

Letter O10



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Via E-Mail and FedEx

Mark Slovick
County of San Diego
Planning & Development Services
5510 Overland Ave., Suite 110
San Diego, CA 92123
E-Mail: Mark.Slovick@sdcounty.ca.gov

Re: Lilac Hills Ranch Project Revised Draft Environmental Impact Report

Dear Mr. Slovick:

This firm represents the Cleveland National Forest Foundation (“CNFF”) in connection with the proposed Lilac Hills Ranch project (“Project”). CNFF previously submitted a comment letter dated August 16, 2013 in which it commented on the Project’s inconsistency with the County’s General Plan and other relevant plans, as well as the legal flaws in the County’s draft environmental impact report. When the County issued its revised draft environmental impact report (“RDEIR”), the County did not respond to CNFF’s prior comment letter and did not correct many of the deficiencies identified by CNFF. Accordingly, CNFF incorporates that comment by reference here and expects that the County will respond to the issues CNFF commented on in that letter almost all of which are still relevant even after the draft EIR was revised.

Unfortunately, the RDEIR still suffers from numerous flaws, and it contains no new information demonstrating that the Project is consistent with the General Plan and relevant Community Plans. Specifically, the RDEIR fails to comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. It is also conflicts with the County’s General Plan, the Bonsall Community Plan and the Valley Center Community Plan, in violation of State Planning and Zoning Law, Gov’t Code § 65000 et seq. For all of these reasons, the County may

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- O10-1 The comment is an introduction to comments that follow and references prior comments submitted in response to the Draft EIR circulated in July of 2013. The County has prepared responses to the referenced August 16, 2013, comments. Please the attached letter with associated responses to comments.
- O10-2 The revisions to the EIR do not change the previous conclusion that the project would be consistent with the General Plan and Valley Center and Bonsall Community Plans. Please refer to Appendix W of the FEIR. The comment addresses general subject areas, which received extensive analysis in the FEIR. The comment does not raise any specific issue regarding that analysis, and therefore, no more specific response can be provided or is required. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the project.
- O10-3 Refer to response to comment O10-2.
- O10-4 Refer to response to comment O10-2.

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not legally approve the Project as proposed. We urge the County to deny this ill-conceived Project.

I. The RDEIR Fails to Correct Numerous Deficiencies Regarding Analysis and Mitigation of Agricultural Resources.

A. The RDEIR Still Understates the Project’s Agricultural Impacts.

As described in CNFF’s prior comment letter, dated August 16, 2013, the Draft EIR significantly understated the Project’s impacts on farmland. The RDEIR now correctly determines that the Project’s impacts are significant, but continues to understate the severity of the impacts. In particular, the RDEIR does not correct the Draft EIR’s error in ignoring the significant impacts to Unique Farmland, Farmland of Local Importance, and other productive agricultural lands. Instead, the RDEIR only recognizes impacts on 43.8 acres of Prime Farmland and Farmland of Statewide Importance as significant impacts of the Project. For all of the reasons described in CNFF’s prior letter, this analysis is legally faulty.¹

This understatement of the Project’s impacts also infects the RDEIR’s mitigation measures. Because the RDEIR only recognizes impacts on 43.8 acres of Prime Farmland and Farmland of Statewide Importance as significant impacts, it only requires 43.8 acres of mitigation land. RDEIR at 2.4-12, 2.4-27. However, as described above, the Project will have significant impacts on many more acres of productive agricultural land, and the RDEIR therefore must include mitigation to address these impacts as well. In addition, the proposed 1:1 mitigation ratio for impacts to agricultural land is insufficient. As the State Department of Conservation states, “if growth inducing or cumulative agricultural impacts are involved, we [DOC] recommend that this ratio be increased.” San Diego County Guidelines for Determining Significance – Agricultural Resources, p. 47, attached as Exhibit 1. Here, the RDEIR recognizes that the Project will have significant growth-inducing impacts and cumulative impacts. RDEIR at 1-48 – 49, 2.4-24, 31. The County must therefore require farmland mitigation at a ratio greater than 1:1.

The RDEIR includes some new analysis and mitigation of indirect impacts to farmland, but still fails to address most of the deficiencies identified in our prior comment letter. In particular, the RDEIR still fails to analyze or mitigate the effects the

¹ The state recently recognized the importance of designated “unique” farmland in SB 375. See Gov. Code §§ 65080.01(b)(1), 65080(b)(2)(B).

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O10-5 In assessing impacts to on-site agricultural resources, the relevant inquiry under the County’s Guidelines for Determining Significance is whether the project would result in the conversion of agricultural resources “that meet the soil quality criteria for Prime Farmland or Farmland of Statewide Importance.” (County Guidelines, p. 40.) Based on the County’s approved significance thresholds, impacts to agricultural resources that do not meet the requisite soils criteria, such as FMMP Unique Farmland or Farmland of Local Importance are not considered significant impacts, within the meaning of CEQA. Please see FEIR subchapter 2.4 and Global Response: Agricultural Resources, Direct Impacts for further information responsive to this comment regarding the County’s thresholds and the related impacts analysis.

O10-6 As explained in the prior response, the FEIR identified the appropriate agricultural resource classifications that would be significantly impacted by the project. CEQA does not require mitigation for impacts not deemed significant. Please see Global Response: Agricultural Resources, Direct Impacts for additional information responsive to this comment.

O10-7 With respect to growth-inducing impacts, the FEIR determined that while growth in the surrounding areas may be encouraged due to the intensification of uses on the project site, potential impacts are too speculative for evaluation in this EIR because the specific nature, design and timing of future projects is unknown at this time. As to agricultural resources, it is speculative to assume that any such future development would occur on Prime or Farmland of Statewide Importance, the two soil classifications relevant to the assessment of significant impacts. Additionally, at a 1:1 ratio, the project would mitigate the project impacts and, therefore, the project as mitigated would not contribute to cumulative impacts. As the comment notes, the Department of Conservation’s position with respect to an increased mitigation ratio is a recommendation and not mandatory. In this case, the proposed 1:1 mitigation ratio for the identified significant impacts is consistent with the County’s approved Guidelines and provides adequate mitigation. It also is noted that as part of the project design, 23.8 acres of active on-site agriculture, including 2.53 acres containing Prime or Statewide Importance soils, would be preserved through the establishment of an open space easement. Please see Global Response: Agricultural Resources, Direct Impacts for additional information responsive to this comment.

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	<p>O10-8 The FEIR adequately analyzes the potential effects the Project would have on nearby agricultural land and the potential for the project to make agriculture less viable from a financial and practical perspective. Subchapter 2.4.3.3 of the FEIR, states, “The pressure, inconvenience, and increased costs of operating remaining farms in areas converting to other uses may render continued farming infeasible or, at least, heighten the attractiveness of selling other farms for development.” Furthermore, the FEIR recognizes that compatibility issues, including invasive pests and pets, pathogens/diseases, air contamination generation, and nighttime lighting, can be contributors to the degradation of the viability of off-site farms. However, such impacts would be less than significant because: (1) the crop types found within the vicinity are primarily citrus and avocado groves and flower/nursery operations, which are not usually found to be incompatible with residential uses; (2) the proposed residential uses do not create conditions (e.g., air contamination/degradation, nighttime lighting) that would adversely affect off-site agriculture; (3) the project would be subject to regulatory requirements for the control of stormwater discharges; and (4) the project would include homeowner disclosure documents issued pursuant to the County Agricultural Enterprises and Consumer Information Ordinance, which would provide notice to homebuyers of the existing ongoing agricultural operations in the vicinity. (Agricultural Resources Report, pages 105-106.) Moreover, any indirect impacts to nearby agricultural lands due to project development would be reduced to less than significant with implementation of the agricultural buffers, fencing, and limited building zone that would be implemented as project mitigation.. Please also see FEIR subchapter 2.4.2.3, Urban/ Agricultural Interface Compatibility [reasons why the proposed project would not affect the viability of agricultural operations in the project vicinity]; and Global Response: Agricultural Resources, Indirect Impacts , for information responsive to this comment.</p>
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Project will have on nearby agricultural land by making farming less viable from a financial and practical perspective. See p. 12 of CNFF’s comment letter dated August 16, 2013. As the County’s own guidelines acknowledge, these types of impacts are very real. See San Diego County Guidelines for Determining Significance – Agriculture, p. 32 (agricultural land is subject to economic pressure to develop when it’s surrounded by urbanized uses). Relatedly, the RDEIR improperly fails to acknowledge that the Project’s growth-inducing effect will impact farmland. RDEIR at 1-49. The RDEIR’s mitigation measures, which address edge effects by requiring, for example, fencing and buffers, do not mitigate this type of impact and are therefore insufficient to mitigate these impacts.

