Letter O9

SHUTE, MIHALY & WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

ERIN B. CHALMERS
Attorney
chalmers@smwlaw.com

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Via E-Mail and FedEx (exhibits only by FedEx)

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

Re: Lilac Hills Ranch Project 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"). The Project and the County's draft environmental impact report ("DEIR") suffer from numerous flaws. Specifically, the DEIR 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. First, the DEIR reaches the outrageous conclusion that the Project would have no significant effects on agricultural resources even though it would convert hundreds of acres of productive farmland to non-agricultural use. Likewise, the DEIR concludes—contrary to common sense and all evidence—that the construction of the proposed suburban community, which is far from any existing urban area and will cause more than 60 million miles of vehicle travel per year, will somehow not have a significant impact on greenhouse gas emissions or climate change.

In addition, the Project 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 example, the Project proposes a new "village" in a rural and semi-rural area where no village is currently planned. The General Plan prohibits such a new village unless it complies with strict environmental stewardship standards, which this Project does not. Finally, the Project's inconsistency with the General Plan precludes its approval under the Subdivision Map Act.

O9-1

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O9-1 The comment is an introduction to more specific comments that follow. Responses are provided below to each comment. As such, no more specific response to this comment 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 proposed project.

Specifically, Section 66473.5 of the Government Code requires that subdivisions be consistent with the jurisdiction's general plan. The Project hinders achievement of the General Plan's and Community Plans' goals to preserve productive agricultural lands, ensure that new development does not impact surrounding agriculture, and maintain the rural character of the community. As a result of these inconsistencies, the Project cannot lawfully be approved.

O9-1 cont.

I. The DEIR Vastly Understates the Project's Impacts on Agriculture, and As A Result, Fails to Adequately Mitigate the Project's Significant Impacts.

Agriculture is vital to San Diego County, accounting for the fifth largest sector of the County's economy. http://www.utsandiego.com/news/2013/aug/02/crops-agriculture-avocados-county/. The County has more farms—6,687—than any other county in the nation. *Id.* Further, many of them are small farms; more than two thirds of the County's farms are less than ten acres in size. *Id.*

Agriculture is also vital to the Bonsall and Valley Center communities where the proposed Project would be located. The Project site itself contains approximately 400 acres of land that is currently in agricultural use for the production of citrus, avocados, row crops, nursery products and wine grapes. DEIR at 2.4-4; Agricultural Resources Report of EIR, Figure 9. The Project site is also surrounded by orchards, row crops, nurseries, greenhouses and other agricultural uses. *See* Agricultural Resources Report of EIR, Figure 12. The Project will destroy virtually all on-site agricultural uses and will serve as a wedge that will make surrounding agriculture less viable from a financial and practical perspective. Despite these huge effects, the DEIR concludes that the Project will not have any significant impacts to on-site agricultural resources, and that a few mitigation measures will cause the Project to not have any off-site impacts to surrounding agriculture. This surprising and counterintuitive conclusion is not supported by substantial evidence, but is based on spurious analysis that fails to account for a variety of factors.

O9-2

A. The Project Will Cause A Significant Impact By Converting On-Site Agricultural Operations to Non-Agricultural Uses.

Despite the presence of numerous, diverse agricultural operations on the Project site, the DEIR reaches the bizarre conclusion that the Project will not cause a significant impact due to conversion of on-site agricultural lands. It reaches this conclusion by determining that on-site soils are poor, and therefore the conversion of hundreds of acres

O9-3

O9-2 The comment is directed towards the agricultural resources impacts analysis presented in the Lilac Hills Ranch Draft EIR circulated for public review in July 2013. Following receipt of public comments, the July 2013 Draft EIR was subsequently revised and circulated for public review in June 2014. The Draft REIR determined that the proposed project would result in significant impacts to on-site agricultural resources (i.e., direct impacts) and identified appropriate mitigation to reduce the impacts. Additionally, the Draft REIR includes revised mitigation measures relating to off-site (i.e., indirect) impacts. Please see FEIR subchapter 2.4, Agricultural Resources, and the corresponding technical report, Agricultural Resources Report, Lilac Hills Ranch (June 2014) [FEIR Appendix F]. Please also see Global Response: Agricultural Resources, Direct Impacts and Global Response: Agricultural Resources, Indirect Impacts. Please see the FEIR Appendix F and the Global Response: Agricultural Resources, Direct Impacts and Global Response: Agricultural Resources, Indirect Impacts for a full discussion on this issue.

O9-3 Please see response to comment O9-2, as well as the Global Response: Agricultural Resources, Direct Impacts for information regarding the County's use of the LARA model in assessing impacts to agricultural resources.

of existing agricultural operations to non-agricultural uses is insignificant. This conclusion is outrageous, and certainly is not supported by substantial evidence.

The DEIR purports to use the Local Agricultural Resources Assessment ("LARA") model to reach its conclusion that the Project will not have significant agricultural impacts due to on-site conversion of farmland. Although it may sometimes be appropriate to use this model as a threshold for determining whether a project's agricultural impacts will be significant, agencies must use the model correctly, and they may not rely exclusively on the model for a finding of insignificant impacts if other substantial evidence in the record demonstrates that the Project may actually cause significant impacts. *Communities for a Better Env't v. California Resources Agency* (2002) 103 Cal.App.4th 98, 112-13 (thresholds of significance cannot be used as binding standards that foreclose the use of other evidence to demonstrate that a project may have significant effects); *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"). Nor may the County rely on this model as a threshold for determining significance if the model fails to accurately measure the particular environmental effects caused by the Project. *Protect the Historic Amador Waterways,* 116 Cal.App.4th at 1109.

O9-3 cont.

In addition, the County's reliance on the LARA model is suspect because it appears that the County never formally adopted the LARA guidance or model as an appropriate method for generally determining the significance of a project's agricultural impacts. Pursuant to CEQA, agencies are encouraged to adopt generally applicable thresholds of significance to measure particular impacts, but they must adopt them by ordinance, rule, regulation or resolution after a thorough public process. Guidelines § 15064.7. They must also be supported by substantial evidence. *Id.* Here, it does not appear that the County ever adopted the LARA guidelines by ordinance, rule, regulation or resolution after a thorough public process. Nor does this guidance include any evidence supporting the notion that impacts on hundreds of acres of productive agricultural land can be considered "insignificant" merely because the soil is considered poor by some standards. Accordingly, the County's rote reliance on the LARA model in the Project DEIR is unwarranted, and the DEIR's conclusion that the Project will not significantly impact on-site agricultural land is not based on substantial evidence, as CEQA requires.

O9-4

O9-4 Please see Global Response: Agricultural Resources, Direct Impacts for information regarding the County's use of the LARA model in assessing impacts to agricultural resources. The LARA Model methodology is an integral part of, and was adopted with, the "Guidelines for Determining Significance – Agricultural Resources" (March 19, 2007). These Guidelines were provided to the public for a 45-day public review on January 30, 2007 and were subsequently approved by both the County of San Diego Departments of Planning & Development Services and Public Works. The Guidelines were also approved by the County of San Diego Land Use and Environment Group (LUEG) Deputy Chief Administrative Officer.

1. The DEIR Fails to Follow the County's Own Guidance on How to Measure Agricultural Impacts Using the LARA Model and Fails to Provide Enough Information to Support, and for the Public to Understand, the DEIR's Conclusions.

In 2007, the County issued guidance on how agencies should analyze the agricultural impacts of projects they approve. County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements: Agricultural Resources ("Guidance") (March 19, 2007), attached as Exhibit 1. For example, the Guidance requires agencies to identify the soil types on a project site by "[p]rovid[ing] a description of the associated Land Capability Classification ("LCC"), Storie Index, and suitability for crop production based on information from the San Diego Area Soil Surveys or other data sources." Guidance, p. 7. Although the DEIR here purports to provide the Storie Index ratings, it does not actually do so. Agricultural Resources Report of EIR, p. 19. Nor does it provide the Land Capability Classifications for on-site soils. *Id.* This failure renders the DEIR's description of existing environmental conditions inadequate, as it does not allow the public to accurately assess the on-site agricultural resources and therefore determine whether their loss will be significant. *See* 14 Cal. Code Regs (hereafter CEQA "Guidelines") § 15125. O9-5

Another flaw is that the DEIR does not provide enough information to support its conclusions. The DEIR's analysis of impacts to on-site farmland is based on a report that uses a matrix to conclude that on-site agricultural resources are not important. The matrix shows that on-site soils achieved a rating of ".100," but does not explain how it came up with this rating. Agricultural Resources Report of EIR, p. 47. The DEIR then explains that "Soil quality matrix scores that are less than 0.33 and have less than 10 acres of contiguous Prime Farmland or Statewide Importance soils receive a low rating pursuant to the LARA Model. Therefore, since the 0.100 is less than 0.33 and the site does not have at least 10 contiguous acres of Prime or Statewide Importance soils, the project would receive a low rating in the soil quality category." *Id.* There are at least two problems with this analysis. First, the Agricultural Resources Report does not provide any background information regarding how it determined that on-site soils have a rating of 0.100. The public therefore has no way to verify this finding. This lack of information violates CEQA's core purpose of promoting informed decisionmaking. See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (August 5, 2013), S202828, __ Cal.4th __. O9-6

Second, the DEIR lacks information to support its conclusion that the site does not have at least 10 contiguous acres of Prime or Statewide Importance soils. On the O9-7

O9-5 Please see Global Response: Agricultural Resources Direct Impacts for information regarding the County's use of the LARA model in assessing impacts to agricultural resources.

The Storie Index and LCC soil ratings qualities were utilized in preparation of the Agricultural Resources report, Appendix F. Specifically, Attachment A of the Agricultural Resources Report includes the results of the LARA model which includes a detailed evaluation of the site's soils, including LCC and Storie Index of each soil found on the project site (see Appendix F, Attachment A, Table A-3). The Storie Index (SI) expresses numerically the relative degree of suitability and grade of a soil for intensive agriculture based on soil characteristics. The Land Compatibility Classification (LCC) is yet another system of rating soil quality.

Furthermore, the LARA Model acknowledges a wider range of soil types as important compared to the standard definition of Prime Soils which only considers soils as Prime if they have a LLC of I or II or a Storie Index of 80 or higher. The County Guidelines for Determining Significance for Agricultural Resources further explains the difference between the LESA model and the LARA model in terms of soil evaluation criteria (Table 1, page 18):

"The LESA model soil quality ratings is based solely on LCC and SI ratings, with an assignment of 50% weight to soil quality using these ratings. San Diego County has limited quantities of high quality soil as defined by LCC and SI ratings. The use of these soil ratings in the LESA Model does not adequately account for locally important soils that may not be rated highly using the LCC and SI rating system. The LARA Model uses a more inclusive definition of soil quality that is based on locally important soils as defined by the USDA NRCS. The USDA NRCS soil quality criteria have been developed for San Diego County to define the soil characteristics that must be met for a site to qualify for the FMMP Prime Farmland and Farmland of Statewide Importance designation."

O9-6 Preliminarily, as noted in the prior responses, the impact analysis has been revised such that application of the LARA model now concludes that the Project site is an important agricultural resource. Please see Global Response: Agricultural Resources, Direct Impacts for additional explanation. The LARA Model worksheets appear as Attachment 1 at

contrary, a map in the DEIR shows that there are at least two large swaths of land containing Statewide Importance soils near the northern end of the Project site, and that most of these areas are available for agricultural use. *See* Agricultural Resources Report of EIR, Figure 7 (see Fallbrook sandy loam, 5 to 9 percent slopes, eroded), Figure 8. It appears as though these areas may each be greater than 10 acres. *See id.*, Figure 8; DEIR at 2.4-10 (acknowledging that the Project site contains more than 40 acres of land that meets the criteria for Prime or Statewide Importance, and that all of these acres may be converted to non-agricultural uses, but not stating how many acres are contiguous). At the least, the DEIR contains no evidence that these areas are less than 10 acres. Thus, its conclusion that the site does not contain important agricultural resources because it does not have at least 10 contiguous acres of Prime or Statewide Importance soils is not based on substantial evidence, as required by CEQA. Guidelines § 15384.

O9-7 cont.

2. The DEIR's Exclusive Reliance on the LARA Model is Unjustified Because Other Evidence Demonstrates that the Project May Cause Significant Environmental Effects.

The DEIR relies exclusively on the LARA model to determine that "the site is not considered an important agricultural resource." Agricultural Resources Report of EIR, p. 47. It therefore summarily dismisses as insignificant the conversion of hundreds of acres of productive farmland. The DEIR's exclusive reliance on the LARA model is misplaced for numerous reasons.

O9-8

(a) The Alleged Fact that On-Site Soils Are "Poor" Does Not Mean the Project Has Less Than Significant Impacts to Farmland.

The DEIR concludes that the Project will not have a significant impact on on-site agricultural lands because on-site agricultural soils are poor. DEIR at 2.4-9. This is the exclusive reason the DEIR finds that the Project will not have a significant impact on on-site agricultural lands. *Id.* The DEIR bases its finding on the Agricultural Resources Report's LARA modeling, which found that "only" 40 acres of on-site land is classified as having soils designated as Prime Farmland soils or soils of Statewide Importance. Agricultural Resources Report of EIR, p. 47; DEIR at 2.4-10.[1]

O9-9

[1] As described above, the DEIR never justifies its conclusion that conversion of a "mere" 40 acres of farmland with admittedly superior soil characteristics is an insignificant impact. Given the importance of farmland to the region, even conversion of

O9-6 (cont.)
the end of the Agricultural Resources Report (Appendix F) of the FEIR. The worksheets and tables found therein explain the scores mentioned in this comment.

O9-7 Please see response to comment O9-2 above, including Global Response: Agricultural Resources, Direct Impacts. As explained in the ARR, a conservative approach was taken in the FEIR such that the revised analysis determined that the project site does contain 10 acres or more of contiguous soils of Prime or Statewide Importance. (ARR, Section 2.1.1.3, Soil Quality.)

O9-8 Please see response to comments O9-2 and O9-7 above, including Global Response: Agricultural Resources, Direct Impacts. The revised analysis determined that the project site does contain "important agricultural resources" as determined through application of the LARA model.

O9-9 Please see response to comment O9-2 above and Global Response: Agricultural Resources, Direct Impacts.

With respect to the comment's focus on agricultural production rather than the physical resources present on the site, the County's Guidelines for Determining Significance – Agricultural Resources, and the LARA Model, specifically, identify six factors to be analyzed when assessing whether a site is an important agricultural resource. Each of these factors relates to the project's physical environment, as required by CEQA; the crops grown on an agricultural property are not considered a physical feature of the property. The LARA Model's three required factors relate to Climate, Water Resources, and Soils. The other three factors are complementary to the required factors and also review the physical environment surrounding a project site. The complementary factors are site and surrounding lands topography, adjoining land uses, and the land use consistency of the built environment.

The rationale behind focusing on the physical resource rather than economic production is explained in the County's Guidelines for Determining Significance – Agricultural Resources at Pages 16 and 17:

The DEIR's characterization of on-site soils as "poor," and its reliance on this factor to find no significant impacts is not supported by substantial evidence. On the contrary, the DEIR itself acknowledges that the site contains a vibrant and productive variety of farms that grow citrus, row crops, grapes and nursery products. If the soil is allegedly so poor, farmers would not have been able to grow these crops for the past four decades. Indeed, if allegedly poor soil disqualified land from being able to support productive agriculture, San Diego County would not have much agriculture. *Most* agricultural soils in the County are poor, but this has not stopped the County from becoming the 12th largest agricultural county in the nation, with more than 292 organic growers—the highest number of any county in the nation. San Diego County General Plan EIR, p. 2.2-2 - 7 (August, 2011), excerpts attached as Exhibit 2 and available in full at http://www.sdcounty.ca.gov/dplu/gpupdate/docs/BOS_Aug2011/EIR/FEIR_2.02_-_Agriculture_2011.pdf .

As the County's own General Plan describes, "The resources that support the County's agriculture are unique. Unlike other jurisdictions across the nation, farming in San Diego is dependent upon the region's unusual microclimates and *often has very little relationship to the quality of the soils*." County General Plan, Conservation and Open Space Element, p. 5-14 – 15, attached as Exhibit 3. And as stated in the EIR for the County's recent General Plan update, "[s]oils in the San Diego region are generally considered poor, with only six percent of the region's soils considered prime agricultural land …. Soil quality measures typically rate local soils as poor because of the County's generally steep terrain and erodible soils." Exhibit 2, p. 2.2-2.

The County General Plan EIR goes on to describe various measures of soil quality and how County soils are often rated poor even though they support a wide variety of agriculture. For example, the Storie Index uses a 100 point scale to express the value of soil for intensive agriculture, with higher ratings indicating higher quality soils. *Id.* at 2.2-3. As the EIR notes, "[p]roductive agriculture in San Diego County typically occurs on soils with low S[torie] I[ndex] ratings (typically in the 30 point range)." *Id.* Likewise, County agriculture generally occurs on soils with Land Capability Classifications of III and IV, with designations of "e" and "s," indicating that the soils are shallow and

these 40 acres is clearly a significant impact. *See Masonite Corp. v. Cnty. of Mendocino,* A134896, 2013 WL 3865101 (Cal. Ct. App. July 25, 2013) (holding that EIR improperly mitigated the significant impact of converting 45 acres of prime farmland); *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296 (conversion of 40 acres of prime farmland was a significant impact).

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O9-9 cont.

O9-9 (cont.)

