

May 28, 2019

**VIA EMAIL**

Mr. Gregory Mattson  
Planning and Development Services  
San Diego County  
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**Re: Comments on the Otay Ranch Resort Village Revised and Recirculated Draft Environmental Impact Report (GPA 04-03/R04-009/SP 04-02/TM 5361, Environmental Review Number 04-19-005)**

Dear Mr. Mattson:

This firm represents the Southwest Regional Council of Carpenters (“Southwest Carpenters”) in the above-referenced matter. Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California. Southwest Carpenters has a strong interest in addressing the environmental impacts of development projects, including the proposed Otay Ranch Preserve and Resort Village in San Diego County (“Project”). We submit the following comments on the Revised and Recirculated Draft Environmental Impact Report (“Recirculated DEIR”) on the Southwest Carpenters’ behalf.

The Project is a massive undertaking that will result in significant environmental impacts. In order to construct the Project, the County of San Diego (“County”) created a unique Subregional Plan (“SRP”), which is now part of the San Diego County General Plan. (Draft Environmental Impact Report, p. 1.0-3 [“DEIR”].) The Project will also require a Specific Plan unique to the Project, General Plan Amendment, Zone Change, Tentative Tract Map approval, an Otay Ranch RMP amendment/adoption, and a County Multiple Species Conservation Program (“MSCP”) Subarea Plan South County Segment Boundary Adjustment. (*Id.* at p. 1.0-9.) Based on the Project description, it appears that the Project would include a Resort Planning Area, a Mixed-Use Planning Area, and a “Village Core.” (*Id.* at p. 1.0-10.) 525 acres of the Project site would be used to construct 1,881 single family homes, with a density of 3.2 to 4.4 dwelling units per acre. (*Ibid.*) It would also include a 14.1 acre “multiple use area,” which would permit construction of 57 homes and “up to” 20,000 square feet of commercial, retail, and office uses. (*Ibid.*) The Project would include a “Resort Site,” located on 17.4 acres, with “up to 200 guest rooms and up to 20,000 square feet” to be used for commercial/office uses. (*Ibid.*) It also

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provides for 28.6 acres of parks with nine park sites. (*Ibid.*) The Project reserves a 2.1 acre public safety site, which could house a fire station and a law enforcement storefront” and states that “the Project proposed to locate the Village 15 elementary school... with the designation of a 10-acre elementary school site located in the Village Core, adjacent to the neighborhood core.” (*Id.* at p. 1.0-11.) In addition, the Project will include 144 acres of open space and will “offer for dedication” 1,089 acres of open space to a Preserve. (*Ibid.*) The Project will also require significant grading and landscaping and would include significant additional roads within the development. (*Id.* at pp. 1.0-12 - 1.0-14.)

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This Project will create significant environmental impacts, and thus requires a careful, complete and thorough environmental analysis. The Recirculated DEIR and DEIR for the Project, however, are woefully insufficient for a project of this size. As explained herein, the Recirculated DEIR relies on an unstable Project description, does not provide an adequate analysis or mitigation for impacts to Global Climate Change, and has an insufficient alternatives analysis, in part, because it relies on conclusions from the DEIR that are not supported by substantial evidence and insufficient mitigation. Please remedy these deficiencies as outlined and requested below in order to ensure that the environmental review documents for the Project comply with CEQA.

### **I. The DEIR Does Not Include a Stable Project Description.**

“Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative), and weigh other alternatives in the balance.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 [“*County of Inyo*”].) “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Id.* at p. 193, italics omitted.)

