardized approach to determining additionality, where performance standards and other conditions or criteria that projects must meet in order to be considered additional are determined by the Reserve. These standards and criteria are established separately for each project type and are designed to exclude non-additional (or "business as usual") projects from eligibility. In all cases, projects that are required by law or regulation are excluded. Other criteria and conditions are specified in each project protocol."

"The Reserve incorporates standardized additionality tests in all of its protocols. These tests generally have two components: a legal requirement test and a performance standard test."

"Projects are very likely to be non-additional if their implementation is required by law. A legal requirement test ensures that eligible projects (and/or the GHG reductions they achieve) would not have occurred anyway in order to comply with federal, state or local regulations, or other legally binding mandates. A project passes the legal requirement test when there are no laws, statutes, regulations, court orders, environmental mitigation agreements, permitting conditions or other legally binding mandates requiring its implementation, or requiring the implementation of similar measures that would achieve equivalent levels of GHG emission reductions.

In Reserve protocols, the specific provisions of the legal requirement test may differ depending on the project type. During protocol development, the Reserve performs a review of existing and pending regulations to identify any specific regulatory requirements that would mandate the implementation of project activities covered by the protocol. If such requirements are identified, then project activities in relevant jurisdictions may be categorically excluded from eligibility. In addition, Reserve protocols require project developers to review and determine whether federal, state or local regulations and other legal requirements (including local agency ordinances or rulings) require the implementation of their project. This review is always required at the time a project is registered and may be required each verification period thereafter depending on the protocol.”

“Projects that are not legally required may still be non-additional if they would have been implemented for other reasons, e.g., because they are attractive investments irrespective of carbon offset revenues. Performance standard tests are intended to screen out this potential set of projects. In developing performance standards, the Reserve considers financial, economic, social, and technological drivers that may affect decisions to undertake a particular project activity. Standards are specified such that the large majority of projects that meet the standard are unlikely to have been implemented due to these other drivers. In other words, incentives created by the carbon market are likely to have played a critical role in decisions to implement projects that meet the performance standard.

Although performance standard tests do not require individual project assessments of financial returns and implementation barriers, they are designed to reflect these factors in determining which projects are additional. Projects that pass a performance standard test should be those that – in the absence of a carbon offset market – would have insufficient financial returns or would face other types of insurmountable implementation barriers.”

American Carbon Registry's *The American Carbon Registry Standard: Requirements and Specifications for the Quantification, Monitoring, Reporting, Verification, and Registration of Project-Based GHG Emissions Reductions and Removals*, Version 6.0 (dated July 2019)

Page 9: “The ACR Standard details ACR’s requirements and specifications for the quantification, monitoring, and reporting of project-based GHG emissions reductions and removals, verification, project registration, and issuance of offsets. The Standard establishes the quality level that every project must meet in order for ACR to register its GHG emissions reductions and removals as tradable environmental assets.”

Page 10: “Adherence to the ACR Standard and associated methodologies will ensure that project-based offsets represent emissions reductions and removals that are **real, measurable, permanent, in excess of regulatory requirements and common practice, additional to business-as-usual, net of leakage, verified by a competent independent third party, and used only once.**” (Emphasis added.)

Page 24:

Verra's Verified Carbon Standard: Program Guide, Version 4.0 (dated September 19, 2019)

Page 3: "The VCS Program establishes the rules and requirements that operationalize the *VCS Standard* to enable the validation of GHG projects and programs, and the verification of GHG emission reductions and removals that can be used both in voluntary and compliance markets. The VCS Program aims to:

- 1) Establish clear rules and procedures to enable the successful development of GHG projects and programs, and the creation of high quality GHG credits;
- 2) Create a trusted and fungible GHG credit, the VCU;
- 3) Stimulate innovation in GHG mitigation technologies and measures as well as procedures for validation, verification and registration, all within a context of quality, credibility and transparency;
- 4) Provide a secure registry system for all VCU that offers assurance against double counting and provides transparency to the public;
- 5) Demonstrate workable frameworks and offer lessons that can be incorporated into other GHG programs and climate change regulation;
- 6) Provide oversight to ensure that investors, buyers and the market recognizes VCUs as being real, additional and permanent; and
- 7) Link carbon markets worldwide through a coherent and robust framework."

Page 10: "GHG emission reductions and removals verified under the VCS Program and issued as VCUs shall meet the following principles:

**Real**

All GHG emission reductions and removals and the projects or programs that generate them must be proven to have genuinely taken place.

**Measurable**

All GHG emission reductions and removals must be quantifiable using recognized measurement tools (including adjustments for uncertainty and leakage) against a credible emissions baseline.

**Permanent**



Where GHG emission reductions or removals are generated by projects or programs that carry a risk of reversibility, adequate safeguards must be in place to ensure that the risk of reversal is minimized and that, should any reversal occur, a mechanism is in place that guarantees the reductions or removals will be replaced or compensated.

### **Additional**

GHG emission reductions and removals must be additional to what would have happened under a business-as-usual scenario if the project had not been carried out.

### **Independently Audited**

All GHG emission reductions and removals must be verified to a reasonable level of assurance by an accredited validation/verification body with the expertise necessary in both the country and sector in which the project is taking place.

### **Unique**

Each VCU must be unique and must only be associated with a single GHG emission reduction or removal activity. There must be no double counting, or double claiming of the environmental benefit, in respect of the GHG emission reductions or removals.

### **Transparent**

There must be sufficient and appropriate public disclosure of GHG-related information to allow intended users to make decisions with reasonable confidence.

### **Conservative**

Conservative assumptions, values and procedures must be used to ensure that the GHG emission reductions or removals are not over-estimated.”

While these excerpts are not an exhaustive representation of the approaches deployed by the referenced carbon registries to ensure the environmental integrity of carbon offsets, they do readily demonstrate that the registries establish frameworks and standards by which to implement their offset programs.<sup>3</sup> Indeed, the registries rely on science-based standards and methodologies and oversee offset project implementation through independent verification to ensure that the

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<sup>3</sup> See also the attached “Application for Leave to File Amicus Curiae Brief in Support of Appellant County of San Diego; Proposed Brief of Element Markets, LLC” in the *Sierra Club v. County of San Diego* proceedings (Case No. D075478).

GHG reductions are real. This provides the County with substantial evidence it needs to rely on the registries' issuance of offset credits.

Relatedly, contrary to EHL's position, the County does not need to use the same processes deployed by the California Air Resources Board (CARB). For purposes of this discussion, the County is a local land use agency acting pursuant to its authority under CEQA, which sets forth standards for the adequacy of mitigation in CEQA Guidelines Section 15126.4. CARB, on the other hand and in the context discussed by EHL, is the state agency "charged with monitoring and regulating sources of emissions of [GHG]" acting pursuant to AB 32 (Health & Safety Code Section 38500 et seq.). The County can utilize any feasible and effective means of mitigating an environmental impact under CEQA, provided the approach is supported by substantial evidence. CARB is more singularly positioned and is acting as the state agency with regulatory authority on the subject of global climate change. As such, in lieu of utilizing carbon offset opportunities available in the existing voluntary marketplace, CARB is required by AB 32 to adopt regulatory standards to implement the Cap-and-Trade Program and create opportunities for offset utilization under it (see, e.g., Health & Safety Code Section 38562).

Finally, EHL continues to cite literature addressing offsets generated under the Clean Development Mechanism (CDM); see, e.g., Exhibit 12 to their May 27, 2020 letter. As the County previously explained in Response to Comment O-5-113 from the certified EIR, the County acknowledges the concerns raised regarding CDM offsets and does not interpret mitigation measures M-GHG-1 and M-GHG-2 as permitting the use of CDM offsets. The County does not intend to accept offsets purchased from CDM nor offsets generated under CDM protocols.

### *The Use of Forecasted Emission Reductions Is Not A Violation of CEQA*

EHL objects to the mitigation measures' allowance for "forecasted" emission reductions under the Climate Action Reserve's Climate Forward program, on the basis that the use of such offsets would allow the adverse impacts of GHG emissions to persist for years before being mitigated. However, EHL misunderstands the nature and functionality of the Reserve's Climate Forward program. As provided in the Reserve's "Climate Forward Program Manual," dated March 2020 and publicly available at <https://climateforward.org/program/program-and-project-forms/>, the intent of the program "is to recognize investments now that will reduce [GHG] emissions in order to mitigate emissions that will occur in the future from new types of economic activity (e.g., ... housing development ...)." While Forecasted Mitigation Units (FMUs) reflect mitigation actions that will produce a future stream of emission reductions, the FMUs only can be issued *after* an accredited confirmation body determines that the emissions-reducing project "has been implemented as described in the forecast methodology, and that the estimated emission reductions have been calculated accurately." Therefore, the emission reductions stream is not deferred to some uncertain time in the future, but rather commences – at the latest – upon issuance of the FMUs. And, under the referenced mitigation measures, FMUs must be provided to the County *before* the grading and building permits are issued and the Project's emissions generation begins. As such, contrary to EHL's argument, the mitigation would not be delivered behind schedule or too late.

It also is noted that the Reserve deploys multiple strategies to minimize potential underperformance in the Climate Forward program, such as “avoiding project types with unacceptably high risk, requiring implementation of ‘resilience measures’ to mitigate risks of project failure or under-performance, conservative GHG accounting approaches, and the use of a risk pool.” FMUs have been retired for CEQA mitigation purposes in other jurisdictions, as disclosed on the Reserve’s Retired Mitigation Units report available at <https://climateforward.apx.com/>. And, while it is a new and developing endeavor, the Reserve has long been a leader in this area, and consistently pursues environmental integrity and transparency to achieve GHG reduction objectives.

### *The Project’s Suite of On-Site Reduction Strategies Is Comprehensive*

Contrary to EHL’s claims, the Project’s suite of on-site emission reduction strategies was evaluated and determined to be fulsome. Because the Proposed Project Amendment would not alter the primary land use mix of the Approved Project, no new or unique reduction strategies are available. EHL offers three recommendations, each of which is addressed below:

#### 1. Building Electrification

The feasibility of, economic, energy portfolio diversity and policy ramifications of, and technology necessary to support building electrification for new residential and nonresidential development is being studied and evaluated by multiple state agencies, including the California Energy Commission (CEC), California Public Utilities Commission (CPUC) and CARB. Because the issue of building electrification and elimination of natural gas is being addressed from a policy perspective at the state level, the County has made a policy decision not to mandate wholesale building electrification in the absence of a state directive to do so through revisions to Title 24 of the California Code of Regulations.

While some local jurisdictions are pursuing mandatory electrification rules and regulations, there are pending legal challenges associated with such rules and regulations. For example, in July 2019, the City of Berkeley adopted an ordinance banning natural gas and requiring building electrification in new construction beginning in January 2020. However, in November 2019, the California Restaurant Association filed a lawsuit in federal court asserting that the City of Berkeley ordinance is preempted by federal law (the Energy Policy and Conservation Act) and state law (the California Buildings Standards Code and California Energy Code). The California Restaurant Association is arguing that the ordinance is a void and unenforceable exercise of the City of Berkeley’s policy power and must be overturned. That lawsuit is pending, and there is no judicial resolution as to the legal authority of cities and counties to adopt such rules and regulations at the time of this response’s preparation.

In any case, it is noted that the Project would implement each of the design-related reduction measures contained in the County of San Diego’s CAP Consistency Checklist. Consistent with the spirit of EHL’s request to evaluate electrification for heating, the Checklist provides that residential projects shall install one of the following types of electric or alternatively fueled water heating systems: solar thermal water heater; tankless electric water heater; storage electric water heaters; electric heat pump water heater; and/or, tankless gas water heater. As the County’s CAP

is the subject of pending litigation, the County is requiring the Project to comply with this water heating design parameter via a condition of approval.

### 2. Fund the Acquisition of Conservation Easements

As to the Project's funding the acquisition of conservation easements in specified off-site areas, the County is not aware of any plan or program in place that would facilitate such a mitigation fee concept. Should one become available and it otherwise meets the requirements of mitigation measures M-GHG-1 and M-GHG-2, the Project would be required to participate in the plan or program under the mitigation measures' locational prioritization provision.

### 3. Increase the Rigor of PDF AQ/GHG-3

The parameters of PDF AQ/GHG-3 are keyed to the 2016 Title 24 standards based on the timeline for preparation of the certified EIR and input parameters of CalEEMod, the GHG emissions modeling platform. As to the latter, the emissions factors for estimating building-related energy use and corresponding emissions levels are based on compliance with the 2016 Title 24 standards.