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The RDEIR also fails to correct other errors, such as its lack of analysis of impacts due to pets and pests, and its consequent failure to adopt all feasible mitigation to address these issues. The RDEIR contains a couple measures, such as fencing and buffers, that allegedly reduce impacts from domestic pets and pests; however, the RDEIR never attempts to describe the extent to which these measures will reduce impacts or describe whether other feasible mitigation is available.

O10-11

II. The RDEIR Continues to Have a Faulty Analysis of the Project’s Consistency with Policies to Protect Agriculture and the Character of the Area.

In response to comments regarding the Project’s inconsistency with numerous general plan and community plan goals, and the DEIR’s failure to accurately describe these inconsistencies, the RDEIR revised its analysis regarding plan consistency. However, the new analysis fares no better. For example, it claims that the Project is consistent with GOAL LU-7, which promotes land use plans that retain and protect farming, because the Project will concentrate development in a compact form, thereby reducing development pressure on other areas that contain farmland. RDEIR, Appdx F. at 115. This analysis is faulty; as the RDEIR shows, the Project will induce growth. RDEIR at 1-49. Thus, far from protecting nearby farmland, the Project will cause more development that will then impact more farmland.

O10-12

Likewise, the RDEIR claims the Project is consistent with LU-7.1, which requires protection of low-density agricultural land, because the Project will modify the general plan and community plans to remove the existing regional category and land use designation and to re-designate the entire 608-acre site as “Village.” RDEIR, Appdx F. at 115. But neither this redesignation nor any other part of the proposed Project approval changes policy LU-7.1. Thus, the Project remains in conflict with the policy notwithstanding the redesignation of the land. The policy would be meaningless if it

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O10-9 The FEIR analysis of potential growth-inducing impacts adequately acknowledged the project’s potential growth-inducing effect on agricultural resources. The FEIR addresses the intensification of land uses on the project site that would result from project development and whether such intensification would encourage substantial economic or population growth, or the construction of additional housing in the surrounding area, either directly or indirectly. (FEIR, Chapter 1.0.) As reported in the FEIR, the County of San Diego General Plan Regional Land Use Element Map currently designates the project site as “Semi-Rural,” and current uses on the site include agricultural operations. (FEIR, Chapter 1.0.) The analysis further reports that the proposed project would amend the project site’s General Plan designation from “Semi-Rural” to “Village,” a designation characterized by compact, higher density development. (FEIR, Chapter 1.0.) Relatedly, the project also would amend the Valley Center and Bonsall Community Plan LandUse designations for the project site, which would result in an increase of allowable dwelling units from approximately 110 to 1,746. (FEIR, Chapter 1.0.) This would result in a direct increase in population that would exceed the population allowed by both the General Plan and Community Plans. (FEIR, Chapter 1.0.)

As a result of this growth, the FEIR concludes that “the intensification of land uses on-site could encourage intensification in the immediate project vicinity. As more intense uses are developed on-site, existing adjacent less intense or vacant lands may be encouraged to intensify.” (FEIR, Chapter 1.0.)

Thus, the FEIR acknowledges that the intensification of land uses on-site resulting from the change in designation from “Semi-Rural” to “Village,” which would result in an increase in allowable dwelling units from approximately 110 to 1,746 could encourage similar intensification and conversion of land uses in the immediate project vicinity. (FEIR, Chapter 1.0.)

As a result, the FEIR reports that the project could have the potential to result in adverse physical environmental effects, including impacts to visual resources, air quality, agricultural and biological resources, cultural resources, and noise. (FEIR, Chapter 1.0.) The analysis evidences that the referenced intensification of land uses in the immediate project vicinity potentially would impact current agricultural resources, as such uses potentially give way to residential uses. However, as the FEIR analysis properly concludes, such

