Neufeld, Darin

From: Slovick, Mark
Sent: Friday, March 13, 2015 11:03 AM
To: Neufeld, Darin
Subject: FW: Newland Sierra Project NOP

Mark Slovick, Planning Manager
County of San Diego | Planning & Development Services
T. 858.495.5172

From: Mike Hunsaker [mailto:m_hunsaker@cox.net]
Sent: Wednesday, March 11, 2015 9:32 PM
To: Slovick, Mark
Cc: Chris.Nichols@UTSanDiego.com; Logan Jenkins, utsandiego; Lyle Davis, The Paper; Teri Figueroa of ut sandiego
Subject: Newland Sierra Project NOP

Dear Mr. Slovick,
Thank you for the presentation on the Notice of Preparation (NOP) for the Newland Sierra Project last week, and the opportunity to speak on matters of concern. Please add me to the distribution list for all public meetings and notices concerning this project.

Consider the following considerations my formal written comments on the NOP

Limitation of NOP

Many are impatient with the NOP process as it only solicits comments on what the EIR should consider. That said, glaring gaps exist in the project description. The sketchy draft EIR with fill-in-the-blanks general descriptions of major, controversial issues does not help.

The purpose of a draft EIR is to at least define what the project will entail and for citizens to have the opportunity to comment. However, without important particulars, it is impossible to define entirely what should be covered by the EIR and project impacts. That opens up exposure to later lawsuits if major environmental problems result for these undisclosed factors which have not been fairly and properly addressed. For example, if there are more than one alternative for the roads, they should all be disclosed and be addressed. Truncating the normal EIR process by limiting or evading discussion of key elements is not responsive.

An egregious problem is the lack of information on water impacts. The Merriam Mountains reincarnation did not pass ultimately on the basis that insufficient water was likely unavailable. Now the water situation is worse. Investors want to have their massive projects pushed forward despite more severe conditions. The investors should not be allowed to take water from existing residences merely to increase their profits. Serious problems with water allocations must be addressed.

I am assuming that issues of wildlife protection and daily traffic and "Green House Gasses" issues will be more than adequately covered by other competent respondents. These comments address less generally appreciated problems which are nonetheless of significant impact to citizens and must be addressed given their substantial impact.

Vallecitos Water District (VWD) Allocations

First, over allocation of available water resources can be a major problem with several sizable County projects in the works and huge developments in San Marcos. At present whenever this local water district (being affected by this project) is asked if there is sufficient water for a project, it answers whether or not that project by itself exceeds the available water supplies. Each individual project gets a letter of sufficiency independent of the total amount required by even just a few the major projects. All or many of the large projects under review now will exceed available supplies. That situation must not be allowed to happen particularly in a drought that could last 100 years by some studies. There is a sustainable amount of water available that is shrinking while the demand is being driven skyward. If communities are to be sustainable, they must have sustainable water. To have a good quality of life, that sustainable level must be

defined and allow citizens to have some flexibility to meet their individual needs and desires – not the needs and desires of mega-rich investors.

Further, the VWD entered into a major desalinization program to provide a reserve for rate stabilization. If even a portion of these projects go through, the damage these large projects will do to the District and the ratepayers will be significant. A study should address the true water capacity available – leaving the desalinization reserve untouched. The EIR must address the projected 100 year drought, the over allocation of available reserves and the probable effect on water rates.

County Zoning Water Allocations

It should also be noted that the proposed site has zoning water allocations for agriculture. If this water is diverted from agriculture, then food that should be grown there has to be shipped from other parts of the country which is a fundamental violation of "Smart Growth" precepts for "sustainable communities". The concept of "Smart Growth" has been progressively shifted from the environmentally balanced growth to one that only benefits investors with their high-density projects ignoring vital issues such as maintaining job creating manufacturing zones and agriculture. The entire Southwest is expected to continue to be hit with severe water shortages. The San Diego Water Board has eliminated agricultural rates eliminating all agriculture dependent on imported water. The imported food is a major consumer of water. It takes close to a 1,000 gallons of water to produce a pound of cereal – much more for protein such as beef which requires 5,000 gallons. Consequently, good 80% of California water goes for agriculture. If there is not enough water for agriculture, any water reallocation for dwellings is inappropriate as it increases the demand for imported food and its indirect water costs on other already environmentally stressed regions.

