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VIA E-MAIL AND U.S. MAIL

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Re: Valiano Specific Plan Project--May 11, 2018 Planning Commission Hearing
Agenda Item 2

To the County of San Diego Planning Commission:

Please accept these comments on behalf of the Elfin Forest Harmony Grove Town Council regarding the Valiano Specific Plan Project including the Final Environmental Impact Report ("Final EIR") (**May 11, 2018 Planning Commission Agenda Item 2**). Our previous comments on the Project are incorporated herein by reference.

The Town Council continues to oppose this Project in its current form. The Project seeks significantly more units (326) than would be allowed by the site's present land use designations (118 units). As we have repeatedly stated, we urge the County to consider a viable alternative to the Project with fewer units that preserves the rural and semi-rural character of the surrounding area. In fact, the Town Council has put forth a feasible alternative—namely the "Valiano Vineyards" alternative—which the County determined not to evaluate in the EIR. This alternative is feasible on its face in that it meets "basic" project objectives and it reduces significant project impacts. Moreover, this alternative strikes a reasonable balance between the interests of the applicant and those of the Elfin Forest-Harmony Grove community. This alternative should be meaningfully considered in the EIR and by decision-makers.

Most troubling is the proposed General Plan Amendment which, if approved, will remove the approximately 44 acres of the southern area of the "Project site" ("Neighborhood 5") from the Elfin Forest-Harmony Grove Subarea Plan, a subarea within the San Dieguito Community Plan Area. As discussed further below, this proposed action is strongly opposed by the very community that the subarea plan is intended to preserve and protect. The sole reason for this General Plan Amendment is to avoid the requirements of the subarea plan. Carving out a portion of the subarea is simply illogical. *See*, land use diagram attached. The Staff Report notes that a previous attempt to change the land use

designation of this area was not accepted by the County when the County considered and adopted the General Plan in 2011. The County should likewise reject the Project's attempt to modify the land use designation of the area via the proposed General Plan Amendment.

For all the reasons we have stated and for those below, we request that the Planning Commission continue or table this item to allow for further consideration of environmental issues as well as viable Project alternatives and mitigation measures consistent with the California Environmental Quality Act ("CEQA").

A. Project Description

The Final EIR's Project Description is confusing to the reader. The Project Description states that the Project proposes a total of 326 single-family units. Yet, the EIR later mentions that a significant number of additional "secondary" units are permitted (Neighborhood 2 – 23 units; Neighborhood 3 – 8 units; Neighborhood 5 – 20 units). The potential for an additional 51 units—for a total of 377 units—must be fully disclosed.

B. Land Use

i. County General Plan

The Project conflicts with a number of County General Plan policies including Policy LU-3.2 in that the Project does not, in reality, present a "range" of housing types (there is no "affordable housing" for instance); Policy LU-14.4 in that the Project may induce growth by providing sewer service to an area currently using septic systems; Policy H-1.9 in that there is no "affordable housing" component to the Project; Policy H-2.1 in that the development "degrade(s) or detract(s) from" the character of the rural area; Policy ME-8.1 regarding transit stops; and Policy S-6.4 in that the Project does not show that the minimum travel times will be met for fire service.

With respect to General Plan Policy H-1.9, the Project should be required to provide an affordable housing component because it is a "large-scale residential project" for which a "General Plan Amendment" has been requested. Moreover, the provision of affordable housing in the Project is "legally permissible." *See, Calif. Building Industry Ass'n v. City of San Jose* (2015) 61 Cal.4th 435. There is a documented need for affordable housing in the County, as reflected in the General Plan policy. The Staff Report acknowledges that the Project does not provide "affordable housing." The Project is therefore not consistent with the General Plan.

With respect to General Plan Policy S-6.4, the Staff Report indicates that San Marcos Fire Station No. 3 is 7.0 minutes from the furthest structure within the Project, while the *minimum* acceptable response time per the General Plan is five minutes. The Staff Report vaguely notes that an agreement has been reached with the Rancho Santa Fe Fire Protection District to provide some portion of the property which is beyond the 5-minute travel time with fire service. The Project must be fully

conditioned to require that fire service is provided to meet General Plan minimum travel times. Further, the Project should not rely on the promise of future fire service within the Harmony Grove Village project. The Project must fully mitigate its impacts through enforceable conditions/mitigation measures.