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	<p>O10-9 (cont)</p> <p>potential impacts are too speculative for evaluation at this time because the specific nature, design, and timing of future projects is unknown, and any potential impacts would be evaluated at the time the future projects are identified and processed. (FEIR, Chapter 1.0.) Specific to agricultural resources, while growth in the surrounding areas may be encouraged due to the intensification of uses on the project site, it is speculative to assume that such future development would occur on (i.e., convert) Prime or Farmland of Statewide Importance, the two relevant soil classifications. (See County Guidelines, p. 40.) Accordingly, even if the project would result in potential adverse growth-inducing effects related to agricultural resources, such potential impacts, like the other impacts, are too speculative to identify, at this time.</p> <p>O10-10 Mitigation measures AG-2 [requiring a 50-foot agricultural buffer planted with two rows of tree crops], AG-3 [requiring a 6-foot-high masonry/metal fence], and AG-4 [requiring establishment of a limited building zone (LBZ) beyond the agricultural buffer], in addition to project design considerations, address the potential for indirect impacts to occur to off-site operations that relatedly could impact long-term economic viability of agricultural operations. For example, fencing would be constructed adjacent to areas where potential adjacency issues were identified. Fencing would prevent trespass, theft, and minimize potential for spreading of pathogens or disease. A 50-foot-wide agricultural buffer planted with tree crops also will be provided to create a transition between off-site agricultural operations and residential uses. A LBZ would provide further buffer and transition between agricultural and residential uses by restricting certain incompatible uses in these areas, such as swimming pool and picnic areas.</p> <p>Compatibility buffers are the primary tool for increasing compatibility between existing agricultural uses/resources and proposed new non-agricultural uses, and AG-2 in combination with AG-4 would result in a buffer ranging in width between 70 and 242 feet, with an average width of approximately 100 feet. In determining the width of the agricultural buffer and related LBZ proposed by the mitigation measures, the County reviewed and considered the County Guidelines and a literature review of agricultural buffers, which cited a range of potentially adequate buffer widths starting as narrow as 10 feet, with an average recommended buffer width of approximately 100 feet</p>
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	<p>Please see Global Response: Agricultural Resources, Indirect Impacts for additional information responsive to this comment.</p> <p>O10-11 The FEIR's identification of agricultural buffers and fence installation would provide adequate mitigation of the project's edge effects, including impacts related to pets and pests. Please see the response to comment O10-10 above, the Global Response: Agricultural Resources, Indirect Impacts, and FEIR subchapter 2.4, for additional information regarding the proposed mitigation measures responsive to the comment.</p> <p>O10-12 The comment asserts that the FEIR analysis is faulty because it states the project is inconsistent with Goal LU-7, yet concludes growth inducing impacts would occur. The FEIR concludes that the project may be growth inducing; however, the impacts of that potential growth are speculative. Please refer to response to comment O10-9 above which explains that the analysis properly concludes that conversion of agricultural land from growth inducement is too speculative for evaluation at this time because the specific nature, design, and timing of future projects is unknown, and any potential impacts would be evaluated at the time the future projects are identified and processed.</p> <p>The project site is located in an area of agricultural and rural residential uses. The project incorporates mitigation measures and project design features to assure the protection of agricultural operations. Specifically, on-site prime and statewide importance soils that would be converted to non-agricultural uses would be mitigated through the purchase of agricultural conservation easements at a 1:1 ratio. Additionally, 42.2 acres of agricultural buffers and agricultural open space are included as part of the project design, and ongoing agricultural cultivation would be allowed to continue in these areas. As discussed in subchapter 3.2.3 of the FEIR, the project would include on-site biological open space, common open space, LBZ buffers, as well as mitigation measures AG-2, AG-3, and AG-4, which would ensure that urban/agriculture compatibility conflicts are less than significant.</p> <p>Please see Appendix W for response to Policy 7.1, which discusses protection of agricultural lands with lower density land use designations that support continued agricultural operations.</p>
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	<p>O10-13 The comment states that the project is not in compliance with Policy LU-7-1, regardless of whether the project is re-designated.</p> <p>The General Plan designated the project site as Semi-Rural Lands pursuant to General Plan Land Use Policy LU-7.1. The project proposes to amend the General Plan Semi Rural Lands land use designation to create a new Village. While the project would increase the density allowed and convert existing agricultural lands to non-agricultural uses, the project would still comply with the intent of this policy in the following ways: (1) The project would preserve approximately 43.8 acres of agriculture off-site through the purchase of PACE program mitigation credits or through the preservation of off-site agricultural resources based on the County's Guidelines for the Determination of Significance for Agriculture (CEQA); (2) The site is not located within a Williamson Act Contract or an Agricultural Preserve; (3) Approximately 20.3 acres of agriculture would remain on-site within the biological open space and agricultural buffers (see Exhibit A - Agriculture to Remain), and agriculture could be established within the manufactured open space areas, which could include community gardens (page II-19 of the Lilac Hills Ranch Specific Plan); (4) Impacts to off-site agriculture would be less than significant through the implementation of mitigation measures, including agricultural buffers, fencing, and fuel modification zone restrictions; (5) Other compatible agricultural uses would be allowed by the Specific Plan, such as farmers' markets (page III-62 of the Lilac Hills Ranch Specific Plan), community gardens (page III-55 of the Lilac Hills Ranch Specific Plan), and vineyards (see Vineyard Park P-9 in the Lilac Hills Ranch Specific Plan).</p> <p>The General Plan is intended to reflect an "environmentally sustainable approach to planning that balances the need for adequate infrastructure, housing, and economic vitality, while maintaining and preserving each unique community within the County, agricultural areas, and extensive open space." Furthermore, the General Plan states that "the policies contained within this General Plan were written to be a clear statement of policy but also to allow flexibility when it comes to implementation. Policies cannot be applied independently; rather, implementation of the policies must be balanced with one another and will address details such as how and when the policy is applied and any relevant exceptions. For example, a policy to</p>
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	<p>O10-13 (cont.)</p> <p>conserve open space is not a mandate for preservation of 100 percent of the existing undeveloped land in the County. It must be balanced with other polices that allow development and other uses of the land." (General Plan, p. 1-5.) Therefore, policy LU-7.1 should not be interpreted independently or as requiring the preservation of 100 percent of the agricultural land in the County. Rather, the policy should be balanced with other policies in the General Plan that allow for new growth and the establishment of new villages. In balancing this policy with other policies in the General Plan, the County may give more weight to the policies that allow new, well-designed development that complies with policies LU-1.2 Leapfrog Development, LU-3.1 Diversity of Residential Designations and Building Types, LU-3.2 Mix of Housing Units in Large Projects and LU-3.3 Complete Neighborhoods</p> <p>The County's responsibility to determine whether the project is consistent with the General Plan is a legislative decision that will not be set aside by a court unless the County has acted arbitrarily, capriciously, or without evidentiary support. In other words, a legislative body's determination that a project is consistent with the general plan carries a strong presumption of regularity and will not be overturned unless the agency has abused its discretion—that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. The term substantial evidence in this instance means that a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, "a reasonable person could not have reached the same conclusion." (No Oil, Inc. v. City of Los Angeles (1987) 196 Cal.App.3d 223, 243.) In fact, the courts give great deference to an agency's determination that a project is consistent with its general plan. The courts consider legislative bodies that adopt general plans as having a "unique competence" to interpret their own policies. (Eureka Citizens for Responsible Gov't v. City of Eureka (2007) 147 CA4th 357.)</p>
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could simply be ignored whenever land was redesignated from low-density agricultural land to more developed uses. The RDEIR must recognize and discuss the inconsistency of the Project with this policy.

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The Project also remains in conflict with numerous community plan policies, and the RDEIR fails to accurately analyze consistency with these policies or even to make a determination of consistency in some cases. For example, the Valley Center Community Plan has a goal to preserve and enhance existing and future agricultural uses in the Plan area. RDEIR, Appdx F. at 120. Though the Project now includes some partial mitigation for agricultural impacts in the form of easements, the Project is still inconsistent with the policy of preserving existing agricultural uses on site. The Project also does not support a rural lifestyle; instead, it creates a new suburban community that will induce more growth. *See id.* at 121. Nor does it maintain the existing rural lifestyle by continuing the existing pattern of residential, equestrian, and agricultural uses within the Bonsall Community Plan area. *Id.* at 123. Notably, County staff identified many dozens of policies with which the Project conflicts. *See* Project Issue Checklist, p. 6 et. seq. These conflicts have not been resolved, and CNFF agrees with staff that the Project conflicts with all of the policies listed in the Checklist.

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In sum, CNFF’s prior comments on the inconsistency of the Project with general plan and community plan policies remain valid. The RDEIR fails to accurately analyze consistency with these policies, and the County may not approve the Project as proposed because of these and other inconsistencies with relevant plans.

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III. The RDEIR’s Climate Change Analysis Remains Faulty.

A. The Analysis Is Confusing and Fails to Demonstrate That the Project Complies with Relevant Thresholds of Significance.

Despite containing a variety of revisions, the RDEIR’s climate change analysis remains legally defective. First, the RDEIR now states that, because the County’s Climate Action Plan (“CAP”) was set aside by the courts, “the EIR was revised to remove the County CAP analysis.” RDEIR, Reader’s Guide to Draft Revised EIR; RDEIR at 3-30. However, the RDEIR still relies on the CAP in making its significance determination. In particular, it relies on the County’s Guidelines for Determining Significance – Climate Change (“GHG Guidelines”), which are attached here as Exhibit 2. These GHG Guidelines, in turn, are based on the CAP. *See* GHG Guidelines at 11 (“The overall framework for assessing consistency with AB 32 is provided by the CAP”), 21 (the GHG Guidelines “provide guidance on assessing significance under the

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O10-14 Please refer to Global Response: General Plan Amendment CEQA Impacts Analysis and Appendix W, as well as response to comment O10-13 above.

O10-15 The Policy states, “Support agricultural uses and activities through the community plan area by providing appropriately zoned areas in order to ensure the continuation of an important rural lifestyle in Valley Center.” The project would support and complement the rural lifestyle in Valley Center via the Specific Plan, which supports the continuation of on-site agriculture throughout the project site including common open space areas, biological open space, and manufactured slopes. Implementation of the project would rezone the project site from zoned A-70 (Valley Center) and RR (Bonsall) with the (RS) Single-Family Residential Use Regulation (outside the Town Center and the two Neighborhood Centers) and (C34) General Commercial–Residential Use Regulation within the Town and Neighborhood Centers. The project would become a self-contained village that includes trails, equestrian opportunities, retained agriculture. Section III of the the Specific Plan details architectural design standards that create a rural atmosphere. For example, the unique character intended within the Town Center would follow the aesthetics, organizational techniques and pedestrian friendly typology found in historical California mixed-use villages built in the 1920s and 1930s (see Section III.E.1.b of the Specific Plan). The new development would not discourage the continuation of the rural character of Valley Center. Please refer to Global Response: General Plan Amendment CEQA Impacts Analysis, Appendix W, as well as response to comment O10-13 above.