"This importance of differentiating important physical agricultural resources [e.g., soils, water, and climate] from important economic agricultural resources [e.g., crops grown on a property] becomes particularly clear when considering how this concept may be applied to an evaluation of the County's highest value agricultural commodity, indoor flowering and foliage plants. Typically, this industry does not rely on native soils. These commodities are often grown in greenhouses and in various artificial or imported growing mediums. Would then, the conversion of a nursery operation located on poor quality soils be considered a physical impact on the environment, assuming the conversion would not adversely impact surrounding agricultural land uses? Assuming a lack of unique site features and a lack of high quality soils, the site should not be considered an important agricultural resource since valuable physical agricultural resources would not be lost. The loss of the nursery operation would constitute a land use change, likely in response to economic factors that make continued production infeasible. It is also an economic change to the agricultural industry; however these effects should not be considered impacts to or the loss of physical resources under CEQA. In contrast, if the nursery operation were located on high quality soils, its loss could constitute a potentially significant adverse effect on an important agricultural resource (the high quality soils)."

The LARA Model addresses the physical impact of the project. As the Guidelines explain "the focus of a CEQA analysis is on impacts to physical resources. In the case of agriculture, the physical resources include those areas of the site that contain soil of a sufficiently high quality to support crop production. The LARA Model focuses on the underlying physical resources in the analysis of impacts versus focusing on the actual agricultural commodity that may have been produced at a site. By focusing on underlying physical resources, this approach recognizes that conversion of a particular agricultural use may not be a significant environmental effect, if the agricultural use is not depending on a valuable agricultural resource such as good soil." (Guidelines, Page 37.)

erodible. *Id.* at 2.2-2 - 3 (class I soils are the most productive, and classes VI – VIII have the most severe limitations).

Accordingly, the fact that some soils on-site are rated as "poor" using standardized measures of soil quality cannot serve as the sole basis on which to conclude that the Project will not have significant impacts on agricultural land. The undisputed evidence demonstrates that the Project will convert hundreds of acres of productive agricultural land to nonagricultural uses. By any rational measure, this is a significant—indeed huge—impact. The DEIR's exclusive reliance on the LARA model, which does not accurately measure the productivity of agricultural land in San Diego County, is misplaced and cannot support the DEIR's finding of insignificant impacts. *See Protect the Historic Amador Waterways,* 116 Cal.App.4th at 1109 (agency may not rely on a standardized measure of significance that fails to measure or account for particular, on-site impacts).

O9-9 cont.

As one example, the Project site contains more than 210 acres of Fallbrook sandy loam with 15 to 30 percent slopes, 149 acres of which are available for agricultural use. Agricultural Resources Report of EIR, p. 19. Although Fallbrook sandy loam with lesser slopes qualifies as a soil of Statewide Importance, the same soil with higher slopes does not. *Id.* Although steep sloped land may not be suited to particular types of agriculture in other areas of the country, it is very well suited to avocado production and other crops that are important in San Diego County. Exhibit 4, Table 5 (federal report on avocado production in California describing how avocados are grown on slopes up to 75%, and that *most* avocado production in San Diego County occurs on slopes greater than 9%). Indeed, Fallbrook sandy loam with 15 to 30 percent slopes has a Storie Index of 35. Agricultural Analysis of Meadowood Project, Fallbrook Community Planning Area, August, 2010, Table 2, attached as Exhibit 5. As described by the County itself in its General Plan EIR, productive agriculture in the County *typically* occurs on soils with Storie Index ratings in the 30 point range. Thus, the DEIR should not have dismissed the impacts on approximately 149 acres of good, though steep, Fallbrook soil as an insignificant impact.

O9-10

Likewise, the DEIR should not have dismissed all impacts on Cieneba soils as insignificant. The same federal report, described above, describes how San Diego County is the leading avocado producing county in the state, growing nearly 47% of California market value for avocados. Exhibit 4, p. 1. It also describes how the Cieneba soil series accounts for approximately 37% of avocado bearing soil acreage, and how these soils are located on slopes of 9 – 85%. *Id.* The DEIR, however, states that there will be no significant impact to avocado production (or other agricultural resources) on-

O9-11

O9-10 The FEIR did not dismiss Fallbrook Sandy loam, which is considered a soil candidate for the Farmland of Statewide Importance mapping category. This soil is included in the LARA model analysis as shown on Table 3 of Appendix F to the FEIR. Please see response to comment O9-2 above and Global Response: Agricultural Resources, Direct Impacts.

O9-11 Please see response to comment O9-11 above and Global Response: Agricultural Resources, Direct Impacts.

The FEIR did not "dismiss" impacts to the Cieneba soil series. Cieneba soils were analyzed within the context of the entire site, pursuant to the LARA Model methodology (see Table 3 of Appendix F to the FEIR). The Cieneba soils are not identified as Prime Farmland soils or Farmland of Statewide Importance soils, and therefore, receive a lower rating pursuant to the LARA Model. (FEIR, Table 2.4-1; FEIR Appendix F, Table 3.) That lower rating does not reduce that soil's qualities or dispel the notion that these soils might also permit growth of viable crops. However, the Prime Farmland and Farmland of Statewide Importance soils are the specific soils identified as valuable for agricultural crops in San Diego County. It is clear that avocados grow on rocky and steep soil types. However, the crop grown is not considered the physical resource but, rather, the soils are the physical resource. Please see response to comment O9-9 above for additional information responsive to the comment.

site because all Cieneba soils are of low quality, and therefore have no significant value to agriculture. Agricultural Resources Report of EIR at A-4. The DEIR's conclusion, and its dismissal of allegedly "low quality" Cieneba soil as unimportant for agriculture, ignores the facts. As the seminal 1973 soil survey of San Diego County noted, avocado production occurs on Cieneba-Fallbrook rocky sandy loams with 30 to 65 percent slopes. Exhibit 6 (USDA soil survey). The Project site contains 115.88 acres of Cieneba-Fallbrook rocky sandy loams with 30 to 65 percent slopes. Agricultural Resources Report of EIR at A-4). There is no basis for the DEIR to ignore impacts to these 115 acres of viable and productive agricultural land simply because the soil fails to meet some metrics of high soil quality.

O9-11 cont.

(b) The DEIR Erroneously Fails to Analyze Impacts to All Types of Farmland.

Second, and related to the issue of allegedly poor soils, the DEIR (and the LARA model generally) only considers whether the Project will impact farmland with soils designated as Prime Farmland or soils of Statewide Importance. Agricultural Resources Report of EIR, p. 47. Because the site only contains a few dozen acres of such soils, the DEIR concludes that the Project site does not contain important agricultural resources and that the Project will not have a significant impact on agriculture due to conversion of on-site farmland. This approach completely ignores all impacts to on-site, productive farmland classified as Unique Farmland and Farmland of Local Importance.

The DEIR presents no justification for its failure to analyze impacts to these other types of farmland, even though it acknowledges that Unique Farmland and Farmland of Local Importance are extremely valuable to the County and that the Project site contains more than 331 acres of Unique Farmland and 146 acres of Farmland of Local Importance. Agricultural Resources Report of EIR, p. 27:

> Unique Farmland includes areas that do not meet the above stated criteria for Prime Farmland or Farmland of Statewide Importance, but that have been used for the production of specific *high economic value crops* during the two update cycles prior to the mapping date. It has the *special combination of soil quality, location, growing season, and moisture supply needed to produce sustained high quality and/or high yields of a specific crop* when treated and managed according to current farming methods. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.

O9-12

O9-12 The significance thresholds used in analyzing agricultural resources are the County's Guidelines for Determining Significance for Agricultural Resources (March 19, 2007) (County Guidelines) which are adapted from criteria provided in Appendix G of the State CEQA Guidelines. Please see subchapter 2.4.2 of the EIR for the specific thresholds applied. 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.) The analysis is to be conducted utilizing the LARA model, a site-specific analytic model that takes into account water, climate, soil quality, surrounding land uses, land use consistency, and the topography of a particular site. (See County Guidelines, Section 3.0.) Based on the County's approved significance thresholds, impacts to Unique Farmland or Farmland of Local Importance that do not contain the soil quality criteria for Prime Farmland or Farmland of Statewide Importance are not considered significant impacts within the meaning of CEQA. Please see Global Response: Agricultural Resources, Direct Impacts, for further information responsive to this comment regarding impacts to Unique Farmland, the County's thresholds and the related impacts analysis.

With respect to the analysis of agricultural impacts presented in the County's General Plan Update EIR, that analysis was a plan level analysis that addressed impacts on a Countywide basis, as compared to the site-specific, project level review presented in the Lilac Hills Ranch FEIR based on the LARA model. The General Plan Update EIR looked at the environmental impact of the then- proposed General Plan's Goals and Policies on agricultural lands and the agricultural industry throughout the County. The comment's comparison of the environmental analysis prepared for the General Plan Update with the project-specific environmental analysis required by the County's Guidelines relative to agricultural resources is a comparison of two separate and distinct processes not related to each other.

> Farmland of Local Importance *is important to the local agricultural economy*, as determined by the County Board of Supervisors and a local advisory committee. The County of San Diego defines Farmland of Local Importance as land with the same characteristics as Prime Farmland or Farmland of Statewide Importance with the exception of irrigation. There are 146.4 acres of Farmland of Local Importance … within the project site.

Agricultural Resources Report of EIR, p. 27 (emphasis added).

The DEIR's analysis of impacts only to Prime Farmland and Farmland of Statewide Importance is inappropriate. Appendix G to the CEQA Guidelines specifically recommends that agencies analyze impacts not only to Prime Farmland and Farmland of Statewide Importance, but also to Unique Farmland. CEQA Guidelines, Appdx. G, § II(a). The County recognized this recommendation when it analyzed the agricultural impacts of its General Plan update; indeed, it went even farther, also analyzing impacts to Farmland of Local Importance and land with historic agricultural uses that was no longer used for farming.

> Based on Appendix G of the CEQA Guidelines and the County of San Diego Guidelines for Determining Significance, Agricultural Resources, the proposed General Plan Update would have a significant impact if it would convert San Diego County Agricultural Resources (*including, but not limited to, Prime Farmland, Unique Farmland, Farmland of Statewide or Local Importance*, pursuant to the FMMP of the California Resources Agency), or other agricultural resources, to non-agricultural use.

Exhibit 2, p. 2.2-12 (emphasis added). Oddly, the Project DEIR itself claims that it uses CEQA Guidelines Appendix G in its analysis, yet it fails to analyze impacts to Unique Farmland, as recommended in Appendix G. DEIR at 2.4-8 ("For the purpose of this EIR, the identified significance thresholds are based on criteria provided in Appendix G of the State CEQA Guidelines . . ."). The DEIR's internal inconsistency on this point also renders the document confusing, thereby thwarting the document's ability to meet CEQA's fundamental purpose of supporting informed decisionmaking.

O9-12 cont.

If the County or other agencies only analyzed impacts to Prime Farmland and Farmland of Statewide Importance in their environmental review for projects in San Diego County—as the Project DEIR does—they would ignore impacts on a vast swath of viable, productive farmland. As of 2006, only approximately 19,000 acres of the County's 314,000 acres of farmland and grazing land were classified as Prime Farmland

O9-13

O9-13 Prime Farmland/Farmland of Statewide Importance is not the same thing as Prime Farmland Soils/Statewide Importance soils, which are the subject of the County's significance thresholds. It is true that San Diego County contains about 6 percent of the former, the LARA Model analysis relies upon the latter. The County Guidelines for Agricultural Resources covers the several FMMP Categories, through its definition of Agricultural Resource. If a site is designated by the FMMP as a Farmland Category, such as Unique Farmland, then the site is considered an Agricultural Resource and the LARA Model is run and agricultural conversion reports are prepared, as was done for this Project.

The FMMP Farmland Categories are determined via an analysis of both soil quality and existing land use, via GIS and aerial photography, as well as access to quality irrigation water. Whereas, the Prime/Statewide soils designation is based on soil quality alone. In order to determine Prime/Statewide soils, the soil type (e.g., Fallbrook sandy loam) is checked against a list of 44 Prime and 65 Statewide soils (specific to San Diego County) and if it is on either of those lists, then that particular soil is considered to be a Prime/Statewide soil. Please see Global Response: Agricultural Resources, Direct Impacts for further explanation of the distinction between the two classifications.

and Farmland of Statewide Importance, which represents just 6% of County farmland. Exhibit 2, p. 2.2-35 (such land represents 9% of all agricultural land if grazing land is excluded). Under this DEIR's theory (and the LARA model's theory) that impacts to all other types of farmland are unimportant and insignificant, projects could destroy more than 90% of the County's farmland without ever triggering a finding that there is a significant impact, and therefore requiring mitigation. This is patently absurd.

O9-13 cont.

Analyzing the full range of impacts on all types of farmland also comports with the Legislature's repeated assertion that preservation and protection of state farmland is an important policy goal and that CEQA is one tool that should be used to carry out this goal. *Masonite Corp. v. Cnty. of Mendocino*, A134896, 2013 WL 3865101 (Cal. Ct. App. July 25, 2013) ("our Legislature has repeatedly stated the preservation of agricultural land is an important public policy. (Gov't Code, § 51220, subd. (a) ["the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary … for the assurance of adequate, healthful and nutritious food for future residents of this state and nation"]; Pub. Resources Code, § 10201, subd. (c) . . . ; Civ.Code, § 815 . . . The Legislature has also declared that CEQA is intended to effectuate this public policy. (Stats.1993, ch. 812, § 1, p. 4428 [(d) The California Environmental Quality Act plays an important role in the preservation of agricultural lands."])." Here, the DEIR's myopic analysis fails to conform with CEQA's explicit requirements or the broader goals of the Legislature. It also flies in the face of the CEQA Guidelines and the County's own, prior analysis for its General Plan update.

O9-14

(c) The DEIR's Reliance on Soil Types As a Proxy For Significant Agricultural Impacts Is Inappropriate.

The DEIR should not rely exclusively on soil types to determine agricultural viability and importance. Two types of on-site agricultural resources are nurseries and greenhouses (Agricultural Resources Report of EIR, pp. 13, 29, Figure 6), which do not depend entirely on existing soil types for their viability because they can import soil to use in potted plants and greenhouses. Although the DEIR does not disclose what is grown at the on-site nurseries, agricultural production of "ornamental trees and shrubs" and "indoor flowering and foliage plants" were the top two crops (by value) grown in San Diego County in 2010, with total values of $418 million and $293 million, respectively. Agricultural Resources Report of EIR, p. 29. Accordingly, to the extent the DEIR's reliance on soil quality as a proxy for determining agricultural viability fails to account for impacts to nursery and greenhouse products, the document fails to serve its purpose. In order to accurately measure the Project's impacts to agriculture, the DEIR must use a

O9-15

O9-14 The comment is a summary conclusion relative to the preceding comments and expresses the opinions of the commentator. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed project. Please see the preceding responses, including Global Response: Agricultural Resources, Direct Impacts for information responsive to the comment.

O9-15 The analysis of potential impacts to agricultural resources presented in the FEIR does not rely exclusively on soil type to determine agricultural importance. Application of the LARA model takes into account soil quality, as well as water and climate, in determining whether the site is an important agricultural resource. The LARA Model methodology, adopted as part of the "Guidelines for Determining Significance – Agricultural Resources" (March 19, 2007), states that "the focus of a CEQA analysis is on impacts to physical resources. In the case of agriculture, the physical resources include those areas of the site that contain soil of a sufficiently high quality to support crop production, as well as climate, water resources and topography. This approach recognizes the market-driven nature of agriculture by focusing on the underlying physical resources in the analysis of impacts versus focusing on the actual agricultural commodity. By focusing on underlying physical resources, this approach recognizes that conversion of a particular agricultural commodity may not be a significant environmental effect, if that commodity is not dependent on physical resources, such as climate, water availability or soil." Please also see Global Response: Agricultural Resources, Direct Impacts and response to comment O9-9 above, for additional information responsive to this comment.

metric that does not rely exclusively on soil types to determine whether impacts are significant.

O9-15 cont.

(d) The DEIR Ignores Impacts on More Than 40 Acres of Prime Farmland and Farmland of Statewide Importance.

Even if the County could legitimately analyze only impacts on Prime Farmland and Farmland of Statewide Importance—which it may not—the DEIR offers no valid excuse for its failure to measure the significance of the 40 acres of such farmland that the Project will convert to non-agricultural uses. DEIR at 2.4-10. The DEIR acknowledges that these types of farmland comprise 10% of the Project site (*id.*), yet curiously disregards any impact on these more than three dozen acres of important farmland. Apparently, the DEIR authors believe that, because the LARA model found that the overall site does not contain a high proportion of these types of farmland, it does not need to analyze the impacts to the Prime Farmland and Farmland of Statewide Importance that do exist on site. Nothing in CEQA or the LARA model allows such a result. On the contrary, CEQA specifically requires agencies to analyze *any* significant impact, including impacts to Prime Farmland and Farmland of Statewide Importance. Pub. Resources Code §§ 21065, 21081; Guidelines Appendix G, § II(a). Likewise, the County's own guidance on implementing LARA states that the model is intended to ensure "completeness of agricultural impact analyses." Guidance, p. i.

O9-16

In sum, given that citrus, avocados and other crops have been successfully grown on the Project site for more than 40 years (Agricultural Resources Report of DEIR, p. 29), and that the Project would wipe out hundreds of acres of productive agriculture on the site, the DEIR's conclusion that the Project will not have significant impacts due to conversion of on-site agricultural uses is specious.

O9-17

B. The DEIR Fails To Accurately and Fully Analyze the Impacts the Project Will Have On Surrounding Agricultural Lands and Operations.

The DEIR describes the impacts that the Project will have on surrounding agricultural uses, but it ignores some types of impacts and incorrectly analyzes the significance of other impacts. The DEIR's flaws include the following.