ii. Elfin Forest Harmony Grove Subarea Community Plan

The Valiano Project has been revised from its original form to include a General Plan Amendment that would remove roughly 44 acres comprising the Project's proposed Neighborhood 5 from the Elfin Forest Harmony Grove Subarea Community Plan ("Subarea Community Plan")¹. The EIR describes that,

the proposed General Plan Amendment would remove the planning inconsistency of having Neighborhood 5 governed by the Elfin Forest-Harmony Grove subarea plan, with the rest of the Proposed Project being governed by only the San Dieguito Planning Area. Following the approval of this General Plan Amendment, Neighborhood 5 would no longer be subject to any of the requirements set forth in the Elfin Forest-Harmony Grove subarea portion of the San Dieguito CPA. The Amendment to the General Plan would ensure consistent application of policy throughout the Proposed Project and integrated conformance with the San Dieguito Community Plan and the County of San Diego's General Plan goals and policies.

As we've expressed, the developer's proposal to amend what is considered by the community to be an essential land use planning tool (*i.e.*, the Subarea Community Plan) is a brazen attempt to serve the interests of the developer and no one else. There is no justification – apart from the developer's desire to maximize profits – for removing roughly 44 acres from the boundaries of the Subarea Community Plan. Any "inconsistency" between proposed Neighborhood 5 and the remainder of the Project site is *self-induced*. The developer purchased the subject properties with full knowledge of the applicable land use designations, boundaries, and planning documents. The implication that the developer is somehow aiding the orderly development of the area is a red herring. The community articulated its vision and desires for the development of the area in its Subarea Community Plan. Very plainly, the community wishes to *keep* in place the current land use designations, boundaries, and planning policies and requirements.

The Subarea Community Plan advises that it "supplements [] countywide policies and diagrams and further directs land uses and development desired to achieve the community's vision." (p. 5) The developer's proposal is antithetical to the community's vision for the Subarea Community Plan area. **It is not the desire or interest of the community to "remove" the area of Neighborhood 5**

¹http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/ELFIN_FOR_HARM_GROVE_CP.pdf
 (This hyperlink and all hyperlinks cited herein are fully incorporated by reference.)

from the Subarea Community Plan. Further, the policies of the Subarea Community Plan should be adhered to as the first priority as the document “supplements” and “further directs land uses” within the larger San Dieguito Community Plan. Additionally, the EIR contains no evidence of any actual inconsistency between current land use plans or uses that would warrant the proposed General Plan Amendment. Indeed, the alleged “inconsistency” between the land uses proposed by the Project and the Subarea Community Plan and/or the San Dieguito Community Plan and County General Plan is purely manufactured. If the developer desires consistency, it should design *the Project* to be consistent with applicable land use plans. Simply, the General Plan Amendment is not necessary where the Project could be built in a way that *is* consistent with applicable land use plans.

Furthermore, the land use amendments do not remove the inconsistency with respect to *the Project’s* inconsistency with adjacent uses and land use plans including the Community Subarea Plan. Adjacent uses are large-lot, rural residential. The Project proposes a higher density development with a sewer system, a waste water treatment plant, roadways, sidewalks, lighting, new streets, and manufactured slopes and walls in a community where rural residential is the dominant land use, and where community plans applicable to the adjacent areas direct that developments should be on septic, should not have sidewalks, and should have lots 2 acres or more in size, etc. There are impacts (such as aesthetic, air quality, noise, and traffic) that are intensified due to the Project’s inconsistency with surrounding land uses. These “land use impacts” are not eliminated by virtue of a general plan amendment.

Finally, with respect to the San Dieguito Community Plan (“SDCP”)², we note that the land use map shows the Project site as outside the “Village Boundary”. More intense land uses are directed *within* these village areas. The SDCP does not anticipate the intensity of the proposed Project, nor does it demonstrate any need for this development to resolve any planning inconsistency between land use plans. Also, the land use map is apparently identical to the land use map in the Subarea Community Plan. The Subarea Community Plan area anticipates that future growth will be balanced to ensure that the community is “able to keep its rural voice.” (p. 21) As to the Harmony Grove area, the community expressed that “the Village development pattern as shown in the General Plan Land Use Map must be strictly adhered to as the formal development model for the area.” (p. 21) The Subarea Community Plan further states, “As the population increases in San Diego County and statewide, there will be continual pressure to put higher density residential *into or adjacent to* Elfin Forest. However, given the challenges facing the community, this should not be allowed to occur.” (pp. 12-13) (emphasis added)

In sum, the evidence shows that the applicable land use plans, including the County’s General Plan, do not envision more intense development for the Project area. Nor does the community desire the proposed land use changes. The developer’s rationale that the General Plan

²http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/CP/San_Dieguito_Community_Plan.pdf

Amendment “removes” a land use inconsistency is simply unsupported and contrary to the wishes of the community.