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The Project description is anything but finite or stable. The majority of the Project description does not designate specific plans, numbers of buildings to be constructed, or other relevant information for the Project. Most of the Project description hedges as to what the Project will actually include. For example, the DEIR provides that the Project would “permit” certain uses or would provide “up to” a certain amount of construction, but does not provide specific details on the size, number, or nature of items to be constructed. (See DEIR, p. 1.0-10.) For example, the DEIR states that, for the Resort Area in the Project, “[a] Site Plan would be required to refine the development program, facilities, site design, architecture, and landscape architecture.” (*Id.* at p. 1.0-11.) The description of the single-family neighborhoods and the



multiple use site all state that they would require a “site plan” to further identify specifics of development. (*Id.* at p. 1.0-10.) The DEIR also states that the “Project reserves a 2.1 acre public safety site, which could house a fire station and a law enforcement storefront” and states that “the Project proposed to locate the Village 15 elementary school... with the designation of a 10-acre elementary school site located in the Village Core, adjacent to the neighborhood core.” (*Id.* at p. 1.0-11.) It is unclear when and if these facilities will be constructed, and if construction occurs at a later date, whether they will undergo additional environmental review and analysis.

The lack of a finite Project description is particularly problematic in an existing open space that will be completely altered and significantly impacted by construction. At this Project site, the number and size of buildings, landscaping, roads, and other man-made objects will dictate the magnitude and nature of impacts on the natural environment and biological resources. As the Recirculated DEIR relies on such a nebulous Project description, it does not and cannot provide an accurate analysis of the Project’s impacts to Global Climate Change and a complete discussion of Project alternatives. Please update the DEIR to provide a specific number, square footage, size, and location of homes, facilities, and buildings that will be included in the Project, and update the Recirculated DEIR to reflect how this data alters the evidence, analysis and findings in the Recirculated DEIR.

## **II. The County’s Global Climate Change Analysis is Insufficient, Unclear, and Is Not Supported by Evidence.**

### **A. The DEIR includes and analyzes irrelevant, confusing, and inapplicable regulations, plans, and policies.**

The Legislature and California Supreme Court have indicated that “an EIR is ‘an informational document’... and that ‘[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment....’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 [“*Laurel Heights*”], citing Cal. Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) Yet the Recirculated DEIR’s discussion of potential impacts on greenhouse gas emissions (“GHGs”) fails to clearly identify or analyze applicable regulations and plans in the context of the Project.

In the Recirculated DEIR, the County incorrectly relies on federal and statewide plans and regulations which were not designed to be applied at the project-level. (See *Center for Biological Diversity v. Dep’t of Fish & Wildlife* (2015) 62 Cal.4th 204 [“*Newhall Ranch*”];

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DEIR, pp. 2.10-3 – 2.10-18.) The County provides little to no analytical connection between these plans and requirements for the Project, itself. (See *ibid.*) These plans, for example, discuss GHG emissions requirements for vehicle manufacturers, GHG reduction measures applicable to oil and gas producers, general state-wide GHG reduction goals, and the cap and trade program, among others, but do not provide project-specific standards for development projects. (*Id.* at pp. 2.10-4, 2.10-6, 2.10-7, 2.10-16.) This information is confusing and extraneous, and undermines the Recirculated DEIR’s function as a transparent, informational document.

**B. The Recirculated DEIR’s analysis of Project impacts without mitigation is not supported by the evidence and does not meet CEQA’s disclosure requirements.**

The Recirculated DEIR’s claim that “the proposed Project’s GHG emissions would be reduced to net zero... thereby supporting a determination that the Project would not change the existing environmental setting” is not supported by substantial evidence. (See Recirculated DEIR, pp. 2.10 - 1 – 2.10 – 2.)

The current “baseline” GHG emissions for the Project site are estimated to be zero, as the Project site is currently open space with native grasses and coastal sage brush. (Recirculated DEIR, p. 2.10-19.) The Project, as proposed, would be a massive development, with close to two thousand homes, a hotel and resort amenities, multiple roads and thoroughfares, and a large number of commercial, retail, and public service buildings. (DEIR, pp. 1.10-10 – 1.10-14.) According to the Recirculated DEIR, “the Project will emit approximately 33,791 MT CO<sub>2e</sub> [Metric Tons of Carbon Dioxide Equivalent] per year during its operational phase” and will create “37,973 MT CO<sub>2e</sub>” during construction. (Recirculated DEIR, p. 2-10.22.)