O9-18

O9-16 Please see response to comment O9-2, above and Global Response: Agricultural Resources, Direct Impacts. For clarification, the comment confuses different methodologies. Soils that meet specific criteria for "Prime Farmland Soils" or "Statewide Importance Soils" are not the same as land which is designated by the FMMP as "Prime Farmland" or "Farmland of Statewide Importance". As discussed in response to comment O9-13, the soils designated as one of these two types are unique to San Diego County and include a much broader range than those defined in Government Code Section 51201(c). In San Diego County, there are 44 different soils that meet the definition of "Prime Farmland soils" and 65 soil types that meet the definition of "Statewide Importance Soil". Please refer to Attachment C of the Agricultural Guidelines for the listings of all of the NRCS soil types that are classified (in San Diego County) as Prime Farmland Soils or Statewide Importance Soils. Please also see Global Response: Agricultural Resources, Direct Impacts for additional information regarding the distinction between the two classifications that is responsive to the comment.

O9-17 Please see response to comment O9-2, above and Global Response: Agricultural Resources, Direct Impacts. The FEIR does conclude that significant impacts to agricultural resources would occur and proposes mitigation measures that would reduce impacts to less than significant.

O9-18 The FEIR and Agricultural Resources Report adequately addressed the potential impacts of the proposed project on surrounding agricultural lands and operations. Please see Global Response: Agricultural Resources, Indirect Impacts.

As to neighboring farmers cooperating in agricultural activities that extend to sharing irrigation or other economic inputs, this is typically not the case in San Diego County, where farmers are operating smaller farms that may be separated by steep canyons, urban development, different well water aquifers, etc., as well as other geographic characteristics that make such cooperation not practical to the farmer. Further, San Diego County farmers typically live upon the land that they farm. Therefore, well water, irrigation systems, etc. are used and operated within individual farms. Water is typically used for the farm and onsite residence(s) and is not managed cooperatively between farmers. The commenter has provided no evidence that "neighboring farmers cooperate in production activities," within the

O9-18 (cont.)

County of San Diego or within the Valley Center area. Moreover, the existing agricultural operations on-site do not have cooperative arrangements with other local farming operations.

The 27-year-old study cited in the comment is general to the United States and not specific to the San Diego County agricultural industry and the project site and surrounding farming operations. As to the comment that land use conflicts may lead to an increase in local ordinances adverse to existing agricultural operations, in fact the County of San Diego has passed a "right-to-farm act" or the Agricultural Enterprises and Consumer Information Ordinance (County Code Section 64.401, incorporated herein by reference), which protects farmers from nuisance complaints by neighboring property owners.

The comment also relies on an article by JunJie Wu, Land Use Changes: Economic, Social, and Environmental Impacts (2008) ("Wu (2008)") for the following three propositions: (i) suppliers would close due to insufficient demand for farm inputs; (ii) competition for labor from nonagricultural sectors may raise farmers' labor costs; and (iii) local agricultural economy may collapse as all agricultural supporting sectors disappear. As this response will explain below, the propositions are not supported.

As to the comment that suppliers would close due to insufficient demand for farm inputs, the author acknowledges in later publications that this assertion is highly simplistic. In *Urbanization and the Viability of Local Agricultural Economies* (2011) ("Wu (2011)"), the author recognizes that the closure of input suppliers would be a short-term problem, which urbanization would correct through increased prices, and increased number of processors, due to the increased proximity of the consumer. (*Id.*, pp. 112-113.) In finding positive effects from urbanization, Wu (2011) notes inputs and profits increase where urbanization provides farmers with opportunities to grow high-value crops. (*Id.*, p. 113.) According to Wu (2011), high-value crops are more input intensive. (*Id.*, p. 114.) (The Wu article is incorporated by reference and can be found here: http://le.uwpress.org/content/87/1/109.refs).

1. The Project May Have A Significant Impact On Adjacent Farms By Making Farming Less Viable.

The EIR briefly analyzes a few ways in which the Project may impact off-site farmland due to adjacency issues. DEIR at 2.4-13 – 21. However, it ignores one of the most significant and pernicious effects of the Project, which would be to change the character and economics of the area, thereby making farming less viable from a financial and practical perspective. As numerous reports have demonstrated, creeping urbanization undermines the ability of farms to remain viable, for a host of reasons:

> Neighboring farmers often cooperate in production activities, including equipment sharing, land renting, custom work, and irrigation system development. These benefits will disappear when neighboring farms are converted to development. Farmers may no longer be able to benefit from information sharing and formal and informal business relationships among neighboring farms. Urbanization may also cause the "impermanence syndrome" (i.e., a lack of confidence in the stability and long–run profitability of farming), leading to a reduction in investment in new technology or machinery, or idling of farmland (Lopez, Adelaja, and Andrews, 1988).
>
> As urbanization intensifies, agricultural and nonagricultural land use conflicts become more severe. This may lead to an increase in local ordinances designed to force farmers to pay for some of the negative impacts generated by agriculture. As the nearest input suppliers close because of insufficient demand for farm inputs, a farmer may have to pay more for inputs or spend more time to obtain equipment repairs (Lynch and Carpenter, 2003). Competition for labor from nonagricultural sectors may raise farmers' labor costs. When the total amount of farmland falls below a critical mass, the local agricultural economy may collapse as all agricultural supporting sectors disappear.

Land Use Changes: Economic, Social, and Environmental Impacts (2008), attached as Exhibit 7.

The DEIR fails to analyze any of these indirect impacts of the Project, which will undoubtedly be significant. The DEIR is therefore inadequate as a matter of law.

O9-18 cont.

O9-18 (cont.)

As to the comment that competition for labor may raise costs, the comment letter overstates Wu (2008). Wu (2008) provides no support for the proposition that competition for labor from nonagricultural sectors may raise farmers' labor costs. In fact, such an assertion was refuted in a preceding publication. In Philip Martin, *Farm Labor Shortages: How Real? What Response* (2007) ("Martin (2007)"), found little evidence of labor shortages and increased costs. In particular, Martin (2007) determined that the "earnings data reported by farmers to the USDA do not suggest significant farm labor shortages, especially in California and Florida, where farm worker earnings have been rising slower than in the United States as a whole." (p. 13.) Martin (2007) notes that it is the farmers' inability to adjust to rising wages, which would only raise the price of goods by 2.4 cents, rather than competition for labor that increases costs. (*Id.*) (The Martin article is incorporated by reference and can be found here: http://www.cis.org/sites/cis.org/files/articles/2007/back907.pdf

More recently, in Migration Policy Institute, *Ripe with Change: Evolving Farm Labor Markets in the United States, Mexico, and Central America* (2013) ("MPI (2013)"), it was determined that changes in the Mexican economy, and increased educational opportunities in Mexico, have impacted U.S. farm labor costs. (*Id.*, pp. 2-4, 8-13.) Because most U.S. farm labor comes from Mexico, it is the Mexican economy – and not land use changes in the U.S. – that affects the number and costs for labor. (*Id.*, p. 17.) (The MPI article is incorporated by reference and can be found here: http://www.migrationpolicy.org/research/ripe-change-evolving-farm-labor-markets-united-states-mexico-and-central-america

As to the comment that local agricultural economy may collapse as agricultural supporting sectors disappear, Wu (2008) notes that just the opposite is likely to occur. According to Wu (2008), "[u]rbanization also presents important opportunities to farmers. The emergence of a new customer base provides farmers new opportunities for selling higher value crops." (*Id.*, p. 7.) Citing Lopez (1988), Wu acknowledges that the "explosion of nurseries, vegetable farms, vineyards, and other high-value crop industries in many suburban areas illustrates how quickly agricultural economies can evolve. Many farmers have shown remarkable adaptability in adjusting their enterprises to take advantage of new economic opportunities at the urban fringe." (*Id.*)

2. Impacts From Pets and Pests.

The DEIR acknowledges that non-native or invasive pests and pets from developed areas can damage adjacent agricultural land. However, instead of actually analyzing the Project's potential to damage adjacent agricultural land through its spread of pests and pets, it merely concludes that this impact will be significant. The same is true of the DEIR's "analysis" of impacts related to pathogens/diseases. DEIR at 2.4-20 (concluding that the Project could result in spread of disease onto adjacent farmland, which would be a significant impact, but not actually analyzing the issue). The DEIR may not cure the DEIR's failure to *analyze* these impacts by rotely acknowledging the impacts' significance. As the court stated in *Galante Vineyards*, "[T]his acknowledgment is inadequate. '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.'" *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1123 (quoting Guidelines § 15151); *see also Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 365 (EIR protects "the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of a[] contemplated action").

Thus, the County may not "travel the legally impermissible easy road to CEQA compliance . . . [by] simply labeling the effect 'significant' without accompanying analysis . . . ." *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1371. Rather, "a more detailed analysis of how adverse the impact will be is required." *Galante Vineyards*, 60 Cal.App.4th at 1123. The public and decision-makers must know whether the Project's potential to impact adjacent farmland due to the introduction of pests, pets and diseases will merely cause a minor nuisance, or whether it may lead to adjoining farms becoming unviable. The County's refusal to provide this information violates CEQA. It also violates the County's own guidance, which requires that the analysis of agricultural impacts not only identify potential interface conflicts, but also "discuss why those conflicts would or would not result in significant adverse effects." Guidance, p. 16. The discussion must describe typical farm management practices associated with surrounding farm use "based on a farm operator interview, if possible." The DEIR does not even attempt to comply with these procedures.

O9-19

In addition, the Project includes a mitigation measure consisting of a 6-foot high fence along the southern edge of the Project in certain locations in order to prevent intrusion by people and domestic pets. DEIR at 2.4-24. However, the DEIR never

O9-20

O9-19 The FEIR adequately addresses the potential impacts associated with invasive pests and pets, and the related spread of pathogens/diseases, and determined that impacts are potentially significant. (FEIR, subchapter 2.4; FEIR Appendix F, Section 3.2.3.7, page 104.) The FEIR acknowledges that non-native or invasive pets or pests (including human trespass) can cause damage to adjacent agriculture either through direct damage to trees and plants from trespass, invasive species (via unmaintained invasive ornamentals), or theft (e.g., crop loss or damage through theft or trespass) or indirectly through the spread of disease.

Mitigation measure M-AG-2 requires planting of a 50-foot agricultural buffer with appropriate tree crops between existing agricultural operations and potentially non-compatible uses on-site. Mitigation measure M-AG-3 requires construction of a 6-foot-high masonry/metal fence between potentially incompatible uses; and M-AG-4 requires a limited building zone of varying widths, in addition to the 50-foot agricultural buffer. These measures would work synergistically to provide distance separation, visual and physical screening, and a physical barrier in the 6-foot-high solid wall with a foundation that extends below ground level. The 50-plus foot buffer would provide adequate separation between potential sources of pests and pets, as well as on-site invasive seeds and the off-site agricultural uses. The six-foot-high wall, while not completely impenetrable by humans, large canines, and insects, would provide a significant barrier to pets, potential trespassers, and the spread of non-native invasive species. The wall would also serve as a barrier to carriers/transmitters (e.g., horses and humans) of agricultural diseases and pathogens. In addition, in response to public comments, an additional project design consideration has been added to ensure on-site common area orchard trees are properly managed to prevent breeding of pests. (FEIR Table 1-3.) Part III of the Specific Plan, Section M.15.k, also has been revised to specify the management responsibility of the HOA relative to common area fruit trees.

O9-19 (cont.)

As to the effect on the viability of adjacent agricultural operations, the FEIR recognizes that compatibility issues including invasive pests and pets, pathogens/diseases, air contaminant generation, and nighttime lighting can be contributors to the degradation of the viability of off-site farms. However, such impacts relative to viability 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. (ARR, pp. 105-106; Global Response: Agricultural Resources Indirect Impacts, pp. 8-10.)

O9-20 The referenced mitigation measure was revised in response to comments on the 2013 Draft EIR. The FEIR provides details that the subject fence shall be one of two types: (1) the solid masonry type with a foundation that extends below ground level and with no gaps; or (2) a combination of masonry and metal fencing with no gaps. (See FEIR, mitigation measure M-AG-3.) As noted in the preceding response, while not completely impenetrable by humans, large canines, and insects, the six-foot wall would provide a significant barrier to pets, potential trespassers, and the spread of non-native invasive species.

describes whether this measure will actually be effective, much less provide substantial evidence that it will be effective. At the least, domestic cats can easily climb such fences, so it would not provide a barrier for them. Likewise, the measure does not state whether the fence may be made of chain link or whether it must be made of something more sturdy. If it is chain link, it can easily be cut. Anza Borrego State Park and other conservation agencies have found that chain link is easily cut and does not provide an adequate barrier that keeps people out. To the extent the DEIR relies on this mitigation measure to minimize impacts to offsite agricultural lands, the DEIR is inadequate in that it does not demonstrate that the measure is likely to be effective and does not specify the material required to be used for the fence.

O9-20 cont.

3. Impacts Related to School.

The Project proposes a 12-acre school site in the southern portion of the Project, which would be located within 425 feet of off-site orchards where aerial spraying of pesticides is used. DEIR at 2.4-14. Despite the obvious danger of placing hundreds of schoolchildren within a few hundred feet of where pesticides are sprayed, the EIR concludes that impacts associated with the proposed school would be less than significant. *Id.* It bases this conclusion on the fact that state regulations prevent aerial pesticide "drift" onto neighboring properties, and the school site will be 325 feet away from the Project boundary. *Id.* The DEIR's finding of insignificant impacts is not supported by substantial evidence.

Despite state law that prohibits pesticide applications from drifting across property lines, such drift occurs with some regularity. As one study found, "[i]n 2002, nearly half of the reported pesticide illness cases in California were individuals who were exposed as a result of pesticide drift[, and r]esearchers believe that reported occurrences are a fraction of actual incidents." Getting the Drift on Chemical Trespass: Pesticide drift hits homes, schools and other sensitive sites throughout communities, p. 1, attached as Exhibit 8. Of particular concern, with the "aerial application of pesticides, [] up to 40% of the pesticide is lost to drift." *Id.* In fact, pesticides often drift more than 325 feet, as they can volatilize and remain in the atmosphere for long periods of time, where they are subject to being blown by the wind. *Id.*, pp. 1-2. Accordingly, the DEIR's conclusion that state laws will ensure that children are not exposed to pesticides is not supported by substantial evidence. Even the LARA model on which the County relies so heavily recognizes that there is a potential for agricultural operations to negatively affect schools, and vice versa, if a school is located within a *mile* of such operations. The DEIR never offers any concrete evidence that locating a school more than fifteen times closer than this recommended distance will somehow avoid any impact.

O9-21

O9-21 Preliminarily, aerial pesticide spraying at the off-site orchards referenced in the comment is conducted infrequently and has been conducted less than five times within the last five years. (FEIR Appendix F p. 35; Figure 10.) Furthermore, as discussed in the FEIR, the Agricultural Resources Report, and Global Response: Agricultural Resources, Indirect Impacts, both the State of California and County of San Diego have a comprehensive regulatory program in place to address the potential effects of pesticide drift on non-agricultural uses, including prohibiting the discharge of pesticides directly and indirectly through pesticide drift onto neighboring property without the consent of the property owner. This regulatory program, in combination with the 325-foot distance between the school and the subject agricultural use, and the relatively infrequent aerial spraying that is conducted on the subject agricultural use, would minimize the potential for significant indirect impacts associated with the proposed school and existing off-site agricultural uses (see FEIR Appendix F, Section 3.2.2.1). However, the FEIR does recognize a potentially significant indirect impact associated with potential incompatibility between the proposed park that would be adjacent to the school and off-site agricultural operations. This area is evaluated as Agricultural Adjacency area 6 and is depicted on Figure 2.4-7d of the FEIR. Mitigation is proposed to reduce the potential significant impacts that require planting of a 50-foot agricultural buffer with two rows of orchard trees, the requirement for a limited building zone extending out an additional 50 feet, and a fence between the adjacent, existing agricultural operations and the adjacent proposed park site. Additionally, Covey Lane is situated between the proposed project and the adjacent agricultural operations at this location and off-site portions of Covey Lane would provide additional buffer width beyond the 100 foot wide buffer provided entirely on the project site. Finally, the Specific Plan provides for another buffer of trees to be provided along the southern boundary of the school site.

The comment letter cites Kagan Owens, *Getting the Drift on Chemical Trespass* (2004) ("Owens (2004)"), as supporting evidence that pesticide spray drift would impact the proposed school site. However, Owens (2004) notes that California state law requires that notice of aerial applications be provided only to those residents within 300 feet of the application, implying that properties located beyond 300 feet would be affected. (*Id.*, p. 19.) Moreover, of the seven states noted in Owens 2004 that have adopted buffer zone requirements, five of the

O9-21 (cont.)

seven require a buffer of 300 feet or less. (Id., p. 18.) As the proposed school site would be located approximately 325 feet from the orchards where aerial spraying may occur, the buffer in this case is consistent with state law and prevailing requirements.

With respect to the statement that pesticides “often drift more than 325 feet” as they can volatize and remain in the atmosphere where they are subject to being blown by the wind, the statement does not take into account the fact that mitigation measure M-AG-2 requires a 50-foot-wide agricultural buffer in the area between the school and the existing agricultural use that is to be planted with two rows of tree crops and that will reduce spray drift between 45 and 90 percent. (See reference below.) Additionally, as noted above, there is a rigorous regulatory structure in place that is designed to minimize and prevent pesticide drift in the first instance. As explained in FEIR subchapter 2.4 and Global Response: Agricultural Resources, Indirect Impacts, the California Code of Regulations (Title 3. Food and Agriculture, Division 6, Pesticides and Pest Control Operations) regulates the application of pesticides, and requires pesticide applicators to obtain a permit from a local official prior to the application of any pesticides; separate permits are issued for each application. The permit application must include a map or description of the surrounding area showing any places that could be adversely affected by pesticide use. The regulations require the County Agricultural Commissioner ("CAC") to evaluate each restricted material use application and decide if it will cause substantial harm to people or the surrounding environment. If the CAC decides that substantial harm is likely, the permit applicant may be required to evaluate alternatives, including not using a pesticide at all, or the CAC may impose extra controls designed to reduce the risk of harm to people or the environment. The CAC has final discretionary authority to approve or deny application permits; however, the CAC must deny a permit application if it is determined that use of the pesticide may harm people or the environment and no restrictions are available to mitigate that harm.