We recognize that the 2019 Title 24 standards are now operative, as of January 1, 2020, and would set the floor for building energy efficiency in the non-residential built environment. We also reasonably anticipate that the next Title 24 building code cycle, which is revisited every three years and would be applicable to the Project, will contain further improvements to building energy efficiency that supersede the requirements of PDF-AQ/GHG-3 via regulatory compliance. This is because the non-residential component of the Project is not expected to be constructed until most of the residential units are constructed. (Neighborhood retail uses require the accompanying residential development in order to generate demand for the goods and services offered in the small commercial centers.) Therefore, construction of the non-residential component is expected towards the end of the Project's estimated 7-year construction schedule, which would be after the next round of Title 24 updates in 2022 (with implementation of the building code beginning January 1, 2023). In combination with continued technological advances, it is expected that achievement of 10% greater efficiency than required by the 2019 Title 24 requirements would be feasible and would be required as a matter of regulatory compliance by the time the non-residential components of the Project are constructed. It is noted that the PPA does not rely upon achievement of 2019 Title 24, much less any future code update(s) for reducing impacts to GHG emissions to less than significant.

### *The Project Satisfactorily Demonstrates Compliance with the County's CAP Consistency Checklist*

EHL states that the Addendum and Appendix H provide that the Proposed Project Amendment is consistent with the County's Climate Action Plan (CAP) Consistency Checklist, but contends that the consistency statement is irrelevant and unsupported.

### Information regarding the Climate Action Plan is Relevant

EHL is correct that the Proposed Project Amendment (like the Approved Project) does not rely upon the County's adopted CAP to make the EIR GHG impact determination. However, consistency with the CAP is relevant as described below.

The status of the County's CAP was uncertain at the time the Approved Project's NOP was prepared. For that reason, the County applied a conservative approach for analyzing and determining the significance of impacts to GHG emissions. (See certified EIR, Section 8.4.6, CAP Consistency.) Specifically, as determined in the certified EIR (see Section 2.7 therein), with implementation of M-GHG-1 through M-GHG-4, the Approved Project would reduce and offset 100% of the construction and operational GHG emissions to a net zero emissions level, ensuring GHG impacts would be less than significant.

Prior to adoption of the Approved Project's certified EIR, the County adopted its CAP, which anticipated and forecasted emissions for Village 14 and Planning Area (PA) 16/19 based on the development of 1,530 dwelling units, which is *less than* the 2,132 units anticipated by the County's General Plan and Otay Ranch General Development Plan/Otay Subregional Plan (GDP/SRP) but *greater than* the unit count associated with the Approved Project and Proposed Project Amendment. Thus, the Approved Project and Proposed Project Amendment are consistent with the underlying emissions inventory in the CAP, the County's General Plan, and the Otay Ranch GDP/SRP, and implementation of the emission reduction measures in the CAP Consistency Checklist is the only requirement for such General Plan consistent projects under the County's CAP.<sup>4</sup> Therefore, the Approved Project and the Proposed Project Amendment go "above and beyond" the requirements of the CAP Consistency Checklist by committing to achieve a net zero GHG emissions level. Of interest, the Proposed Project Amendment takes the added step of permanently reducing development that was previously anticipated under the CAP emissions inventory by placing areas approved for development (areas referred to as PV1, PV3, and PA 16) into open space preserve, thereby creating local GHG emissions reductions through conservation of areas otherwise approved for development.

In December 2018, the San Diego County Superior Court set aside the CAP and its supporting environmental impact report. However, the court order allows the County to continue processing projects that do not rely on M-GHG-1 in the CAP EIR. In this instance, neither the Approved Project nor the Proposed Project Amendment rely on M-GHG-1 from the CAP EIR. (See certified EIR, Section 8.4.6, CAP Consistency.) Further, the County has implemented the CAP Consistency Checklist without challenge for other General Plan consistent projects, such as Ocean Breeze Ranch, a nearly 400-unit project in the Bonsall Community Plan Area.

### The Discussion of the Project's Compliance with the CAP Consistency Checklist is Supported

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<sup>4</sup> As a reminder, while the Approved Project included a General Plan Amendment (GPA), the GPA was *not* a density or intensity increasing GPA; rather, it was to correct GIS mapping registration errors and amend a segment of Proctor Valley Road's classification in the General Plan Mobility Element.

Regarding EHL's comment about the CAP Consistency Checklist requiring the Project's non-residential components to achieve a 15% VMT reduction, while the Checklist does not include a VMT reduction target for "mixed-use" projects, the County has conservatively applied this 15% reduction to the Project's non-residential/commercial component. To achieve this reduction, two factors have been considered: SANDAG's internal trip reduction credit for mixed-use projects and the Project's Transportation Demand Management (TDM) Program. Each factor is discussed below.

First, the Proposed Project Amendment's 12% internal trip capture rate is an inherent feature of this mixed-use project, as identified by the SANDAG model, and would be similar to the rate calculated for the EIR Land Exchange Alternative (due to the similar land uses and due to the mix of on-site land uses [residential, commercial retail, park uses, and elementary school]). Unlike the Approved Project, the Proposed Project Amendment would be more compact, with development consolidated closer to the Village Core, and 150 multi-family units would be provided at a more attainable price point. This more compact development pattern, combined with a mix of neighborhood-serving uses connected by an integrated system of pathways, trails, and sidewalks, would combine to encourage walking and bicycling and reduce reliance on automobiles. It is further noted that while EHL suggests employees at the retail and school sites would not be likely to afford the assumed costs of on-site housing, the comment neither provides any supporting evidence, nor does the comment recognize the continuing trend of dual-income households.

Second, the effectiveness of the Proposed Project Amendment's TDM Program is analyzed in the EIR Land Exchange Alternative TIA (Appendix 4.1-15 of the Approved Project EIR) and summarized in Table 3 of Attachment B to Appendix H of the Addendum. As calculated therein, the Proposed Project Amendment would achieve a 4.6% reduction in VMT project-wide through implementation of the TDM Program. This reduction is commensurate to over 5,000 VMT/day, which significantly exceeds the requirement of a 15% reduction for the non-residential component of the Project (calculated at approximately 286 VMT/day).

To ensure the TDM Program strategies are implemented and effective, as required by PDF-TR-1, a transportation coordinator (likely as part of a homeowner's association) would be designated to monitor the TDM Program, and would be responsible for developing, marketing, implementing, and evaluating the TDM Program. Thus, this enforcement mechanism would ensure the Proposed Project Amendment would commit to monitoring and reporting the accuracy of the TDM Program.

Regarding CAP Checklist Items 3a, 4a, 5, 6a and 9a, as stated in Attachment B, the Proposed Project Amendment would comply with the adopted CAP Consistency Checklist requirements as a Condition of Approval. Specifically, the CAP Consistency Checklist requirements would be implemented and enforced via Condition #94, excerpted below. This does not constitute the deferral of mitigation, but rather the implementation and enforcement of a condition through standard County process and pursuant to articulated requirements of the CAP Consistency Checklist.

### **94. AQ/GHG#8 - CLIMATE ACTION PLAN SATISFACTION (M-AG-9, PDF-UT-1 THRU 5, M-AE-2 & PDF-AQ/GHG-1 THRU10)**

INTENT: The project shall include the following features described below.

DESCRIPTION OF REQUIREMENT: The project shall implement or install the

following measures or features as required within Step 2 of the CAP Measure Consistency Checklist.

- a. Measure 3a: The project will install the following types of electric or alternatively fueled water heating systems: tankless electric water heater, tankless gas water heater.
- b. Measure 4a: The project will comply with the following water efficiency best management practices. First, the maximum flow rate of kitchen faucets in residential buildings shall not exceed 1.5 gallons per minute at 60 psi. Kitchen faucets may temporarily increase the flow above the maximum rate, but not to exceed 2.2 gallons per minute at 60 psi and must default to a maximum flow rate of 1.5 gallons per minute at 60 psi. Second, the project will install at least one qualified Energy Star dishwasher or clothes washer per residential unit.
- c. Measure 5a: The project will make use of incentives to install one rain barrel per every 500 square feet of available roof area for residential buildings.
- d. Measure 6a: The project shall submit a Landscape Document Package that complies with the County's Water Conservation in Landscaping Ordinance and demonstrates a 40 percent reduction in current Maximum Applied Water Allowance for outdoor use.
- e. Measure 9a: The project will plant, at a minimum, two trees per every new residential dwelling unit proposed.

DOCUMENTATION: The applicant or its designee shall comply with the requirements of this condition. TIMING: Prior to the approval of each Final Map and prior to the approval of any building permit. MONITORING: The [PDS, LA] and [DPR, TC, PP] shall review the Landscape Plan(s) for that phase for compliance with Measures 4a and 6a of this condition. The [PDS, BPPR] shall verify that the Building Plans comply with Measures 3a and 9a of this condition. The [PDS, BI] shall inspect the site for compliance with Measure 5a this condition.

### *The Project Is Consistent with the Sustainable Communities Strategy Adopted by SANDAG*

The Project's consistency with SANDAG's Sustainable Communities Strategy, as contained within San Diego Forward: The Regional Plan, is discussed at length in the certified EIR. However, it is important to note the Project's role as a component of the Otay Ranch GDP/SRP and the corresponding consideration of Project-related development in regional planning efforts, like the County's General Plan and SANDAG's Regional Plan. EHL notes that CARB's determination that the State's climate goals for 2030 and 2050 will only be met if emission reductions beyond those anticipated by SB 375 are realized. We do not dispute CARB's determination and earnest pursuit of additional VMT-based emissions reductions, but do note in response that: (a) EHL's comment verges on conflating SB 743 analysis (which only becomes mandatory on July 1, 2020) with SB

375 analysis; and, (b) the Project would be required to achieve a “net zero” GHG emissions level, which is consistent with the approach for project-level analysis set forth in CARB’s 2017 Scoping Plan and ensures that the Project would not interfere with SANDAG’s achievement of its regional emissions reduction targets under SB 375.

### **Energy Resources**

#### *Residential Energy Consumption*

Shute Mihaly states that the EIR Addendum lacks evidentiary support that energy consumption from the Proposed Project Amendment’s residential component would not be considered inefficient or wasteful. The comment further notes that the project needs to demonstrate that it has decreased per capita energy use.

In response, the Approved Project would result in a residential electricity use of 6,471,000 kilowatt-hours (kWh) per year. With 4,028 residents, this would result in a per-capita residential electricity consumption of 1,606.5 kWh per person per year. In contrast, based on data from the CEC and SANDAG, the County of San Diego’s residential electricity consumption was 6,942,482,091 kWh in 2018 with a population of 3,658,638 people. This translates to a per-capita residential electricity use of 1,897.6 kWh per person per year. Therefore, the Approved Project would have a lower per-capita electricity use than the County. Similarly, the Proposed Project Amendment would result in residential natural gas use of 25,603,613 kilo-British thermal units (kBtu) per year, equating to a per-capita natural gas use of 6,356.4 kBtu per person per year. In contrast, the County’s residential natural gas consumption in 2018 was 26,452,674,000 kBtu according to the CEC, resulting in a per-capita natural gas use of 7,230.2 kBtu per person per year. Therefore, the Proposed Project Amendment would have a lower per-capita natural gas use than the County.

As described in the December 19, 2019 *Energy Technical Memorandum for the Otay Ranch Village 14 and Planning Area 16/19 Proposed Project Amendment*, the Proposed Project Amendment would have more residential units than the Approved Project, but a similar total amount of built square footage due to the change in product type resulting from consolidating development in Village 14 and eliminating the estate homes in Planning Area 16. Therefore, the Proposed Project Amendment is expected to have similar electricity and natural gas demand compared to the Approved Project. Moreover, the Proposed Project Amendment is estimated to have a residential population of 4,549 (RH Consulting 2019), which would result in a per-capita electricity use of 1,422.5 kWh per person per year and a per-capita natural gas use of 5,628.4 kBtu per person per year. The Proposed Project Amendment, as such, would have a lower per-capita energy use compared to the Approved Project and the County.

The Proposed Project’s residences would meet ZNE [Zero Net Energy] design standards as defined by the California Energy Commission (CEC). The Proposed Project Amendment would also include the installation of EV charging equipment in the garages of half of all residential units



with the remaining half being EV-ready, and the installation of charging stations in the Village Core. Additionally, the Project would meet the most recent Title 24 standards, and would feature drought-tolerant landscaping. These project features would contribute to the conservation of resources; would be compatible with community character; and would increase the self-sufficiency of individual communities, residents, and businesses.

As to the source of the electricity for the electric vehicle chargers, PDF-AQ/GHG-2 requires that the Proposed Project's residences be designed to achieve the CEC's Zero Net Energy (ZNE) design standards. Based on technical analysis provided by the Proposed Project's building efficiency design expert (ConSol), the residences are anticipated to provide rooftop solar to assist with the ZNE demonstration. Therefore, it is reasonably expected that the residences' electric vehicle chargers will be powered, at least in part, by renewable energy resources located on each residential rooftop.

As set forth in PDF-AQ/GHG-2 (see certified EIR Table 2.7-5), prior to the issuance of residential building permits, the Proposed Project shall submit building plans to the County illustrating compliance with ZNE design standards, as defined by the California Energy Commission. ConSol prepared a Building Analysis, which was included in the certified EIR. Specifically, Attachment A to Letter O-5 contains ConSol's analysis of a single-family residential building design prototype, representing a typical home, for the Proposed Project Amendment. Attachment A discusses the anticipated photovoltaic (PV) system size needed to achieve ZNE, and was conducted using the worst-case building orientation thereby representing the largest PV system required to achieve ZNE. ConSol concluded that, with consideration of rooftop design, the prototype residence could accommodate the PV system size required to achieve ZNE design. As such, the Proposed Project Amendment would not result in an inefficient or wasteful use of energy.