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The Recirculated DEIR states that “in an effort to ensure a conservative analysis... the Project’s increase in GHG emissions may have a potentially significant impact on the environment (see CEQA Guidelines §15064.4(b)(1)).” (*Id.* at p. 2-10.23.) Likewise, the Recirculated DEIR concludes that, prior to mitigation, “the Project’s GHG emissions would be potentially significant and potentially conflict with plans and policies designed to reduce GHG emissions.” (*Id.* at p. 2.10-28.)

CEQA Guidelines § 15064.4(b)(1) provides: “[a] lead agency should consider the following factors, among others, when determining the significance of impacts from greenhouse gas emissions on the environment... [t]he extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting.” In this case, Project construction would result in a 37,900 MT CO<sub>2e</sub> increase in GHG emissions at the Project site during construction and a 33,700 MT CO<sub>2e</sub> increase in GHG emissions on an annual basis.

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(See Recirculated DEIR, p. 2-10.22.) However, the City fails to disclose the threshold it used to determine the significance of Project-related GHG impacts. Failure to base this determination on a threshold that meaningfully discloses the significance of GHG impacts fails to comply with CEQA’s standards for transparency and disclosure. “[A]n EIR is ‘an informational document’” aimed at providing “‘detailed information about the effect which a proposed project is likely to have on the environment...’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 [“*Laurel Heights*”], citing Cal. Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) To do so, the EIR must provide clear data regarding a proposed project’s significant impacts on the environment. “[A] sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 515.) “An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” (Cal. Code Regs., tit. 14, § 15151.)

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The Recirculated DEIR’s Global Climate Change analysis does not meet these standards, as it does not clearly disclose that the Project would have significant impacts prior to mitigation, or the severity of these impacts. Instead, it states that “the Project would result in an increase in GHG emissions” but that with mitigation “the proposed Project would not result in a significant impact to global climate change.” (Recirculated DEIR, pp. 2.10-1 – 2.10-2.) Despite the overwhelming evidence that the Project will have significant impacts with respect to GHG emissions, the EIR does not adequately disclose that it will result in these significant increases prior to mitigation and will only have a net total of no GHG emissions if it purchases carbon offsets. (*Id.* at Table 2.10-4.) Failing to clearly disclose the significance of the impacts of the Project prior to mitigation fails to provide decisionmakers with information that enables them to make intelligent decisions that account for environmental consequences.

Please update the Recirculated DEIR to disclose the methodology the County used to determine that the Project will result in a significant impact to GHG emissions. In addition, please ensure the County has done everything it can to ensure all significant Project GHG impacts are reduced to the greatest extent feasible.

**C. The Recirculated DEIR’s discussion of the Project’s consistency with applicable plans, policies, and regulations adopted for the purpose of reducing GHG emissions is incorrect and incomplete.**

**a. The Recirculated DEIR’s conclusion that the Project would not prevent the attainment of SB 32 and S-3-05 goals is not supported by the evidence.**

The County concludes that the Project would not prevent the attainment of 2030 or 2050 goals articulated in SB 32 or S-3-05, because “the Project achieves carbon neutrality (i.e. a net zero emissions level), thereby resulting in *no* net increase in GHG emissions relative to existing environmental conditions.” (Recirculated DEIR, p. 2.10-26.) This conclusion is not supported by the evidence for two reasons.

First, as discussed *supra*, the conclusion that the Project will result in no increase in GHG emissions relative to the existing environmental conditions is not supported by the evidence. While the County claims that purchase of massive carbon offsets would result in a “net” balance, the evidence demonstrates that the Project as constructed would contribute to a large increase the GHG emissions in San Diego County.