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	<p>O10-16 The statement references a checklist sent by the Planning & Development Services to the Applicant as a part of its processing of its application for this project, and the issues have been addressed thorough out the process. The letter predates the public review period of the prior draft of the project's EIR and the REIR. CEQA requires that comments on a draft EIR should focus on the sufficiency of the document in identifying an analyzing the possible impacts on the environment and ways in which the project's significant effects might be avoided or mitigated, especially specific alternatives or mitigation measures. (Guidelines 15204(a).) Since the attached letters were written before the REIR was out for public review, the letter goes beyond the scope of CEQA and does not raise any environmental issue with respect to this document. Therefore, no response is required.</p> <p>O10-17 Please refer to FEIR Appendix W.</p>
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framework provided by the County’s CAP”), 23 (“The County’s CAP provides the overall framework for assessing significance.”). Indeed, the “performance” threshold of significance used in the RDEIR was developed “in order to allow projects to clearly demonstrate compliance with the CAP.” *Id.* at 23; *see also* RDEIR GHG Report at 81 (admitting that the GHG Guidelines’ thresholds are designed “to allow projects to clearly demonstrate compliance with the County CAP”).

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The RDEIR is confusing and fails to meet CEQA’s requirement to foster informed decisionmaking by stating in one place that it does not include CAP analysis, yet then providing a detailed analysis of GHG impacts based on alleged compliance with the CAP. *See Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 402 (describing “CEQA’s fundamental goal of fostering informed decision making.”). In addition, the RDEIR’s continued use of a threshold of significance based on the now-invalidated CAP is improper. The CAP was thrown out by the Superior Court because it failed to ensure that the GHG reduction measures in the CAP would actually be carried out. *See* Exhibit 18 to CNFF’s August 16, 2014 letter. Because the County’s thresholds of significance were set at levels that assumed the CAP’s mitigation and implementation measures would be carried out (GHG Guidelines at 11), the thresholds are no longer valid because the CAP’s measures have been adjudicated to be uncertain and unenforceable. Accordingly, the GHG Guidelines’ thresholds—including the one used in the RDEIR—are not supported by substantial evidence and may not be used to determine the significance of the Project’s GHG impacts.

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Second, the Project does not comply with the CAP. Thus, even if the RDEIR could properly rely on CAP compliance to demonstrate that the Project will not have significant GHG impacts, the document fails to demonstrate such compliance. The CAP lists certain steps agencies must take to determine whether a project has significant GHG impacts. One step is to compare a project’s emissions with screening criteria to quickly determine whether their project may have significant GHG-related impacts. CAP at 17-19. If a project exceeds the screening criteria, the agency must “incorporate all applicable CAP measures” as part of the project. CAP at 20. Here, the Project exceeds the screening criteria. RDEIR GHG Report at 60; *id.*, Appdx. G, at 1. However, the Project fails to incorporate all relevant CAP GHG reduction measures.

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The RDEIR does not even attempt to demonstrate that the Project incorporates all relevant CAP GHG reduction measures. Instead, it merely states that the Project “includes *several* GHG-reducing design features that comply with County CAP measures” RDEIR GHG Report at 81 (discussing mixed-use design, neighborhood

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O10-18 through O10-20

The comments object to the utilization of the County’s CAP and *Guidelines for Determining Significance, Climate Change (2013 Guidelines*; November 7, 2013) for purposes of assessing the significance of the project’s GHG emissions. In response, please note that FEIR Subchapter 3.1.2, Greenhouse Gas Emissions, does not rely on either the CAP or the *2013 Guidelines*, and clearly discloses the County is not implementing either document. Rather than relying on those two documents, the significance of the project’s GHG emissions is evaluated by reference to the two criteria contained in Appendix G of the State CEQA Guidelines, and seven methodologies that are informed by State CEQA Guidelines section 15064.4, the 2006 Global Warming Solutions Act (AB 32), the 2008 Sustainable Communities and Climate Protection Act (SB 375), Executive Orders B-30-15 and S-3-05, and the County’s General Plan.

O10-21 through O10-24

The comments state that the project is inconsistent with the County’s CAP because it exceeds the CAP’s screening criteria and does not incorporate all applicable CAP measures. However, as discussed above in response to comments O10-18 through O10-20, the County is no longer implementing the CAP. Further, because of the litigation invalidating the CAP, the CAP is no longer an applicable plan, as defined by CEQA, for purposes of demonstrating project consistency.

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walkability, energy efficiency measures, use of smart meters, and tree planting) (emphasis added). As demonstrated by Appendix G of the RDEIR GHG Report, these few measures are not the only relevant ones that the Project must incorporate. This Appendix, which contains a “CAP Compliance Checklist,” acknowledges that the CAP requires that projects obtain 19% of overall water heating needs from solar energy and that 30% of residential electricity and 20% of commercial electricity be generated from alternative energy systems. However, it provides no detail for compliance, and the RDEIR nowhere appears to require or even encourage compliance with this measure. Likewise, the CAP Compliance Checklist ignores the CAP measures related to increasing transit use, increasing ridesharing and alternative-fuel vehicles, and three measures for agricultural impacts (A1, A2 and A3).² In addition, the checklist states that the Project will comply with the “tree planting” CAP measure by planting 35,000 trees.³ However, the CAP makes clear that simply planting trees, with their carbon sequestration potential, is not what provides the main GHG reduction benefits. Rather, planting trees is supposed to shade buildings, thereby saving on the energy needed for cooling homes and businesses. CAP at 25. However, the Project does not commit to planting the trees in locations where they will shade buildings. See RDEIR GHG Report at Appdx 1, p. 3. The RDEIR therefore may not rely on a mere commitment to plant thousands of trees as

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² These agriculturally-related measures would be applicable to the remaining agriculture on site, including the rows of orchard crops used as buffers, community gardens, and farmland that remains during Project development.

³ Additionally, the RDEIR’s reliance on tree planting and consequent carbon sequestration to meet CAP goals and reduce GHG emissions is misleading. Although planting trees may result in some carbon sequestration in the trees, the Project also proposes to bulldoze hundreds of acres of existing, mature trees, including orchard trees. RDEIR Appdx. F, Agricultural Resources Report at 33 (there are 293 acres of orchard crops on site). In addition, the Project would have growth-inducing effects that would impact surrounding orchards. RDEIR, Appdx. F, Agricultural Resources Report at 43 (there are 1,347 acres of orchard within a mile of the Project site). The Project therefore results in the loss of existing, larger trees that currently sequester CO₂. It is arbitrary and misleading for the RDEIR to calculate the benefits of the Project’s proposed tree planting in terms of carbon sequestration, but to ignore the drawbacks of the Project in terms of loss of existing carbon sequestration. At the least, the number of trees cut down must be subtracted from the number of new trees planted in order to provide a net number of new trees.

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demonstrating compliance with the CAP's requirement to plant trees *for purposes of shading*. Nor may it rely on any alleged benefit of that shading in terms of energy savings. See RDEIR GHG Report, Appdx. 6 (calculating that Project tree planting will result in CO₂ reductions from carbon sequestration, but not calculating energy efficiency benefits of trees).

O10-24
 cont.

Moreover, even if the Project were changed to include implementation of all CAP measures at the levels described in the CAP (e.g., obtain 19% of overall water heating needs from solar energy and that 30% of residential electricity and 20% of commercial electricity generated from alternative energy systems), this would still not support a conclusion that the Project has insignificant climate-related impacts. These measures were only designed to ensure compliance with the state's 2020 GHG-reduction goals. CAP at 24-25. As described in the CAP and in this letter below, the County and state must continue reducing GHG emissions far beyond the levels set in the 2020 goals. See CAP at 49. Thus, incorporation of existing CAP measures does not demonstrate that the Project will help the state and County achieve their GHG reduction goals for 2035 and 2050, or that it will help stabilize the climate. The Project would therefore still have significant climate impacts even if it incorporated all current CAP measures.