O9-21 (cont.)

Additionally, to conduct aerial pesticide applications, a pilot must obtain a Qualified Applicator License, an Agricultural Pest Control Business License, and a Pest Control Aircraft Pilot Certificate. In order to attain these licenses, the pilot must exhibit understanding and properly apply principles intended to maximize safety and minimize drift. These include guidelines and regulations for pre-application notification, calibration of equipment, droplet size, maximum wind speed, application speed, application height (altitude), ferrying to and from the job site, buffer zones, dilution, flow rate/volume per acre, spray patterns, and the purpose and toxicity of each particular pesticide to be applied. The pilot must also complete continuing education classes in order to renew the license. In addition, because the control of drift is always a priority, either an on-site ground crew "flagger" or smoke generator is used to provide direction to the pilot regarding wind direction and wind speed. Geographic positioning systems (GPS) are used to give the pilot precise data about swath locations such that only the minimum effective amount of the pesticide is applied. If the pilot is unfamiliar with the application site, the recommended procedure is for the pilot to scout the area for proximity to both flight hazards and also environmentally sensitive areas, such as lakes, streams, and riparian habitats or locations where people gather (e.g., schools, playgrounds, shopping centers).

Additionally, reliance on Owens (2004) also is misplaced because the reference does not address the effect vegetative buffers have on reducing drift. Relative to the proposed school site, as noted above, the area between the school and the existing agricultural use that periodically conducts aerial pesticide spraying would include an agricultural buffer that would include two rows of trees, among other design elements.

Vegetation in buffer zones has been found to reduce the effect of pesticide spray drift. According to Andrew Hewitt, *Drift Filtration By Natural and Artificial Collectors* (2001) ("Hewitt (2001)"), spray drift can be reduced between 45 and 90 percent with the use of vegetation in a buffer zone. (*Id.*, section 3.0.) The Owens article is incorporated by reference and can be found here: http://www.pir.sa.gov.au/__data/assets/pdf_file/0006/235536/20100406_Spray_Buffer_Report_2009_second_version_.pdf

O9-21 (cont.)

Mitigation Measure M-AG-2 requires a 50-foot-wide agricultural buffer planted with two rows of tree crops in those locations where proposed residential uses would abut existing, adjacent orchards and other agricultural operations. Specific to the school site, an agricultural buffer would be established in Adjacency Area 6, which is the area between the existing adjacent agricultural use that infrequently conducts aerial spraying and the southern end of the proposed park; the school site is located at the northern end of the proposed park, as previously noted, approximately 325 feet from the existing agricultural use. (See FEIR Appendix F, page 73, Figure 3 [school site location], and Figures 16 and 16d [Adjacency Area 6 agricultural buffer].) Mitigation Measure M-AG-2 further requires that the Adjacency Area 6 agricultural buffer be planted with Canary Island Pines among the tree crops in order to provide additional buffer between the existing adjacent agricultural use and the proposed park and school sites. The Canary Island Pine is a fast-growing pine that grows 60 to 80 feet tall, has needles (which are more efficient at removing small drifting droplets from the air than smooth leaves), and low water needs. The mitigation measure requires that the Pines be placed in a manner that optimizes porosity and maximizes pesticide drift interception. These criteria are consistent with the findings reported in Hewitt 2001, which concluded that there is general agreement in the literature that a drift reduction of 45 to 90 percent can be achieved through appropriate barriers. (Id., section 3.0.)

The DEIR also ignores specific CEQA provisions that require agencies to closely analyze the siting of new schools to ensure future children and employees are not placed at risk due to surrounding hazardous conditions. Public Resources Code section 21151.8 requires agencies to determine whether a proposed school site is located within a quarter mile of surrounding hazards, including large agricultural operations. If the site is located within a quarter mile of such hazards, a school district must find that the school site will not endanger public health. Here, the EIR never conducts a health risk assessment or other analysis to support its determination that there will be no significant impacts to schoolchildren with substantial evidence. O9-22

Further, the area between the school site and the off-site agricultural operations is proposed for a park. DEIR at 2.4-14. The EIR should not rely on this park as a buffer between the school and the off-site agriculture (and its pesticide spraying) because the schoolchildren will likely use the park. Indeed, County staff pointed out this precise concern in written comments on the proposed Project: "Proposed School Site. The future school children will most likely use this park and therefore a larger buffer is needed between the park and adjacent off-site agriculture. The park as a buffer between the school and off-site agriculture is not enough. There should be an on-site buffer between the park and the off-site ag." Project Issue Checklist, p. 254. O9-23

All in all, the school and adjacent park appear to be placed in a terrible location where children may be exposed to pesticides and where adjacent farmers will be exposed to children who may trespass, vandalize or otherwise harm their farming operations. DEIR at 2.4-14 (admitting that the Project will have a significant impact due to compatibility concerns from children using a park adjacent to agricultural lands). O9-24

4. The DEIR Fails to Analyze a Range of Other Ways in Which the Project May Impact Off-Site Agricultural Operations.

Although the EIR briefly analyzes a few ways in which the Project may impact off-site farmland due to adjacency issues such as invasive pests, generation of air contaminants, nighttime lighting, etc., it fails to acknowledge or address a variety of other ways in which the Project may impact adjacent agricultural operations. As County staff detailed in written comments on the Project application, such impacts include, but are not limited to, incompatible traffic flows, such as slow-moving farm vehicles on roadways, and the corresponding increased risk of accidents; increased fire risks; and littering. Project Issue Checklist, pp. 25-28. The DEIR must be revised to include this information and then recirculated. O9-25

O9-22 The referenced CEQA provision applies to school districts and the CEQA documents prepared by a school district acting as lead agency in connection with the district's purchase of a school site or its construction of a new school, which is not the case here. Any school district proposing to construct a new school on the project site, the district will be required to conduct the analysis set forth under Public Resources Code section 21151.8, including any health risk assessment that may be required. See also Education Code section 17078.54 requiring that charter schools meet all the requirements regarding school construction as any non-charter school project of a school district. Moreover, as summarized in the preceding responses, the FEIR conducted an appropriate analysis of the potential impacts associated with aerial spraying of pesticides and determined that in light of the comprehensive regulatory program in place, in combination with the distance between the proposed school site and existing farms, including the specific agricultural buffer, potential impacts would be less than significant. Please see response to comments O9-21 and O9-22, and Global Response: Agricultural Resources, Indirect Impacts for additional information responsive to this comment.

O9-23 In order to address County staff's comments in the Project Issue Checklist, mitigation measures M-AG-2, M-AG-3, and M-AG-4 were included to provide adequate buffering in this location. This area is evaluated as Agricultural Adjacency area 6 and is depicted on Figure 2.4-7d of the FEIR. This area includes a 50-foot agricultural buffer with two rows of trees (which would substantially reduce spray drift into the park (see response to comment O9-21), a limited building zone extending out an additional 50 feet, and a fence between the adjacent, existing agricultural operations and the proposed park site. Additionally, Covey Lane is situated between the proposed project and the adjacent agricultural operations at this location and the off-site portions of Covey Lane would provide additional buffer width beyond the 100-foot-wide buffer provided entirely on the project site. Moreover, in addition to the buffer area described above, and the substantial regulatory program in place to minimize pesticide drift (see response to comment O9-21), any use of the park by the school children would be intermittent and of limited duration. Please see Global Response: Agricultural Resources, Indirect Impacts for additional information responsive to this comment.

C. The DEIR Fails to Include All Feasible Mitigation, and the Mitigation It Does Include Fails to Conform to CEQA's Standards.

Because the DEIR concludes that impacts to on-site agricultural resources will not be significant, it does not require any mitigation for these impacts. However, because such impacts are actually significant, the DEIR must include all feasible mitigation to minimize these impacts.

An EIR's central purpose is to identify a project's significant environmental effects and then evaluate ways of avoiding or minimizing them. §§ 21002.1(a), 21061. The lead agency also must adopt any feasible mitigation measure that can substantially lessen the project's significant environmental impacts. § 21002; Guidelines § 15002(a)(3). In doing so, the lead agency must "ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." *Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (italics omitted).

O9-26

1. The DEIR Must Require Agricultural Conservation Easements to Mitigate the Project's Impacts.

One type of mitigation that the courts have recently upheld as being feasible and effective is the purchase of agricultural conservation easements ("ACE") to protect off-site agricultural lands. *Masonite Corp. v. Cnty. of Mendocino,* A134896, 2013 WL 3865101 (Cal. Ct. App. July 25, 2013. In *Masonite Corp*., a project was going to convert 45 acres of prime farmland, which the agency properly recognized was a significant impact. However, the agency refused to mitigate for this impact by requiring the project proponent to purchase off-site agricultural easements or by paying an in-lieu fee for the agency to acquire the same. The agency claimed that such easements did not actually mitigate the project's impacts because they did not replace the lost farmland or lessen the amount of acreage that was converted.

The court emphatically disagreed, stating that ACE "may appropriately mitigate for the direct loss of farmland when a project converts agricultural land to a nonagricultural use, even though an ACE does not replace the onsite resources. Our conclusion is reinforced by the CEQA Guidelines, case law on offsite mitigation for loss of biological resources, case law on ACEs, prevailing practice, and the public policy of this state." As the court noted, "[t]here is no good reason to distinguish the use of offsite ACEs to mitigate the loss of agricultural lands from the offsite preservation of habitats for endangered species, an accepted means of mitigating impacts on biological

O9-27

O9-24 The comment largely restates the preceding comments. Please see the responses to comments O9-21 through O9-23 and Global Response: Agricultural Resources, Indirect Impacts for information responsive to the comment. With respect to children who may trespass, mitigation measure M-AG-3 requires a 6-foot-high fence along the southern edge of the park to be constructed either of solid masonry or a combination of masonry and metal fencing with no gaps. The fencing would substantially reduce, if not eliminate entirely, the likelihood of trespass and vandalism.

O9-25 As discussed in the FEIR Project Description (EIR subchapter 1.2.1.4) and illustrated on Specific Plan, Exhibit 25, the project would improve West Lilac Road to a 20-foot half-width with 4-foot shoulders. Compared to the existing condition, the project would provide road improvements that would better facilitate traffic flow and safety over existing conditions (e.g., by providing wider shoulders and thus more space for farm vehicles to yield to faster traffic). The fact that there are, at times, slow-moving tractors on the area roadways does not constitute a significant impact in terms of project traffic. Tractors utilizing the roadways are a rare occurrence and this small frequency is a factor in the conclusion of no significance. In addition, the tractors are already utilizing the area roadways and there is no evidence of safety issues as a result. The mere fact that the project will add traffic to roadways occasionally used by tractors does not constitute a significant impact.

With respect to fire risks, please see FEIR subchapter 2.7.2.

Littering is illegal and, in any event, should not cause an impact to adjacent agricultural operations given the buffers between the project and adjacent agricultural operations.

O9-26 Please see response to comment O9-2 and the fact that the FEIR identifies significant impacts to on-site agricultural resources. As a result, the FEIR includes mitigation measure M-AG-1, which requires the applicant to obtain conservation easements to mitigate the identified impacts. Please see Global Response: Agricultural Resources, Direct Impacts for additional information responsive to this comment.

resources." Use of ACE therefore can directly and effectively mitigate a project's cumulative, indirect and growth-inducing effects by limiting the amount of agricultural land lost due to a project and other cumulative projects.

Here, the Project will undoubtedly have significant impacts on adjacent farms. Indeed, the DEIR admits as much with regard to adjacency impacts (though it incorrectly finds that mitigation will reduce these impacts to a level of insignificance). The Project will also have growth-inducing impacts due to the fact that it will create or expand roads, wastewater facilities and other infrastructure, thereby allowing further growth in the region. In addition, the Project would set a new, and dangerous, precedent in terms of ignoring (or at least creatively interpreting) the County General Plan policies that prohibit leapfrog development that is not adjacent to existing villages. If this Project is approved, developers will be emboldened to propose more sprawling projects far from existing development and services, and the County will be more likely to approve them. Further, if the County allows this Project to go forward with its inadequate analysis of agricultural impacts under LARA, which ignores all impacts on areas that have allegedly poor soils, it would allow and encourage further, unmitigated growth that could destroy the vast majority of the region's farmland with no required mitigation.

All of these factors mean that the Project will likely directly and indirectly impact surrounding farms, and will induce further growth in the region, leading to increased pressure on the region's fast-disappearing farmland. This is precisely why agricultural easements are so crucial—they can help maintain a critical mass of agricultural land and stave off some of the financial pressures to convert agricultural land. Because courts and other agencies have recognized the feasibility of this type of mitigation, the County must impose it as a condition on this Project if it goes forward.

O9-27 cont.

2. The DEIR Unlawfully Defers Mitigation.

The DEIR imposes Mitigation Measure M-AG-4, which requires the applicant or future Homeowners' Association to exercise control over interim agricultural operations in order to reduce conflicts between such operations and the developing Project. DEIR at 2.4-24 – 25. However, the mitigation measure does not meet CEQA's standards for being specific, enforceable and certain. In particular, the measure specifies that the "applicant/HOA will prohibit aerial pesticide spraying and will take all precautions to minimize other impacts . . . including noise and dust generation, trespassing, and vandalism." *Id.* But it is not clear how this measure is binding on the HOA, as required by CEQA. Guidelines § 15126.4(a)(2). Nor is it clear what, exactly, the HOA or applicant is supposed to do, other than take "all precautions to minimize other impacts."

O9-28

O9-27 Please see response to comment O9-26 and Global Response: Agricultural Resources, Direct Impacts for information responsive to the comment.

O9-28 The Recirculated DREIR contained a revised mitigation measure M-AG-4 which was replaced by M-AG-5. M-AG-5 requires a 100-foot fuel modification zone/limited building zone (LBZ) between ongoing agricultural uses and residential development. Specifically, and as set forth below, M-AG-5 is neither vague nor unenforceable:

"An interim 100-foot limited building zone shall be required between ongoing agricultural uses and residential development for each phase of development. In additional to the restriction of aerial pesticide application, which is stated in the Specific Plan, the limited building zone shall also limit pesticide use to only organic materials."

As explained in FEIR subchapter 2.4, mitigation measure M-AG-5 would be enforceable as a requirement in the Specific Plan and would ensure that interim agricultural uses, as the project is phased in over time, would not result in significant indirect impacts. Interim on-site agricultural operations will be subject to lease agreements and prohibit aerial pesticide spraying on-site.

Do they have to repair fences that are supposed to keep trespassers from going off-site? Repair them within a certain timeframe? Put up warning signs regarding pesticide application? Come up with a list at some later time about the things they will do to carry out this vague mitigation measure?

In essence, the DEIR provides only a vague and unenforceable mitigation measure and provides no evidence that it will, in fact, mitigate the impacts as it is supposed to do. It defers formulation of actual implementing measures without providing any guidelines as to what measures the applicant or HOA will eventually take. This flatly violates CEQA, which allows a lead agency to defer mitigation only when: (1) an EIR contains criteria, or performance standards, to govern future actions implementing the mitigation; (2) practical considerations preclude development of the measures at the time of initial project approval; and (3) the agency has assurances that the future mitigation will be both "feasible and efficacious." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94-95; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 669-71; Guidelines § 15126.4(a)(1)(B). Here, none of these requirements are met.

O9-28 cont.

D. The DEIR's Analysis of Cumulative Impacts is Deficient.

For many of the same reasons that the DEIR's analysis of Project-specific impacts is deficient, its analysis of cumulative impacts is also insufficient. For example, the DEIR again relies on the LARA model's faulty analysis to conclude that, because the Project allegedly will not impact an important agricultural resource, it cannot possibly contribute to a significant cumulative impact. DEIR at 2.4-21. This is absurd for all of the reasons detailed above, and for the additional reason that the Project will directly impact more than 40 acres of Prime Farmland or Farmland of Statewide Importance; thus, even impacts on only this type of farmland contribute to a significant cumulative impact.

O9-29

The DEIR's analysis is also internally inconsistent. After first determining that the Project will not contribute to a cumulative impact, the DEIR then analyzes cumulative impacts anyway, and determines that "significant cumulative indirect impacts could occur." DEIR at 2.4-22. Such inconsistent reasoning and analysis thwarts CEQA's fundamental purpose to inform the public and decisionmakers and is in itself a CEQA violation.

O9-30

Regardless, the DEIR's analysis of cumulative agricultural impacts is faulty for substantive reasons as well. First, the DEIR attempts to show that the Project's

O9-31

O9-29 As noted in the prior responses, the 2013 Draft EIR was revised and the FEIR now identifies significant project impacts to on-site agricultural resources. As a result, the cumulative impacts analysis also was revised and the FEIR identifies significant cumulative impacts as well.

O9-30 Please see response to comment O9-29 regarding the revised cumulative analysis presented in the FEIR.

O9-31 As discussed in the preceding responses, the FEIR determined that the project would result in significant cumulative impacts. Therefore, the premise of the comment (i.e., that cumulative impacts were determined to be less than significant) no longer applies.

With respect to the adequacy of the study area, the FEIR analyzes cumulative impacts to agriculture both at a local level (list of projects method within approximately a one mile radius around the project site) and region wide. Therefore, the study area is appropriate.

conversion of hundreds of acres of productive farmland is insignificant by comparing it to the loss of farmland statewide, as opposed to regional, or community-wide losses. DEIR at 2.4-22. It thus bases its finding of insignificant cumulative impacts on this County-wide analysis, even though it admits that the Project represents 58% of the potential impacts to Important Farmland within the cumulative study area. *Id.* The DEIR may not artificially minimize the Project's apparent impacts by ignoring the document's selected cumulative impact study area and "watering down" the Project's impact by comparing them to a vastly larger area. As the DEIR recognizes, the County requires agencies to analyze cumulative impacts by looking at impacts caused by other projects in the cumulative study area. DEIR at 2.4-21; see also Guidelines § 15130(b)(3) (agencies must define a relevant cumulative study area in which they analyze cumulative impacts). Here, the cumulative study area consists of a few thousand acres surrounding the Project site, not the entire County. DEIR at 2.4-22. Within this study area, the Project will unquestionably make a cumulatively considerable contribution to a significant cumulative impact on agricultural resources. The DEIR's conclusion to the contrary is not supported by substantial evidence.

