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December 27, 2019

San Diego County Planning & Development Services
Attn: Mark Wardlaw, Director of Planning & Development Services
5510 Overland Avenue, Suite 310
San Diego, CA 92123
By email: *Mark.Wardlaw@sdcounty.ca.gov*

RE: Otay Ranch Resort Village – Village 13 Recirculated Draft Environmental Impact Report; Otay Ranch Resort Village, Project Nos. GPA04-003, REZ04-009, TM-5361, SP04-002, and ER LOG04-19-005

Dear Mr. Wardlaw:

RA-5-1 Our office has reviewed the Recirculated Draft Environmental Impact Report (DEIR) for the proposed Otay Ranch Resort Village – Village 13 Development (Project) and respectfully submits the following comments. We spoke with Project Manager Greg Mattson on November 22, 2019, and December 17, 2019, and alerted him that we would be submitting these comments. We request that you consider our comments before certifying a final environmental impact report.

RA-5-2 The Attorney General's Office submits these comments pursuant to the Attorney General's independent power and duty to protect the environment and natural resources of the State from pollution, impairment, or destruction, and in furtherance of the public interest. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)[1]

RA-5-3 In the wake of the State's deadliest wildfires in 2018, the destructive wildfires of 2019, and the increased occurrence of fires anticipated throughout the State in coming years, it is particularly important that local jurisdictions carefully review and consider new developments in fire-prone areas. This is particularly important for new developments proposed in the wildland-urban interface or in other relatively undeveloped and remote areas, like the area where the Project is proposed.

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[1] This letter is not intended, and should not be construed, as an exhaustive discussion of the DEIR's compliance with the California Environmental Quality Act (CEQA) or the Project's compliance with other applicable legal requirements.

RA-5-4

Baldwin & Sons and Moller Otay Lakes Investments, Inc., propose to develop the Project on a currently undeveloped 1,869-acre site in a very high fire hazard severity zone in southeastern San Diego County, east of Chula Vista. The Project would include 780 developed acres and 1,089 acres of preserved and managed open space. (DEIR at p. 4.0-1.) The Project would feature 1,881 single-family units on 525 acres; a 14-acre mixed-use site with 57 multi-family units and 20,000 square feet of commercial space; a 17-acre resort site with 200 guest rooms and up to 20,000 square feet of commercial office use; 28 acres of parks; a 10-acre elementary school site; and a 2-acre public safety site for a fire station. It is anticipated that the Project will have 6,957 permanent residents, and that approximately 850 staff and hotel guests will be on site each day. (DEIR, Appx. C-21 at p. 19.)

RA-5-5

The Project site sits "at the interface of existing urban development and undisturbed open spaces." (DEIR at p. 2.1-1.) It is bordered by Lower Otay Lake to the south and west. (DEIR, Appx. C-21 at p. 3.) "The Project site is currently vacant, with historic vegetation consisting of native coastal sage scrub and grassland habitats," which are highly flammable. (DEIR at p. 2.6-7.) The site topography comprises a broad mesa sloping to the south, broken by several steep canyons draining from north to south. Portions of the relatively flat mesa extend north into the Jamul Mountains, where the terrain primarily consists of steeper slopes, where fire typically spreads more rapidly. The steeper slopes lie mainly within the areas designated as permanent open space preserve, which would not be developed. (*Ibid.*)

RA-5-6

The Project site has seen a number of fires over the years. According to the DEIR, five fires have burned on the property, and "[m]uch of the property has burned four times over approximately 125 years." (DEIR at pp. 2.6-7 to 2.6-8.) This includes the October 2003 Mine/Otay Fire, which burned the *entire* Project area (and nearly 40,000 acres in Otay Mesa overall). (DEIR at p. 2.6-7.) In a May 2019 comment letter, the Center for Biological Diversity, the California Chaparral Institute, and Preserve Wild Santee state that the DEIR omits other fires, including the 2007 Harris Fire, which, according to the letter, burned through the majority of the Project area as well. (CBD, *et al.*, May 28, 2019 letter, at p. 21.)