O10-25

Further supporting the inexorable conclusion that the Project has significant climate impacts, the RDEIR GHG Report contains a brief discussion of the Project's compliance with the County's different, "efficiency" threshold. To meet the efficiency threshold, the Project would need to emit less than 4.32 metric tons of CO₂ equivalent per year per person (i.e., per employee/resident; the sum of residents and employees is called the "service population"). See RDEIR GHG Report, Efficiency Threshold Evaluation; RDEIR at 3-37. The document first discusses the uncertainty involved in calculating the Project's service population, but it uses various assumptions to calculate a high and low service population estimate. Based on the high and low estimates, the RDEIR shows that the Project would emit between 4.22 and 5.93 metric tons of CO₂ equivalent per year. In other words, the Project would almost certainly exceed the efficiency threshold of 4.32 metric tons of CO₂ equivalent per year per person unless the County utilized the lowest possible assumptions regarding service population.

O10-26

The RDEIR may not simply ignore this evidence, which demonstrates that the Project will have significant GHG impacts. The RDEIR claims that the uncertainties involved in determining the service population render this threshold inappropriate for use in determining the Project's impacts, but this claim is not supported by substantial evidence. As the analysis of the efficiency threshold demonstrates, the County can use reasonable assumptions in order to determine the service population. Even if there is

O10-27

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O10-25 The comment states that the analysis contains no evidence that the project will allow for the achievement of long-term GHG reduction goals and, therefore, concludes that impacts would be significant. Please see "Methodology 7: Executive Orders B-30-15 and S-3-05" in FEIR Subchapter 3.1.2. As discussed therein, arguably, assessing the project's impacts relative to post-2020 statewide reduction goals identified in the referenced executive orders is speculative. However, in light of the anticipated decline in project emissions and the benefits of the State's extensive existing and planned GHG emission reduction programs, the project's impacts with respect to post-2020 goals also can be characterized as less than significant.

O10-26 and O10-27

The comments state that the project would have a significant impact under the County's Efficiency Threshold because the potential service population range identified for the project demonstrates an exceedance of the threshold at one end of the potential population range. However, as discussed above, the County is no longer implementing its *2013 Guidelines*, including the Efficiency Threshold contained therein.

Additionally, a service population threshold has not been utilized to assess the significance of this project's GHG emissions due to uncertainties associated with establishing a reliable service population estimate. As discussed at length in the Efficiency Threshold Evaluation, of FEIR Appendix O, a project's service population is calculated by summing a project's residential and employment populations. For purposes of this particular project, the populations associated with the following land uses were found to be too variable to establish a reliable service population: school (particularly the administrative staff), retail and hotel uses, water reclamation facility, recycling facility, and assisted living facilities.

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some uncertainty regarding the service population, there is virtually *no* uncertainty about whether the Project would exceed the efficiency threshold—it would. The alleged uncertainties are nothing more than a smokescreen that the County attempts to utilize in order to discredit inconvenient information. The County may not do this. Even if the County could use the separate “performance” (i.e., BAU”) threshold, the County is still required to consider other evidence—such as evidence that the Project will exceed the efficiency threshold—that the Project may cause a significant GHG-related impact. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met”). Here, all relevant evidence demonstrates that the Project will have significant GHG impacts.

O10-27
 cont.

Last, the Project significantly overstates the extent of the Project’s alleged GHG emissions reductions from a “business as usual” scenario by providing a huge credit for installing gas-burning, rather than wood-burning, fireplaces. As CNFF commented in its prior letter, wood burning is, in the long term, carbon neutral because trees can grow back. Further, the RDEIR uses unrealistic and unsupported assumptions about the frequency with which residents would burn wood. For the “unmitigated” assumption, the RDEIR assumes that people would utilize their wood-burning fireplaces 180 days per year. RDEIR, GHG Report at 69. There is no support for the notion that people in mild San Diego County typically use their fireplace 180 days per year. Instead of representing a realistic, “business as usual” scenario, this represents an artificially inflated hypothetical situation that serves to mislead the public and improperly minimize the Project’s true impacts. If the Project did not improperly take credit for the alleged GHG reductions attributable to installing gas, rather than wood, fireplaces, the Project would not achieve the 16% reduction from business as usual, and would have a significant impact. *See* RDEIR, GHG Report at 76.⁴

O10-28

B. The RDEIR’s Analysis of Long-Term GHG Impacts Is Woefully Inadequate.

⁴ The Project must have less than 34,252 tons/yr of mitigated emissions to meet the 16% reduction standard. Without the approximately 1,500 tons/yr assumed emission reductions from “area sources” such as fireplaces, the Project would have 34,545 tons/yr of mitigated emissions, which exceeds the threshold of significance. *See* RDEIR at 3-48.

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O10-28 The comment states that the GHG emissions inventory relies on “unrealistic and unsupported assumptions” about wood-burning frequency. However, the number of days for fireplace use is a default setting within CalEEMod 2011, which was used to prepare the project’s GHG emissions inventories. According to Appendix A, page 24, of the CalEEMod 2011.1 user’s guide, “default values for the emission factors and the amount of wood burned by different hearth types and the percentage of different hearths in various areas of California are based on ARB, USEPA, and district supplied emission factor values for hearths and woodstoves.” As discussed in FEIR Appendix O, the default number of annual burning days in CalEEMod is 246 days. However, 246 days is considered excessive for the San Diego region; therefore, the number of burning days was reduced to 180 days based on the conservative assumption that some amount of wood burning may occur for approximately six months of the calendar year. (In the neighboring southerly City of Escondido, the average low temperatures in November through April ranged from 42 to 51 degrees Fahrenheit in 1981 through 2010, based on data available at www.usclimatedata.com. These temperatures are conducive to wood burning, particularly in the evening hours.) Note that the frequency assumption (i.e., number of burning days) was applied uniformly for purposes of the “unmitigated” and “mitigated” conditions under Methodology 2 (County’s 2015 GHG Guidance); the NAT and project conditions under Methodology 3 (SMAQMD’s CEQA Guide); and, the BAU and project conditions under Methodology 4 (CARB’s 2008 Scoping Plan). As none of these agencies, nor the County, have provided new information to modify these parameters, the assumption on the number of wood-burning days represents the best available information for determining emissions from fireplaces. In any event, therefore, even if the number of wood-burning days were reduced, this would result in the same reduction in natural gas fireplace usage, and thus the overall percent GHG reduction would remain similar.

The comment also states that the analysis overstates emission reductions from the business-as-usual condition by taking too much credit for gas, rather than wood-burning fireplaces. For additional information of the appropriateness of the fireplace-related assumptions, please see Response O4-110 to the Johnson & Sedlack comment letter, which provides additional information regarding the Draft RFEIR’s assumptions for fireplaces.

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The RDEIR also fails to adequately analyze the Project’s long-term GHG emissions impacts. The RDEIR now acknowledges that the County’s efforts to reduce GHG emissions do not end in 2020, but continue to 2035, 2050 and beyond. However, the document’s analysis of the Project’s consistency with these long-term GHG reduction goals is confusing and rife with errors.

