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Otay Ranch Resort Village - Village 13 FEIR **Sierra Club San Diego Opposition**

April 13, 2020

Dear Ms. Jimenez,

Sierra Club is pleased this FEIR has been recirculated. As climate change progresses month by month with increased intensity and adverse impacts to San Diego County and the entire nation, a current EIR is more vital than ever. In the last four years a lot has changed: the global climate, the political climate in the state and county, and legal action here in the county do not resemble 2015.

That said, the FEIR for Village 13 has a number of major problems which require revision and a repeated recirculation. This document suffers from missing scientific information, failure to recognize the positive carbon impact of the existing land and habitats, excessive and distracting use of boilerplate language from other documents, apparently intentional use of mitigation methods which have been declared illegal by the court, and a general failure to understand the gravity of the climate change catastrophe.

Attempting to employ obsolete methods of dealing with greenhouse gas generation fails the citizens of San Diego County, the proponents of this development and the long-established Greenhouse Gas reduction goals of the State of California governors and legislature. Incorporated by reference are the May 28, 2019 analysis, comments and remarks from the Law Firm Shute, Mihaly & Weinberger LLP, representing the Endangered Habitats League in the subject project: Otay Ranch Resort Village - Village 13 Draft Revised Environmental Impact Report and the May 28, 2019 comment letter submitted by Center for Biological Diversity, California Chaparral Institute, and Preserve Wild Santee.

- 1) Chaparral and Coast Sage Scrub are an invaluable carbon sink that Village 13 will destroy. At several points in this revised FEIR the applicant erroneously states that the project site is vacant. This is untrue and shows a lack of knowledge regarding these ecosystems and inexperience of the applicant and their environmental consultants about climate change. In section 2.10.1.4 the FEIR states: "The Project site is currently vacant, with vegetation consisting of native coastal sage scrub and grassland habitats." And again in 2.10.2.4 the FEIR states, "Given the site's vacant condition, existing uses within the Project site emit approximately zero (0) MT CO₂e per

year.” This is not only a failure of semantics, but indicates a complete misunderstanding of the carbon cycle. The County must be reminded that this recirculated FEIR resulted from defective presentation of the facts regarding GHG generation and related mitigation. Repeating such errors should result in further recirculation. These statements fail to recognize that chaparral and coastal sage scrub not only do not produce GHG, they conversely absorb enormous quantities of carbon as documented in abundant scientific literature. See, for example the following three publications:

http://www.californiachaparral.com/images/Luo_et_al_Chaparral_as_carbon_sink_2007.pdf

http://www.patrickgonzalez.net/images/Gonzalez_et_al_2015.pdf

<http://www.planetary.brown.edu/pdfs/3403.pdf>

As a result of the applicant’s unfamiliarity with the value of this land as a carbon sink, with the County of San Diego Planning and Development Department acquiescence, the entire calculation of GHG that will result from this project is erroneous, invalid, and must be rejected and recalculated by an independent certified specialist in GHG inventories and generation. This self-serving and defective analysis speaks to the inherent conflicts of claims regarding county oversight while simultaneously championing projects that in no way reflect the 2011 General Plan Update, the mitigation requirements of a valid, approved, verifiable and enforceable Climate Action Plan (CAP) or demands of the California Superior Court. The project reflects the limited knowledge and dismissive attitudes of the early 1990s while claiming to meet 2019 standards of GHG reduction.

- 2) The FEIR suggests gas stoves, gas water-heaters, gas heat, and natural gas fireplaces will be standard appliances in non-attached homes. Moreover, the FEIR is inconsistent in whether gas fireplaces would be permitted in attached homes or not. The FEIR states, “Attached multi-family residences will be designed and constructed without wood-burning or natural gasburning fireplaces.” (Page 2.10-32). However, in another section of the FEIR the restriction on gas-burning fireplaces is omitted: “The Project’s residences would only utilize natural gas fireplaces; no wood burning fireplaces would be installed” (Table 2.10-3). So we are left with uncertainty as to whether all or just some residences would have gas fireplaces.