### *Petroleum Usage*

Shute Mihaly contends the EIR Addendum lacks evidence to support the conclusion that the Proposed Project Amendment's residential component would not inefficiently or wastefully consume petroleum. In response, the Approved Project is anticipated to have a per-capita fuel consumption of 457 gallons per person (1,841,299 gallons as noted on page 3.1.9-21 and 4,028 residents as noted on page 3.1.5-10 of the certified EIR). In contrast, the County of San Diego is forecast to have a per-capita fuel consumption of 628 gallons per person (2,295,882,400 gallons and 3,658,638 people) by 2028 based on fuel consumption from Caltrans and the SANDAG Series 13 forecast. Therefore, the Approved Project would have lower per-capita fuel consumption than the County.

Because the Proposed Project Amendment would generate a similar land use mix as the EIR Land Exchange Alternative, the average trip length for the EIR Land Exchange Alternative of 9.71 miles, which was back-calculated from the estimated vehicle miles traveled (VMT), was used for

the Proposed Project Amendment.<sup>5</sup> Additionally, because the Proposed Project Amendment would implement a TDM Program, the Project's transportation engineer (Chen Ryan) quantified the reduction in VMT attributable to implementation of the TDM-related strategies. (Please see Table 15 in Appendix 2.7-1 of the certified EIR for additional information regarding the VMT reduction benefits of the TDM Program.) The Approved Project was determined to result in an overall 4.3% reduction in total VMT; therefore, the Proposed Project Amendment is anticipated to achieve a minimum of 4.3% reduction in VMT. However, a total VMT reduction of 4.6% was estimated for the EIR Land Exchange Alternative; and, since the Proposed Project Amendment is most similar to the EIR Land Exchange Alternative, a VMT reduction of up to 4.6% is achievable.

The Proposed Project Amendment would also include a multi-pronged approach to increase electric vehicle (EV) adoption for residents. As part of this strategy, Level 2 EV Supply Equipment would be installed in half of all residential units (633 units), and 10 parking spaces located in the Village Core's commercial development area and P1 through P4 park areas would include charging stations. These strategies—in conjunction with market forces decreasing the cost and increasing the availability of EVs, regional charging initiatives decreasing range anxiety and increasing the share of miles driven by plug-in hybrid electric vehicles in EV mode, and state targets fueling programs and incentive pools making EV ownership more cost effective and appealing (International Council on Clean Transportation 2017)—will increase the market penetration of EVs and share of EV miles driven as a result of the Proposed Project Amendment.

In closing, the Proposed Project Amendment, similar to the Approved Project, would have a less than-significant impact related to the inefficient or wasteful use of petroleum during operation, and the level of impact would not increase from those levels identified in the Approved Project's certified EIR.

### **Visual Character and Quality**

The Shute, Mihaly & Weinberg letter states that the Final EIR for Approved Project failed to adequately analyze the Approved Project's impacts on the visual quality and character of the Project Area. The comment is similar to the comment previously submitted by the commenter on June 19, 2019, which was addressed in detail in the Response to Comments (Volume II) for the Final EIR for the Approved Project. See Response to Comments O-6-369 through O-6-428 which addressed the commenter's previous comments regarding the visual analysis, including scenic vistas.

The commenter also addresses the EIR Addendum's Visual Resources Technical Memorandum, specifically, the determination that the aesthetic impacts of the Proposed Project Amendment (PPA) would be less than the Approved Project due to an overall smaller development footprint. In

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<sup>5</sup> VMT was estimated for the Approved Project and the EIR Land Exchange Alternative by Chen Ryan in the Approved Project Final EIR. The EIR Land Exchange Alternative had a higher estimated VMT per trip compared to the Approved Project. Therefore, it was determined the EIR Land Exchange Alternative VMT was more conservative to use as the basis for the Proposed Project Amendment VMT. The Proposed Project Amendment VMT was estimated using Proposed Project Amendment-specific trip rates (Chen Ryan 2019) and the average trip length from the EIR Land Exchange Alternative (Chen Ryan 2017).

response, while the PPA would increase the total number of residential units compared to the Approved Project (1,266 vs. 1,119 units; an increase of approximately 13 percent) and would develop land outside of the construction footprint of the Approved Project, the PPA would result in a substantially smaller development footprint compared to the Approved Project (579 vs 809 acres; a decrease of approximately 39 percent). As detailed in the EIR Addendum's Visual Resources Technical Memorandum, the development footprint of the PPA would generally be concentrated in a central location along Proctor Valley Road as opposed to discontinuous development footprints along the Proctor Valley Road corridor associated with the Approved Project. The "concentrated" location of the PPA development footprint would result in a reduced viewshed of the development footprint as compared to the Approved Project. A reduced viewshed (i.e., geographical extent of potentially available views to new development) would allow for a greater percentage of undisturbed valley and mountain views for Proctor Valley Road motorists compared to the Approved Project's development footprint. As a result, development of the Approved Project is experienced intermittently over a longer duration (as compared to PPA development) while traveling on the Proctor Valley Road corridor between Chula Vista and State Route 94.

The commenter is correct in that a visual simulation for the PPA was not provided in the EIR Addendum's Visual Resources Technical Memorandum. The Approved Project's certified EIR adequately disclosed and approximated the visual characteristics of the Approved Project and EIR Land Exchange Alternative through visual simulations and depicted how the visual quality of the Proctor Valley landscape and views from Proctor Valley Road would change. Key Views offering a foreground view to development associated with the Approved Project were established and provided in the EIR (see Key Views 1, 2 and 7). Due to similar proximity to the development footprint of the PPA, changes to visual quality and views from Proctor Valley Road would be similar under the PPA as previously disclosed in the EIR for the Approved Project at Key Views 1, 2, and 7. It should also be noted that visual simulations are tools utilized in visual assessments and the lack of a new visual simulation does not alone equate to a lack of evidentiary support as suggested by the commenter. For example, the EIR Addendum's Visual Resources Technical Memorandum includes a description of the PPA components; a comparison of the PPA and Approved Project in the context of development footprint (acres), project acres (acres), off-site (acres), and units; aerial base maps depicting the PPA and Approved Project development footprints; and a comparative analysis (with the aid of viewshed maps) between the PPA and Approved Project for all aesthetics significance thresholds considered in the EIR for the Approved Project.

### **B. RESPONSE TO REAX ENGINEERING**

The letter begins by summarizing the documents reviewed by the commenter, which include the Addendum to the Final EIR (Addendum), Fire Protection Planning Technical Memo (Appendix J), Fire Safety Memo (Appendix X), and the PPA Wildland Fire Evacuation Plan (WFEP). The commenter, Reax Engineering from Berkley, CA, is a consultant of EHL, and is not a County-approved Consultant for purposes of preparing Fire Protection Plans. The analysis upon which the County has determined that impacts of the PPA would be less than significant, was prepared by a County-approved Consultant (Dudek) following the County's guidelines and using County-adopted thresholds for determining significance. The County's selection of thresholds for determining significance comply with CEQA, which provides lead agencies with discretion when selecting such thresholds. The thresholds are consistent and do not conflict with Appendix G of the CEQA Guidelines.

#### **Comments on New Development in the WUI and Fire Ignition Risk**

The comment incorrectly suggests that the PPA would introduce humans into an area "where human interaction had been limited or non-existent" and that "housing of any density is a larger ignition issue than natural wildland because of the introduction of humans." In reality, Proctor Valley has been characterized by decades of illegal off-road vehicle activity, illegal weapon discharge, and other risky activities. These activities have been unsupervised, and have lead local agencies to put up guard railing and other deterrents to restrict access to illegal trails. The PPA would introduce humans to the project site on a permanent basis within a highly managed and maintained, ignition resistant landscape with a wide buffer separating it from the adjacent open space areas. The PPA also would provide measures to minimize potential for ignitions and would facilitate rapid response from the Project's new fire station to contain ignitions that may occur. Further, the PPA would provide for continuous monitoring of the area and introduce a human presence to deter illegal off-road and other risky activity. In addition, the naturally vegetated areas within which the Project is proposed includes significant existing human populations on its periphery. The ignition sources are already present and it is incorrect to suggest that the Project would be introducing ignition sources to an area that is free of them now.

The commenter suggests, without evidence, that "the Proposed Project further increases the risk of structure loss and loss of life in adjacent communities due to the increased probability of ignition it presents. However, according to Dicus:

*Continued development has the potential to actually REDUCE the risk of ignition of older developments that were not built with today's construction standards and codes. While this would certainly not be the case if new communities were developed with old building*

codes, expansion of new development (built to increasingly stringent codes) could buffer older fire-prone communities.<sup>6</sup>

The commenter provides a series of figures which the commenter states demonstrates that humans and roads are more likely to cause fires than natural events such as lightning strikes. The maps are consistent with information contained in the Approved Project FEIR and PPA Addendum that fires are caused by humans and that roads are a source of ignitions, which are factors that have been considered and planned for as part of the PPA. The maps also demonstrate that there are many human-caused ignitions occurring in the project vicinity now because there are humans influencing the area currently and not much monitoring. The maps confirm that the existing open space in Proctor Valley has many human influences already. With development of the PPA, there would be eyes and ears on site monitoring the Project's vicinity, resulting in a decrease in illegal activities. The PPA would also provide roadside hardening along currently unimproved Proctor Valley Road, to minimize roadway fires and provide a fast response from a new station to control accidental ignitions.

The commenter cites a study which purports to conclude that "the expansion of development into wildland areas increases the probability of perpetuating one of these ill-timed ignitions under conditions conducive to extreme fire behavior." However, the study does not specifically analyze the effects of a fire-hardened and fire-aware master planned community such as the PPA, which would be built to code compliance or exceeding standards, provide for an annually maintained 100' FMZ and convert undeveloped open space into an ignition resistant community, the likes of which have been effectively implemented and demonstrated to be safe during more recent wildfires across the state. The study does not address this type of ignition resistant and fire-aware community, resulting in inappropriate comparisons between older, more vulnerable construction, wider spaced, intermix residences with much greater exposure and interface, and lack of or varying levels of defensible space.

### **Comments on Evacuation Planning and Execution in San Diego County/Evacuation Routes**

The commenter states that while the PPA may be consistent with County evacuation planning efforts, which is the requirement under CEQA, that there are always additional measures or steps that can be taken to create an evacuation plan with greater resiliency. While this may be true of any project, even those built in urban environments entirely surrounded by development, the County has reviewed and provided input consistently throughout the planning stages of the PPA and is satisfied that the project, as proposed, can be effectively evacuated or otherwise protected through implementation of code-compliant or exceeding building codes and perimeter hardening.

The commenter then opines that the PPA evacuation planning leaves decisions solely at the feet of the authorities, who make evacuation decisions based on available evacuation routes and that

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<sup>6</sup> Dicus, C.A., N.C. Leyshon, and D. Sapsis. 2014. Temporal changes to fire risk in disparate WUI communities in southern California, USA. Pgs. 969-978 In Viegas, D.X (Ed.). Advances in Forest Fire Research. University of Coimbra Press. ISBN 978-989-26-0884-6.

providing secondary or tertiary access roads gives authorities options during an emergency. The commenter is correct that decision on evacuation are at the discretion of the Incident Commander based on a myriad of considerations including evacuation routes. Any other approach could lead to conflicting directives during an emergency situation, potentially resulting in an inefficient and unsafe evacuation. Here, the PPA provides for a fully improved evacuation route via Proctor Valley Road, which provides a new, hardened connection between Jamul and Chula Vista, and also provides an additional route for existing residents in both communities that is not desirable in its existing, unimproved condition.

The commenter suggests that the Addendum has not considered an event where Proctor Valley Road becomes congested during an attempted evacuation or where evacuation on Proctor Valley Road is precluded due to fire. The comment is incorrect. Under such conditions, the project has been designed to enable emergency managers flexibility to provide for temporary refuge on-site until it is determined that evacuation is safe. The PPA consolidates development in Village 14 thereby reducing the amount of fire perimeter and the potential for combustion of homes within the project site. This results in a more defensible community that requires minimal fire response resources when compared to less dense communities.

The commenter then notes where the PPA Wildland Fire Evacuation Plan (WFEP) has been revised to delete text that was previously included in the Approved Project's Evacuation Plan. The County contracted with an independent fire operations consulting firm (Rohde and Associates), which has been preparing regional Wildland Urban Interface (WUI) emergency response plans that encapsulate the County's pre-fire planning for wildfire emergencies. These pre-fire plans include, in operational format and terminology, the anticipated fire behavior, trigger thresholds, and planned evacuation approach, amongst other important emergency response data. These plans are provided to all emergency response agencies in a format that is consistent for every County area and includes an operational focus. These pre-fire plans are intended for the internal use of emergency response agencies and not meant for public distribution.