The RDEIR’s GHG Report admits that, in order to meet the 2035 GHG reduction goal adopted by the County, the County must reduce GHG emission levels 49% below 2005 levels. RDEIR, GHG Report at 79, 89; CAP at 20, 49. It then acknowledges that the Project will not come close to meeting this goal because it will only reduce emissions 19.1% below a business as usual scenario. RDEIR, GHG Report at 78-79. Incredibly, the Report does not then acknowledge the obvious: that the Project has a significant GHG-related impact because it fails to help the County achieve its 2035 GHG reduction goals. Instead, it states that this 19.1% reduction “is considered the fair-share contribution from the project in the current regulatory environment,” and ends its analysis there. RDEIR, GHG Report at 79.

This is plainly inadequate. The RDEIR GHG Report provides the relevant GHG threshold—49% reduction by 2035—and states that the Project will not help achieve this goal. Yet the County refuses to find that this impact is significant and to require mitigation. Instead, the RDEIR GHG Report meekly suggests that some further mitigation measures “may not be currently economically, technically, or politically feasible.” RDEIR, GHG Report at 79; *see also* CAP at 52. But neither the County nor the public knows whether such additional measures are actually feasible for this Project because the County never analyzes whether it is feasible to require solar power on homes and businesses, mandate green waste recycling, require that trees are planted in a manner to shade homes, increase ridesharing, increase transit use, require solar water heating, and require additional measures. It is the County’s job to assess the feasibility of all of these measures as part of its environmental review for this Project.

The RDEIR also implies that the County is excused from not requiring more measures to reduce the Project’s GHG emissions because the 2035 GHG emissions reduction goal is only achievable if state and federal authorities adopt new regulations and new technologies are developed. RDEIR, GHG Report at 79. But the RDEIR and the CAP contradict this theory: both documents acknowledge that achieving the County’s reduction goal will require significant action not only at the state and federal level, but also at the *County* level. *Id.*

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O10-29

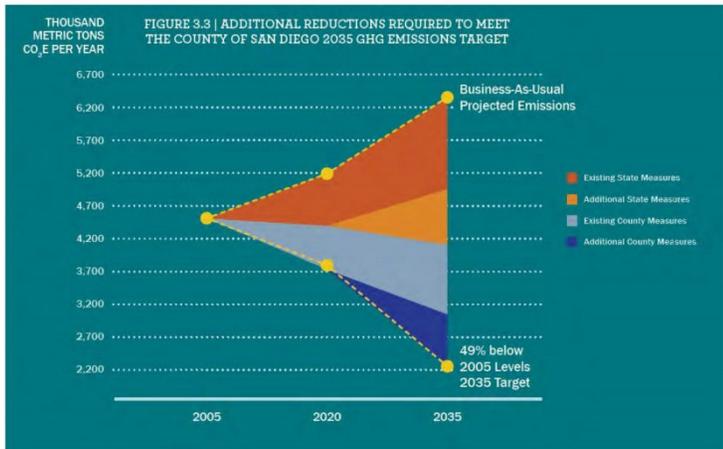
O10-30

O10-31

O10-29 through O10-34

The comments state that the analysis fails to assess the project’s consistency with the County’s post-2020 GHG reduction goals, as set forth in its CAP. However, as discussed above in responses to comments O10-18 through O10-24, the County is no longer implementing its CAP, including the reduction targets therein, due to related litigation. That being said, Methodology 6: SB 375 and SANDAG’s 2050 RTP/SCS in FEIR subchapter 3.1.2 considers the project’s potential to conflict with the 2035 mobile source-related reduction target for the San Diego region adopted by CARB pursuant to SB 375. And Methodology 7: Executive Orders B-30-15 and S-3-05 considers the project’s potential to conflict with the interim, 2030 goal and long-term, 2050 horizon year goal articulated via executive orders. As such, the GHG analysis provided in the FEIR conservatively looks beyond the only statutorily established statewide reduction target (i.e., return to 1990 emission levels by 2020) codified by AB 32.

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O10-32

CAP at 52.

For example, in order to reach the 2035 goal, the County must get many more homes to supply their own solar or other carbon-free power, must reduce vehicle miles traveled by more than 20%, and may require homes to be net-zero energy, among other measures. CAP at 49-51. In fact, the County has already documented what it needs to do in order to meet its 2035 goal. This includes achieving a 40% per capita water reduction, 84% solid waste diversion rate, 100% of residential and commercial buildings have solar water heating, 10% of residential buildings have alternative energy systems, 20% reduction in vehicle miles traveled, and more. CAP, Appdx F at Table F.1. The RDEIR demonstrates that the Project does not meet any of these goals. See RDEIR, GHG Report, Appdx. G (Project will not require any solar water heating or alternative energy systems, nor will it increase transit use). In sum, the RDEIR is legally flawed because it fails to make an explicit determination of whether the Project’s GHG emissions represent a significant impact compared to its chosen threshold of 49% reductions by 2035.

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Further, the RDEIR fails to adopt all feasible mitigation to address the Project's unquestionably significant GHG impacts.⁵

} O10-33

Even more incredibly, although the RDEIR's GHG Report contains the entire analysis discussed above, the RDEIR itself completely omits any analysis of the significance of the Project's emissions vis-à-vis the 2035 GHG reduction goals. See RDEIR at 3-48. It is inappropriate for the RDEIR to contain substantive analysis in an appendix but not in the RDEIR. *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2003) 44 Cal.4th 459,493. To the extent the County did not include the 2035 analysis in the RDEIR itself because this analysis allegedly relates to the now-invalidated CAP, this is also improper.⁶ Although the CAP was overturned, the court's ruling had nothing to do with the validity of the 2035 reduction target contained in the CAP. See Exhibit 18, p. 7 to CNFF letter dated August 16, 2013 (invalidating CAP because it should have been approved with a supplemental EIR, not an addendum to an EIR, and because it contained no detailed deadlines for meeting GHG reduction goals and contained no enforcement mechanisms). Accordingly, the County cannot disclaim its 2035 reduction target. The County still recognizes the need for the County and state to reduce GHG emissions beyond AB 32 levels on a trajectory consistent with EO-S-3-05. RDEIR at 3-48. The RDEIR therefore must analyze the Project's inconsistency with the County's 2035 GHG reduction target as part of its analysis of the Project's inconsistency with the state's long-term GHG reduction goals.

} O10-34

⁵ The RDEIR states that the Project might be able to achieve a much greater reduction in GHG emissions if all of the trees were planted in locations that would provide shading for homes, thereby reducing energy use. RDEIR, GHG Report at 78. Inexplicably, the RDEIR fails to actually require this mitigation measure. If the County ends up deciding to incorporate this measure, it will need to verify its GHG reduction potential and will also have to determine whether it will impede the ability of residential and commercial roofs to provide solar power.

⁶ The County's 2035 GHG reduction goal was described in the CAP. CAP at 52. Notably, although the County states that the CAP was invalidated and purports not to rely on it in this RDEIR, the County still publishes a link to the CAP on its website, leading the public to believe that it is still valid and may be relied on. See <http://www.sdcountry.ca.gov/pds/advance/climateactionplan.html>.

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The RDEIR contains an even less adequate analysis of the Project’s GHG impacts compared to the statewide goal of reducing GHG emissions 80% below 1990 levels by 2050. The RDEIR acknowledges the relevancy of EO S-3-05 as a GHG reduction goal, but states that achieving the 2050 goal is speculative and analyzing the Project’s consistency with the goal would not provide meaningful information for decisionmaking. RDEIR, GHG Report at 79; RDEIR at 3-48. But uncertainty does not get the County off the hook for making its best effort to find out and disclose all that it can. CEQA Guidelines, § 15144 (environmental analysis “necessarily involves some degree of forecasting. While seeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can”). Here, at the least, the RDEIR should have compared the Project’s emissions trajectory against the trajectory necessary to meet the state’s 2050 GHG reduction goals. And despite any uncertainty regarding how exactly to *measure* the Project’s impacts in comparison to that goal, there is no uncertainty as to the *significance* of the Project’s impacts. When compared to the 2050 goal, the Project’s GHG impacts are clearly significant. The RDEIR failed by not acknowledging this fact and implementing all feasible mitigation to lessen the Project’s emissions.