Second, the conclusion that the Project is consistent with SB 32 and S-3-05 is also not supported by the evidence. SB 32 mandates that “statewide GHG emissions are reduced to 40 percent below 1990 levels by 2030.” (Recirculated DEIR, p. 2.10-8.) Executive Order S-3-05 provides that GHG emissions in California “should be reduced to... 1990 levels by 2020, and to 80 percent below 1990 levels by 2050.” (*Id.* at p. 2.10-26.) The Project’s mitigation measures for construction do not explicitly require that the Project applicants and/or operators purchase carbon offsets within the State of California. (See *id.* at pp. 2.10-31 – 2.10-32.) The mitigation measure directs the Project applicants and/or operators to prioritize purchasing offsets within San Diego County and the State of California but does not require the Project to do so. (*Id.* at p. 2.10-31.) This does not ensure that California will reach its 2030 or 2050 goals.

Please update the analysis to accurately reflect that the Project would impede the attainment of SB 32 and S-3-05.

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**b. The Recirculated DEIR’s analysis of Project consistency with applicable plans, policies, and regulations does not clearly explain or provide the plan, policy, or regulatory standards it is analyzing.**

RO-3-6 The Recirculated DEIR’s analysis of Project consistency with applicable plans, policies, and regulations does not clearly explain or provide the plan, policy, or regulatory standards it is analyzing. For example, the Recirculated DEIR states that “the Project is consistent with General Plan Goals COS-1, COS-17, COS-19,” but does not explain what the goal is, how the goal relates to the reducing GHG emissions, or how, specifically the Project meets that goal. (Recirculated DEIR, p. 2.10-24.) Likewise, the Recirculated DEIR concludes that the Project would be consistent with the San Diego Forward Plan and SB 375, but it does not explain what the San Diego Forward Plan provides or requires with respect to reduction of GHG emissions, nor how the Project complies with specific provisions of this plan, nor how the plan seeks to reduce GHG emissions. (*Id.* at p. 2.10-25.) In addition, this analysis does not identify any goals that the Project may be in conflict with or may not be in complete conformity with.

Please revise the Recirculated DEIR to provide the text of specific goals, explain how such goals will reduce GHG emissions, and discuss, with specific data regarding the Project, how the Project is consistent with such goals. Please include an analysis of these items, including the text of all specific policies, plans, or regulations, an explanation as to how compliance with these policies, plans, and regulations reduces GHG emissions, or otherwise describe how the Project does not comply with or will obstruct these plans, policies, and regulations.

**D. The Recirculated DEIR’s GHG cumulative impact analysis is not supported by the evidence nor does it clearly explain how the County reached its conclusions.**

RO-3-7 When conducting an environmental impact analysis, an agency’s determinations must be supported by evidence in the record. (Cal. Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Cal. Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency cannot simply draw conclusions without analysis. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511–512, 515 [“*Topanga*”].) It “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Ibid.*) In completing a cumulative impacts analysis, an agency “must use its best efforts to find out and disclose all that it reasonably can.” (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [“*San Franciscans*”]).

With respect to greenhouse gas emissions, “The challenge for CEQA purposes is to determine whether the impact of the project's emissions of greenhouse gases is *cumulatively* considerable, in the sense that ‘the incremental effects of [the] individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.’” (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 219, citing Pub. Resources Code, § 21083(b)(2), Cal. Code Regs. tit. 14, 15064(h)(1).)

The Recirculated DEIR does not support its conclusions with analysis, its conclusions are not supported by the evidence, and it does not demonstrate that the agency has used “its best efforts to find out and disclose all that it reasonably can.” (See *San Franciscans, supra*, at 74.) The Recirculated DEIR concludes that the “Project’s contribution to the cumulative impact of global climate change would be less than significant with mitigation” because “the Project would result in no net increase in GHG emissions” and would not conflict with the San Diego Forward Plan. (Recirculated DEIR, p. 2.10-27.) The Recirculated DEIR does little to explain how the County reached this conclusion. And the conclusion that the Project would not result in any net increase in GHG emissions is not supported by substantial evidence in the record. (See discussion *supra*.)

As written the Recirculated DEIR does not comply with CEQA. Please update the cumulative impacts analysis to better explain how the County reached its conclusions regarding cumulative impacts.