Emergency response agencies managing wildfire evacuations would not rely on a project specific evacuation plan. Wildfires are fluid events and San Diego County has developed a sophisticated approach to tracking and predicting wildfire spread and behavior with corresponding technology to phase evacuation notifications of down-wind communities. Situation awareness during a wildfire is important and the combined resources available to emergency managers are robust, providing these agencies with appropriate and essential evacuation control, which can evolve and include mid-evacuation changes and the need for strong alert messaging and in-field control. With the creation of the official pre-fire plans, the intent of project-specific evacuation plans evolved to focus on community resident awareness and preparedness. This approach is consistent with limiting potential for conflict with the County's internal plan. CEQA requires an analysis to confirm that a Project's evacuation would not substantially impair an officially adopted evacuation plan. Because there are no officially adopted evacuation plans for the area and because emergency management agencies have publicly stated they are confident they can evacuate the Project given its location and surrounding populations, this CEQA requirement is met.

To avoid redundancy, project specific evacuation plans, like the plan prepared for the PPA, focus on easily presented and understood concepts that residents would be provided on an ongoing

basis. Topics include evacuation protocols, evacuation route maps, contingency options, and personal preparedness toolkits.

### **Comments on Resiliency of Modern Residential Subdivisions**

The commenter restates concerns from the Approved Project Evacuation Plan that the analysis used incorrect weather inputs when modeling flame lengths and therefore underestimated other factors such as fire spread rate and spotting distances. The comment is incorrect. As explained in the Final EIR Response to Comments O-6-225 and O-6.4-12. As noted therein:

The FPP (Appendix 3.1.1-2) anticipated two fire events, including a wind-driven Santa Ana fire (i.e., 50 mph) which exceed those established by the County of San Diego. The County developed guidelines and standards for weather inputs to be used in fire behavior modeling for development projects proposed in the County (County of San Diego 2010). Given the Proposed Project's location, County standards require a peak-condition wind input speed of 41 mph for fire behavior modeling. The use of 50 mph for fire behavior modeling is, therefore, considered more conservative than other regionally accepted standards....

...the wind inputs used in support of Appendix 3.1.1-2 (50 mph) exceed those established by the County of San Diego, Planning & Development Services. The County developed guidelines and standards for weather inputs to be used in fire behavior modeling for development projects proposed in the County (see the County's Report Format and Content Requirements, Wildland Fire and Fire Protection (2010)).

With respect to the claim that a different weather station data should have been used, it is noted that the PPA would consolidate development in central Proctor Valley, away from ridges. Thus, while the Approved Project only included approximately 112 units, or about 10% of the project, in higher elevations (i.e., Planning Area 16), the PPA reduces this even further through limiting development primarily in the core of Village 14.

The comment then claims that "it is disingenuous to suggest that the use of ignition-resistant building materials or fuel modification zones would begin to compensate for the Project's location within a very high fire hazard severity zone." The comment cites research by Kramer that broadly concludes that "the interface WUI, i.e. settled areas with little wildland vegetation that are near large blocks of wildland vegetation, is where the greatest total amount of building destruction has occurred in California"; however, the research does not note the extent to which these losses are from older, vulnerable buildings compared to newer, master planned communities like the PPA with its code-compliant and exceeding measures. In fact, in response to destruction caused by wildfire in older homes, the advent of the ignition resistant materials and methods chapter of the building code was exactly to address building in fire hazard severity zones such as the project vicinity.

The commenter provides a summary of data from homes damaged during the Thomas Fire in Ventura and Santa Barbara County. The commenter says the data demonstrate that "it can be shown that the majority of the structures were of fire-resistant construction, had multi-pane windows, and had eave vent screens. Although not a majority, a significant number of the structures damaged or destroyed had enclosed eaves." The comment concludes that the data

“illustrate that ignition resistant construction, including features to mitigate ember penetration ... are not a sufficient defense against extreme wildfires.” While it is assumed the data is accurately presented in the report, it’s not clear the details and exact level of fire protection measures of the damaged and destroyed homes. Based on significant experience evaluating after action reports, and engaging in discussions with fire prevention officers from the affected communities, the ignition resistance of even the “newer” lost homes did not include ember resistant vents (with baffles specifically designed to keep embers out). For instance, vent screens include openings that embers can penetrate when winds are high and are far different from ember resistant vents such as those the PPA would be required to have. Further, it is not clear whether the communities impacted by the Thomas Fire had fuel modification zones managed and ensured by an HOA, or what the surrounding vegetation was like prior to the fire.

The commenter points out that Appendix J states that in instances like the Coffee Park and Paradise fires, homes served as fuel to oncoming fires. The commenter questions why this would be the case for those fire events but that the homes in the PPA “would not be susceptible to wildfire exposure.” However, this is not an “apples to apples” comparison. Large, master planned communities such as the PPA with code-compliant and exceeding fire protection measures have been demonstrated to fair well against wildfire whereas the examples provided by the comment each included losses of older homes with vulnerabilities that will not occur at the PPA. Embers penetrating into homes, typically through unprotected vents, can ignite homes and result in home to home fire, particularly for communities that lack the latest ignition resistant requirements and interior sprinklers. Further, and separate from building code compliance, the surrounding vegetation in Paradise and Santa Rosa is significantly different than the vegetation in the project vicinity and includes much more forested areas with large trees that can contribute to embers and spotting at great distances.

The commenter laments that many experts do not believe compliance with building codes is enough, and that “many cities and their officials ignore past fire history in favor of development, not requiring the stricter measures required by Chapter 7A even though history demands otherwise.” San Diego County is not one of those jurisdictions and does require compliance with Chapter 7A, as well as other non-building code requirements such as managed fuel modification zones and an on-site, funding fire station.

The commenter concedes that “Ignition resistant, modern developments are safer than their older counterparts” however, opines without providing evidence that any development within a VHFHSZ is not safe “no matter the stringency of codes, standards, and ignition-resistant features provided.”



### **C. RESPONSE TO GRIFFIN COVE TRANSPORTATION CONSULTING, PLLC**

The comment letter introduces the Proposed Project Amendment, providing a brief description, and then summarizes the documents reviewed by the commenter; include the Addendum to the Final EIR (Addendum), Fire Protection Planning Technical Memo (Appendix J), Fire Safety Memo (Appendix X), and the PPA Wildland Fire Evacuation Plan (WFEP).

The commenter, Griffin Cove Transportation Consulting from Mackinaw Island, MI, is a paid consultant of EHL, and is not a County-approved Consultant for purposes of preparing Fire Protection Plans. The analysis upon which the County has determined that impacts of the PPA would be less than significant was prepared by a County-approved Consultant (Dudek) following the County's guidelines and using County-adopted thresholds for determining significance. The County's selection of thresholds for determining significance comply with CEQA, which gives lead agencies discretion when selecting such thresholds. The thresholds are derived from, and do not conflict with, Appendix G of the CEQA Guidelines.

#### **Comments on the Updated Wildland Fire Evacuation Plan**

Focusing on the PPA's Wildland Fire Evacuation Plan, the comment re-states the commenter's opinion regarding the Approved Project's Evacuation Plan (Appendix 3.1.1-2 of the Approved Project's Final EIR, "Evacuation Plan"). The first claim is that the Evacuation Plan assumed inadequate mobilization time. However, as explained in Response to Comment O-6.5-5, the Approved Project's Evacuation Plan did consider instances when, due to the location of the fire in question, short or no notice is provided. The Evacuation Plan then provides contingent measures to address such a fire, including the potential to provide temporary on-site refuge. The PPA is also designed to allow for temporary refuge. Note, however, that the PPA would consolidate development and significantly reduce the amount of wildland edge; thus reducing the perimeter and reducing the potential for such short or no notice evacuations.

The next claim suggests the Evacuation Plan overestimates roadway capacity, stating that the plan should have assumed 1,700 passenger cars per hour per lane, not 1,800-1,900 pc/h/l. The County responded to this comment previously in Response to Comment O-6.5-8 of the Final EIR. The PPA would not materially change the configuration of Proctor Valley Road; thus, the same capacity is considered appropriate – i.e., 1,800-1,900 pc/h/l. Moreover, the consolidation of development closer to Proctor Valley Road (i.e., the elimination of development in Planning Area 16) would reduce the time it takes for evacuating traffic to reach this Mobility Element roadway.

The comment restates the claim that the Evacuation Plan did not consider several factors such as the emotional state of drivers, smoke, and effects of vehicles towing trailers and RVs during an evacuation. Again, the County addressed this issue in the Final EIR, please see Response to Comments O-6-252, 253, and 254 and Responses O-6.5-10, 11, 12 and 22.

The letter then criticizes the Evacuation Plan on grounds that the traffic demand estimates only consider evacuation of the Village 14 and Planning Areas 16/19 project and not surrounding communities (i.e., Jamul). While there is no requirement for this analysis, the approach used in the Approved Project Evacuation Plan was consistent with the adopted approach used by the County. Importantly, because the proposed project would improve Proctor Valley Road, it creates a new

evacuation route that did not exist before, as County fire safety managers previously determined that Proctor Valley Road, in its current, unimproved condition, would not feasibly support safe evacuation procedures. Thus, under existing conditions (i.e., without improvements to Proctor Valley Road), there would be no means to execute a large-scale evacuation of Jamul to the southwest and traffic would be required to evacuate northeast towards SR-94. By improving Proctor Valley Road, however, the PPA would provide additional evacuation capacity compared to the existing condition, and provide the Incident Commander with additional options in the event of an evacuation scenario. Note also that evacuations are fluid events, depending on a number of factors, and impossible to predict. See also Response to Comments O-6-232, 256, and O-6.4-14 for additional responsive information.

The comment restates claims on the Approved Project Evacuation Plan that the analysis did not consider the projected congestion on Proctor Valley Road during an evacuation. Please refer to Response to Comment O-6-257 of the Final EIR for responsive information which explains that

[E]vacuation traffic is typically allowed to flow more consistently, with intersections controlled by law enforcement personnel, enabling more cars to proceed through intersections. Proctor Valley Road from the Project Area to Chula Vista includes no intersections until within developed portions of the City of Chula Vista, aiding law enforcement's ability to control downstream intersections.

The commenter concludes by restating his opinion that the Evacuation Plan's evacuation time estimates are flawed. Refer to Response to Comment Letter O-6.5 for responses to the commenter's previous analysis. The Approved Project's Evacuation Plan was prepared in compliance with the County's adopted methodologies and site-specific information. As explained below, in recognition of the myriad of factors influencing specific evacuations, the Proposed project Amendment Wildland Fire Evacuation Plan has been revised to be a community resource focused on education and preparation; while the county has prepared community-specific plans for potential evacuations.

Regarding the updated Evacuation Plan for the PPA (WFEP), the commenter states that while the WFEP is similar to the Approved Evacuation Plan, it has been revised to delete information regarding evacuation. The letter then cites and re-states the text from the Approved Evacuation Plan which has been removed.

Griffin Cove incorrectly asserts that certain evacuation plan content was strategically removed to avoid details related to PPA evacuation. Specifically, the County contracted with an independent fire operations consulting firm (Rohde and Associates) which has been preparing regional Wildland Urban Interface (WUI) emergency response plans that encapsulate the County's pre-fire planning for wildfire emergencies. These pre-fire plans include, in operational format and terminology, the anticipated fire behavior, trigger thresholds, and planned evacuation approach, amongst other important emergency response data. These plans are provided to all emergency response agencies in a format that is consistent for every County area and includes an operational focus. These pre-fire plans are for internal use by emergency response agencies and not meant for public distribution.

Emergency response agencies managing wildfire evacuations would not rely on a project-specific evacuation plan, as such plans may not be consistent with the on-the-ground, real time directives of the Incident Commander. Wildfires are fluid events and San Diego County has developed a sophisticated approach to tracking and predicting wildfire spread and behavior with corresponding technology to phase evacuation notifications of down-wind communities. Situation awareness during a wildfire is important and the combined resources available to emergency managers are robust, providing these agencies with appropriate and essential evacuation control, which can evolve and include mid-evacuation changes and the need for strong alert messaging and in-field control. With the creation of the official pre-fire plans, the intent of project-specific evacuation plans evolved to focus on community resident awareness and preparedness, not on evacuation routing per se, as the latter is controlled by emergency managers and law enforcement. This approach is consistent with limiting potential for conflict with the County's internal plan; and because there is no regulation, policy or CEQA requirement to prepare an evacuation plan, is consistent with applicable requirements. CEQA requires an analysis to confirm that a Project's evacuation would not substantially impair an officially adopted evacuation plan. Because there are no officially adopted evacuation plans for the area and because emergency management agencies have publicly stated they are confident they can evacuate the Project given its location and surrounding populations, this CEQA requirement is met.

To avoid redundancy, project specific evacuation plans, like the plan prepared for the PPA, focus on easily presented and understood concepts that residents would be provided on an ongoing basis. Topics include evacuation protocols, evacuation route maps, contingency options, and personal preparedness toolkits.

The threshold for determining significance is whether a project would impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan. The proposed project would not conflict with any adopted emergency evacuation plan; and the county does and continues to update evacuation plans which include the project therein.