Gas Fireplaces and other gas appliances are major sources of greenhouse gas generation and should be deleted from any planning considerations in a conscientious project. Only electric energy and appliances should be used utilized in order to reduce greenhouse gas generation. Electricity will be obtainable from a variety of renewable sources in the County’s Community Choice Energy program which will soon be adopted as SDGE will no longer be a procurement source. The FEIR report lauds the project for gas fireplaces versus wood burning fireplaces. The FEIR claims an 88% reduction in GHG. Gas fireplaces still emit greenhouse gasses, so if their data is to be believed, that is actually an 18 % increase in GHG. Gas and wood fireplaces are not justifiable as a heat source in modern San Diego County. Electric powered heat pumps in new housing developments can provide nearly GHG-free warmth in 2019 and should be substituted in this project in this very early planning phase. The costs associated with fireplace and chimney materials, construction and labor requirements could well be avoided; allowing a lower building cost to developers and enabling a lower retail expense to homebuyers.

- 3) The FEIR states additional mitigation is required as the project otherwise has significant effects after mitigation. Without mitigation, the proposed Project's GHG emissions would result in a potentially significant impact due to the Project's incremental contribution to the cumulative issue of global climate change. The FEIR is unclear if the various mitigation measures actually result in a substantial reduction in project related GHG. Such determinative calculations and substantive evidence must be presented with any GHG reduction claims or otherwise be discarded as wishfully speculative.
- A) While trails and bike lanes proposed in M-GCC-1 are laudable, the GHG impacts of their creation must be calculated and mitigated. The taking of the native vegetation and the construction of paths and paved surfaces would both independently increase GHG, not reduce it. Please provide the actual amount of lost carbon sequestration from the loss of native vegetation, the tonnage of Co2e sequestration lost and returned to the atmosphere via removal. Please provide the detailed mitigation measures this action will require, including replanting, the 5-years of irrigation and oversight required to insure regrowth and securing the biologically equivalent open space currently threatened by development.
- B) It is likewise laudable under M-GCC-1 that information about transit would be provided to residents. But currently there is no adequate county transportation system to or from the proposed site. The application must provide substantial detail concerning what transportation would be available to and from Village 13, how long this would take to various destinations, and the likely percentage of residents that would use such a service. Please tell the public and decision makers the development plans to remove gasoline internal combustion cars from the road by residents of Village 13. Please understand this is not the developer's Draft Recirculated Environmental Report – this recirculation resulted from the County of San Diego's failed attempt to justify sprawl development with unprovable claims of conforming to State of California GHG standards. Please demonstrate how this rural development will meet the GHG and Vehicle Miles Traveled (VMT) standards resulting from automobile use.
- C) The requirement in M-GCC-2 and M-GCC-4 for "High-Efficiency Lighting in Multi-Family Homes and Non-Residential Buildings" and "Energy Star Appliances in Multi-Family Homes and Non-Residential Buildings" are good ideas, but it leave two questions unanswered: First why such standards are not required for single family homes? Second, compared to no project alternative, this innovation will only reduce the increase in GHG, not mitigate it. How is this a mitigation factor? Third, High-Efficiency Lighting of all types has been required by code for more than 3-years on **any and all** home types. Any such "high efficacy" claims are meaningless to an already existent standard, illusory to the public and an obvious distraction to decision makers from the present reality of the standards of the California marketplace. Such references should be struck from all aspects of the FEIR.
- https://www.energy.ca.gov/2015publications/CEC-400-2015-032/chapters/chapter_6-Residential_Lighting.pdf
- 6.1.1 Significant Changes in the 2016 Energy Standards The 2016 Energy Standards have simplified the residential lighting requirements through the following important changes:*

1. All luminaires installed in residential construction must qualify as “high efficacy luminaires.” This eliminates varying requirements by room and type of controls. This also eliminates the need to calculate the wattage of low versus high efficacy luminaires in the kitchen.