**E. The Recirculated DEIR’s mitigation measures for GHG emissions are not sufficiently specific and are not designed to actually mitigate the Project’s GHG emissions.**

“An EIR shall describe feasible measures which... minimize significant adverse impacts...” (Cal. Code Regs., tit. 14, § 15126.4(a)(1).) “Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments.” (*Id.* § 15126.4(a)(2).)

**a. The Project’s mitigation measures are not specific enough to ensure a meaningful reduction in the severity of GHG emissions from the Project.**

Mitigation Measures should not be “vague” or “incomplete.” (Continuing Education of the Bar, *Practice Under the California Environmental Quality Act*, § 14.11.) They “must not be remote and speculative.” (*Id.* citing *Federation of Hillside & Canyon Associations v. City of Los*

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*Angeles* (2000) 83 Cal.App.4th 1252, 1260.) Mitigation measures must be sufficiently defined and specific to ensure that they are effective and actually reduce significant environmental impacts. (See *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.)

The Project's mitigation measures are extremely broad and provide very little, if any specific, tangible, enforceable requirements that will concretely lessen GHG emissions. For example, the Project applicant, prior to the issuance of grading permits, must "implement traffic calming features... to reduce motor vehicle speed and encourage walking and biking." (Recirculated DEIR, p. 2.10-28.) This, however, does not specify what type of features must be implemented, what traffic calming features actually are, where this must be implemented, or provide any specific, objective criteria that the Project applicant must comply with. This does not, for example, require that such features "encourage biking or walking" or provide convenient walking or biking options that connect housing to commercial or school areas. (*Ibid.*) In addition, the Recirculated DEIR requires that the Project must provide information about transit options to Project residents. The Recirculated DEIR does not clearly explain how these mitigation measures will objectively contribute to reduced GHG emissions at the Project site. Likewise, the Recirculated DEIR requires the installation of Energy Star appliances and high-efficiency lighting in multi-family and non-residential buildings, but does not provide any quantifiable criteria as to the type of high-efficiency lighting to be used, whether all non-residential buildings must comply with this requirement, and what specific appliances must be Energy Star certified. (*Id.* at p. 2.10-29.)

While the Project applicant/operator is required to submit a Zero Net Efficiency Confirmation report, confirming that single family residences will achieve zero net efficiency, this mitigation measure does not include specific criteria or requirements for the Zero Net Efficiency Confirmation report. (*Id.* at pp. 2.10-29 – 2.10-30.) In addition, these mitigation measures must be provided "to the satisfaction of San Diego Planning & Development Services Department." (See e.g., Recirculated DEIR, p. 2.10-29.) Such measures are inherently nebulous and difficult to enforce, and impermissibly defer mitigation under CEQA. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236 ["[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR."])

Please remedy these deficiencies so as to ensure that the Project's mitigation is clear, enforceable, and will actually reduce projected Project GHG emissions.

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**b. The Recirculated DEIR provides no mitigation, save carbon offsets, for Project construction.**

Project construction is forecast to result in 37,973 annual MT CO<sub>2e</sub> emissions. (Recirculated DEIR, Table 2.10-4.) Yet the Recirculated DEIR provides no mitigation for construction emissions save the purchase of carbon offsets. This does not evidence an attempt to actually mitigate significant GHG emissions caused by Project construction.

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Please update the Recirculated DEIR to include additional measures, such as requiring maximum construction vehicle idling times, requiring the use of energy-efficient vehicles and tools that are not powered by gas or diesel motors, requiring the use of carbon-neutral construction materials, and requiring that the Project will hire a specific percentage of construction workers that live within a specific radius of the Project site to minimize GHG emissions from workforce commute times, etc., to mitigate emissions during construction.