As explained in Appendix X, Fire Safety Memo, there are too many variables and variations thereof to accurately model every conceivable wildfire/evacuation scenario. Instead, the County pre-plans for potential future evacuation and makes certain recommendations for specific projects. As noted above, the PPA would widen and pave Proctor Valley Road from the community of Jamul to the southwest into Chula Vista, thereby providing an additional evacuation route for existing residents (e.g., people living in Jamul) to utilize in the event of a major wildfire. Further, the PPA consolidates development in Village 14 and eliminates large-lot estates in PA 16. These aspects of the PPA support evacuation efforts by shortening the distance required to evacuate from the project and, as noted above, reducing the amount of wildland edge; thus reducing the potential fire perimeter and allowing easier defense against a potential fire. The project also includes annually maintained fuel modification zones and fire-resistant construction that meets or exceeds current codes, including ignition-resistant roof, siding, and deck materials; closed eaves; ember resistant vents; and double-paned, one pane tempered, heat-resistant windows. The PPA also would construct and staff an on-site fire station, which would introduce fire-fighting apparatus into the area.

If a wildfire occurs and threatens the area, the County's pre-plans would be activated as explained in Appendix X. San Diego County has been a leading jurisdiction in implementing evacuations, fire protection planning, and expanding fire response resources. More than 500 million dollars has been invested to enhance the county's fire prevention, detection, response, suppression and recovery capabilities since the 2003 Cedar Fire<sup>7</sup>. These efforts have focused on identifying components of the emergency response system that were vulnerable or did not function properly during large wildfires and addressing those deficiencies. The types of resources that have been acquired include significant numbers of fire apparatus, expansion of personnel, robust emergency alert systems with the ability to notify of evacuations on a small scale, fire behavior and real-time prediction modeling, fuel reduction, and evacuation route hardening, amongst many others. These efforts have proven effective in successfully managing wildfire events, such as was accomplished most recently during the successfully managed 2017 Lilac Fire.

### **Comments on the Fire Safety Memorandum (Appendix X to the Addendum)**

The comment letter addresses the Fire Safety Memorandum, which the comment points out does not contain much "subdivision specific" information. This assessment is correct, as the Fire Safety Memo was intended to provide a higher-level discussion regarding fire safety in general as additional context within which the project-specific fire plans have been prepared. This is stated in the introductory paragraph of the Fire Safety Memo, which says:

Comments submitted in response to the Addendum expressed concerns regarding the Proposed Project Amendment's impacts on fire ignition risk and emergency evacuation procedures. This memorandum addresses those issues and seeks to clarify certain points regarding fire ignition, subdivision-specific evacuation planning and execution, the defensibility of modern subdivisions, and temporary refuge strategies. *This memorandum does not address all fire protection measures, planning, design, monitoring and maintenance measures that would be provided by the Proposed Project Alternative*, and should be read in conjunction with the project's collective fire and evacuation safety documentation, including that set forth in, and attached to, the Final EIR for the Approved Project...(emphasis added)

The commenter notes that the Fire Safety Memo refers to evacuation scenarios which were removed from the WFEP. As explained above, the WFEP was prepared in accordance with direction from the County to focus on its intended use as a community resource for project residents, not for fire personnel. Rather, the San Diego County Fire Authority (SDCFA) prepares regional evacuation plans, called WUI Emergency Response Plans and these plans are not intended to be public for health and safety reasons (i.e., domestic terrorism).

The commenter also notes a discrepancy between the numbers of vehicles assumed to be evacuating. The Fire Safety Memo states two vehicles per residence while the Evacuation Plan assumed 2.2. The reason for this is due to the more compact nature of the PPA and the addition of 150 multi-family units compared to the Approved Project (which are essentially the additional

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<sup>7</sup> <https://www.sandiegocounty.gov/content/dam/sdc/sdcfa/documents/prevention/2019-Wildfire-update-5-6-2019.pdf>

147-units proposed under the PPA). These smaller units, in combination with the elimination of the large estate lot units previously planned and approved in Planning Area 16, would reduce the overall average home size and expected number of cars. Thus, the analysis in the Fire Safety Memo assuming 2 cars per unit for the additional 147 units in the PPA is accurate and supported.

The commenter then suggests that all vehicles in the project would evacuate simultaneously. This is not an accurate or reasonably foreseeable assumption. As explained in the Fire Safety Memo, the Incident Commander would determine which neighborhoods would be evacuated, at what time and in what order depending on real-time information about the fire, wind direction and speed, intervening fuels, etc. If the Incident Commander determined that evacuation was hazardous, residents may be directed to temporarily refuge in code-compliant and exceeding structures until it was determined safe to continue evacuations. Thus, the analysis presented in the comment regarding V/C ratios is immaterial.

Further, relying on LOS is not accurate to calculate evacuation times because under an evacuation, the Incident Commander coordinates with other agencies including the Sheriff to direct traffic through downstream intersections, thus greatly expanding roadway capacity by keeping traffic free-flowing instead of being controlled by stop signs and traffic signals. Simply stated, evacuations are managed events, not the same as LOS and everyday traffic. It is expected there could be heavy traffic during mass evacuations based on direction from the Incident Commander, and that is why downstream intersections are controlled - to keep traffic moving from potentially threatened areas.

For additional responsive information regarding the LOS analysis, refer to Response to Comments O-6.5-8, 19, 21, and 23 from the Final EIR. The PPA's additional units would not change the analysis materially and the consolidated development pattern under the PPA would reduction evacuation distances from rural estate lots in PA 16.

The commenter states the Fire Safety Memo presents general information and does not address whether an evacuation can be successfully implemented. As noted above, the intent of the Fire Safety Memo is not to *address all fire protection measures, planning, design, monitoring and maintenance measures that would be provided by the Proposed Project Alternative*, and should be read in conjunction with the project's collective fire and evacuation safety documentation. Further, CEQA does not require preparation of an emergency evacuation plan, a point the commenter conceded (see page 9 "Although these statements might be accurate" referring back to "evacuation plans are not required by CEQA..."). There is no dispute that the safety of project residents and residents of the surrounding communities is a major concern. This is why the County, including the San Diego County Fire Authority,

- thoroughly reviewed the project plans, including the Fire Protection Plan, Evacuation Plan, and project design;
- required a 100' fuel modification zone with bi-annual inspections,
- required implementation of adopted, proven fire resistant building techniques,
- required an on-site fire station with funding for ongoing operations, and
- required improvements to Proctor Valley road.

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The project would be built to the ignition resistant levels and provide code meeting or exceeding access, water, response, etc. - deemed appropriate for these environments and the fire's they would produce. The Fire Authority is on record that it can defend the project site and will include the project in updating its WUI plans. In combination, the county (which has experienced wildfire, and has a record of accomplishment of successful evacuations and has further fortified fire defenses over the last 15 years) has determined in its discretion that the PPA would not result in a significant impact regarding wildfire hazard.

### **Comments on the Fire Protection Planning Technical Memo (Appendix J to the Addendum)**

The commenter also addresses the Fire Protection Planning Technical Memo, Appendix J to the Addendum. The commenter notes that the Fire Protection Planning Technical Memo addresses the project's impacts on fire hazards based on code compliance and consistency with the general plan, but does not address evacuation in the event of a wildfire. The commenter is correct that the Fire Protection Planning Technical Memo is not intended to serve as an evacuation plan.

The thresholds the County relies upon to determine wildfire hazard are strictly related to the adoption and compliance with a Fire Protection Plan, compliance with fire codes, and consistency with the county's General Plan Safety Element for fire response. There is no threshold regarding preparation of an evacuation plan and determination of an appropriate evacuation time. As the comment notes, the Fire Protection Planning Technical Memo determined the project would not result in an impact to wildfire hazard based on the County's legally adopted thresholds for determining significance.

The comment also notes that the Fire Protection Planning Technical Memo includes four additional memorandums which provide responses to comments on the Approved Project. The commenter notes one of these attachments erroneously references the date of the Approved Project Evacuation Plan as September 2017 instead of February 2018. While it is correct that the date of the Evacuation Plan was incorrect, the content of the Evacuation Plan that was available to the public is correct and the analysis contained therein was relied upon to reach the conclusions on the Approved Project.

The commenter concludes by sharing his opinion that no certainty has been provided that the residents of the PPA could safely evacuate. In response, the County Fire Authority San Diego County Sheriff's Department have stated that they can evacuate the project site under a wildfire and that, in combination with the presence of an on-site fire station, an improved Proctor Valley Road, fire-resistant building techniques, and implementation of a fuel modification zone, impacts related to wildfire hazards would be less than significant.

### D. RESPONSE TO HAMILTON BIOLOGICAL

Dudek has reviewed the contents of the Hamilton Biological letter and provides this response to the portions of the letter under the headings “Crotch Bumble Bee”, and “Systematic Misrepresentation of Plant Communities”. HELIX has reviewed and provided a response for the portions of the letter pertaining to Quino checkerspot butterfly.

#### **Crotch Bumble Bee**

As stated in the Biological Resources Technical memo prepared for the Proposed Project Amendment, the Final Environmental Impact Report (EIR) did not discuss Crotch bumble bee because, at the time the Final EIR was being prepared, Crotch bumble bee was not a listed species (or a candidate for listing); nor was it among those invertebrates that the County’s CEQA Guidelines for Biology required the EIR to study. There is currently no standardized survey methodology for surveying for this species. In the absence of surveys to verify the presence/absence from the biological study area, a habitat assessment was used to determine the extent of potential habitat loss for this species as fully described in the Biological Resources Technical memo.

#### **Systematic Misrepresentation of Plant Communities**

*Point 1 - Hamilton’s representation of habitat location relevance is misleading.*

A large portion of areas reviewed and “re-mapped” by Hamilton are actually located in either: i) Planning Area (PA) 19 which will be developed; or ii) existing Otay Ranch Resource Management Plan (RMP) Preserve.

- These areas include: large portions of Map 1 and Map 2, all of Map 3 (which is incorrectly labeled as R-14 when it is PA19 and RMP Preserve lands), a portion of Map 4 (again, the entire area to the west of Proctor Valley Road is RMP Preserve and PA 19, as is a large majority of the eastern side which will actually be developed), and Map 5 and 6 are entirely RMP Preserve.
- None of these areas are included in the proposed land exchange between the Project Applicant and California Department of Fish and Wildlife (CDFW); they will be either developed by the project or conveyed to the Otay Ranch RMP Preserve as required. Therefore, the vegetation mapping within the areas described in the first bullet point are immaterial to evaluating the proposed land exchange.
- The commenter admits that portions of Proctor Valley Road were not accessible during his site visit and therefore he cannot fully evaluate the land exchange parcels and instead focuses on portions of the project that he could see, the large majority of which are not a part of the land exchange.
- Specifically, as to the eucalyptus mapping in R-14 (Photo 18), there are some scattered eucalyptus trees with a coastal sage scrub understory. This snapshot on April 11, if it were to be used for mapping, would only change habitat to EUC/CSS. Note that this location is in the Otay Ranch RMP Preserve where habitat mapping

## Responses to Late Comment Letters

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is conducted to provide the status of Preserve habitat in accordance with the Otay Ranch RMP, not for mitigation purposes.

- Hamilton is attempting to utilize areas of the Otay Ranch RMP Preserve and planned development to represent areas of the proposed land exchange, which is misleading.

*Point 2 - Hamilton's time in the field is inadequate to provide a thorough review of the areas subject to the land exchange.*

- Dudek biologists spent approximately 18 person days conducting vegetation mapping across the Project Area, 69 days conducting focused rare plant surveys and 49 days conducting focused surveys for coastal California gnatcatcher across the Biological Study Area for the Proposed Project. Dudek Biologists also spent over 100 person days conducting other focused surveys within the Biological Study Area. HELIX biologists with the support of a number of sub-consultants and independent consultants who are permitted to survey for the Quino checkerspot butterfly spent approximately 200 person days conducting habitat assessments, host plant mapping and focused surveys for Quino checkerspot butterfly. Each of these surveys require that biologists walk the survey area on foot. During vegetation mapping, biologists also look for *higher* vantage points within the survey area to review the site with binoculars, something the commenter was unable to do in one day with no access to the site. These numerous field days allow for biologists to closely review the site and associated habitats and their ability to support special-status species, something a one field visit would not be able to provide.
- The commenter appears to have conducted his surveys solely through binoculars and from a *low* vantage point. This approach to surveying misses the nuances of the landscape such as scattered patches of native grassland mixed in with the shrubs, as well as low-growing shrubs recovering from fire.