C. Greenhouse Gas Emissions

The Project’s reliance on carbon offsets as mitigation for significant GHG emission impacts is inadequate, and the EIR should be recirculated based on the new information and findings presented in the Final EIR with respect to GHG emissions.

The County of San Diego updated its General Plan in 2011. The General Plan Update EIR found that climate change impacts were “potentially significant” with regard to compliance with Assembly Bill (“AB”) 32. The General Plan Update EIR included mitigation measures for GHG and climate change impacts, including Mitigation Measure CC-1.2 requiring the County to: “Prepare a County Climate Change Action Plan with an update[d] baseline inventory of greenhouse gas emissions from all sources, more detailed greenhouse gas emissions reduction targets and deadlines; and a comprehensive and enforceable GHG emissions reduction measures that will achieve a 17% reduction in emissions from County operations from 2006 by 2020 and a 9% reduction in community emissions between 2006 and 2020.” The County determined that CC-1.2’s 17% and 9% reduction levels were necessary to comply with AB 32. Mitigation Measure CC-1.8 requires the County to revise its Guidelines for Determining Significance based on the CAP. The County’s General Plan Update also contains Policy COS-20.1 requiring the preparation of a CAP. The General Plan’s Mitigation Monitoring and Reporting Program (“MMRP”) also includes provisions requiring the County to prepare a CAP (6.9.1.A) and revise its thresholds of significance based on its CAP (6.9.3.A). The County approved a CAP on June 20, 2012 (“2012 CAP”). The 2012 CAP was intended to serve as a mitigation measure to mitigate otherwise significant adverse impacts resulting from the County’s 2011 General Plan Update. The Sierra Club successfully challenged the 2012 CAP resulting in a Court judgment requiring the County to vacate the 2012 CAP. This decision was upheld by the Court of Appeal.

On November 7, 2013, the County adopted a document titled Guidelines for Determining Significance and Report Format and Content Requirements (“2013 GHG Thresholds Document”) which detailed GHG analysis report content requirements and set thresholds of significance for GHG impacts. The 2013 GHG Thresholds Document provided four methods for determining significance of a project’s GHG impacts: Efficiency Threshold, Bright Line Threshold, Stationary Source Threshold, and Performance Threshold. Under the 2013 GHG Thresholds Document’s “Efficiency Threshold,” “[a] proposed plan or project would have a cumulatively considerable contribution to climate change impacts if it would result in a net increase of construction and operational [GHG] emission, either directly or indirectly, at a level exceeding 4.32 metric tons of CO₂e per year.” On or about July 29, 2016, the County issued “2016 Climate Change Analysis Guidance: Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA Documents” (“2016 GHG County Efficiency Metric Document”). The document was apparently never approved by the

Board of Supervisors. It included a “County Efficiency Metric,” screening criteria, and recommended mitigation measures.

The Recirculated DEIR’s analysis of the Valiano Project’s GHG impacts was based on the Efficiency Metric Document. Using *that* specific methodology, the RDEIR concluded that the Project’s GHG impacts were less-than-significant and no mitigation was required. The Final EIR, in contrast, discloses significant GHG impacts based on an entirely new analysis. The Final EIR relies upon a new threshold – “net zero emissions (i.e., carbon neutrality)”, which derives from the County’s Climate Action Plan adopted by the Board of Supervisors in February 2018 (“2018 CAP”)³. By law, the EIR must be recirculated must be based on this new information, methodology and the changed conclusion.

Apart from the need for recirculation, the Final EIR fails to demonstrate based on substantial evidence how the Project, which requests a General Plan Amendment, enables the County to achieve the emission reduction goals and targets set forth in the CAP insofar as the CAP admits that its emission reduction calculations do not include the various “General Plan Amendments” that are currently being processed/considered by the County. Instead, the CAP apparently includes a guidance document (“Guidelines For Determining Significance”) which in theory allows applicants to process General Plan Amendments and still be consistent with the CAP.