**c. The Project's use of carbon offsets as mitigation shirks responsibility for creating a Project that does not significantly contribute to climate change.**

The Recirculated DEIR only requires the Project applicant and/or operator to offset the Project's *projected* GHG emissions, not the Project's actual emissions. (Recirculated DEIR, p. 2.1-33 [stating that, prior to construction, the applicant/operator will provide evidence of purchasing carbon offsets for 28,625 MT CO<sub>2e</sub> per year], Table 2.10-4 [providing that the Project is projected to have emissions of 28,625 MT CO<sub>2e</sub> per year during operation].) This is insufficient to ensure that this mitigation measure will produce the net-zero emissions reported in the Recirculated DEIR.

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Furthermore, without explanation, the County set a 30-year limit on the primary mitigation for the Project. For M-GCC-8, the Recirculated DEIR sets as mitigation that, "As to operational emissions, the Project applicant (or its designee) shall purchase and retire carbon offsets sufficient to offset, for a 30-year period, the operational GHG emissions from that incremental amount of development to net zero." (Recirculate DEIR, Global Climate Change Evaluation, at Table ES-3, p. ES-10; Recirculated DEIR, p. 2.10-32.) The County does not explain why it set a 30-year limitation on this mitigation, nor does it provide evidence that Project operation will cease within 30 years or that Project emissions will otherwise cease to be significant at that time. As the Project is, in essence, a small town, it is highly unlikely that Project operation will simply cease within 30 years. Absent this information, the County has failed to justify this limitation on its mitigation, and it should be presumed that the Project's significant GHG emissions will simply cease to be mitigated after 30 years.



In addition, the County’s discussion of mitigation measure M-GCC-8 does not accurately describe the reductions this mitigation measure will achieve. This mitigation measure requires the Project applicant to obtain “carbon offsets in the amount of 28,625 MT CO<sub>2</sub>e per year multiplied by 30 years.” (Recirculated DEIR, p. 2.10-33.) This, the County states, will reduce Project emissions to zero for the duration of the operation of the Project. However, this is inaccurate, as, even if the proposed mitigation effectively mitigated Project emissions to zero, this mitigation is only required for the first 30 years of Project operation. In short, the evidence contradicts the County’s conclusion that M-GCC-8 will result in net-zero Project-related GHG emissions during the operational phase of the Project.

Moreover, purchasing carbon offsets for a limited duration of the Project life, rather than ensuring that the Project is designed, constructed, and operated in a manner that will reduce or eliminate its GHG emissions to the greatest extent possible is irresponsible and fails to truly minimize or mitigate the root causes of Climate Change and Global Warming. Failure to minimize GHG emissions throughout the life of the Project improperly offloads GHG impacts on future generations, and, as a result, will increase future GHG emissions.

Please update the mitigation measures to provide increased mitigation in the form of construction mitigation and enhanced mitigation for Project operation. In a revised DEIR or Final EIR, please provide data evidencing that the Project has utilized all mitigation possible to ensure that the Project will result in as little GHG emissions as possible prior to purchasing carbon offsets. If the Project must purchase carbon offsets to mitigate its GHG emissions, please require that the Project applicants/operators purchase offsets within California, and purchase offsets for the projected Project emissions with calculations for reasonably foreseeable increases in emissions for the projected life of the Project.

**III. The Recirculated DEIR Alternatives Analysis Does Not Sufficiently Examine Alternatives That Would Mitigate Project Impacts and Is Not Based on Accurate Data.**

- a. The DEIR does not include an accurate analysis of substantial impacts and mitigation, and thus does not provide a sufficient alternatives analysis.**

“Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process.” (*Laurel Heights, supra*, 47 Cal.3d at 404; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350.) An EIR’s review of Project alternatives must analyze alternatives “which are capable of avoiding or substantially lessening any significant effects of the project.” (Cal. Code Regs., tit. 14, §

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15126.6(b).) An EIR's very purpose is to identify ways to reduce or avoid significant environmental impacts. (*Laurel Heights, supra*, 47 Cal.3d at 403.) In order to achieve this purpose, the EIR must correctly identify project impacts.