RA-5-7

San Diego County, as the lead agency, has prepared a DEIR for the proposed Project. Despite acknowledging that the potential for wildfires "in and around the Project site is high," the DEIR fails to adequately address the risk of fire in several important respects.[2]

I. THE DEIR SHOULD ANALYZE THE INCREASED RISK OF WILDFIRE THAT WILL RESULT FROM THE PROJECT

The DEIR should, but does not, analyze the increased risk of wildfire that will result from siting the proposed development within a high fire sensitivity zone. The DEIR discusses

[2] We understand that the Center for Biological Diversity and others submitted comments to the County on May 22, 2015, July 24, 2018, November 13, 2018, and May 28, 2019, raising many of these same issues. We have not yet seen responses to these comments.

RA-5-7 cont.

emergency access to the site and onsite fire protection measures (see below).[3] But the DEIR does not disclose that locating new development in a high fire sensitivity zone will itself increase the risk of fire and, as a result, increase the risk of exposing residents, employees, and visitors to that increased risk. (See CEQA Guidelines, § 15126.2, subd. (a) [requiring the evaluation of potentially significant environmental impacts of locating development in areas susceptible to hazardous conditions such as wildfire risk areas, especially as identified in hazard maps and risk assessments].)

RA-5-8

RA-5-9

It is well-accepted that building in wildland areas increases the risk of fires.[4] The California Supreme Court has confirmed that these sorts of risks must be considered as part of the CEQA analysis for a proposed project. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 388 [CEQA requires analysis of the project's impacts when it brings development and people into an area of existing environmental hazards]; see also California Natural Resources Agency, Final Statement of Reasons for Regulatory Action Amendments to the State CEQA Guidelines, pp. 86-87 (Nov. 2018) [discussing *California Building Industry Association* and articulating the rationale for proposed clarifications to the Guidelines to more clearly account for the risks of locating development in high fire risk areas and within the wildland-urban interface].)

RA-5-10

Concerns regarding the Project's impact on the occurrence of wildfires were raised in public comments on the DEIR. In their May 28, 2019 letter, for example, the Center for Biological Diversity, the California Chaparral Institute, and Preserve Wild Santee explained that "construction of more homes in the wildland-urban interface is one of the main factors that 'magnify the wildfire threat and place substantially more people and property at risk than ever before.'" (CBD, *et al.*, May 28, 2019 letter at p. 20.) The letter notes, however, that the DEIR "ignores . . . ample scientific evidence linking sprawl development in high fire-prone wildlands with increased fire risk," and "fails to acknowledge the potential wildfire hazard from increased human-caused ignitions in the Project area." (*Id.* at pp. 20, 21.) The County should address these issues before certifying a final EIR.

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[3] A Fire Protection Plan was prepared for the Project. (DEIR, Appx. C-21.) Fire protection elements include 100-foot fuel modification zones; vegetation management; road requirements; structure requirements, including the use of ignition-resistant construction in compliance with San Diego County standards and the California Fire and Building Codes; hydrants and sprinklers; and additional requirements for non-residential buildings. (*Id.* at pp. 23-40.)

[4] See, e.g., PNAS, Rapid Growth of the US Wildland-Urban Interface Raises Wildfire Risk (Feb. 6, 2018) (https://www.pnas.org/content/pnas/115/13/3314.full.pdf); New York Times, Climate Change Is Fueling Wildfires Nationwide, New Report Warns (Nov. 27, 2018) (https://www.nytimes.com/interactive/2018/11/27/climate/wildfire-global-warming.html); Scientific American, Living on the Edge: Wildfires Pose a Growing Risk to Homes Built Near Wilderness Areas (June 1, 2018) (https://www.scientificamerican.com/article/living-on-the-edge-wildfires-pose-a-growing-risk-to-homes-built-near-wilderness-areas/).