O9-31 cont.

II. The County May Not Approve the Project as Proposed Because It Is Inconsistent With Numerous County General Plan and Community Plan Policies.

The State Planning and Zoning Law (Gov't Code § 65000 et seq.) requires that development decisions be consistent with the jurisdiction's general plan. As reiterated by the courts, "[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, "[t]he consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

General plans and community plans establish long-term goals and policies to guide future land use decisions, thus acting as a "constitution" for future development. *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. To promote coordinated land use policies and practices, state law requires local governments not just to formulate theoretical land use plans, but also to conform their development and land use projects and approvals with those duly certified plans. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570. It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." *Napa Citizens*

O9-32

O9-32 The project is consistent with the applicable policies of the County's General Plan and Valley Center and Bonsall Community Plans. Please see responses to comments O9-38 through O9-45 and Appendix W.

for Honest Gov't v. Napa County (2001) 91 Cal.App.4th 342, 379. The project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." *Napa Citizens*, 91 Cal.App.4th at 379. As the County recognizes in the Project Specific Plan, "Community Plans are part of the General Plan and . . . [a]s legally required by State law, Community Plans must be internally consistent with General Plan goals and policies of which they are a part." Specific Plan, p. V-7.

Here, the Project fundamentally conflicts with numerous policies of the County General Plan, Bonsall Community Plan and Valley Center Community Plan. These inconsistencies violate State Planning and Zoning Law and render any Project approval unlawful.

O9-32 cont.

A. The Project Conflicts With Plan Policies Intended to Protect Agriculture and the Rural Character of the Area.

The County General Plan contains numerous goals and policies designed to retain and protect farming and agriculture, promote a sustainable agricultural industry, protect agricultural operations from encroachment of incompatible land uses, and support the acquisition of agricultural conservation easements. Agricultural Resources Report of EIR, pp. 95-96. Likewise, the Valley Center Community Plan has goals to "Preserve and enhance existing and future agricultural uses in the Valley Center," to "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," and to "Prohibit residential development which would have an adverse impact on existing agricultural uses." Agricultural Resources Report of EIR, pp. 96-97. The Bonsall Community Plan contains similar goals, including to (1) "Maintain the existing rural lifestyle by continuing the existing pattern of residential, equestrian, and agricultural uses within the Bonsall CPA," (2) "Discourage incompatible land uses on areas of agricultural use and land suitable for agricultural usage," (3) "Encourage the use of agriculture easements ….", and (4) "Require development to minimize potential conflicts with adjacent agricultural operations." *See id.* at p. 97.

O9-33

The relevant Plan policies fall into various categories. The Project conflicts with all of them, and the DEIR fails to accurately or adequately analyze these conflicts. First, a number of relevant policies aim to ensure that new development does not unduly impact offsite agricultural land, or serve as a wedge that drives out surrounding agriculture. *See, e.g.*, Agricultural Resources Report of EIR, pp. 95-97 (describing General Plan Policy

O9-34

O9-33 The project is consistent with the agricultural goals of the County General Plan, and Valley Center and Bonsall Community Plans. Please refer to Appendix W for details relating to the project's consistency with all relevant agricultural policies.

With respect to the VCCP, agricultural activities are preserved through the inclusion of active agricultural areas throughout the project as part of the community landscaping. Additionally, the project will permanently preserve 23.8 acres of agricultural land as mitigation for the project's direct impacts to agricultural resources. The project also includes agricultural buffers where the project borders off-site agricultural operations to reduce potential indirect impacts to off-site agricultural operations. With respect to the BCP, The Specific Plan includes various policies that would support compatibility with the surrounding agricultural lands and that would support a "rural lifestyle". For example, the specific plan requires certain final maps to plot the largest of the lots proposed on each such map along the Community boundary in situations where project single family development will be at the same grade as the adjacent existing homes. In addition, on-going agriculture would be allowed within common areas and within areas of the onsite open spaces that were historically used for agriculture. Public trails are proposed throughout the project site and connecting to the surrounding community, thereby enhancing rural amenities in the community. In addition, the proposed trail along West Lilac Road is designed to accommodate equestrian use.

As discussed in Section I.H. of the Specific Plan, the project is located less than a half-mile from the I-15 corridor. As shown in Figure 5 of the Specific Plan, there are a number of planned and approved projects, representing a large diversity of parcel sizes. The analysis completed by Chicago Title Company and Corelogic concludes that within a 5-mile radius of the project, 59 percent of all single-family parcels are smaller than the current minimum two-acre parcel size. Additionally, there are 6 other existing and planned projects along I-15 that average between 3 homes per acre to 16 homes per acre. These projects include: Circle R Ranch, Castle Creek Condos, Lawrence Welk Village, Lake Rancho Viejo, Campus Park, and Meadowood. In comparison, the overall zoning for Lilac Hills Ranch is 2.9 homes per acre. In addition, Figure 4 of the Specific Plan illustrates the various generalized Specific Plans within the Valley Center Community Plan.

O9-33 (cont.)

Refer also to Global Responses: Agricultural Resources, Direct Impacts and Agricultural Resources, Indirect Impacts for additional details.

O9-34 The courts have consistently held that a project need not be a perfect match with each and every policy, but needs only to be consistent overall with the General Plan. Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal.App.4th 807, 817. (see also Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 719, 29 Cal.Rptr.2d 182, consistency is defined as "compatibility" and not strict adherence to every policy in the general plan.)

Detailed responses to individual comments follow:

As detailed in the Agricultural Technical Report and Appendix W of the FEIR, the project would be consistent with all applicable agricultural policies of the County General Plan, Bonsall and Valley Center Community Plans.

CEQA Guidelines 15125(d) requires that an EIR evaluate any inconsistencies with plans. However an analysis is not necessarily required if the project is consistent with the relevant plans. See Pfeiffer v. City of Sunnyvale (2011) 200 CA4th 1552 and City of Long Beach v. Los Angeles Unified Sch. Dist. (2009) 176 CA4th 889. Only a brief explanation of plan consistency has been upheld as sufficient by the court in Marin Mun. Water Dist. V. KG Land Cal. Corp (1991) 235 CA3d 1652,1668.

COS 6.2, 6.3, 6.4; Bonsall Community Plan Policy P LU-1.1.2, COS-1.2-3; Valley Center Community Plan Policy 1, 4). As described above, the Project will have numerous significant impacts to offsite agricultural lands, and will likely start a domino effect whereby surrounding lands will succumb to suburban/urban development. The DEIR incorrectly, and without support, dismisses the notion that the Project conflicts with these policies. Agricultural Resources Report of EIR, pp. 97-106. However, it never addresses any of the deficiencies identified above. Its conclusion that the Project will not conflict with these policies is therefore not supported by substantial evidence.

O9-34 cont.

Second, other policies concern the protection of the rural and agricultural character of the region. *See, e.g.*, Agricultural Resources Report of EIR, pp. 95-97 (describing General Plan Policy LU-7, LU-7.1, COS 6; Valley Center Community Plan Policy 1, 2, 4; Bonsall Community Plan Policy P LU-1.1.2, Goal COS-1.2); Specific Plan, p. V-11 ("Perhaps the major goal in the Valley Center Community Plan is to maintain its rural character. The theme of this goal is repeated in several policies."); Specific Plan, p. V-13 ("Perhaps the major goal in the Bonsall Community Plan is the maintenance of rural character. This goal is supported by several policies emphasizing the retention of agriculture and large lot estate development."). Currently, the Bonsall community, in which the Project is partially located, is characterized by spaced, rural housing, agricultural operations and open space. As the DEIR describes, houses are located far apart, and "[s]urrounding the houses are large open spaces composed of fallow fields, undisturbed native vegetation, and agriculture. Agriculture is a key factor in Bonsall's rural community character, as are the scenic, sometimes narrow and winding, rural roads . . . Open space is an outstanding characteristic of the community of Bonsall and, along with the uses and pleasures it affords, comprises the "rural atmosphere" which Bonsall residents are committed to preserving." DEIR at 3-63 – 64.

Similarly, Valley Center "is characterized by its unique topographic features, its agricultural activities, and its predominance of estate residential development. The rural character of the community results from the low population density and the prevalence of large areas of open space provided by agriculture. . . . although urbanization has greatly diminished agricultural uses in other areas of the County, Valley Center has managed to maintain its rural identity." DEIR at 3-63. Currently, "[t]he area immediately around the project site does not contain streetlights, lighted signs, or traffic signals, and outside lighting of residences is customarily kept to a minimum to maintain dark skies." DEIR at 3-64.

The DEIR contains various, contorted rationales for how the Project will protect the rural and agricultural nature of the area. DEIR at 3-66 – 67. For example, it states

O9-35

O9-35 Please see responses to comments O9-33 and O9-34, and the General Plan Consistency matrix included as Appendix W of the FEIR.

that the rural qualities of the area will be protected because the Project will allow "varied land uses," will maintain some token areas where agriculture is allowed on-site, will place the highest density of homes in the center of the site, and will include different architectural styles. *Id.* But these rationales have nothing to do with the actual policies, which call for "[m]aintaining the existing rural lifestyle by *continuing the existing pattern of residential, equestrian, and agricultural uses*" in the area. Agricultural Resources Report for EIR, p. 97 (quoting Bonsall Community Plan Policy P LU-1.1.2) (emphasis added). No reasonable person could conclude that placing more than 1700 new residences and associated commercial uses in the middle of a rural area is a continuation of the existing pattern of land uses. The DEIR admits as much when it notes that "The project proposes land uses and densities that are not consistent with the adopted General Plan Land Use Element Regional Category of Semi Rural" and that the Project vicinity currently "consists of rural hills, valleys, and riparian habitat, as well as estate residential development." DEIR at 3-64. In fact, County staff, who commented on the Project application and EIR, specifically stated that "The predominance of small lot development, as well as the uniformity of lot sizes within the development area would not be consistent with rural development patterns within the Valley Center Community Plan area." Project Issue Checklist, p. 15.

O9-35 cont.

The Specific Plan also claims that agriculture will be protected because the Project may allow farmers' markets on site (Specific Plan, p. V-4) and that "[t]he project will retain agriculture throughout, reinforcing the agricultural nature of the surrounding area" (Specific Plan, p. V-11). Again, it is incomprehensible how wiping out hundreds of acres of row crops, orchards and vineyards will somehow "retain agriculture." That the Project may allow farmers' markets on site, or allow a couple rows of orchard trees around the edge to provide a buffer does not mean that it is retaining agriculture in any meaningful sense of the term.

O9-36

Last, the Project also conflicts with policies to promote agricultural easements as a method for maintaining agriculture. E.g., Agricultural Resources Report of EIR, pp. 95-97 (describing General Plan Policy COS 6.4; Bonsall Community Plan Policy COS-1.2.2). As described previously in this letter, and in contrast to these policies that encourage agricultural easements, the Project does not include any requirement for agricultural easements in order to mitigate the Project's significant impacts on farmland.

O9-37

O9-36 The comment misrepresents the meaning and language of the Specific Plan. The project will provide space for a farmers market in the Town Center to support local agricultural operations. The project will include approximately 40 acres of agriculture throughout the site within the buffers and open space and would also preserve approximately 43.8 acres of significant agricultural land off-site or through the purchase of PACE credits. The FEIR has adequately analyzed the potentially significant direct and indirect impacts to agricultural resources and has provided adequate mitigation measures to reduce impacts to less than significant. Refer to subchapter 2.4, Appendices F and W of the FEIR. Also see Global Responses: Agricultural Resources, Direct Impacts and Agricultural Resources, Indirect Impacts.

O9-37 This comment is no longer applicable because the current FEIR does include agricultural easements as detailed in subchapter 2.4, mitigation measure, M-AG-1. As detailed in M-AG-1, the project would be required to permanently preserve total of 43.8 acres of agricultural resources in conservation easements. Therefore, the project does not conflict with the referenced policies.

B. The Project Flatly Violates Two Mandatory County General Plan Policies Prohibiting Leapfrog Development and Expansion of Existing and Planned Villages.

The County General Plan contains mandatory, explicit prohibitions on "leapfrog" development and the creation of new rural "villages." Although there are exceptions to these prohibitions, the Project does not fall within any of the exceptions and is therefore prohibited due to its inconsistency with these policies.

O9-38

O9-38 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

1. The Project is A Classic "Leapfrog" Development that is Prohibited By the General Plan.

County General Plan Policy LU-1.2 states:

"**Leapfrog Development**. Prohibit leapfrog development which is inconsistent with the Community Development Model. Leapfrog Development restrictions do not apply to new villages that are designed to be consistent with the Community Development Model, that provide necessary services and facilities, and that are designed to meet the LEED-Neighborhood Development Certification or an equivalent. For purposes of this policy, leapfrog development is defined as Village densities located away from established Villages or outside established water and sewer service boundaries."

The Project site is located in an area far from existing cities, towns and villages, and surrounding land uses are rural or semi-rural in character. This is a classic "leapfrog" development under the General Plan's own definition of the term. Accordingly, it is prohibited unless the Project is designed to meet the LEED-Neighborhood Development ("LEED ND") Certification or an equivalent standard. The County admits as much in the Specific Plan, stating that the proposed Project is located in a semi-rural area and may only be approved if it is designed to meet the LEED-ND standards. Specific Plan at II-32, V-7. Because it is not designed to meet this standard, it is prohibited.

The LEED ND certification emphasizes "site selection, design, and construction elements that bring buildings and infrastructure together into a neighborhood and relate the neighborhood to its landscape as well as its local and regional context." LEED 2009 for Neighborhood Development, p. xii, attached as Exhibit 9. To qualify for LEED ND certification, a project must satisfy a variety of mandatory prerequisites and additionally qualify for a minimum number of points based on other project features. *Id.*, p. xix.

O9-39

O9-39 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

Here, the Project fails to meet a number of the mandatory minimum requirements for certification, and is thus ineligible for certification.

O9-39 cont.

First, the LEED ND standard requires a development to be in a "smart location." *Id.*, p. 1. The goal is to "encourage development within and near existing communities and public transit infrastructure. To encourage improvement and redevelopment of existing cities, suburbs, and towns while limiting the expansion of the development footprint in the region to appropriate circumstances[, and t]o reduce vehicle trips and vehicle miles traveled." *Id.* To carry out this goal, projects must locate the project either on an infill site or a site that is adjacent to previously developed land where the connectivity of the site and adjacent land is at least 90 intersections per square mile. *Id.* Previously developed land does not include agricultural land. *Id.*, p. 14. Here, the Project is not on an infill site, nor is it adjacent to previously developed land at all,[2] much less land with a connectivity of 90 intersections per square mile.

Alternatively, a project may qualify if it is constructed on a transit corridor where at least 50% of dwelling units are located within close walking distance to transit stops, and the service at those stops provide at least 60 trips per day. *Id.*, p. 3. The Project does not meet this requirement, as it is not near existing transit and does not include plans for such high quality transit. DEIR at 1-12 (stating that the Project is located 8 miles from existing transit routes and that "[a]s the project is built-out, the NCTD [transit district] *may* adjust routes and services to meet the needs of the growing community.") (emphasis added).

O9-40

O9-40 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

Second, the LEED ND standard requires that a development preserve agricultural land by "Locat[ing] the project development footprint such that it does not disturb prime soils, unique soils, or soils of state significance as identified in a state Natural Resources Conservation Service soil survey." Exhibit 9, p. 15. Here, as described above, the Project will impact more than 40 acres of land designated as prime or statewide significant soils. It will also impact more than 330 acres designated as "unique farmland." Agricultural Resources Report of EIR, p. 27. The Project cannot meet this standard.

O9-41

O9-41 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

Nor does it meet alternative standards, such as locating on a site with transferred development rights, or mitigating the loss of farmland "through the purchase of

O9-42

O9-42 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

[2] A project must have 25% of its border adjoining previously developed land, and at least 75% of those bordering parcels must be previously developed. *Id.*, p. 7.

easements providing permanent protection from development on land with comparable soils in accordance with the ratios based on densities per acre of buildable land as listed in Tables 1 and 2 [of the LEED ND guidance]." Exhibit 9, p. 15.

O9-42 cont.

Third, the Project does not meet the criteria for getting points based on preferred locations, as it is not an infill site, is not adjacent to already developed sites, does not have high connectivity to adjacent sites, is not located in a high-priority redevelopment area, and is not located in an area with reduced auto dependence. *Id.* at 22-28. Indeed, the Project will cause people to drive tens of millions of miles per year.

O9-43

Lastly, the County has apparently made virtually no attempt to find that the Project would comply with any of the above requirements or the various other requirements to be certified as LEED ND or equivalent. For example, in addition to the above requirements, the Project would have to include a LEED certified building, have energy efficient buildings, and obtain dozens more points based on its sustainability, energy efficiency, production of on-site renewable energy, or other factors. *See generally, id.* The Specific Plan includes only a cursory discussion of the need to comply with the LEED ND standard, and a half-hearted attempt to show that this sprawling, transit-unfriendly development would somehow comply with the standard. Specific Plan at II-31 – 33, V-1 - 14. Likewise, the DEIR mentions the LEED ND standard in passing and devotes a couple sentences to justifying the Project's alleged compliance with the standard. DEIR at 3-64 – 65. This discussion is plainly inadequate and does not address any of the specific inconsistencies discussed above.