*Point 3 - Hamilton fails to understand biological surveys over time vs a one day "snapshot".*

- It is important to note that since the original vegetation mapping was conducted, it is likely that portions of the Project Area, specifically those that have been repeatedly used for off-road recreation and hiking, as shown in Habitat Photo 1, Habitat Photo 3 and Habitat Photo 24 and associated Maps 8 and 9, could result in habitat type conversion to more disturbed landscape. Similarly, seasonal differences and annual variation may occur over time. The large rainfall that occurred this last winter could have resulted in the proliferation of non-native annual species within the landscape that was not previously present.
- Note, however, that Dudek biologists Patricia Schuyler and Anita Hayworth and CDFW staff Dave Mayer reviewed the areas subject to the land exchange, the majority of which were walked over the course of three field days. During this review, the biologists and CDFW concurred that while some areas could be updated to reflect more recent conditions, overall the mapping was accurate and revising the vegetation would not change any of CDFW's conclusions regarding the value of the land and associated habitat as a large connective wildlife corridor. This statement is confirmed in the Land



Conservation Evaluation (LCE) prepared by CDFW as quoted in the commenter's letter. CDFW review of the portions of the Project Area subject to the land exchange found approximately 10 acres of habitat which could be revised to reflect current conditions, not hundreds of acres as the commenter claims. CDFW and Dudek biologists concur that updating the approximately 10 acres from disturbed coastal sage scrub to smaller polygons of disturbed coastal sage scrub or disturbed coastal sage scrub/non-native grassland ecotone as described by CDFW in the LCE is not material to the LCE conclusion.

*Point 4 – The County is not using the land exchange as “mitigation” as Mr. Hamilton states.*

The proposed land exchange between the project applicant and CDFW is not mitigation for project impacts. Rather, the land exchange is a modification of the previously-approved project, subject to the processes outlined in the Dispute Resolution Agreement (DRA) executed by the project applicant, CDFW, the County and the United States Fish and Wildlife Service (USFWS). The land exchange creates a larger, more connected preserve system while concentrating development in Village 14. The Proposed Project will, however, utilize R-14 for project related conveyance requirements in accordance with the Otay Ranch RMP and as expressly agreed to by CDFW and USFWS in the DRA. The mitigation requirements for the Proposed Project Amendment follow the Otay Ranch RMP conveyance requirements as established by the 1996 Phase 2 RMP<sup>8</sup> and confirmed in the adoption of the Otay Ranch Phase 2 RMP Update<sup>9</sup>. As stated in those documents, Otay Ranch RMP Preserve land will be conveyed to the Preserve Owner Manager at a ratio of 1.188 acres for each 1.0 acre of development. This conveyance is not based on either location of land to be conveyed or vegetation communities present within those lands. Mitigation for project related impacts can occur within any portion of Otay Ranch and mitigation for impacts to certain vegetation communities does not need to be “in-kind”.

*Point 5– Conclusion*

Mr. Hamilton spent one day (April 11) reviewing the Project Area from Proctor Valley Road and states he “accurately mapped hundreds of acres.” Mr. Hamilton’s statement that his letter provides “thorough documentation...beyond any doubt”, discounts the 100+ person days of on the ground work done by qualified biologists to accurately document the biological resources within the Project Area. Mr. Hamilton’s statement that the Addendum’s vegetation mapping for the Project Area constitutes a “misrepresentation of resources” across the entire Project Area is incorrect and misleading, especially since Mr. Hamilton spent only one day conducting his mapping effort. Mr. Hamilton was only able to view portions of the Project Area during his one day review, the majority of which are not even part of the proposed land exchange but rather consists of lands that will be

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<sup>8</sup> City of Chula Vista and County of San Diego. 1996. *Otay Ranch Phase II Resource Management Plan*. County Board of Supervisors. June 4, 1996. Revised August 7, 2002.

<http://www.sandiegocounty.gov/content/dam/sdc/dplu/docs/OtayRanchRMP2.pdf>.

<sup>9</sup> RECON. 2018. *Phase 2 Resource Management Plan Update*. Prepared for County of San Diego and City of Chula Vista. August 23, 2018.

conveyed to the RMP Preserve or developed as a part of the Proposed Project Amendment. While Dudek biologists do recognize that project conditions could have changed since the time of the original mapping, the nuances Mr. Hamilton identifies are between varieties of coastal sage scrub, including the degree of disturbance. The area Mr. Hamilton contests has been historically and consistently mapped as coastal sage scrub, as is evident in the Final EIR prepared for the County of San Diego General Plan Update. In addition, the County's Biological Mitigation Ordinance (BMO) does not distinguish between disturbed forms of coastal sage scrub and requires the same mitigation for all coastal sage scrub varieties, which are considered Tier II per Attachment K of the BMO<sup>10</sup>. The BMO follows the same methodology as the MSCP where there is no distinction or habitat value difference between disturbed coastal sage scrub and coastal sage scrub.

### **Quino Checkerspot Butterfly**

HELIX has reviewed the portion of the Hamilton letter dated May 25, 2020 that discusses the Quino checkerspot butterfly. The letter uses statements made in the LCE and attempts to present arguments that counter those statements. There are three basic themes:

1. The discussion of 100% avoidance of occupied habitat from the 1993 Otay Ranch EIR;
2. The discussion of the project specific protocol surveys conducted in 2015 and 2016 by HELIX versus the non-protocol surveys conducted between 2017 and 2019 by others; and
3. The designation and impacts to Critical Habitat.

All three of these issues are addressed in the Additional Information provided for the Proposed Project Amendment, as well as in previous response to comments on the Final EIR and raise no new information. No additional response is not required.

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<sup>10</sup> Habitat based mitigation is described in Section 86.506 of the BMO while habitat tiers and mitigation are provided in Attachment K and M. County of San Diego. 2010. County of San Diego Biological Mitigation Ordinance. Ordinance Nos. 8845, 9246, 9632, 10039. Amendments effective April 2, 2010.  
[http://www.sandiegocounty.gov/content/dam/sdc/pds/mscp/docs/SCMSCP/BMO\\_Update\\_2010.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/mscp/docs/SCMSCP/BMO_Update_2010.pdf).

### E. RESPONSE TO OSBORNE AND BALLMER

The commenter provides a brief summary of comments made on the Final EIR for the Approved Project. Please refer to Volume II, Response to Comments, of the Final EIR for responsive information.

The commenter ignores the fact that the PPA eliminates development on PA 16, conserves PV-1 in its entirety and all but 6.1 acres of PV-3. The comment also disregards the PPA's overall benefit to preserve design. PV-1 and PV-3 were considered high priority areas for Quino conservation by the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW), which is why their preservation is a major component of the Quino Conservation Strategy that was developed in cooperation with the Wildlife Agencies. Conservation of PA 16 and 19 would also conserve habitat suitable for the Quino. The commenter refers to the central Proctor Valley as Quino rich, without supporting this statement. Based on the USFWS database, the maximum number of Quino observed in the central Proctor Valley in any given year was six individuals (2019). PA 16 and 19 had two individuals immediately adjacent and PV-1 had multiple Quino observed immediately adjacent between 2017 and 2019.

The commenter refers to unmitigable impacts due to a loss of hundreds of additional acres of Quino critical habitat. However, the comment ignores that the PPA would result in an overall reduction of 267.6 acres in impacts to Quino potential habitat compared to the Approved Project. As described in the analysis for the PPA, the revised project design would not have an unmitigable impact to Quino. Areas of highest value for the Quino have large, dense patches of host plants, adequate nectaring sources, lower non-native weed cover, and intact soils. Intact soils alone should not be the criteria for determining habitat value for Quino. Based on site-specific mapping, when actual host plant data is reviewed, host plant resources on GDCI exchange lands total 1.922 acres (PV-1 - 0.518 acre, PV-3 - 0.896 acre and R-14 - 0.508 acre) while CDFW exchange lands total 1.282 acres (Parcel A – 0.633 acre<sup>11</sup>, Parcel B - 0.361 acre, Parcel C - 0.092 acre and Parcel E - 0.196 acre). Parcels C and E have almost no host plant resources (0.092 acre and 0.196 acre). Parcel B has limited resources (0.361 acre), and Areas B and C do not have large polygons of host plants mapped. Parcel A has the largest total area of host plants, but would be surrounded by development and Proctor Valley Road without the land exchange and its long-term conservation value would be reduced with or without the land exchange.

The assertion that Quino are restricted to certain soils because more well drained soils have plantago that senesces earlier than plantago in heavier soils is not borne out by evidence. Three primary soil types occur on Village 14: Olivenhain cobbly loam in the central portion of the site, San Miguel-Exchequer rocky silt loam in PV-1 and PV-3, and Friant rocky fine sandy loam along

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<sup>11</sup> Excludes 0.429 acre within Proctor Valley Road alignment that will be impacted by the Approved Project and by the proposed Land Exchange footprint.

the eastern and northern portions of the site. Friant soils are sandier than either San Miguel or Olivenhain soils and yet Quino, are observed in all three soil types with the largest number of Quino sightings occurring in San Miguel soils (Figure 1). Quino occur in all three soil types. Specifically, when soils and Quino locations are assessed for the three largest populations in southern San Diego County (north of Lower Otay Reservoir [Figure 2], south of Lower Otay Reservoir [Figure 3], and Western Otay Mountain [Figure 4]), it is clear that Quino are present in habitat that contain all three soil types, with the area north of Otay Reservoir supporting a significant number of Quino sightings in Friant soils.

We concur that exclusion of exotic plant species and presence of soils capable of supporting plantago resources are helpful for Quino to persist on a given site and that sites with shallow soils and/or soil crusts are conducive to providing these. Soils by themselves however should not be the only criteria in assessing Quino suitability. Portions of the central valley mentioned in the comment have soils with cryptogamic crusts, yet had very limited plantago resources during 2015 and 2016 site-specific surveys when both years were considered very good years for plantago expression, and much of Parcel A in the central valley, with one exception in the very northwestern corner, had almost no plantago resources (See also Response O-3).

The comment that the GDCI exchange lands "...are characterized by large expanses of weedy and disturbed habitat, almost none of which is designated as Quino Critical Habitat" ignores PV-1 and PV-3, both of which are entirely within Quino critical habitat and support patches of plantago resources. In addition, Quino were documented on PV-1 in 2019. Land exchange parcel R-14, which the PPA would preserve, has significant areas that are good quality open sage scrub and grassland habitats that are considered suitable habitat for Quino. Contrary to the comment, R-15 and R-16 have low overall weed cover. All of the GDCI exchange lands have localized areas of shallow soils, hard surfaces with crust and or cryptobiotic crusts, and these areas also have host plant and nectaring resources suitable for Quino.

The quote from the Land Conversion Evaluation (LCE) is based on an assessment that relies at least in part on "Relatively brief site visits were performed in October and December of 2019 by CDFW staff". These assessments by CDFW staff over-emphasize the intact soils component of Quino habitat requirements instead of the detailed data set compiled by the 2015 and 2016 survey efforts. As a result, the value of portions of the CDFW exchange lands are overstated simply because they have intact soils, even though some of these areas had little or no actual Quino host plants. Conversely, some areas of the GDCI exchange lands were undervalued because the soils did not appear to be as intact, despite evidence that these areas have relatively high Quino host plant and nectaring resources.

The commenter then states the Quino Conservation Strategy confers no actual benefit to Quino and misstates the goals of the Quino Conservation Strategy and Framework Management Plan. The Quino Conservation Strategy was developed in coordination with USFWS and CDFW and

outlines the four imperatives for conservation and management of the lands. The goal of the Quino Conservation Strategy is not to establish “viable Quino colonies”, but instead to manage the lands to maintain and enhance potential Quino habitat connectivity and create functional uplift. The GDCI exchange parcels have areas where there are significant host plant patches, relatively intact soils and relatively low weed cover as explained above. PV-1 and PV-3 also include hill-topping areas for Quino. R-15 and R-16 also provides hill-topping areas and protection of lands that would be connected to other areas of preserved lands.

The commenter ignores the conservation of PV-1 and PV-3 provided by the PPA. These areas were considered high priority areas for Quino conservation by USFWS and CDFW. Conservation of PA 16 and 19 would also conserve habitat suitable for the Quino. PV-1 and PV-3 in particular are considered important in expanding existing connectivity and metapopulation stability with populations to the south and north of the project. The conservation provided by the PPA includes a wide variety of slope, habitat types and plantago resources “...distributed over a diverse and heterogenous range of host densities, patch sizes, slope exposures, vegetative contexts, etc...” described by the commenter.

We disagree with the commenter who states that the Framework Management Plan’s management measures have no track record of success. There are two components to the Framework Management Plan: Re-establishment of 2 acres of plantago resources, and long-term management and enhancement of a minimum of 20 existing plantago resource nodes. Both of these components would restore and enhance Quino resources where they historically occurred, with the goal of maintaining adequate Quino host plant resources to support a viable long-term Quino occurrence complex within the Proctor Valley region in perpetuity.

The Framework Management Plan’s management measures were based in part on the Quino habitat restoration that is currently being completed for the USFWS’ “bus stop” site (see page 3 of the Quino Framework Management Plan) and on HELIX’s successful restoration efforts in recent years. The “bus stop” site is partway through its restoration program, but initial feedback from USFWS was that the weed control efforts have been successful for improving habitat conditions, which HELIX also observed during a December 2019 site visit with USFWS. HELIX is currently working on two restoration efforts where Quino have been observed within the first year of the restoration effort, including one on Spooners Mesa in southwestern San Diego County where Quino was thought to be extirpated, and the restoration site was heavily degraded with little or no Quino resources prior to restoration. Both sites have seen significant increases in Quino host plant and nectaring resources.