II. THE DEIR SHOULD ADDRESS THE CUMULATIVE FIRE RISK POSED BY ALL NEW DEVELOPMENT IN OTAY RANCH

RA-5-11

The Project is one of a number of large new developments that would add thousands of homes in a highly fire-prone area of San Diego County. For the reasons discussed above, construction in such an area increases the threat of wildfires, and together the new developments will only enhance this effect. The DEIR fails to adequately assess this cumulative impact. With no real analysis, it concludes that "the proposed Project would ***not result in a cumulatively significant impact*** related to the risk of wildland fires" because the Project alone would not have such an impact, and because the fire station would provide adequate fire protection services. (DEIR at p. 2.6-27, emphasis in original; see also CBD, *et al.*, May 28, 2019 letter at p. 26.) The DEIR must do more to address the cumulative risk posed by the siting of multiple new developments in high or very high fire hazard severity zones. (See CEQA Guidelines, §§ 15130, 15355 [EIR must analyze cumulative impacts of the proposed project in conjunction with other developments that affect or could affect the project area].)

III. THE DEIR SHOULD ADDRESS EVACUATION IN THE EVENT OF FIRE

RA-5-12

The DEIR concludes that, as a result of the Fire Protection Plan, the requirement of compliance with building fire codes, and the planned fire station, "the Project would have ***a less than significant impact*** due to wildfires." (DEIR at p. 2.6-24, emphasis in original.) But the DEIR reaches this conclusion without a plan for evacuation. Instead, the Fire Protection Plan simply states that "[a] Community Protection and Evacuation Plan (CPEP) will be prepared . . . prior to occupancy," and that this plan "will form the backbone of hazard relocation/evacuation planning" for the Project. (DEIR, Appx. C-21 at p. 43.)

RA-5-13

The DEIR should include a robust evacuation plan now. Once roads and infrastructure are built, and the Project footprint is established, it may be too late to change any structural impediments to safe evacuation. The evacuation plan should address, at a minimum, (1) the evacuation of residents, employees, and guests in the event of a fire; (2) the increased challenges that existing users of the roads will face during an evacuation due to the added users; and (3) the increased challenges that firefighters and emergency responders would face in accessing the site and preventing the spread of a wildfire due to the simultaneous evacuation from the Project and neighboring areas. (See *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193-194 [finding that a project would not have had a significant impact on the risk of fire hazards because, among other things, the project would not materially affect evacuation routes]; *California Clean Energy Committee v. County of Placer* (Cal. Ct. App., Dec. 22, 2015, No. C072680) 2015 WL 9412772 [concluding that the EIR failed to adequately evaluate evacuation issues associated with the project and rejecting respondents' argument that these considerations were beyond the scope of the EIR].)

RA-5-14

Further, meaningful analysis of the risk of fire and evacuation plans should not be deferred until after a final EIR is certified and the Project is approved. (See CEQA Guidelines, § 15126.4(a)(1)(B).) While the deferment of mitigation measures may sometimes be appropriate, here no basis has been provided for why the evacuation plan was not already

RA-5-14 cont

prepared as part of the DEIR, nor have any specific potential mitigation measures been identified. (See *ibid.*; see also, e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671 [mitigation measure that included development of a post-final EIR management plan was found to be improperly deferred mitigation where no basis was provided for why the development of mitigation measures needed to be deferred to future plans, and where the EIR set forth no specific criteria, performance standards, or potential mitigation measures]; CBD, *et al.*, May 28, 2019 letter at p. 22.) In addition, based on the discussion in the DEIR, we are concerned that the Community Protection and Evacuation Plan, when it is developed, may not adequately address the totality of issues related to evacuation.

IV. THE DEIR SHOULD RESTRICT VEGETATION ON PRIVATE LOTS

RA-5-15

The DEIR "recommend[s] that none of the plant materials listed in the 'Prohibited Plant List' . . . or otherwise known to be especially flammable be planted on private lots." (DEIR, Appx. C-21 at p. 28.) To ensure that all residential lots avoid these hazardous plants, and to reduce the risk of fire as much as possible, the DEIR should change this from a recommendation to a requirement.

RA-5-16

We appreciate your consideration of our comments and respectfully request that you defer certification of the EIR and approval of the Project until you more fully address the risks of wildfire associated with the Project. If you have any questions or would like to discuss our comments, please feel free to contact us.

Sincerely,

KIMBERLY R. GOSLING
Deputy Attorney General

For XAVIER BECERRA
Attorney General

cc: Greg Mattson, Project Manager (*by email:* Gregory.Mattson@sdcounty.ca.gov)

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