Yet the Project alternatives analysis, as drafted, does not adequately assess whether alternatives would avoid or substantially lessen significant Project effects because it is based upon incorrect or incomplete data in the DEIR. The DEIR both does not provide sufficient analysis of Project impacts and incorrectly finds impacts to be less than significant. For example, while the DEIR stated that the Project's impacts to biological resources are significant, the County found that Project impacts to biological resources would be less than significant for a number of items, despite evidence to the contrary. (DEIR, pp. 2.3-13 – 2.3-14.) For instance, the County found that the Project would have less than significant impacts on sensitive vegetation despite evidence that acres of sensitive vegetation communities would be entirely destroyed. (*Ibid.*) The DEIR also concluded that the Project will have less than significant impacts to federally endangered species, though the data shows that the Project will result in "permanent impacts" to the San Diego thornmint, and likely impacts to the San Diego ambrosia and Otay tarplant, which are all federally endangered. (*Id.* at p. 2.3-18.) In addition, the DEIR concludes that the Project would result in less than significant impacts to the federally protected California gnatcatcher, though the Project would eliminate 14 locations for this species. (*Id.* at pp. 2.3-19 – 2.3-20.) The DEIR also concludes that the Project would have a less than significant impact on a core wildlife area. (*Id.* at p. 2.3-23.) Yet, the evidence shows that the Project would destroy 786.1 acres of wildlife habitat, and threshold criteria consider projects that impact more than 500 acres that support sensitive or multiple wildlife species to have significant impacts. (*Id.*) The DEIR similarly concludes that significant wildlife habitat would be destroyed but such destruction would not result in significant impacts. (*Id.* at pp. 2.3-21 - 2.3-24.) The DEIR thus fails to properly identify significant impacts, and as a result, fails to properly mitigate significant impacts. This deficiency renders the alternatives analysis insufficient, as the Recirculated DEIR does not analyze such significant impacts when identifying, assessing, and selecting Project alternatives.

The DEIR also fails to provide appropriate, enforceable mitigation for impacts to traffic and transportation and to cultural resources, and, as a result, the Recirculated DEIR's alternatives analysis relies on incorrect data regarding the Project's impacts post-mitigation. The County fails to provide enforceable mitigation for significant and unavoidable impacts to traffic and transportation for the Project. (See DEIR, pp. 2.9-50 – 2.9-51 [stating that mitigation for traffic and transportation must be approved by the City of Chula Vista before it may go into effect, which is impermissibly unenforceable].) The County also states that the Project could result in potentially significant impacts to human remains, but concludes that with mitigation, the impacts

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RO-3-13 would be reduced to a less than significant level. (*Id.* at p. 2.4-29.) Yet the County does not provide clear, enforceable mitigation for discovery of human remains, nor does it provide enforceable mechanisms to ensure that local Native American tribes dictate the procedure for preservation of human remains that are identified as Native American. (*Id.* at p. 2.4-27 [stating that “standard procedures... shall be implemented” and “Native American representative... shall be consulted”].) Without enforceable mitigation, the County’s conclusions that impacts to traffic and transportation and cultural resources would be less than significant are not supported by the evidence. An alternatives analysis that relies on faulty or unsupported conclusions is likewise unsupported by evidence. Without evidence-based information regarding impacts and mitigation measures, the Recirculated DEIR’s alternatives analysis does not provide a clear explanation of how alternatives might differ from the Project or better minimize or eliminate Project impacts.

RO-3-14 The Recirculated DEIR’s alternatives analysis, therefore, does not adequately identify feasible alternatives that lessen adverse impacts, nor does it sufficiently examine whether the alternatives listed would mitigate or avoid Project impacts. Please reassess and alter the discussion of impacts and mitigation in the DEIR discussed herein. In addition, please concurrently update the Recirculated DEIR alternatives analysis to include options that would lessen or avoid all significant and/or inadequately mitigated impacts.