O9-44

The County admits that it may not approve the Project unless it meets the LEED ND or an equivalent standard. It has made virtually no attempt to show that the Project would meet the standard, nor can it show that the Project meets the standard. The County therefore may not lawfully approve the Project as proposed.

O9-45

2. The Proposed Project Would Unlawfully Permit a New Village that is Not Contiguous With Existing or Planned Villages.

In addition to its prohibition against leapfrog development, the County General Plan allows new village designations *only* if the new village is contiguous with an existing or planned village *and* where the expansion is consistent with community character, the scale, and the orderly and contiguous growth of a village. General Plan Policy LU-1.4. Here, the new proposed village is not contiguous with an existing or

O9-46

O9-43 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

O9-44 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

O9-45 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

O9-46 General Plan Policy LU-1.4 applies to new Village Regional Category designated land uses only where contiguous with an existing planned Village and where all of the following criteria are met:

- Potential Village development would be compatible with environmental conditions and constraints, such as topography and flooding.
- Potential Village development would be accommodated by the General Plan road network.
- Public facilities and services can support the expansion without a reduction of services to other County residents.
- The expansion is consistent with community character, the scale, and the orderly contiguous growth of a Village area.

This policy specifically addresses the expansion of new Village development adjacent to existing Villages under very specific circumstances. It does not address the provision of new villages in areas where none currently exist, which the project proposes. That condition is addressed in LU-1.2 which was specifically adopted to ensure that new villages could be allowed. The project does not include the expansion of an existing Village. Therefore, LU-1.4 does not apply to this project. Please see also Global Response: Project Consistency with General Plan Policy LU-1.2.

planned village. *See* Valley Center Community Plan, p. 9, Figure 3;[3] Bonsall Community Plan, p. 24, Figure 3; Lilac Hills Ranch Specific Plan, Figures 7-10.[4] Nor does the County proposed to change General Plan Policy LU-1.4 as part of the Project. Lilac Hills Ranch Specific Plan, Figures 7-10. The Project is therefore strictly prohibited by the County's General Plan. In addition, the Project DEIR unlawfully fails to discuss the Project's inconsistency with this policy.

O9-46 cont.

For all of the reasons discussed above, the DEIR's conclusion that the Project is consistent with the General Plan and both Community Plans, and that "land use impacts associated with policy inconsistencies would be less than significant," is baseless. DEIR at 3-65.

O9-47

III. The DEIR Fails to Adequately Evaluate the Project's Contribution to Climate Change.

The DEIR's analysis of greenhouse gas ("GHG") emissions attributable to the Project is also shockingly deficient. Likewise, its conclusion that the Project—which consists of more than 1700 homes where residents will drive more than 60 million miles every year—will not have significant GHG-related impacts is breathtaking. By any rational measure, the Project will have a significant impact related to climate change. The DEIR concludes otherwise only because it distorts the Project's actual impacts, uses an inappropriate way to measure the significance of the Project's impacts, ignores that the Project conflicts with various relevant GHG-reduction policies, and uses other flawed analyses. Because the DEIR concludes that the Project will not have a significant climate-related impact, it fails to adopt feasible mitigation. However, because the

O9-48

[3] The version of the Valley Center Community Plan on the County's website for the Project DEIR does not contain Figure 3; rather, that page is blank. The County must correct this error. The full, current Community Plan can be found at *www.sdcounty.ca.gov/.../C.2_21_**VALLEY_CENTER**__08_03_11.pdf* and is incorporated in this comment by reference. *See Consolidated Irrigation District v. Superior Ct.* (2012) 205 Cal.App.4th 697 (documents referenced in comment letter with a specific URL link are included in the record).

[4] This document can be found listed as the "General Plan Amendment – Land Use Element" on the County's website for the Project DEIR, or can be found at http://www.sdcounty.ca.gov/pds/regulatory/docs/LILAC_HILLS_RANCH/General_Plan_Amendment_-_Land_Use_Element.pdf

O9-47 Please see Global Response: Project Consistency with General Plan Policy LU-1.2.

O9-48 The comment, which serves as an introduction to comments that follow, objects to the project's GHG analysis and contends that the project's impacts "will actually being significant." However, for reasons discussed in the responses below and FEIR subchapter 3.1.2, substantial evidence supports the conclusion that the project's GHG emissions will not result in an environmentally significant impact under each of the seven methodologies utilized in the FEIR, which collectively consider the 2006 Global Warming Solutions Act (AB 32), the 2008 Sustainable Communities and Climate Protection Act (SB 375), and Executive Orders S-3-05 and B-30-15.

Project's impact will actually be significant, the DEIR must identify and include adequate mitigation measures to reduce or avoid the Project's contribution to global warming.

O9-48 cont.

A. The DEIR's Significance Threshold for Measuring GHG Emissions Is Flawed, and the County Misapplies the Threshold in Any Event.

1. The DEIR's Use of a "Business As Usual" Approach to Determine Significance of GHG Impacts Is Inappropriate.

Determining whether or not a project may result in a significant adverse environmental effect is a key aspect of CEQA. CEQA Guidelines § 15064(a) (determination of significant effects "plays a critical role in the CEQA process"). Under CEQA, agencies use thresholds of significance as a tool for judging the significance of a Project's impacts. CEQA Guidelines §§ 15064.4, 15064.7. The first major problem with the DEIR's climate change analysis is that it uses an approach to measuring climate change impacts that has been soundly rejected as inappropriate by the California Supreme Court, Attorney General and numerous others. Specifically, the DEIR does not measure the significance of the Project's GHG emissions by comparing them to existing conditions, as CEQA generally requires. *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (August 5, 2013), S202828, __ Cal.4th __. Rather, it compares the Project's emissions to the emissions that would be emitted under a hypothetical future scenario in which the Project did not include any mitigation measures or design features that reduced GHG emissions. In essence, it compares the Project's emissions to a future, hypothetical "business as usual" ("BAU") baseline to find that climate change impacts would not be significant.

O9-49

This method of analysis is contrary to CEQA's requirements. In evaluating project impacts, courts have repeatedly held that agencies should normally analyze a project's impacts by comparing them to actual existing conditions, not hypothetical conditions that may minimize the project's apparent impacts and allow the agency to avoid analysis and mitigation. *See, e.g., Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 691 ("hypothetical office park was a legally incorrect baseline [against which to measure significance] which resulted in a misleading report of the project's impacts."); *Env't Planning & Information Council v. County of El Dorado*, 131 Cal. App.3d 350 (1982) (EIR for area plan invalid because impacts were compared to existing general plan rather than to existing environment).

The California Supreme Court recently reaffirmed this longstanding principle in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (August 5,

O9-49 The comment challenges the FEIR's utilization of a business-as-usual (BAU) methodology to assess the significance of the project's GHG emissions. While the BAU methodology is supported by substantial evidence, as described in subchapter 3.1.2, Greenhouse Gas Emissions, of the FEIR, it also should be noted that subchapter 3.1.2 utilizes other, non-BAU methodologies, each of which also supports the conclusion that the project's GHG emissions are not significant.

Critically, the comment is based on the now erroneous statement that the FEIR fails to assess the significance of the project's GHG emissions relative to the existing environmental analysis. Please see "Methodology 1: Comparison of Project Emissions to the Existing Condition" in FEIR subchapter 3.1.2 for the assessment of the project's increase in GHG emissions required by CEQA Guidelines section 15064.4(b)(1). As discussed therein, the project's increase in GHG emissions is not a sufficiently informative or reliable indicator of project significance.

Because the existing condition comparison is not informative, the FEIR also couples that assessment with an assessment of the project's GHG emissions relative to five other methodologies outlined in subchapter 3.1.2. Although the comment is based on the presupposition that CEQA limits the assessment of project significance solely by reference to the existing conditions, there is no such mandate in CEQA. Rather, CEQA Guidelines Section 15064.4(b) recognizes the wide latitude of factors that a lead agency can consider when determining the significance of a project's GHG emissions, only one of which is the comparison to existing/no project conditions. Further, as recognized by *Woodward Park Homeowners' Association, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 706-707, a "two-baselines approach" can be CEQA compliant.

It also is worth noting that the BAU methodology previously received a judicial stamp of approval from the Fourth District Court of Appeal in *Citizens for Responsible Equitable* Environmental *Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 336-337. While the comment correctly notes that the California Attorney General did comment on the San Joaquin Valley Air Pollution Control District's CEQA guidance for the assessment of GHG emissions (which sets forth a BAU methodology), the San Joaquin air district subsequently adopted that guidance without legal challenge, and the Attorney

2013), S202828, __ Cal.4th __, where it held that, "while an agency preparing an EIR does have discretion to omit an analysis of the project's significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value." The County has not even attempted to show how it would be misleading or without informational value to compare the Project's GHG emissions against existing on-site emissions in order to determine the significance of those emissions. Accordingly, the DEIR's failure to compare Project GHG emissions to actual, existing conditions, and its use of a hypothetical, future baseline against which to measure Project impacts, violates CEQA.

The Attorney General has also criticized the use of a BAU approach to measure GHG impacts. As the Attorney General recently opined, evaluating GHG impacts based on purported reductions from "business as usual" "will not withstand legal scrutiny and may result in significant lost opportunities for . . . local governments to require mitigation of greenhouse gas (GHG) emissions)." Letter from Attorney General to San Joaquin Valley Air Pollution Control District re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA (Nov. 4, 2009), attached as Exhibit 10. Likewise, the California Resources Agency recently updated the CEQA Guidelines by adopting recommendations on how agencies may analyze the significance of a project's GHG emissions. One of the factors for determining the significance of Project GHG impacts in the Guidelines is whether the project "may increase or reduce greenhouse gas emissions compared to the *existing environmental setting*." Guideline § 15064.4(b)(1) (emphasis added). As set forth in the Final Statement of Reasons for Regulatory Action on the Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97:

> This section's reference to the 'existing environmental setting' reflects existing law requiring that impacts be compared to the environment as it currently exists. This clarification is necessary to avoid a comparison of the project against a 'business as usual' scenario as defined by ARB in the Scoping Plan. Such an approach would confuse 'business as usual' projections used in ARB's Scoping Plan with CEQA's separate requirement of analyzing project effects in comparison to the environmental baseline.

Final Statement of Reasons at 24-25, attached as Exhibit 11 and available at http://ceres.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

O9-49 cont.

O4-49 (cont.)

General never formally adopted that critique as establishing office-wide policy. Further, the Attorney General did not express the same concern during the Sacramento Metropolitan Air Quality Management District's recent 2014 update to its *CEQA Guide*, which also includes a BAU methodology.

Finally, contrary to the concern identified by the Attorney General, there is no evidence here that the County has not capitalized on opportunities to secure meaningful GHG emission reductions; rather, the project includes a suite of design considerations that allow for the establishment of a complete, mixed-use, sustainable community in a location reasonably sited to accommodate long-term growth in the San Diego region.

Here, it is misleading to measure the significance of Project impacts by comparing the Project to a hypothetical "what if" scenario rather than to existing conditions. For example, the DEIR sets out a hypothetical BAU scenario in which the Project is built but only a few statewide regulations and laws regarding GHG emission reductions have gone into effect. DEIR at 3-30. Then, the DEIR calculates the Project's emissions by giving the Project credit for reducing emissions based on the Project's compliance with preexisting requirements of law such as the low carbon fuel standard, tire pressure program and other measures. DEIR at 3-30. The DEIR then compares the BAU scenario to the Project's impacts and, unsurprisingly, finds that the Project will have fewer emissions than the artificially inflated BAU scenario.[5]

O9-50

Because the Project would have to comply with existing GHG-related laws and regulations anyway (including CEQA's requirement for mitigation), it is misleading for the DEIR to state that the Project will cause a 16% reduction in GHG emissions due to particular Project features, when in fact these features are required anyway. Likewise, it is misleading and inappropriate to compare the Project emissions against an artificially inflated baseline of alleged BAU conditions. Courts have recognized that comparing project impacts to such an artificially inflated baseline results in "illusory comparisons that can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts, a result at direct odds with CEQA's intent." *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th 310, 322 (2010). A proper comparison would be to the Project site as it currently exists. Guidelines § 15126.2(a)

O9-51

An accurate comparison with existing conditions is particularly important with regard to climate change because existing conditions are such that we have already exceeded the capacity of the atmosphere to absorb additional GHG emissions without risking catastrophic and irreversible consequences. Therefore, even seemingly small additions of GHG emissions into the atmosphere must be considered cumulatively considerable. *See Communities for Better Env't v. California Resources Agency*, 103 Cal.

O9-52

[5] The DEIR also gives the Project credit for installing only gas fireplaces (DEIR at 3-31) instead of some wood-burning ones. But it is questionable whether using gas fireplaces instead of wood burning ones actually reduces overall climate change impacts. If wood is harvested from areas where the trees will grow back, burning wood is carbon neutral. In contrast, gas is a fossil fuel, and burning it may actually produce more carbon dioxide than wood. Gas fireplaces do emit fewer particulates and other pollutants than wood fireplaces, but this is irrelevant for the GHG analysis.

O9-50 As applied to the FEIR, the comment is critical of the parameters used to define the "unmitigated," NAT and BAU conditions in subchapter 3.1.2, Greenhouse Gas Emissions. However, the parameters for each emissions modeling exercise were derived from reliable, technical sources developed by experts in the field. Table 7 in FEIR Appendix O (GHG Technical Report) provides a useful comparative overview of the different assumptions utilized for Methodology 2 (based on the County's *2015 GHG Guidance*), Methodology 3 (based on SMAQMD's *CEQA Guide*), and Methodology 4 (based on CARB's 2008 *Scoping Plan*). As explained in subchapter 3.1.2, the "unmitigated," NAT and BAU conditions are subject to calculation parameters that allow for a ready comparison with the assumptions used by CARB either in its 2008 *Scoping Plan* or 2011 Final Supplement; these parameters allow for a determination of the project's consistency with the GHG emissions reduction mandate established by AB 32.

O9-51 The comment characterizes the project's reductions in GHG emissions from the "unmitigated," NAT and BAU conditions as "artificially inflated." However, the reductions were calculated in conformance with the County's *2015 GHG Guidance*, SMAQMD's *CEQA Guide*, and CARB's 2008 *Scoping Plan*. As discussed above, the methodologies contained in each of those three source documents are intended to allow for a comparison of project-specific GHG emissions with the State of California's legislative mandate to return to its 1990 emissions level by 2020 (AB 32). Therefore, the intent of the analysis is not to provide illusory or misleading information, but to plainly assess project significance relative to AB 32.

O9-52 The comment suggests that any additional contribution of GHG emissions to the atmosphere is environmentally significant, referencing the County's *Guidelines for Determining Significance, Climate Change* (*2013 Guidelines*; November 7, 2013). However, the County is no longer implementing its *2013 Guidelines*, but is instead referring project applicants to its *2015 GHG Guidance*. Additionally, the referenced "bright line" threshold in the County's 2013 Guidelines was never intended to operate as an absolute numeric criterion for purposes of determining the significance of a project's GHG emissions; rather, that threshold was developed as a screening criterion in order to help alleviate the administrative, processing and substantive burdens on sufficiently small projects for purposes of determining the required level of CEQA review.

App. 4th 98, 120 (2002) ("the greater the existing environmental problems are, the lower the threshold for treating a project's contribution to cumulative impacts as significant."); *see also Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007) ("we cannot afford to ignore even modest contributions to global warming."). In keeping with the seriousness of the threats posed by climate change, both the Bay Area Air Quality Management District and San Diego County have proposed low bright-line and efficiency-based thresholds for analyzing project-level GHG emissions. As described below, the Project exceeds these thresholds. The County may not ignore the Project's exceedence of these thresholds simply because the Project may not have a significant impact when measured by a different, inappropriate BAU threshold.

O9-52 cont.

2. Even If the County Could Use a "Business As Usual" Approach, the DEIR Misapplies the Approach.

Even if BAU were a legitimate means for determining significance, which it is not, there is no evidence supporting the DEIR's assumption that new development that is 16% below BAU will help achieve California's emission reduction objectives. First, the AB 32 Scoping Plan determined that California's overall emissions must be cut by "approximately 30 percent from business-as-usual emission levels projected for 2020" to meet AB 32 requirements. Thus, a 16% reduction from BAU is not nearly enough to meet this standard. Moreover, even if the Project was 30% below BAU, this would still not be enough. The DEIR's significance determination mistakenly presumes, without any support, that emission reduction expectations are the same for existing and new sources of emissions to meet AB 32 targets. However, the Scoping Plan is silent as to the obligation of new development to mitigate greenhouse gas emissions under CEQA. Contrary to the DEIR's naked assumptions, as opportunities for reducing emissions from the built environment are more limited and present greater challenges, expectations for minimizing emissions from new development, through energy efficiency, renewables, increased density, mixed use and siting close to transit, should be greater than that of existing development, where emission reduction opportunities may be more constrained.

As recognized by the California Air Pollution Control Officers Association ("CAPCOA") in its CEQA & Climate Change White Paper, "greater reductions can be achieved at lower cost from new projects than can be achieved from existing sources." CAPCOA, CEQA & Climate Change at 33, attached as Exhibit 12.[6] Similarly, as one of

O9-53

[6] As explained on its website, CAPCOA "is a non-profit association of the air pollution control officers from all 35 local air quality agencies throughout California.

O9-52 (cont.)

Further, neither the County nor any regulatory agency with expertise and/or jurisdiction over this project has adopted a zero-based emissions threshold. Indeed, as recognized by the California Natural Resources Agency, the CEQA Guidelines provisions addressing GHG emissions are "not intended to imply a zero net emissions threshold of significance," as CEQA case law is clear that there is no "one molecule rule." (California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97* (December 2009), pp. 25, 85; see also "Methodology 1: Comparison of Project Emissions to the Existing Condition" in FEIR subchapter 3.1.2.)