Fourth, “Energy Star Appliances” are virtually ubiquitous, with it being nearly impossible to purchase any appliance not meeting that most basic of standards. Fifth, please advise exactly what referenced “Energy Star Appliances” are being installed in these proposed homes. Unless electric water heaters or electric heat pumps will be installed, any appliance burning gas is simply compounding the challenges our County faces in controlling GHG generation.

- D) The proposal for Zero Net Energy as a mitigation measures in single family homes in M-GCC-4 has two problems. First, the FEIR does not show how much GHG this would reduce. Second and worse, how can homes using natural gas ever show Zero Net Energy use? This makes no sense. Please explain how such a conclusion was reached and how it will be corrected.
 - E) Beyond code efficiencies for multifamily homes and non-residential buildings are proposed In M-GCC-5 but this alleged mitigation measures leaves three questions unanswered: First, this provision does not show how much GHG this would reduce. Second, why is this standard not applied to single family homes? Third, this proposal does not reduce GHG emissions, it only results in a smaller **increase** in GHGs.
 - F) Mitigation measure M-GCC-6 for Zero Emission Vehicle Charging is a good idea as well but only applies to half the residential units. What about the other half? Also, what is the projection for the number of residents that would own such vehicles? The FEIR must calculate how much GHG this would actually save. Please respond with these calculations and reasoning.
 - G) Because the project cannot reduce the GHG produced during construction on the project site (M-GHC-7), the applicants intend to use “the Climate Action Reserve, the American Carbon Registry, and Verra (previously, the Verified Carbon Standard).” However, a recent (12-24-2018) decision in the California Superior Court right here in San Diego precludes and declares illegal such out of county GHG mitigation. The requires the County and applicant to find projects here in San Diego County to mitigate GHG generation created during initial construction.
- 4) The mitigation for greenhouse gas still does not guarantee that all GHG mitigation will occur within the county of San Diego as required by Superior Court Judge Timothy Taylor and described in excruciating detail in his minute order:
<https://www.voiceofsandiego.org/wp-content/uploads/2019/01/Judge-Taylors-Final-Ruling-on-Climate-Action-Plan-case.pdf>
Unfortunately, the FEIR borrows the boilerplate language from the county’s illegal climate action plan that does not guarantee in-county mitigation:

“Sixth, all carbon offsets required to reduce the Project’s operational emissions shall be associated with reduction activities that are geographically prioritized according to the following locational attributes: (1) off-site, unincorporated areas of the County of San Diego; (2) off-site, incorporated areas of the County of San Diego; (3) off-site areas within the State of California; (4) off-site areas within the United States; and, (5) off-site, international areas.” The applicant evidently does not understand that only mitigation measures 1 and 2 are legal under Judge Taylor’s ruling.

Please make a note of highest priority that ***the County of San Diego and its County Board of Supervisors are currently enjoined from using such out of County mitigation schemes.*** The December 24, 2018 Permanent Injunction provides, in relevant part:

“During review of greenhouse gas ("GHG") emissions impacts of development proposals on unincorporated County lands under CEQA, including in the review of such impacts prior to the issuance of any permits or entitlements for any General Plan amendment projects approved on or after February 14, 2018, the County, its agencies, agents, employees, representatives, supervisors, or other personnel, shall not rely on Mitigation Measure M-GHG-1, which is contained within the County of San Diego Supplement to the 2011 General Plan Update Program Environmental Impact Report, dated January 2018.”

A cursory comparison of Mitigation Measure M-GHG-1 and mitigation measures M-GCC-7 and M-GCC-8 show that the Project’s proposed GHG mitigation measures suffer from the same legal defects as M-GHG-1.

- 5) Sierra Club was a supporter of the General Plan and realizes more attention to climate change demands that planning now requires attention to GHG. The FEIR asserts that “development of the Project site under the Otay Ranch GDP/SRP has been incorporated into regional planning documents, including those that consider GHG emissions, such as the County’s General Plan and the San Diego Association of Government’s (SANDAG) San Diego Forward: The Regional Plan.” Today, under SB 375 a 15% reduction in GHG over the original proposal is required.