The project is proposing to provide funding for on-going management in perpetuity, with the goal of focusing on high priority “nodes” initially, and as nodes are fully enhanced, adding additional nodes that will continue to enhance and expand Quino resources across the site. It is anticipated that as weed species are minimized, soil structure (i.e. crust formation) is also expected to improve over time. Currently there is no funding available to manage these lands for Quino.

Additionally, the PPA will consolidate development and reduce project edge by approximately 13 miles. Indirect impacts to biological resources were determined to be less than significant with implementation of the following mitigation measures: M-BI-1 (biological monitoring), M-BI-2 (temporary construction fencing), M-BI-5 (permanent fencing and signage), M-BI-14 (stormwater pollution prevention plan [SWPPP]), M-BI-15 (erosion and runoff control), M-BI-16 (prevention of invasive plant species), M-BI-17 (prevention of chemical pollutants), M-BI-18 (noise), M-BI-19 (fire protection), and M-BI-20 (lighting).

The commenter opines that successful establishment of new Quino populations within all of the restored habitat areas should be demonstrated prior to impacts to occupied habitat. However, it is not reasonable to require Quino occupancy given the variability of emergence of the species from year to year. The final success criteria will provide for all of the constituent elements required for Quino habitat and potential occupation.

Lastly, the commenter suggests that the PPA mitigation requirements would not compensate for the project impacts of large tracts of mature, occupied Quino habitat. The comment continues that it is not only the loss of larval resources, but “the entirety of the mature habitat, including diversity of vegetative and topographic features”. The PPA consolidates impacts to a central area and results in conservation of PV-1, PV-3, R-14, PA 16, and PA 19. These are areas of mature Quino habitat including a diversity of vegetative and topographic features in a reserve design that is superior to the Approved Project, and when combined with restoration and long-term management provided by the PPA, will contribute to long-term population stability and resilience for the south county Quino population. For these reasons, the PPA’s impacts to Quino are considered mitigable.

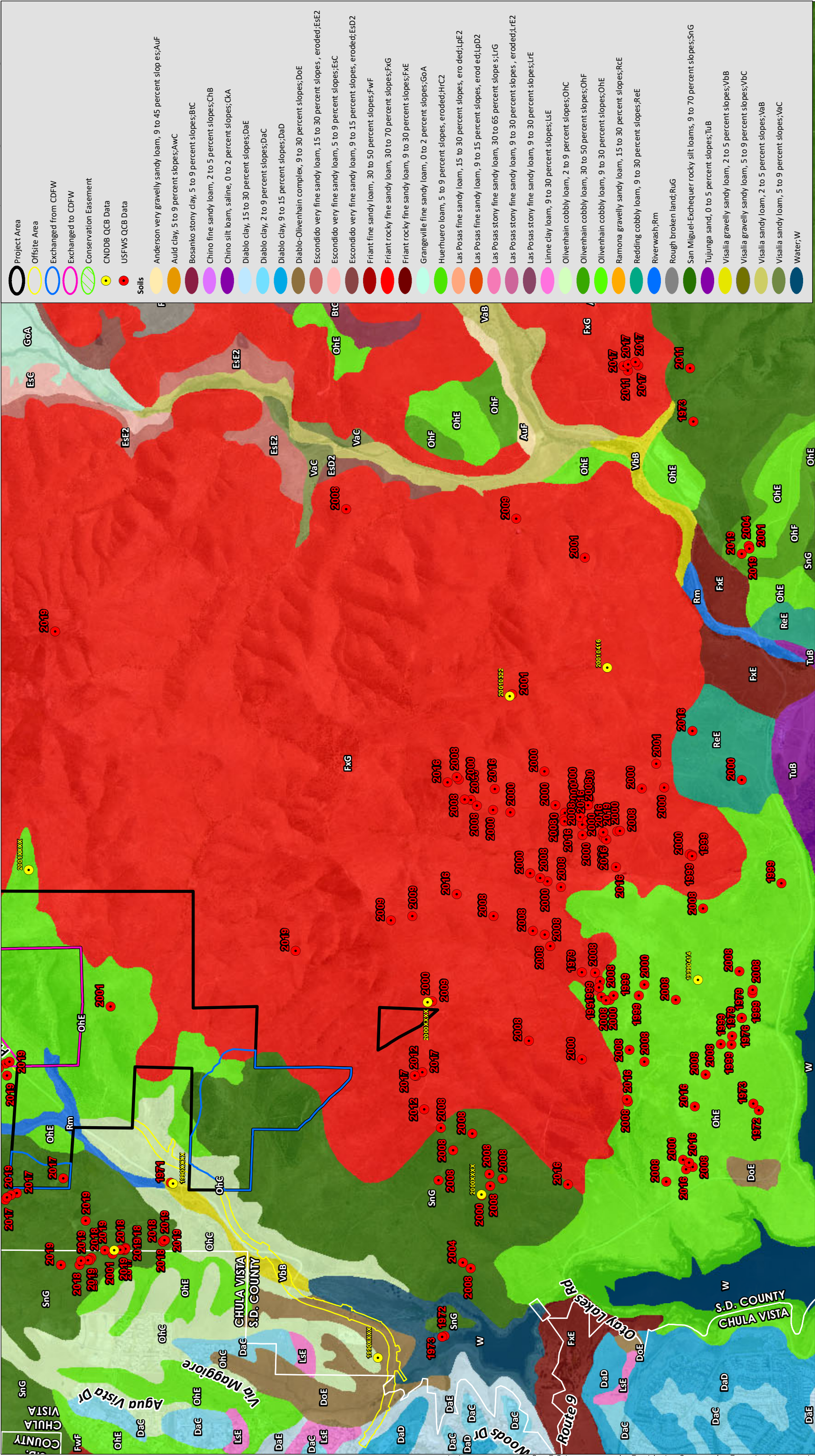










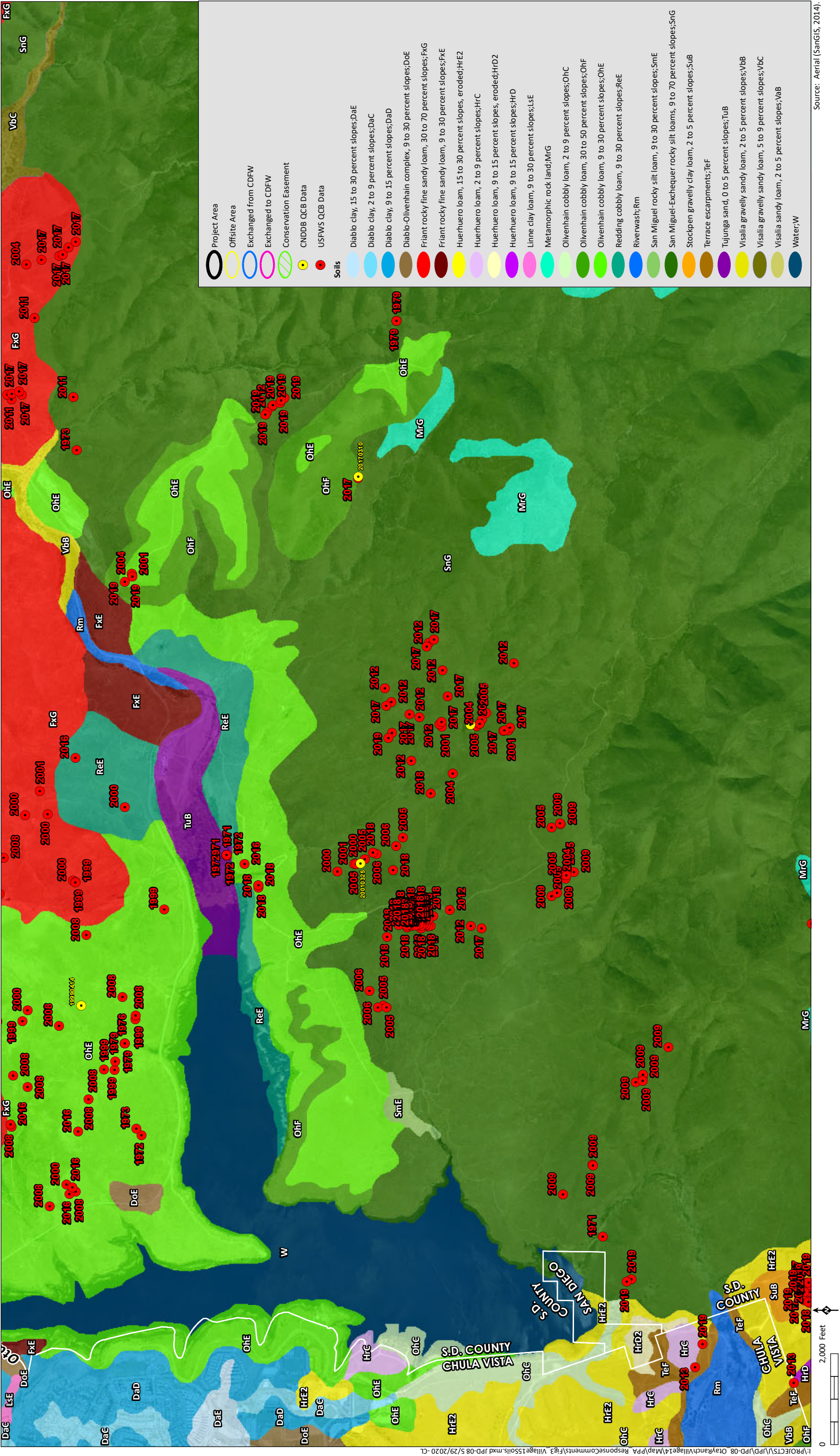


Source: Aerial (SanGIS, 2017).

Soils with QCB Sightings North of Lower Otay Reservoir





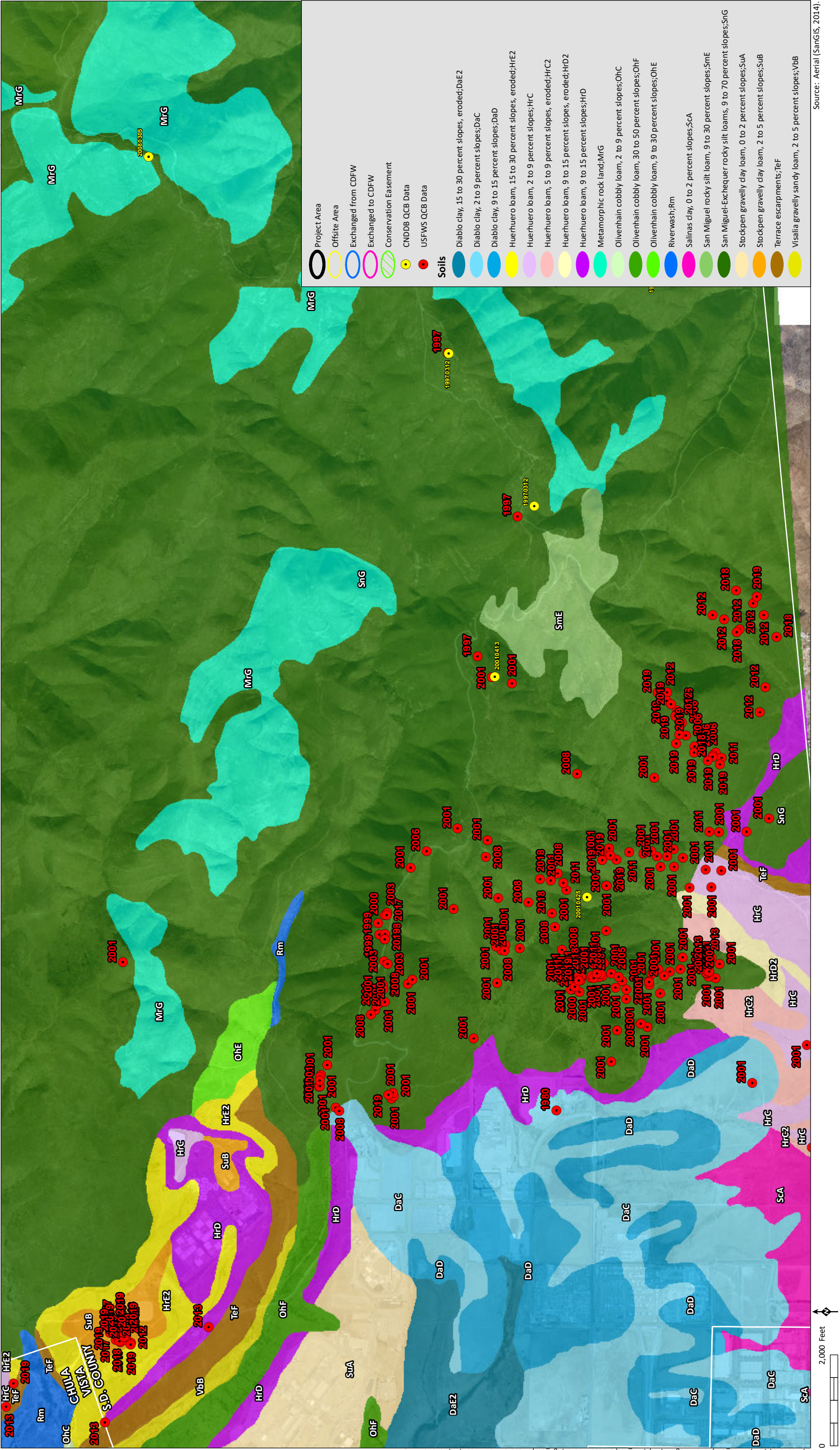


Source: Aerial (SanGIS, 2014).