Any misuse of unused, uneconomical agricultural zoning allocations must not be pushed forward as an excuse to avoid the issues of its impact on the entire environment. "Preserving agricultural land" that is barren, arid will likely never have enough water in our lifetimes is no excuse for making the situation worse.

Indian Tribe Allocations

Indian Tribes are campaigning for more water rights and a right to be "first in line". The controlling judicial cases concerning Indian Tribe water are ***Winters v. United States***, 207 U.S. 564 (1908) and ***Arizona v. California,*** 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542 (1963).

In ***Arizona v. California***, the Indian Tribes were given a wide latitude in determining what water rights they could have and that these rights were superior to other claims. Most reservations are thinly populated on arid soil. Generally under these rulings , the tribes must not only have sufficient water for their food needs, they were to be allowed to have enough water to develop commercial operations on any arable land they own. There was the recognized need to quantify the extent to these claims for a balance between the needs of large non-Indian populations and the small tribes of Indians. Most states have conducted negotiations with tribes and have established these "quantums". However, California is on e if the few states which have NOT quantified these claims.

Further, the California tribes have been acquiring land through fee-to-trust transactions which have increased amounts of arable land. These water rights have not been adequately defined what happens in a drought. The Indians , naturally, are pressing for their share at the expense of all others in a drought giving them a environmentally and economically unsustainable situation for all others and potential monopolies on any agricultural endeavor. The Federal government has recently announced that the Tribes may raise marijuana in any state that legalizes recreational or medical useIf the water demand is set for water-hungry crops, then the water allocation becomes severely burdensome. "Smart Growth" requires the balanced manufacture of food – not marijuana.

The acquisition of agricultural land in California for their Tribal investor partners can easily result in food and marijuana monopolies by large investors. Further, the tribes have senior rights to water to convert their land to agriculture at any point in the future. These rights have not been quantified for California tribes and the obtainment of additional land by these tribes now potentially increases their "senior claims".

During the droughts (which are expected to worsen in the future), the effects of these "senior" undefined claims poses a serious obstacle to all new development. None of the water district's Master Water Plans address these issues.

Note that a major source of water for this project is from the Colorado River which would be the logical source for Tribal water which largely line its banks. So, the EIR should address and provide a reasonable basis for determining the limits of these potential claims to determine how much water is truly reliable and factor in the effect such claims would have for the development's impact on top of the prospective claims that the tribes may place. Point in fact, these potential claims pose serious economic threats to all Californians until they are quantified and all major projects need to address the serious issue.

Importance of Desalinized Water

The VWD wisely purchased a sizable proportion of the Carlsbad Desalinization capacity. It was recognized that the District needed a reserve in case of drought and the sharply increased water costs projected. About 40% of the power used in California is used to transport water. Desalinized water uses considerable power in its production. As the clean power from San Onofre is set to be lost forever, the difference is being made of from "dirty" power generators out of state. Ratepayers must pay increased carbon taxes to their Greedy State which proposes diverting the money to subsidize high-density developments and the "Bullet" train.

Note the Tribal situations on the Upper Colorado River. Water must be transported to the reservations. Indian Tribes to have major claims to water, but need not be even the normal water ways to require it be made available. But fair negotiations there have quantified the demand and allocated the costs. But in California, who pays the transportation costs and what do the Tribes and their large financial partners have to pay?. The VWD ratepayers must pay for the desalinized water whether or not they get the water. Will that water go elsewhere leaving them with the bill and none of the benefits except for more draconian "conservation" measures to meet even more investor demands?

The water quality issue further complicates the Tribal Water issue. In the Federal case ***City of Albuquerque v Browner***, 865 F Supp. 733 (D.N.M. 1993)**,** the courts permitted the Indian tribes to set more stringent water quality standards than any State and even the EPA to be applied to upstream users. As tribes have claims on both sides of the Colorado River – the major supplier of water to Southern California, this situation sets up a case where the tribes have the authority to demand more water using water quality standards as a bargaining chip. Use of desalinized water to achieve this goal is an obvious means to ensure that tribal/investor water standards can be set arbitrarily high so they get more valuable pure water. Potentially ALL the VWD water reserve could be diverted to their sole use.