O9-53 While the comment is premised on the County's *2013 Guidelines*, which is no longer being implemented, the basic arguments advanced in the comment are: (1) a 30 (not 16) percent reduction from the BAU condition is required to demonstrate consistency with AB 32; and, (2) even a 30 percent reduction is not sufficient because new development needs to compensate for the relative inefficiencies of existing development.

In response, FEIR subchapter 3.1.2 assesses the significance of the project's GHG emissions relative to a 16 percent reduction target (see Methodology 2) *and* a 30 percent reduction target (see Methodology 4). Under both methodologies, the project's GHG emissions would be less than significant. (See, e.g., FEIR Table 3.1-5, Annual Estimated GHG Emissions – County 2015 GHG Guidance, and Table 3.1-7, Annual Estimated GHG Emissions – 2008 Scoping Plan.) As discussed in subchapter 3.1.2, the 30 percent reduction target is based on CARB's original 2008 *Scoping Plan*, whereas the 16 percent reduction target is based on CARB's 2011 Final Supplement to the 2008 *Scoping Plan*, which accounts for the effects of the economic recession and two regulatory standards (20 percent RPS and Pavley I) on the State's GHG emissions projections for 2020. Utilization of the 30 percent reduction target in the FEIR, therefore, is conservative because CARB has determined that fewer emission reductions are required.

As to the suggestion that new development must compensate for the inefficiencies of existing development, well- established CEQA principles require that any mitigation exacted from a project must have proportionality and nexus. As recognized in the California Supreme

its reasons for finding that a proposed 29% below BAU threshold of significance "will not withstand legal scrutiny," the Attorney General noted that "it seems that new development must be more GHG efficient than this average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit." Exhibit 10. Accordingly, there is no scientific or factual basis supporting the EIR's unsubstantiated opinion that new development that is merely 16% below BAU (or even 30% below BAU) will not interfere with California's near-term emission reduction objectives. *See* Pub. Res. Code § 21082.2(c) ("[a]rgument, speculation, unsubstantiated opinion or narrative, [and] evidence which is clearly inaccurate or erroneous" does not constitute substantial evidence); *see also Californians forAlternatives to Toxics v. Dept. of Food & Agric.*, 136 Cal. App. 4th 1, 17 (2005) ("[C]onclusory statements do not fit the CEQA bill."). By simply assuming that AB 32 emission reduction targets will be achieved because Project emissions are purportedly 16% below "business as usual," the EIR's significance criteria does not reflect "careful judgment . . . based to the extent possible on scientific and factual data." Guidelines § 15064(b).

O9-53 cont.

The DEIR also blindly relies on the County's guidelines for determining GHG significance without demonstrating that the recommendations and methods in the guidance are supported by substantial evidence. Although it may sometimes be appropriate to rely on thresholds of significance that are adopted for general use, here the County's GHG guidance and thresholds have apparently not been adopted by regulation, rule, resolution or ordinance, as required by CEQA. Guidelines § 15064.7(b). Nor is there any evidence that the guidance was subject to public review as required by CEQA. *Id*. Nor does the guidance include information, studies and explanations that constitute substantial evidence on which the suggested 16% below BAU threshold is based.[7]

O9-54

CAPCOA was formed in 1976 to promote clean air and to provide a forum for sharing of knowledge, experience, and information among the air quality regulatory agencies around the State."

[7] The County posted a document entitled Appendix To Guidelines For Determining Significance Climate Change on its website. http://www.sdcounty.ca.gov/pds/advance/Draft_Guidelines_for_Determining_Significance_Climate_Change_Appendix.pdf. This document contains background documentation to support its bright line and efficiency threshold, but does not appear to contain any similar evidence to support its BAU threshold.

O9-53 (cont.)

GHG emissions. Indeed, there are numerous efforts underway at the State level to secure GHG emission reductions from existing development. For example, AB 758, which was enacted in 2009, requires the California Energy Commission (CEC) to develop a comprehensive program to achieve greater energy efficiency in existing buildings. The CEC began to implement AB 758 with voluntary participation and incentives, but is moving towards the implementation of mandatory retrofit requirements. For more information on the CEC's AB 758 programs, please see http://www.energy.ca.gov/ab758/. Similarly, on page 85 of its *First Update to the Climate Change Scoping Plan* (May 2014), which is publicly available at http://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf and hereby incorporated by reference, CARB recognizes the importance of developing a comprehensive GHG emissions reduction program for existing building retrofits by 2017.

O4-54 The comment challenges the utilization of the County's *2013 Guidelines*. However, as discussed in FEIR subchapter 3.1.2, the project's GHG analysis no longer relies on the *2013 Guidelines*, but instead evaluates the significance of the project's GHG emissions relative to six separate and independent methodologies, each of which is supported by substantial evidence.

For all of these reasons, even if the DEIR could use a BAU approach, there is no evidence demonstrating that a 16% reduction below BAU will help the region achieve the state's short and long term GHG reduction goals. As described above, the Scoping Plan supports the notion that new development would need to reduce emissions below BAU by at least 30%. Likewise, the County's own interim guidance from 2008 stated that development projects would have to reduce emissions 33% below BAU to achieve AB 32's 2020 targets. Given that the 2008 guidance used San Diego specific data to develop the 33% reduction recommendation, and the 2012 guidance used generic, statewide data, the 2008 guidance appears to be more accurate. *Compare* Exhibit 13, p. 4, *with* Exhibit 14, pp. 32-33.

O9-55

B. Other Substantial Evidence Demonstrates that the Project Will Likely Have a Significant Impact Related to Its GHG Emissions.

The County's Guidelines for Determining the Significance of Climate Change include three suggested methods, or thresholds, for determining whether residential and mixed use projects will have a significant GHG-related impact. Exhibit 14, p. 21. The DEIR relies entirely on one of these thresholds—the BAU, or "performance standard" approach described above—to determine that the Project will not have a significant impact on climate change. DEIR at 3-29. However, even if the County could legitimately use the BAU threshold, and even if it properly applied the threshold—neither of which are true—the County is still required to consider other evidence 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, other evidence clearly demonstrates that the Project's GHG emissions will cause a significant impact. As described below, the Project's GHG emissions exceed the County's two other recommended thresholds—a "bright line" and an "efficiency" threshold—by a great margin. The County may not ignore this evidence, which demonstrates that the Project's GHG emissions may have a significant impact on the environment. *Protect the Historic Amador Waterways,* 116 Cal.App.4th at 1109.

Under the bright line threshold, a project will have a significant impact if it will result in a net increase of operational GHG emissions greater than 2,500 metric tons of CO_2 equivalent per year. Exhibit 14, p. 28. Here, the DEIR states that Project will result in net operational GHG emissions of 32,317.22 metric tons of CO_2 equivalent per year.

O9-56

O9-55 The comment objects to the utilization of a 16 percent reduction target. However, as previously discussed, that target, as expressed in the County's 2015 GHG Guidance, is supported by substantial evidence in the form of CARB's 2011 Final Supplement to the 2008 Scoping Plan. Further, as an exercise in caution due to the statewide controversy concerning the analysis of GHG emissions under CEQA, FEIR subchapter 3.1.2 also utilizes six other separate and independent methodologies in addition to the 2015 GHG Guidance (total of seven evaluation methodologies) to assess the significance of the project's GHG emissions.

O9-56 The comment is based on the County's 2013 Guidelines. However, as discussed above and in FEIR subchapter 3.1.2, the County is no longer implementing the 2013 Guidelines but rather referring project applicants to its 2015 GHG Guidance. The analysis provided in the FEIR is based on the 2015 GHG Guidance and six other methodologies. Alternative evaluation methodologies are allowable, per the County's 2015 GHG Guidance.

While the 2015 GHG Guidance, like the 2013 Guidelines, contains a "screening threshold," the purpose of the numeric value (900 MTCO2E) is to alleviate procedural and substantive burdens on sufficiently small projects that categorically would not result in significant GHG emissions. Exceedance of the numeric value, on its own, is not evidence of a significant environmental impact requiring mitigation. In the event that the "screening threshold" is exceeded, the County's 2015 GHG Guidance provides that the significance of a project's emissions may be evaluated by considering the difference between the project's "mitigated" and "unmitigated" emissions. If the project's "mitigated" emissions are at least 16 percent lower than the "unmitigated" emissions, the 2015 GHG Guidance provides that a project's impact to global climate change would be less than significant.

DEIR at 3-32.[8] This is nearly thirteen times the County's bright line significance threshold. Accordingly, using the County's own significance threshold and the DEIR's own evidence, it is clear that the Project may have a significant impact related to GHG emissions. The DEIR must be revised and recirculated to address this significant impact, and mitigation must be imposed.

O9-56 cont.

Under the efficiency threshold, a project will have a significant impact "if it would result in a net increase of construction and operational GHG emissions, either directly or indirectly, at a level exceeding 4.32 metric tons of CO2e per year, per service population." Exhibit 14, p. 24. The service population is the sum of the residents and employees. *Id.* at 26.

The average Valley Center household size in 2010 was 2.96 persons per household. DEIR at 1-38. Given that the Project includes development of 1,746 residential units, this equates to a population of 5,168 people. The Project also includes construction of up to 90,000 square feet of commercial, office, and retail. DEIR at 1-2. It does not appear that the DEIR calculates the projected number of employees at the site. However, based on general statistics for employees per square foot in the San Diego region, agencies such as the City of San Diego estimate that each employee needs between 300 square feet (for general retail and office use), to 400 square feet (for industrial parks), to 1000 square feet (for hotels/resorts) per employee. City of San Diego Draft General Plan PEIR, p. 3.18-5, attached as Exhibit 15. Taking the approximate average of these numbers (and taking into account that the Project includes only one, small hotel/inn), the Project's 90,000 square feet of commercial/retail space could result in 180 employees if each employee used 500 square feet of space. Accordingly, the "service population" of the Project would be 5,348.[9]

O9-57

[8] This number is calculated by taking the Total annual estimated GHG emissions and subtracting the construction related emissions of 567.12. *See id.*

[9] A 2001 report, which the County's GHG Guidelines cite as a source for determining employees per square foot as part of the service population calculation, have slightly higher numbers, averaging 600 – 1300 square feet per employee for the types of facilities the Project is likely to have. *See* www.mwcog.org/uploads/committee.../bl5aX1pa20091008155406.pdf. The Project's GHG impacts would still be significant if the DEIR used these numbers to calculate the service population.

O9-57 The comment is based on the County's *2013 Guidelines*. However, as discussed above and in FEIR subchapter 3.1.2, the County is no longer implementing the *2013 Guidelines* but rather referring project applicants to its *2015 GHG Guidance*, which does not contain a so-called efficiency threshold.

Additionally, 4.32 metric tons of CO_2e per year, per 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, contained within 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.

The Project's total annual, net CO_2 equivalent per year for construction and operations is 32,884.34. DEIR at 3-32. 32,884.34 divided by 5,348 is 6.15. This means the Project will result in a net increase of construction and operational GHG emissions, either directly or indirectly, at a level nearly 50 percent higher than the County's threshold of 4.32 metric tons of CO2 equivalent per year, per service population. Once again, this evidence demonstrates that the Project may have a significant impact related to GHG emissions.

O9-57 cont.

The Project also exceeds other relevant thresholds of significance, further reinforcing the conclusion that it will have a significant impact related to GHG emissions. For example, the Bay Area Air Quality Management District has developed thresholds of significance for GHG emissions that are similar to San Diego County's bright line and efficiency thresholds. These recommended thresholds recognize that a residential or mixed-use development will normally have a significant GHG-related impact if its emissions exceed 1,100 metric tons of CO_2 equivalent per year or 4.6 metric tons of CO_2 equivalent per year, per service population. *See* Exhibit 16.

O9-58

C. The DEIR's Conclusion that the Project Will Not Conflict With Relevant Plans to Reduce GHG Emissions Is Not Supported By Substantial Evidence.

In addition to the BAU threshold discussed above, the DEIR also uses a different threshold of significance which recognizes that the Project will have significant GHG-related impacts if it will conflict with an applicable plan, policy, or regulation that was adopted for the purpose of reducing the emissions of GHGs. DEIR at 3-36. However, the DEIR concludes that the Project will not conflict with any such plan, and therefore will not have a significant impact. The EIR's analysis on this point is deeply flawed.

First, the DEIR errs by considering the Project's consistency with only a subset of relevant plans and policies. Primarily, it (and the County's guidance on which the DEIR's analysis is based) only considers whether the Project will conflict with AB 32. DEIR at 3-29 (GHG analysis "focuses on a 2020 timeline, consistent with the legislative mandate embodied in AB 32"), 3-36 – 37 (analyzing compliance with AB 32 and Scoping Plan). However, AB 32 and the Scoping Plan are not the only relevant policies and plans that have been adopted for the purpose of reducing GHG emissions. Crucially, Executive Order ("EO") S-3-05 also sets forth state policy related to GHG reduction, including that it is the policy of the state to reduce GHG emissions to 80% below 1990 levels by 2050. DEIR at 3-18.

O9-59

O9-58 The comment cites to thresholds of significance developed by the Bay Area Air Quality Management District. Of note, because of litigation pertaining to that district's thresholds, the district "is no longer recommending that [its] [t]hresholds be used as a generally applicable measure of a project's significant air quality impacts." (See http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Updated-CEQA-Guidelines.aspx; last accessed March 2, 2015.)

In addition, that district's thresholds are supportive of the observation made in prior comments that there is no scientific or regulatory consensus regarding what particular quantity of GHG emissions is environmentally significant. Specifically, that district developed a screening threshold of 1,100 MT CO_2E per year for non-stationary source projects (as noted in the comment), but a 10,000 MT CO_2E per year threshold for stationary source projects. Scientifically speaking, there is no rational basis to distinguish the GHG emissions of stationary versus non-stationary source projects; the environmental effect of GHGs is largely the same, irrespective of the type of emission source. It is the quantity of GHGs that matter, not the source. (See http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/Summary_Table_Proposed_BAAQMD_CEQA_Thresholds_May_3_2010.ashx?la=en; last accessed March 2, 2015.)

Finally, and perhaps most importantly, consistent with well-established CEQA principles, lead agencies retain the discretion to determine the environmental significance of projects, provided their discretion is exercised in a manner that is supported by substantial evidence. Here, the County's *2015 GHG Guidance* establishes a consistent and uniform framework for CEQA evaluations within the unincorporated County area, while providing the County with some flexibility when identifying the approach best able to provide an informative assessment for individual projects, given that thresholds, methodologies and analytical approaches rarely come in a one-size-fits-all variety.

The DEIR acknowledges EO S-3-05, and even states that the County's Climate Action Plan ("CAP") "was designed to mitigate the impacts of climate change by achieving meaningful GHG reductions within the County, consistent with AB 32, *EO S-3-05*, and SB 97, and to provide a mechanism that subsequent projects may use as a means to address GHG impacts under CEQA." DEIR at 3-24 (emphasis added). It further states that the "CAP provides the overall framework for assessing significance" and that it is intended to foster mitigation that will help achieve the "state-mandated reduction targets embodied in . . . EO S-3-05…." DEIR at 3-36. Yet the DEIR never analyzes the Project's consistency with EO S-3-05 or portions of the CAP that go beyond the 2020 targets. For example, the CAP includes GHG reduction targets for 2020 *and* 2035, yet the DEIR does not measure the Project's impacts against the 2035 targets. DEIR at 3-24 – 25.

The DEIR's failure to compare the Project's emissions—which will continue for decades if not in perpetuity—against long-term GHG emission reduction policies such as those in EO S-3-05 is unlawful. The GHG reductions in EO S-3-05 embody the reductions that climate scientists have concluded are needed to provide a 50-50 chance of limiting global average temperature rise to 2°C above pre-industrial levels. The AB 32 Scoping Plan incorporates this goal, establishing a "trajectory" for reaching it over time. That trajectory requires continuing and steady annual reductions in both total and per capita emissions. Accordingly, analyzing the impacts of a long-term project such as this[10] against only short-term GHG-reduction plans misleads the public into thinking that the Plan will help achieve the GHG reductions necessary to stabilize our climate. This is inaccurate. In fact, even if the Project helped achieve the 2020 targets embodied in AB 32 (which it does not), the Project is wildly out of compliance with the necessary 80% reductions embodied in EO S-3-05.

The Cleveland National Forest Foundation previously litigated and won a case involving a San Diego regional agency's failure to measure a project's impacts against EO S-3-05. In *Cleveland National Forest Foundation v. San Diego Association of*

[10] The Project is planned for construction over a ten year period. DEIR, p. S-3. Given that environmental review is still ongoing, and assuming for the sake of argument that the Project could proceed without significant redesign and further environmental review, the Project could not realistically begin any earlier than 2014. It would thus not be built out until 2024, at the earliest—nearly half a decade beyond the 2020 timeframe in which the DEIR measures the significance of the Project's GHG impacts.

O9-59 cont.

O9-59 The comment states that the project's impacts relative to Executive Order S-3-05 must be considered. Consistent with that comment, "Methodology 7: Executive Orders B-30-15 and S-3-05" in FEIR Subchapter 3.1.2 considers the project's impact on the horizon-year goal to reduce GHG emissions by 80 percent below 1990 levels by 2050. As discussed therein, the project's 2020 emissions totals represent the maximum emissions inventory for the project; and, substantial evidence shows that the project's emissions will be subject to a long-term, gradual decline due to the continuing implementation of advancing regulatory standards and technological improvements. Arguably, assessing the project's impacts relative to the 2050 statewide reduction goal are 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.

As to the comment's reference to the County's CAP, in late 2014, the Fourth District Court of Appeal determined that the County failed to comply with CEQA when adopting its CAP. Therefore, the County presently is not implementing its CAP, such that the post-2020 reduction targets expressed therein are no longer applicable.