O10-35

Last, the RDEIR fails to accurately compare the Project’s GHG emissions against SB 375’s requirements. Although the RDEIR claims that the Project is consistent with SB 375’s goals and mandates, this is clearly inaccurate. RDEIR, GHG Report at 83. As the RDEIR acknowledges, SANDAG crafted a Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS”) that was intended to meet SB 375’s GHG reduction targets. *Id.* at 82. This strategy assumed that 80% of new housing would be located within a half-mile of transit stations. *Id.* Yet this Project will not place any housing within a half-mile of transit stations, either existing or planned, and is therefore clearly inconsistent with the RTP/SCS.

O10-36

The RDEIR also states that the Project will reduce vehicle miles traveled by more than 14% in comparison to the “unmitigated” Project, and that this reduction exceeds the targets adopted for the SANDAG region for vehicle emissions reductions. RDEIR at 3-57. But the RDEIR is comparing apples and oranges. The RDEIR’s comparison of 2020 “mitigated” versus 2020 “unmitigated” *total project* vehicle trips is different than, and not comparable to, SB 375’s requirement that the SANDAG region achieve a *regionwide, per capita* reduction of vehicle trips in 2020 as compared to 2005. This comparison is misleading, uninformative and does not promote intelligent decisionmaking. Because RTP/SCS’s must achieve SB 375’s regionwide GHG reduction target, the way to measure conformity with SB 375 is simply to determine whether a project complies with

O10-37

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O10-35 The comment states that the analysis fails to adequately consider the project’s consistency with Executive Order S-3-05’s horizon-year, 2050 reduction goal. Please see “Methodology 7: Executive Orders B-30-15 and S-3-05” in FEIR subchapter 3.1.2. Arguably, assessing the project’s impacts relative to the 2050 statewide reduction goal is speculative for the reasons set forth in subchapter 3.1.2. However, in light of the anticipated decline in project emissions and the benefits of the state’s extensive existing and planned GHG emission reduction programs, the project’s impacts with respect to the 2050 goal also can be characterized as less than significant, such that no mitigation is required.

O10-36 and O10-37

The comments challenge the project’s consistency with SB 375 and SANDAG’s 2050 RTP/SCS. However, the comment is based on the incorrect premise that the only way to demonstrate consistency with SB 375 and SANDAG’s RTP/SCS under Appendix G of the CEQA Guidelines (see section VII.b) is for projects to identify evidence that the projects match up, line for line, with the SCS input assumptions. This is not the case. Contrary to the comment, lead agencies retain discretion to evaluate planning consistency issues under CEQA, provided the analysis is supported by substantial evidence.

By way of background, per Government Code section 65080(b)(2)(B), SANDAG must prepare a SCS that “set[s] forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by” CARB. However, SANDAG’s SCS, including the forecasted development pattern, is not intended to regulate the use of land, as explicitly provided by the California Legislature when enacting SB 375. Rather, pursuant to Government Code section 65080(b)(2)(K), the SCS does not regulate the use of land; does not supersede the exercise of the land use authority of cities and counties within its region; and, does not require that a city’s or county’s land use policies and regulations, including its general plan, be consistent with it.

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	<p>O10-36 and O10-37 (cont.)</p> <p>Nonetheless, the consistency of the project with SB 375 and SANDAG's 2050 RTP/SCS is addressed at length in Subchapter 3.1.2, Greenhouse Gas Emissions, of the FEIR in connection with "Methodology 6." Several qualitative and quantitative factors inform the FEIR's conclusion that the project is consistent with that legislative framework and the regional implementing plan:</p> <ul style="list-style-type: none">• The project is consistent with the applicable goals and policies of SANDAG's 2050 RTP/SCS;• The project locates a range of housing types, services and jobs in a compact pattern of development located within a 1/2-mile from at least seven diverse neighborhood assets, thereby:<ul style="list-style-type: none">○ Encouraging non-vehicular travel, including pedestrian and bicycle movement,○ Reducing the size of required infrastructure improvements,○ Capturing 22 percent of all daily vehicle trips, keeping them internal to the project site, and○ Reducing vehicle miles traveled by approximately 5.9 percent;• The project's trip lengths would be shorter than the existing trip lengths identified for the Valley Center Community by the County's General Plan and SANDAG's 2050 RTP/SCS;• The project site is located approximately 1/4-mile from I-15, which is identified by SANDAG's 2050 RTP/SCS as a High Quality Transit Corridor in 2050; and <p>The project would achieve a 16.9 percent reduction in vehicle emissions in 2020, and a 37.1 percent reduction in 2030 under the County's methodology for quantifying and assessing GHG emissions (see description of "Methodology 2" modeling assumptions in subchapter 3.1.2.2, Analysis of Project Impacts and Determination of Significance, and FEIR Appendix O).</p> <p>Also, although the project site is not identified by SANDAG in the 2050 RTP/SCS (see Figures 3.2 and 3.3) as a location for suburban development during the 2020 and 2035 horizon years, the project site is identified by the 2050 RTP/SCS (see Figure 3.4) for single-family residential development in the 2050 horizon year. The exclusion of the project site from the 2020 and 2035 forecasted land use development patterns contained in the 2050 RTP/SCS is not dispositive of the</p>
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an adopted RTP/SCS. Here it does not. In addition to not being within a half mile of transit stops,⁷ the Project requires a massive amendment to the County General Plan in order to allow a new, sprawling suburb that is located far from any existing services or urban centers. This is the antithesis of the type of development envisioned under SB 375, and was not accounted for when SANDAG developed its RTP/SCS, which was based on current general plans. See SANDAG Sustainable Communities Strategy, Appendix D: Background Documentation, pp. D-3, D-11, D-19, attached as Exhibit 3. The RTP/SCS maps show the Project area as remaining in low-density rural and agricultural uses in 2020 and 2035. The Project is clearly inconsistent with these maps, and approving projects such as this may make it impossible for the San Diego region to achieve the GHG reductions required by SB 375.

C. The RDEIR Fails to Adopt All Feasible GHG Mitigation Measures.

As described extensively in CNFF’s prior letter on this Project, the EIR fails to adopt numerous, feasible mitigation measures to reduce the Project’s climate impacts. This letter describes other feasible measures in the section, below, regarding energy impacts. Still other measures are contained in the LEED ND standards, which provide a menu of ways in which projects can reduce their energy use and their environmental impact. See Exhibit 9 to August 16, 2013 CNFF letter.

The RDEIR does contain a few, sometimes contradictory references to project design measures that will allegedly reduce the Project’s GHG impacts. However, not all of these measures are certain to occur or enforceable, and therefore do not qualify as adequate CEQA mitigation. CEQA Guidelines § 15126.4(a)(2). For example, the RDEIR describes how the Project could reduce its GHG emissions by planting trees that would shade buildings, thereby providing energy savings. RDEIR, GHG Report at 78. However, the document does not actually require this mitigation measure. *Id.* (stating that GHG reductions will occur “if the trees were located in proximity to buildings to provide shade.”) (emphasis added). It also states that the Project will provide temporary transit services until such time as the local transit district provides linkage. RDEIR at 3-169; see also *id.* at 1-54. However, these vague standards are not certain to occur and

⁷ As the RDEIR notes, SANDAG’s RTP/SCS achieves its alleged GHG reductions in large part due to investments in transit such as light rail and bus rapid transit. RDEIR, GHG Report at 82. This Project would not utilize any such transit, further supporting the conclusion that the Project is inconsistent with the RTP/SCS, and therefore SB 375.

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O10-37
 cont.