The Guidelines For Determining Significance claims that achieving “net zero emissions” through the purchase of “carbon credits” is consistent with the CAP notably the CAP’s emission reduction targets and goals. However, there is not substantial evidence in this case to demonstrate that the purchase of “carbon credits” allows the County to achieve its emission reduction targets and goals because the “carbon credits” are ill-defined and not shown to be related to reducing emissions in *the County of San Diego*, which is the sole purpose of the CAP. The applicant is allowed under the Project’s mitigation program to purchase offsets from an unspecified registry without showing that the credits will actually reduce carbon emissions or achieve the reductions necessary to off-set *total* Project emissions. More information is needed about the off-set programs to ensure that they meet minimum standards and will be effective. For instance, the off-sets must meet legal standards. Cal. Code. Regs., Tit. 17, § 95973 (a)(2). It is noteworthy that CARB’s Scoping Plan (2017) prioritizes onsite GHG mitigation measures, and the percentage of GHG reductions that come from offsets will lower to 4% in 2021. Health & Safety Code, § 38562(c)(2)(E). Moreover, are there sufficient credits available from adequate programs when there are a number of “general plan amendment” projects that intend to rely on the credits (e.g., the Harmony Grove Village South project)?⁴ Also, the Project’s off-sets will only cover 30 years of Project impacts which does not seem adequate when the life of the Project is much longer than 30 years.

³ The 2018 CAP is now under legal challenge by Sierra Club and other plaintiffs. The lawsuit alleges *inter alia* that the carbon offsets are inadequate mitigation.

⁴https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/FinalPublicReviewDocs/FinalBoardDocs/Chapter%208.0_%20Revised%20Final.pdf

Furthermore, the Guidelines For Determining Significance states that “Option 2” is available *only* if all feasible on-site design features and mitigation measures have been incorporated into the subject project; and all said design features and mitigation measures must be supported by substantial evidence that impacts have been reduced per the Guidelines For Determining Significance. This makes sense since it is the goal of the 2018 CAP to reduce County-wide emissions and not simply rely on off-sets which may serve to off-set emissions in other areas. The Valiano Project has not first adopted all feasible on-site design features and mitigation measures for GHG emissions. For instance, the Project will not be served by public transit. The Project should endeavor to connect to public transit or should provide shuttle service to nearest transit centers. The Project does not provide for a trail or bike paths to connect pedestrians and/or bicyclists to transit centers. (There will be a multi-purpose trail within the Project site.) In fact, the Project does not conform to a number of General Plan policies aimed at reducing GHG emissions by encouraging the use of public transit. The Project does virtually nothing to reduce *vehicle miles traveled* (VMT) which is the primary cause of the Project’s GHG emissions. Available mitigation would also include creating a ride share program for homeowners.

In fact, it is not certain based on substantial evidence that the Project adopts all feasible mitigation ensuring that impacts have been reduced *prior to* the purchase of the carbon credits, as required. Specifically in terms of energy consumption, the Final EIR’s GHG analysis concludes that the Project generates 396 MTCO_{2e} annually for residential energy use. This calculation is based on the deployment of 100% solar energy production. But solar is not necessarily required as discussed further below. Furthermore, it is not clear based on the available information that PV solar is sufficient to provide 100% of the Project’s residential energy needs. Are the solar panels of a sufficient size and production value to produce 100% of the Project’s residential energy needs? Also, the carbon credits are dubious where they are purchased only after Project approval (prior to building permits) subject to only planning-level approval. The public has no way of verifying whether the carbon credits are sufficient to reduce the Project’s GHG emissions, and certainly no way to determine whether the off-sets are related to emissions in the County of San Diego which would be necessary to ensure the “net zero” scenario required by the CAP to ensure that the County can achieve emission reduction goals.