Soils with QCB Sightings South of Lower Otay Reservoir







Soils with QCB Sightings Western Otay Mountain

Figure 4





**ATTACHMENT 1**

**LETTER FROM NANCY T. SCULL, SHEPPARD, MULLIN, RICHTER & HAMILTON  
LLP, DATED JUNE 2, 2020**





June 2, 2020

Mark Wardlaw  
Director, Planning and Development Services  
County of San Diego  
5510 Overland  
San Diego, CA 92123

Re: Otay Ranch - Village 14

Dear Mr. Wardlaw:

I am writing to you at the request of our client GDCI Proctor Valley L.P., in connection with the Otay Ranch Village 14 master planned community and the comments provided to the EIR regarding the formation and powers of the master association ("Master Association") that will be formed to govern the Otay Ranch Village 14 master planned community. For more than 35 years I have had the opportunity and privilege to work with clients in establishing their common interest developments throughout the State of California, including many master planned communities and condominium and planned unit development projects. This experience has included establishing the governance structure and obtaining all of the regulatory approvals required from local jurisdictions and the California Department of Real Estate ("DRE") for communities such as EastLake, Otay Ranch, Civita, Millenia, Escaya, Villages of La Costa, San Elijo and many more. As a former chair of the California Building Industry Association – DRE Committee and as the chairperson of the committee that developed the DRE regulations for master planned communities, clients and the DRE and local jurisdictions with whom I have worked with over the years have recognized the breadth and depth of our expertise in this area.

California is one of the most highly regulated states in the country with respect to the establishment of owners associations and the marketing and sale of residential lots and condominiums in common interest developments to consumers. The Davis Stirling Act and the regulations of the DRE provide the basis for the establishment and operation of owners associations and their governance. However, this statutory and regulatory framework presents only some of the extensive requirements that must be satisfied to establish an owners association, and in particular a master association to govern a master planned community. Governing documents, including the declaration of covenants, conditions and restrictions which is recorded against the community ("Declaration") must also take into account all of the requirements of all governmental agencies, including those set forth in conditions of approval and other recorded city agreements that impose on going obligations. Where cities and counties have imposed specific obligations on owners and owners associations, the Declaration must grant these governmental agencies the rights they need to ensure compliance. Having been lead counsel on so many of the County's largest (and most successful) master planned communities, I have worked with all of the applicable governmental agencies to ensure their objectives and requirements are satisfied

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through the establishment of the Declaration, the owners associations and the various governance programs.

Before responding to the comments in the EIR, it is important to understand the process which must be undertaken to prepare the Declaration and other governing documents for a master planned community and any other common interest development in California and to understand the enforcement tools available to an owners association under California law. Prior to commencing any drafting of a Declaration (or any other CC&Rs for a community), it is imperative for legal counsel to review and understand all of the project's entitlements, including the Tentative Map and all conditions of approval issued in connection with the Tentative Map, any Specific Plan Conditions, Specific Plan Appendices, Design Regulations or Design Guidelines, County ordinances, Fire Protection Plans, Storm Water Agreements and so forth ("Project Entitlements") to identify all of the ongoing covenants that must be performed throughout the life of the project and the roles and responsibilities for compliance with such requirements, including to identify all of the maintenance and operational responsibilities of the owners association and the homeowners. In fact, in order to submit an application to the DRE for a public report, the conditions of approval and other relevant documents which impose ongoing requirements must be included in the application which is submitted to the DRE. The DRE then performs a review of all of these governing and formation documents and identifies any required changes before it will issue a public report authorizing the sale and conveyance of residential interests. We also work with the applicable city or county governing agencies to identify every provision in the Declaration which addresses the requirements of the Project Entitlements and customarily provide a summary of the required provisions for review by city or county counsel if so required.

Not only does the process of ensuring conformance with the Project Entitlements focus on ensuring that the Declaration include all of the ongoing operational and maintenance requirements, which are funded by assessments levied against the owners. The amount of assessments levied against the owners is established by a detailed budget that is prepared for the association. In California, for every project with an owners association, a budget must be prepared by a specialist who works with DRE budgets. This budget must reflect all of the costs and expenses which will be incurred in performing all association maintenance and other obligations, including the costs of compliance with the Project Entitlements. The budget must conform to the DRE cost operating manual which means that sufficient cost allocations are included in the budget. For example, if a city requires annual inspections or an education program, there must be a line item in the budget for these costs. All of this information in the budget is then reviewed in detail by the DRE before the DRE will sign-off on the budget and authorize the issuance of a public report. It is not uncommon for the DRE to, for example, to inquire as to whether a particular line item in the budget adequately address the requirements in relevant Project Entitlements. This provides further assurances as to the accountability of the association for performing the obligations imposed by any Project Entitlements and ensuring that the costs have been appropriately accounted for in the annual budget.

Lastly, to ensure that an association and the owners conform to the requirements in the Declaration, including compliance with the Project Entitlements, the Declaration grants all of the necessary enforcement rights to the association and the owners to ensure compliance. The

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association has lien rights, foreclosure rights and all of its remedies at law or equity. These rights are all set forth in the Davis Stirling Act, including the procedures which must be undertaken to pursue such remedies. Many local jurisdictions also require that the Declaration make the local jurisdiction a third party beneficiary with full rights of enforcement. In addition, it is important to understand that the board of directors for the association will be managed by a professional and experienced management company and that the individual board members owe a fiduciary duty to the owners which further ensures that a board will undertake to perform its obligations under the Declaration or else those board members could be subject to liability.

Given the long history of master planned communities in the State of California, including San Diego County, there are ample examples of how successful this functioning of the owners associations and their compliance with the requirements of the local jurisdictions has been. Over the years, owners associations have evolved into not merely maintenance organizations. Owners associations today foster communities, provide a broad array of services and act as a liaison to ensure owners and the communities are in compliance with all of the governmental requirements. There are owners associations which regulate private water companies, maintain public/private spaces, have oversight and responsibility for major drainage channels serving a broad community, implement city and county transportation programs, conduct owner education programs and perform many other services for the benefit of the homeowners and/or to comply with governmental requirements.

In light of the foregoing, I would like to respond to the comments to the EIR relating to the Fire Protection Program and why the comments do not comport with the statutory and regulatory requirements in California for the establishment and governance of owners associations. In responding I have noted each specific comment in italics and provided my response to each.

1. Establishment of Owners Association. *The comment states that the Project's proposed Homeowners' Association's (HOA) fire safety measures are not "assured," claiming the record "lacks evidence" that the HOA will be established or that the HOA will effectively implement and maintain fire safety measures assigned to it under the Project documents. The comment cites the Revised Fire Protection Plan, pages 16, 22, 25, and 35, and the Addendum, pages 25-26; and states that neither the EIR nor the Addendum provides any information on the Project's HOA, asserting that the EIR documents lack "the required evidentiary support that the HOA would undertake these fire safety measures." The comment goes further, stating, "[i]n fact, it is unclear whether an HOA would be formed at all."*

Response to Comment. Residential subdivisions in California that are classified as "common interest developments" are regulated under the Davis Stirling Act (California Civil Code Section 4000, et seq.). A common interest development includes a planned development, which is a real property development within which there is common area that is owned and/or maintained by an association. (Civil Code Section 4100, 4175.) Common Area is the term that refers to the portions of a community other than the homes. (Civil Code Section 4095.) Examples of common area include private streets, landscape lots, drainage lots, and lots used for recreational facilities and community parks. Importantly, common interest developments **must** be managed by a

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homeowners association. (California Civil Code Section 4800 ["A common interest development shall be managed by an association that may be incorporated or unincorporated."])

The Proposed Project Amendment master planned community will include private streets, which in and of itself would necessitate the formation of an association under the Davis Stirling Act. Moreover, the community will include a number (up to 55 planned) internal open space lots which will be owned by an association.<sup>1</sup> Based on these features alone, the Village 14 master planned community would be classified as a common interest development for which an association must be formed. The DRE regulates common interest developments. In order for a developer to enter into a contract to sell a residential lot or condominium the developer must obtain a final subdivision public report from the DRE. The DRE will not issues a final subdivision public report unless and until the Association is incorporated. Therefore the DRE provides a "checks and balances" to ensure the Association is formed and the Public Report advises the owners of the breadth and scope of the jurisdiction of the Association. Moreover if any property is to be conveyed to the owners association as would be the case in this master planned community, then the DRE further requires that no closings can occur unless such conveyances to the association occur in coordination with the phasing plan approved by the DRE.

2. Funding for the Association. *The comment states that the Addendum "makes no attempt" to identify the funding needed to ensure that the Project's fire safety measures assigned to the HOA can be undertaken in perpetuity.*

Response to Comment. The costs incurred by an association in California to perform its obligations are funded by assessments levied by the members of that association (i.e., the homeowners). In fact, in California a homeowners association **must** levy assessments sufficient to perform its obligations under the governing documents and the Davis Stirling Act. (California Civil Code Section 5600(a).).

In connection with the establishment of the association for Village 14 and in conformance with the regulations of the DRE, a Master Declaration will be recorded. The Master Declaration will impose perpetual assessment rights in favor of the association in accordance with the requirements of the Davis Stirling Act. The Declaration will also impose perpetual lien rights in favor of the Master Association, which lien rights enable the Master Association to collect delinquent assessments to maintain the ability to fund the Master Association's obligations. These provisions are included in every Declaration recorded in the State of California for common interest developments. Every owners association relies upon these provisions for the functioning of their association. The ability to have these lien rights is not a new concept. There are tens of thousands of active associations in the State of California and they function because of these statutory rights which are granted to associations in California.

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<sup>1</sup> The Master Association owned and/or maintained areas and other facilities may include items such as private roads, entry gates, specialty lighting, open space trails, parks and recreational facilities and other amenities and features as determined by the developer and approved or required by the applicable governmental agencies.

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3. Effective Establishment of the Association. *The comment states that the EIR cannot assume that the eventual establishment of the HOA will be effective because it does not exist and neither the EIR nor the Addendum evaluate how it would operate and whether it can or will effectively implement and maintain the fire safety role and responsibilities assigned to it.*

Response to Comment. The regulations of the DRE will require the establishment of the Master Association as a condition to obtaining a final subdivision public report. A developer cannot sell and close any homes in a common interest development community without a public report. This ensures that the Master Association will be formed and activated. The Declaration will impose all of the obligations regarding the fire safety role similar to obligations imposed on other master associations to comply with the requirements of similar and other requirements of governmental agencies. Declarations for master planned communities and other common interest developments customarily require compliance with fire management programs, storm water requirements, requirements for public use of private space and other governmental requirements. For example, these may include the obligation to provide a reclaimed water facility, the obligation to sponsor and provide for public programming and/or the obligation to maintain a major drainage channel serving a community and surrounding areas. In all cases, the governmental agencies have relied upon the declarations which are recorded and the associations formed to further their goals and requirements. This is not unusual and is accepted practice throughout the State.

4. Fire Safety Program. *Lastly, the comment states that the County has not provided any "reason or basis" for why it could not have developed the HOA fire safety "program" prior to Project approval.*

Response to Comment. Association educational or outreach programs which are mandated by the Project Entitlements are routinely developed after project approval (and in some cases after recordation of the applicable Declaration) where, as is the case here, the fundamental guidelines for the program are established in the Project Entitlements. Often it is premature to develop such a plan without more specific information about product type (i.e., single family versus condominiums), exact locations of homes versus fire protection areas, etc., which is information that may not be known at initial project approval. For Village 14, a Wildlife Fire Evacuation Plan was prepared for the project which serves to inform the association on the specifics of the annual evacuation awareness program. The Wildlife Fire Evacuation Plan includes information such as emergency evacuation routes, guidelines as to what information must be posted on the association's website relative to fire safety, and frequency of community outreach. In our experience, it would not be customary for the County to require the development of a fire safety education or outreach program at project approval given the extensive guidelines provided in the Wildlife Fire Evacuation Plan and other Project Entitlements. As the final form of the Master Declaration is prepared and reviewed all of the specific requirements which incorporate the intent of the Fire Evacuation Plan can be developed in cooperation with the County and given the size and duration of development of the master planned community these programs can evolve to address the specific areas within the master planned community.

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We would be happy to provide any further information required by the County in response to the issues above.

Very truly yours,

A handwritten signature in blue ink, reading "Nancy T. Scull". The signature is fluid and cursive, with a long horizontal line extending from the end.

Nancy T. Scull  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4835-7452-8446.4  
cc: Liz Jackson  
Rob Cameron