O10-38

O10-39

O10-40

O10-41

O10-36 and O10-37 (cont.)

project’s consistency with SB 375, particularly as the Government Code 65080(b)(2)(K) explicitly provides that sustainable communities strategies do not control or regulate the use of land. Rather, as provided in the FEIR and summarized above, it is appropriate and reasonable to consider the project’s consistency with policies set forth in SB 375 and the 2050 RTP/SCS, as well as the project’s relationship to the reduction targets identified by CARB for the region.

O10-38 The comment again states that the FEIR fails to adopt all feasible mitigation measures. However, as provided by CEQA Guidelines Section 15126.4(a)(3), “[m]itigation measures are not required for effects which are not found to be significant.” Here, the FEIR concludes that the project would not result in a significant impact attributable to GHG emissions; and, thus, CEQA’s all feasible mitigation requirement is not applicable.

O10-39 The comment is an introduction to subsequent comments addressed below, and lays the groundwork for the concern that the project design features relied upon in the analysis are not sufficiently enforceable. Of note, the comment confusingly applies CEQA’s requirements for mitigation measures to the project design features, even though they are not one and the same.

O10-40 The comment expresses concern regarding utilization of the shading benefits of the tree planting in the emissions inventory estimates, and also suggests that it should be required mitigation. However, the GHG analysis provided in FEIR Subchapter 3.1.2 does not quantitatively rely on the project’s vegetation plans to support the determination that impacts would be less than significant. Further, as the project’s GHG impacts are determined to be less than significant under seven methodologies, there is no CEQA requirement to adopt feasible mitigation. (Note that t As such, the project’s emission inventories likely provide a conservative representation of the project’s GHG emissions at build out because the vegetation plans for the project likely will provide some shading benefits to on-site structures, including residential and non-residential uses, thereby reducing energy demand. Because detailed, lot-specific vegetation plans are not available at this time, the energy-reducing benefits of the shading have not been quantified.)

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RESPONSE

	<p>O10-41 The comment expresses concern that the temporary transit services are not sufficiently defined, and that the transportation demand measures are not adequately incorporated into the project design. However, the GHG analysis did not quantify or incorporate the benefits of the temporary transit services of TDM measures into the calculation of the GHG emissions or the determination of significance under CEQA. For further information regarding the project's TDM measures, please see Section III of the project's Specific Plan and FEIR Table 1-3.</p>
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lack adequate performance standards. For example, the RDEIR merely states that certain transportation demand measures “could be incorporated” into the project design. But there is no binding commitment that they be so incorporated. Further, it states in one place that the Project will exceed Title 24 energy efficiency standards by 25% (RDEIR at 1-53), but in other places states that it will exceed such standards by 30% (RDEIR at 3-168).

O10-41
 cont.

O10-42

Last, as previously noted, the RDEIR describes various “design features” that will allegedly reduce the Project’s GHG emissions to meet the County’s performance standard/threshold. However, it then provides an escape valve that allows a future project developer to forgo any of these design features if a later study shows that they are not needed to meet the County’s GHG emission reduction goals. RDEIR at 3-55. This is completely unacceptable. While some flexibility may be warranted to allow a developer to take advantage of new technology in the future, this measure is not enforceable as written and provides far too much leeway. The County must provide a mechanism for future public review of any new project features and must provide a specific method for ensuring compliance. Most importantly, any future review of the Project’s GHG reduction measures must account for then-current County requirements for GHG reduction. In other words, the RDEIR currently requires the developer only to reduce GHG emissions to meet AB 32’s 2020 GHG reduction goal. As described in this letter, this is inappropriate. But it is even more inappropriate if the County lets a future developer, say in the year 2020, change the Project and yet incorporate only enough GHG reduction measures to meet the same 2020 goal. Any future modification to the Project must trigger an obligation to meet whatever County, state and federal GHG reduction goals and standards are applicable at that time.

O10-43

IV. The RDEIR’s Energy Impacts Analysis Is Deficient.

CEQA requires agencies to analyze whether their projects will result in the wasteful or inefficient use of energy. Pub. Res. Code § 21100(b)(3); CEQA Guidelines, Appdx. F. “Under CEQA, an EIR is ‘fatally defective’ when it fails ‘to include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy.’” *Cal. Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209 (quoting *People v. County of Kern* (1976) 62 Cal.App.3d 761, 774). In order to demonstrate that a project will not result in the wasteful use of energy, agencies must show that the project has decreased per capita energy consumption, decreased reliance on fossil fuel use and increased reliance on renewable energy sources. *Id.*

O10-44

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O10-42 The comment states that the project’s exceedance of the 2008 Title 24 energy efficiency standards is inconsistently characterized as a 25% and 30% exceedance.

As background, the project description of the FEIR states that the “project is designed to achieve a 25 percent improvement in energy efficiency over the 2008 Title 24 energy efficiency requirements,” and also states that the project’s residential and commercial buildings will “exceed 2008 Title 24 Part 6 energy efficiency standards by 30 percent.” (See also FEIR, subchapter 3.1.2 [identifying a 30 percent exceedance].) The reference to 25 percent is a typographical error and has been corrected; *all references to the exceedance of the 2008 Title 24 standards should read 30 percent.* That is, at a minimum, the project’s residential and non-residential structures will exceed the energy efficiency requirements of the 2008 Title 24 standards by 30 percent.

O10-43 The comment objects to the FEIR’s discussion of an “Alternate Compliance Mechanism” for purposes of establishing the project’s GHG reducing attributes. In response, that mechanism has been eliminated from the FEIR’s GHG analysis.

O10-44 After providing introductory remarks regarding the analysis of energy impacts under CEQA (and particularly Appendix F of the CEQA Guidelines), the comment suggests that the FEIR exclusively relies on the project’s exceedance of the 2008 Title 24 standards of the California Building Code to support the determination that the project’s energy impacts are not significant. The comment objects to this perceived approach because Title 24 does not address “many of the considerations” required by Appendix F of the CEQA Guidelines, such as whether a building should be constructed at all, how large it should be, etc.

Contrary to the comment, the assessment of the project’s long-term operational energy use is not so narrowly designed. While the project’s compliance with Title 24 is one factor considered in the analysis, there are numerous other design features that inform and support the FEIR’s conclusion that energy impacts would not be significant. (See FEIR subchapter 3.1.8; see also Table 1-3 and FEIR Appendix O.) While not all of those features are reiterated in this response, some of the relevant considerations are set forth again below for ease of reference:

LETTER

RESPONSE

	<p>O10-44 (cont.)</p> <ul style="list-style-type: none">• The project would install 2,000 kilowatts of on-site solar/photovoltaic systems capable of producing approximately 3,400,000 kilowatt-hours of electricity (which is approximately 22 percent of the project's total electricity needs at build-out).• All new residential units built as part of the project would be equipped with smart meters to help monitor energy consumption and efficiency.• The project would provide Energy Star appliances, including clothes washers, dishwashers, fans and refrigerators, in 95 percent of the single-family, mixed-use residential, and senior community residential uses.• The project would install high-efficiency lighting, thereby achieving a 15 percent lighting energy reduction.• Bicycle racks would be provided at various locations throughout the site to facilitate non-vehicular modes of transportation, thereby decreasing fuel consumption.• Various other features, such as the coordination of ride share and/or shuttle systems, and a park-n-ride lot, would minimize the use of single-occupancy vehicles. (Ibid.) <p>Further, the FEIR's energy analysis considers not only the natural gas and electricity consumption of the project's structures, but also the energy demand and efficiency levels associated with water conveyance and fuel consumption. As such, it is not correct to state that the EIR's analysis relies predominately on compliance with Title 24. That being said, it is important to note that considering the "degree to which the project complies with existing energy standards," such as Title 24, is expressly identified in Section II.C.4 of Appendix F of the CEQA Guidelines as relevant to the assessment of a project's energy impacts.</p>
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