D. Conflicts With Regional Plans

Realistically, the Project locates a large housing tract far away from major employment centers. Downtown San Diego is 30-40 miles from the Project site. It is a plain fact that traffic congestion on Interstate 15 is disastrous during “rush hours”. Indeed, the Project is located outside of the Urban Area Transit Strategy Boundary according to SANDAG’s Regional Transportation Plan/Sustainable Community Strategy (“RTP/SCS”)⁵. The Project is inconsistent with the RTP/SCS because its density is greater and the number of dwelling units is higher than what

⁵ http://www.sdfoward.com/pdfs/Final_PDFs/The_Plan_combined.pdf

was included in the land use input assumptions for San Diego County. The Project must evaluate the Project's unplanned growth on regional climate goals and plans. The RTP/SCS assumes the development of denser communities, namely that 80% of all housing would be developed within the urbanized areas of the western part of San Diego County – not the Project area. The RTP/SCS is based on the fact that VMT will be reduced because of the concentration of development in certain urban areas. The Project is contrary to the assumed development patterns and therefore has impacts that have not been evaluated and have not been shown to be mitigated by the proposed mitigation program.

E. Energy Impacts

The Final EIR's energy mitigation is unenforceable and illusory. EIR Table 3.1.2-9 indicates significant reductions in energy consumption based on the use of solar energy. The EIR implies that the Project's residential component will be 100% solar, *but solar energy is not necessarily required*. The EIR discloses that the Project may employ solar energy, participation in EcoChoice, or "equivalent" measures. SDG&E's EcoChoice program appears to be a voluntary program for consumers, meaning that individual consumers would need to apply, participate, and continue participation in the program⁶. Further, energy mitigation can be "equivalent" to PV solar panels or EcoChoice, whatever this means. In sum, the mitigation language is vague and unenforceable. The Project should be conditioned so that the entire Project is built with solar ready roofs and that use of PV solar panels is implemented as a condition of the Project's development. Otherwise, the Project cannot take substantial credit for the reduction of energy consumption and, moreover, GHG emissions.

F. All "Design Considerations" Should Be Made Enforceable Requirements of the Project

The EIR lists a number of "design considerations"; the EIR apparently relies on these design considerations in the analysis of Project impacts. Thus, all design considerations must be made enforceable CEQA mitigation measures. *See, Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 658. "Design feature" no. 12 states that construction of the proposed project "would utilize Tier 4 certified equipment." The Project must include as an enforceable CEQA mitigation measure the requirement that the Project shall utilize Tier 4 certified equipment. This makes the measure enforceable pursuant to CEQA. *See, Guidelines* §§15097 (a), 15126.4 (a)(2). Also, the alleged requirement to use solar energy or "equivalent" measures shall be made enforceable CEQA mitigation measures. If these measures are not adopted through the CEQA mitigation program, they are not enforceable pursuant to CEQA and should not be relied upon in the analysis.

G. Findings and Statement of Overriding Considerations

The Project's Findings and Statement of Overriding Considerations are based in large part on features and mitigation measures that are necessary to implement the Project; that is, they are not

⁶ <https://www.sdge.com/residential/savings-center/solar-power-renewable-energy/ecchoice>

“overriding benefits” of the proposed Project. The Project is also justified by the County’s need for additional housing. Yet according to the General Plan, the County’s Land Use Plan provides adequate housing to meet the planning cycle’s overall Regional Housing Needs Assessment (RHNA) of 22,412 units.⁷ And, according to the Housing Element, “locating future growth in [remote, rural communities] is not consistent with the County’s multiple planning objectives.” The Project is not shown based on substantial evidence to be necessary to meet housing demand. Furthermore, the Project is justified by the vague claims that it provides access to housing for individuals in different phases of life. This does not translate to providing access to housing for a range of *income* levels. For instance, in 2013, the County determined that most single-family homes sold for between \$225,000 to \$425,000 and concluded that “[s]ingle-family homes are generally not affordable to lower income households.”⁸ According to Zillow, the median home price in San Marcos is currently \$582,748⁹. The median home price in San Diego County in 2017 was \$529,000.¹⁰ These prices are clearly out of reach for persons in lower socio-economic brackets or even first-time homeowners. The Project does not in the practical sense present a range of housing products to service varying income levels.

Conclusion

We urge the Planning Commission to continue this item to allow further deliberation and analysis of all pertinent environmental and planning issues.

Thank you for your consideration of these comments.

Sincerely,



Abigail Smith, Esq.

Enclosure - land use map

⁷ <https://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/docs/GP/HousingElement.pdf>

⁸ <http://www.hcd.ca.gov/community-development/housing-element/docs/san-diego-cou-5th-adopted050713.pdf>

⁹ <https://www.zillow.com/san-marcos-ca/home-values/>

¹⁰ <http://www.sandiegouniontribune.com/business/real-estate/sd-fi-2017-housing-recap-20180214-story.html>