**b. The Recirculated DEIR does not adopt feasible alternatives that would lessen the Project’s environmental impacts.**

RO-3-15 The CEQA alternatives analysis has been described by the California Supreme Court as the “core of an EIR.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) CEQA provides a “*substantive mandate* that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures” that can lessen the environmental impact of proposed projects. (*Mountain Lion, supra*, 16 Cal.4th 105, 134 [emphasis added].) It compels government to mitigate adverse effects through the selection of feasible alternatives. (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233; see also Cal. Pub. Resources Code § 21002.) If an agency determines that it will not utilize Project alternatives, the public agency must analyze why alternatives are infeasible. “[A]n EIR should set forth the alternatives that were considered by the lead agency and rejected as infeasible during the scoping process, and the reasons underlying the agency's determination.” (*Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1351.)

Alternative G would have fewer environmental impacts than the Project in every category analyzed and less than significant impacts with mitigation. (See Recirculated DEIR, Table 4.0-2.) Specifically, when compared to the Project, it would result in reduced environmental impacts

in aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, noise, solid waste, transportation and traffic, and global climate change.

(*Ibid.*) Alternatives C and E would result in reduced environmental impacts and less than significant impacts with mitigation in seven of ten environmental areas. (*Ibid.*) Yet the County does not select any of these alternatives to minimize environmental impacts of the Project. Nor does it include an analysis of why Alternatives C, G, and E, or any of the other alternatives are infeasible. This is insufficient under CEQA, and is particularly problematic, as the DEIR concludes that several impacts, including impacts to air quality and traffic and transportation, will result in significant and unavoidable impacts. (See e.g., DEIR, pp. 2.2-19 – 2.2-20, 2.9-50 – 2.9-51.)

Please update the alternatives analysis with an adequate discussion, including specific, evidence, indicating why each alternative is infeasible and was not selected in place of the proposed Project.

**c. The Recirculated DEIR fails to adequately examine an alternative site for the Project.**

CEQA Guidelines provide that an EIR must analyze Project alternatives “which are capable of avoiding or substantially lessening any significant effects of the project.” (Cal. Code Regs., tit. 14, § 15126.6(b).) An EIR must include a sufficient range of alternatives to permit a reasoned choice between alternatives and foster public participation. (Cal. Code Regs., tit. 14, § 15126.6(f); *Bay Area Citizens v. Association of Bay Area Gov’ts* (2016) 248 Cal. 4th 477.) The EIR should provide “enough of a variation to allow informed decisionmaking.” (*Mann v. Community Society v. County of San Bernardino* (1984) 155 Cal. 3d. 738, 750.)

The Recirculated DEIR states “selection of another location may have avoided impacts to biological resources, cultural resources, and geology and soils, which are specific to this location.” (Recirculated DEIR, p. 4.0-4.) Yet the Recirculated DEIR dismisses a different Project site alternative and does not analyze how an alternative site could minimize significant impacts. An alternative site could significantly reduce the impacts associated with constructing a huge project on previously undeveloped open space. If the Recirculated DEIR identified a location that was already developed or even partially developed, it could reduce the irreparable loss of native vegetation, wildlife, and open space and the other related impacts to biological resources in the area, as well as potentially reducing impacts to cultural resources and geology and soils. Reference to, but then the County’s ultimate omission of, such an alternative does not permit a reasoned choice nor “provide enough of a variation to allow informed decisionmaking. (See *Mann, supra*, 155 Cal. 3d. at 750.)

RO-3-15  
Continued

RO-3-16



RO-3-16  
Continued

Please revise the Recirculated DEIR to analyze at least one additional project site, so that the public and decisionmakers have an opportunity to evaluate a sufficient array of alternatives.

#### **IV. Conclusion**

Southwest Carpenters thanks the County for providing an opportunity to comment on the Recirculated DEIR. Please update the Recirculated DEIR to adequately address the issues raised in these comments, then either recirculate a revised DEIR or provide a Final EIR with the information and analysis requested herein.

RO-3-17

Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, please notify Southwest Carpenters of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Laws. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the County or any other public entity in connection with this Project and add Southwest Carpenters to the list of interested parties in connection with this Project. All notices should be directed to my attention. Please send all notices by email, or if email is unavailable, by U.S. Mail to:

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