Unfortunately, nowhere in this FEIR do the applicants even mention the 15% figure again. Clear evidence is required that this 15% reduction in GHG will actually occur. Please understand that SANDAG is currently being re-evaluated as it fails to meet the standard GHG reduction targets required by state law. Such references are distracting from the absolute responsibilities of the County of San Diego as “lead agency” to obey the laws of California. No other agency has the right to grant entitlements, or the critical responsibility to do so only after thorough evaluation. Invoking such claims while SANDAG is completely reassessing its capabilities to meet GHG generation reductions standards is an unwarranted distraction.

- 6) The FEIR reports on numerous special status plants, special status wildlife species, vernal pools, protected avian species, wetland, waterways, wildlife corridors, habitat linkages that will negatively impacted or destroyed by the proposed project. The FEIR clearly admits that these resources will be “permanently or temporarily impacted.” Indeed, given that a large housing

project will be located on the site these biological resources will be permanently impacted and destroyed. The FEIR concludes that “there would be significant impacts to biological resources.” These resources and this land will be lost forever, and there is no indication in the FEIR that the mitigation is *real, additional, or permanent*. Additionally, some of the mitigation measures (for example to the Quino Butterfly) are proposed and hypothetical but *not real*. Creation of a preserve on already sensitive land is *not an additional* mitigation of biological resources. There is no assurance in the FEIR that the preserve that is proposed is *permanent*. In fact, the plans for both Otay Villages 13 and 14 develop land that was permanently preserved by prior agreements.

- 7) The director of the San Diego County Department of Planning and Development Service does not have the expertise to determine the adequacy of the required in-county mitigation. Instead an expert, *independent* consultant should certify the adequacy of any claims to in-county mitigation or GHG and on mitigation measures. Such certification would need to be approved by a vote of the County Board of Supervisors, subject of course to court challenges to such decisions.
- 8) There is no new analysis of traffic impacts in this revised EIR. Traffic is the leading source of GHG in California and the County of San Diego. Instead, the FEIR relies on the defunct 2015 traffic report. There is no indication that the 2015 report even dealt with the GHG implication of traffic with underlying consideration of resulting Vehicle Miles Traveled (VMT). Indeed, a word search for either GHG or Greenhouse Gas revealed no mention of it in the 2015 traffic report. Clearly, traffic has deteriorated significantly on the feeder Streets in Otay Ranch and on highways 125 and 805. A new analysis must be conducted that calculates the amounts of increased traffic and the GHG that is produced as motorists sit in gridlocked or slow traffic. Please understand that the concept of Level of Service (LOS) has been revoked by the California Office of Planning and Research since 2015 and replaced with Vehicle Miles Traveled regarding traffic impacts from major developments. (<https://la.streetsblog.org/2014/08/07/california-has-officially-ditched-car-centric-level-of-service/>)

This Sierra Club review has touched on only the most rudimentary of deficiencies in the FEIR and related project. We have every confidence the Shute, Mihaly & Weinberger review will meet the comprehensive legal standards of CEQA review and analysis.

A major underlying concern is that of an inadequate project description, where the entirety of environmental impacts is not known, analyzed or revealed by the County of San Diego. Unfortunately, this syndrome has been a characteristic of all prior General Plan Amendments (GPAs), including the purported Climate Action Plan that has suffered multiple defeats in the courtroom. Here again in Otay Ranch Village 13 we see the disgraced and repeatedly repudiated attempts to use out of county, out of state, and out of country GHG “offsets” resurrected. Such actions by County Staff equate to an attempt to destroy the County’s own 2011 General Plan Update.

It is beyond time that the County decision-making leadership take control of these “poison pill” schemes and move forward in serious attempts to meet state GHG control standards. Sierra Club San Diego remains ready to assist at the first indication of Board of Supervisor willingness to honor the 2011 General Plan Update and create a verifiable and enforceable Climate Action Plan.

Sincerely Yours,

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