Similarly, as to the comment's reference to the San Diego County Superior Court's ruling in the CEQA litigation concerning SANDAG's 2050 RTP/SCS, a trial court order is not citable precedent that can be relied on in a court of law. Further, in March 2015, the California Supreme Court granted the SANDAG's petition for review of the Fourth District Court of Appeal's decision in that matter; therefore, the Fourth District's decision also is not citable precedent.

Governments, the Superior Court held that SANDAG's EIR for its Regional Transportation Plan was

> impermissibly dismissive of Executive Order S-03-05. SANDAG argues that the Executive Order does not constitute a 'plan' for GHG reduction, and no state plan has been adopted to achieve the 2050 goal. [ROA 62 at 34] The EIR therefore does not find the RTP/SCS's failure to meet the Executive Order's goals to be a significant impact. This position fails to recognize that Executive Order S-3-05 is an official policy of the State of California, established by a gubernatorial order in 2005, and not withdrawn or modified by a subsequent (and predecessor) governor. Quite obviously it was designed to address an environmental objective that is highly relevant under CEQA (climate stabilization). . . SANDAG thus cannot simply ignore it.

O9-59 cont.

Ruling on Petitions for Writ of Mandate, Dec. 3, 2012, pp. 11-12, attached as Exhibit 17. So too here, the County ignores EO S-03-05 when analyzing the significance of the Project's GHG impacts.

Indeed, the DEIR ignores any comparison of Project impacts to long-term GHG reduction goals. In addition to EO S-03-05, it also fails to analyze the Project's inconsistency with SB 375 and the recently adopted regional transportation plan/sustainable communities strategy ("RTP/SCS") for San Diego County. DEIR at 3-24 – 25, 3-36 – 37 (describing and analyzing consistency with various local, regional and statewide plans, but not SB 375 or the RTP/SCS); DEIR at 3-20 (describing SB 375 and RTP/SCS). Pursuant to SB 375, SANDAG was required to adopt an RTP/SCS that achieved specific GHG reduction targets for 2020 and 2035 due to better land use planning and consequent reductions in vehicle miles traveled. To do so, it used current planning assumptions under jurisdictions' general plans to develop a proposed land use development scenario that would reduce vehicle trips and meet the GHG reduction targets. Here, this Project does not comply with existing General Plan designations for the site, and therefore frustrates the County's ability to meet the reductions forecast in the RTP/SCS. Also, by placing new single family development so far from existing services, where residents will be reliant on private vehicles for virtually all offsite trips (and many onsite trips), the Project flies in the face of SB 375 and the RTP/SCS, which are supposed to facilitate reduced driving. The DEIR's failure to analyze the Project's inconsistency with the above plans and laws means that the County has failed to proceed in the manner required by law.

O9-60

O9-60 The comment states that the analysis fails to consider the consistency of the project with SB 375 and SANDAG's 2050 RTP/SCS. However, 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; see "Methodology 6: SB 375, and SANDAG's 2050 RTP/SCS." Several qualitative and quantitaive factors inform the FEIR's conclusion that the project is consistent with that legislative framework and the local implementing plan:

- 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 ½ -mile from at least seven diverse neighborhood assets, thereby:
  - 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,
- 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 2015 GHG Guidance for quantifying and assessing GHG emissions.

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 project's consistency with SB 375, particularly as the Government Code explicitly provides that sustainable communities strategies do not

Second, to the extent the DEIR relies on the Project's alleged compliance with the CAP as evidence that the Project will not have significant GHG-related impacts, this reliance is unfounded. *See* DEIR at 3-36 (stating that the "CAP provides the overall framework for assessing significance"). The San Diego County Superior Court recently invalidated the County's CAP because it failed to contain binding commitments that demonstrated the County was going to reduce GHG emissions by the amount it claimed it would. *See* Superior Court of San Diego, Minute Order in Case No. 37-2012-00101054-CU-TT-CTL (April 19, 2013), attached as Exhibit 18. Although the case is on appeal, the fate of the CAP is uncertain and the DEIR should, at the least, acknowledge this fact and describe how, as a result, alleged compliance with the CAP is insufficient to demonstrate that the Project will not have significant GHG impacts.

O9-61

D. The DEIR Underestimates the Project's GHG Emissions.

As described in technical comments submitted to the County on the DEIR's traffic analysis by Darnell & Associates, the DEIR does not accurately analyze the number of vehicle trips that will be caused by the Project. Because the DEIR underestimates such trips by approximately 12%, it also underestimates the GHG emissions associated with such trips. Likewise, because the DEIR underestimates the number of external trips, and overestimates the percent of trips "captured" within the Project, the DEIR does not accurately portray the total vehicle miles traveled, which will be greater than estimated in the DEIR. Again, this serves to minimize the GHG emissions associated with the Project's generation of vehicle trips. The County must revise its GHG analysis after it corrects its erroneous calculation of vehicle trips.

O9-62

E. The DEIR Fails to Analyze and Adopt All Feasible Mitigation.

Because the DEIR concludes that the Project's GHG-related impacts will be less than significant, the County did not adopt any mitigation measures related to GHG impacts.[11] However, because the Project's actual GHG emissions will cause a significant impact, the DEIR must analyze, and the County must adopt, all feasible mitigation to

O9-63

[11] The Project does include some "design features," which are functionally equivalent to mitigation measures, that are intended to reduce the Project's GHG emissions. DEIR at 3-32 – 36. However, the DEIR never hints that these few features represent all feasible mitigation, therefore satisfying CEQA's requirement that agencies adopt all feasible mitigation to reduce or mitigate a Project's significant impacts. Pub. Res. Code § 21081.

O9-60 (cont.) 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.

O9-61 The comment states that the project's analysis cannot rely on the County's CAP because it was invalidated by a trial court order. In response, FEIR subchapter 3.1.2 explicitly discloses the status of the litigation relating to the County's CAP; and no aspect of the significance analysis provided for the project is dependent upon the CAP or information contained therein.

O9-62 The comment states that the GHG emissions associated with mobile sources have been underestimated because the project's traffic analysis does not accurately forecast the number of trips that will be generated by the project. Please see the responses provided to the Darnell & Associates August 16, 2013 comment letter in this FEIR (see response to comments I51I-4 through I51I-7). Because the trip calculations were not erroneous, no changes to the GHG emission calculations are required.

O9-63 The comment states that the EIR fails to identify and recommend that the County adopt all feasible mitigation measures. However, because the FEIR determined that the project's GHG emissions would not be significant, the County does not need to adopt all feasible mitigation for the project under CEQA Guidelines Section 15126.4(a)(3) – stating that mitigation measures "are not required for effects which are not found to be significant."

That being said, it should be noted that a number of the exemplar mitigation measures identified in the comment already are design features of the project, as follows below and detailed in the project's Specific Plan and FEIR subchapter 3.1.2:

- The project will promote ride-sharing through its transportation demand management program;
- The project will design buildings to be energy efficient;
- The project will install efficient lighting;

reduce those impacts. Numerous agencies and organizations have documented the types of mitigation that are appropriate and feasible for residential and commercial development projects. The County itself describes such mitigation in its 2008 Guidelines re GHG Analysis. As just a few examples, the County finds that the following measures are often appropriate:

Transportation and Motor Vehicles

• Use low or zero-emission vehicles, including construction vehicles.

• Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a web site or message board for coordinating rides.

• Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.

• Create local "light vehicle" networks, such as neighborhood electric vehicle (NEV) systems.

• Provide the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles (e.g., electric vehicle charging facilities and conveniently located alternative fueling stations

• Build or fund a transportation center where various public transportation modes intersect.

• Provide shuttle service to public transit.

• Provide public transit incentives such as free or low-cost monthly transit passes.

Energy Efficiency

• Design buildings to be energy efficient. Site buildings to take advantage of shade, prevailing winds, landscaping and sun screens to reduce energy use.

• Install efficient lighting and lighting control systems. Use daylight as an integral part of lighting systems in buildings.

O9-63 cont.

O9-63 (cont.)

- The project will install on-site solar/photovoltaic systems;
- The project will install energy efficient appliances;
- The project will create water-efficient landscapes and install water-efficient irrigation systems; and
- The project will implement low-impact development practices.

• Install light colored "cool" roofs, cool pavements, and strategically placed shade trees.

• Provide information on energy management services for large energy users.

• Install energy efficient heating and cooling systems, appliances and equipment, and control systems.

• Install light emitting diodes (LEDs) for traffic, street and other outdoor lighting.

• Limit the hours of operation of outdoor lighting.

• Use solar heating, automatic covers, and efficient pumps and motors for pools and spas.

• Provide education on energy efficiency.

Renewable Energy

• Install solar and wind power systems, solar and tankless hot water heaters, and energy-efficient heating ventilation and air conditioning. Educate consumers about existing incentives.

• Install solar panels on carports and over parking areas.

• Use combined heat and power in appropriate applications.

Water Conservation and Efficiency

• Create water-efficient landscapes.

• Install water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls.

• Design buildings to be water-efficient. Install water-efficient fixtures and appliances.

• Restrict watering methods (e.g., prohibit systems that apply water to nonvegetated surfaces) and control runoff.

• Restrict the use of water for cleaning outdoor surfaces and vehicles.

• Implement low-impact development practices that maintain the existing hydrologic character of the site to manage storm water and protect the environment. (Retaining storm

O9-63 cont.

water runoff on- site can drastically reduce the need for energy-intensive imported water at the site.)

Exhibit 13, pp. 14-16.

In its 2012 Guidance, the County also lists other sources of mitigation measures; the County must consider all of the measures listed in these documents in a recirculated Project DEIR, and it must adopt all feasible measures in order to reduce the Project's impacts to a level below significance.

- Governor's Office of Planning and Research. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: http://www.opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf.

- California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf.

- California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf.

- Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

Exhibit 14, p. 36.

These documents, in addition to lists of mitigation measures and design features maintained by other organizations cover a wide range of topics, including (1) land use, urban design, transportation measures; (2) shade and sequestration, including using trees to shade buildings; (3) energy conservation; (4) water Conservation; and (5) carbon offset

O9-63 cont.

credits. The County must consider all of these types of mitigation measures for the Project's significant impacts.

O9-63 cont.

Other agencies routinely require mitigation for residential and mixed-use development projects that include requirements to use renewable energy or install on-site solar power. For instance, Riverside County has previously required large development projects to meet the following standard: "80 percent of residential units shall meet 60 percent of their baseline demand power energy needs with renewable energy; and 80 percent of commercial building square footage shall meet 40 percent of their baseline demand power energy needs with renewable energy." Travertine Point Specific Plan Conditions of Approval, attached as Exhibit 19, p. 91. If the developer cannot show that the local electricity provider is meeting these standards, than renewable energy must be provided from on-site sources. *Id.* Likewise, Riverside County also required this project to install cool pavement and cool roofs. *Id.* (see p. 90, measure 30. Planning 111); *see also id.*, pp. 88-94 (requiring other energy and water efficiency measures).

O9-64

Likewise, the building industry is rapidly advancing in its ability to offer energy efficient homes. For example, Shea homes now offers a zero-energy home that offsets all of the home's energy use by using efficient building techniques and having solar power on the roof. *See* Exhibit 20. Courts have made clear that "if [a] project can be economically successful with mitigation, then CEQA requires that mitigation …." *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 599-600. Given that Shea has sold more than 1,000 zero-energy homes, and that the technology for providing solar power has become much more affordable over the past few years, it is certainly feasible for the developer here to provide zero-energy homes to mitigate the Project's GHG impacts. The DEIR has certainly offered no evidence to the contrary.

O9-65

Finally, the best mitigation would be to disapprove this Project and adopt a city-centered, infill alternative that conforms to actual smart growth principles. This would have numerous benefits, including preservation of agricultural land, the rural character of Bonsall and Valley Center, reduced vehicle miles traveled (and concomitant reductions in GHG and other air pollutant emissions), shorter commutes, preservation of wildlife habitat, and less traffic on rural roads.

O9-66

O9-64 The comment observes that other agencies have required projects to rely on renewable energy or install on-site solar power. Please note that, as discussed in FEIR subchapter 3.1.2 and the project's Specific Plan, the project will install 2,000 kilowatts of on-site solar/photovoltaic systems capable of producing approximately 3,400,000 kilowatt-hours of electricity annually (which is approximately 22 percent of the project's total electricity needs at build out). Additionally, all buildings on the project site will be "solar ready" by having roofs built for solar panels and pipes for solar hot water, and are individually planned to consider solar orientation.

O9-65 The comment observes that some residential builders offer zero-energy homes. Please see response to comment A-63 for information regarding the mitigation obligations of this project relative to GHG emissions. Additionally, please note that the CEC, California Public Utilities Commission and CARB have expressed a demonstrated commitment to achieving net zero energy by 2020 for residential structures and 2030 for commercial structures:

"California has a policy goal of achieving zero-net-energy building standards by 2020 for low-rise residential buildings and by 2030 for commercial buildings. … Making the zero-net-energy definition operational will require ongoing efforts through the 2016 and 2019 code development cycles. … Recommendations to ensure success in meeting the zero-net-energy goals as they are currently outlined include adopting triennial building standards updates that increase the efficiency of new buildings by 20 to 30 percent in each update … "

(California Energy Commission, 2013 Integrated Energy Policy Report (2013), pp. 5-6; see also id. at pp. 34-42. A copy of this report is publicly available at http://www.energy.ca.gov/2013publications/CEC-100-2013-001/CEC-100-2013-001-CMF.pdf.) The project will be required, by law, to comply with all applicable regulations designed to reduce energy consumption. And, due to the long-term, multi-year construction schedule associated with the project, more efficient regulations may apply to the project than those conservatively assumed in the analysis.

F. The DEIR Must Compare the Project's GHG Impacts to the Impacts of the Proposed Alternatives.

When the County revises and recirculates the DEIR's GHG impacts analysis, the revised document must also include a full comparison of the Project's GHG-related impacts to the same impacts of the alternatives. O9-67

Conclusion

The Project is a terrible example of the type of sprawling development that California is, unfortunately, famous for, and which both the County and the state have been claiming they want to stop. The DEIR's self-serving rhetoric about how the Project is an allegedly "sustainable" town cannot cloak the reality that the Project would massively increase GHG emissions at a time when we desperately need to be significantly reducing them, and would destroy hundreds of acres of productive farmland that the County and state cannot afford to lose. To make matters worse, the DEIR is woefully inadequate and does not begin to provide a reasoned and full analysis of the Project's huge impacts, much less provide adequate mitigation to address these impacts. As proposed, the Project also flatly violates numerous General Plan provisions and may not be approved. CNFF urges the County to reject this ill-conceived Project entirely. At the least, the Project will have to be massively revised, and the DEIR will have to be substantially updated and recirculated, before the County can seriously consider approving the Project. O9-68

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Erin B. Chalmers

EXHIBIT LIST

Exhibit 1: County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements: Agricultural Resources (March 19, 2007) O9-69

SHUTE, MIHALY & WEINBERGER LLP

O9-66 The project location conforms to County principles associated with its location. See Global Response: Project Consistency with General Plan Policy LU-1.2. Additionally, discussions associated with the preservation of rural character, reduced VMT and traffic, and wildlife preservation can be found in detail in FEIRI subchapters 3.1.4, 3.1.2, 2.3, and 2.5, respectively.

O9-67 As required under CEQA, the project's alternatives provide a comparison of each potentially significant project impact (as discussed throughout Chapter 2.0) to that of the alternative. Through multiple methodologies and analysis modelling as detailed in FEIR subchapter 3.1.2 and FEIR Appendix O, GHG emissions was determined to be less than significant and is therefore not included in the general impact discussion throughout the alternatives. GHG is included in the Road Design Alternative (FEIR subchapter 4.8) and the Mountain Ridge Road Fire Station Alternative (FEIR subchapter 4.9).

O9-68 Concluding statement is acknowledged.

O9-69 Attached exhibits are acknowledged and will be part of the final administrative record.

Exhibit 2: San Diego County General Plan EIR, Agricultural Impacts Analysis

Exhibit 3: San Diego County General Plan, Conservation and Open Space Element

Exhibit 4: Federal report on avocado production in California

Exhibit 5: Agricultural Analysis of Meadowood Project, Fallbrook Community Planning Area, August, 2010, excerpts

Exhibit 6: USDA soil survey, excerpts

Exhibit 7: Land Use Changes: Economic, Social, and Environmental Impacts (2008)

Exhibit 8: Getting the Drift on Chemical Trespass: Pesticide drift hits homes, schools and other sensitive sites throughout communities

Exhibit 9: LEED 2009 for Neighborhood Development

Exhibit 10: Letter from Attorney General to San Joaquin Valley Air Pollution Control District re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA (Nov. 4, 2009)

Exhibit 11: California Natural Resources Agency: Final Statement of Reasons for Regulatory Action (December 2009)

Exhibit 12: CAPCOA: CEQA and Climate Change (January 2008)

Exhibit 13: County of San Diego Draft Interim Guidelines for Determining Significance (2008)

Exhibit 14: County of San Diego Draft Guidelines for Determining Significance (June 20, 2012)

Exhibit 15: City of San Diego Draft General Plan PEIR, Theoretical Buildout Analysis

Exhibit 16: BAAQMD Resolution Adopting Thresholds of Significance under CEQA (June 2010)

O9-69 cont.

Exhibit 17: Ruling on Petitions for Writ of Mandate (Dec. 3, 2012); *Cleveland National Forest Foundation v. San Diego Association of Governments,* San Diego County Superior Court Case No. 2011-00101593

Exhibit 18: Order Invalidating San Diego County Climate Action Plan (April 19, 2013); San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL

Exhibit 19: Travertine Point Specific Plan Conditions of Approval

Exhibit 20: "Zero-net-energy homes: More feasible, still rare," San Francisco Business Times (March 29- April 4, 2013)

O9-69 cont.