One Indian Tribe has already approached the City of San Marcos to establish a casino there. Given the City's rapidly weakening economics and the near elimination of its cash reserves combined with the Tribal and Investor interest in growing these facilities in more urban areas, an Indian off-reservation site for a casino just north of Palomar College would be logical. Such a site would take advantage of a widened Twin Valley Oaks Road and recent and coming improvements in Borden Road, extension of Las Posas Road, and expansion of Buena Creek Road. Having a agricultural valley to boot. This area is a natural target.

Note that water rights were previously transferred by the Feds to the Indian tribes around Lake Henshaw was on the basis that the water would be made up by the Federal Government by relining canals. With the drought, the water has not been replaced as promised. Further, the Indian tribes are pressing for even more water as their Lake reservoir is almost dry. If Indian agriculture and casino comes to this area, the water consequences will be horrific on traffic, carbon taxes and water. This rural area will be a figurative zoo. This should be considered and addressed with a permanent ban on such development agreed to by all Indian Tribes. No "reconsideration" later. No "surprise" fee-to-trust transactions with ""surprise" new heavy water demands.

The Indian Tribes have been treated badly by the standards of the vast majority of Americans even today particularly in mismanaged Government services in health and education. Drug addiction plagues them. The American voters and courts have allowed them a measure asymmetric treatments under the law to establish casino monopolies and a wide ranging measure of special sovereign nation privileges. These measures recognize that Indian Tribes were poorly represented and supported and that these measures of privilege would allow for more rapid improvement in quality of life to the level enjoyed by others. However, Tribes have not prospered equally from casinos. Many are too far from urban centers to thrive. So a measure of further aid is appropriate for those tribes which have not benefited. Further, once tribal members reach a certain level of development, those privileges should be phased out for those fortunate members that no longer need special treatment and and other measures taken to better the lot of the less fortunate.

To be fair, the issue of marijuana growth is a two-edged sword for them. The replacement of a drug cash crop away from food production violates their environmental and tribal values. It also promotes the bad problems their members already have from addictions to alcohol, oxycodone - and marijuana. Illicit marijuana growers steal from their limited water supplies and pollute the land with unregulated fertilizers and insecticides. Tribes are cooperating with Federal agents which violate their lands with their illicit production. Marijuana is a particularly water hungry plant requiring about 8 gallons of water per day. Raising marijuana would also hurt their high standing with voters on which such special privileges are based. Having investors pressure them into drug production is a risky gamble with major dangers – and huge investor profits.

Tribal water quantification can take place at any point in the future – even after tribes and their investors acquire more land in the present.

At the very least, these water demands should be quantified and negotiated fairly with the drought in mind before any project goes forth.
There should be a fair consideration for Indian affairs and relations and the needs of all parties.

An Underappreciated Fire Danger

Moving onto fire issues, the major fatal cause of fire fatalities is smoke inhalation. Yet the existing fire plan for this project primarily addresses safety of structures and the assumption of adequate evacuation routes.
The residential structure defense on the east end involves progressively reducing the height of the fire as it approaches the buildings by considering four rings around the development. The outer ring consists of natural fuel scrub which will be allowed to burn at its expected high rate and height (over six feet). The next ring consists of 50% thinned natural vegetation which will not burn as high. The third zone consists of landscaping which should reduce the height to less than three feet. At less than three feet, the fire is considered to be manageable by emergency vehicles and/or relatively fireproof buildings.
But the smoke and heat from all sections of the rings will inundate the homes. Trapped citizens will likely die from this cause – even though their homes will be saved by the layered protection rings and emergency vehicles. This peculiarity of warped priorities is, of course, inherent in the environmental process which Nixon set up in the EPA to where citizens' lives and money are counted as nothing. But smoke inhalation should obviously be addressed if a successful fire protection plan is really adequate.
The second problem are the traffic snarls that plague the area even today. Historically Twin Oaks Valley and Deer Spring Roads become completely snarled by even minor fender benders. The proposed emergency route through Salver lane requires Twin Oaks Valley and Deer Springs Roads to be free flowing to allow cars to exit through those roads and emergency vehicles to enter. That requires a complete restructuring and expansion of the roads before any residences are in place.

Fire Plan and Water

The fire plan on the west end aggravates the water situation as it depends on landscaping and agriculture for "protection". It speculates that water use from the agriculture will be coming, but requires protective landscaping and its irrigation as a substitute. Obviously both these alternatives must be addressed. The VWD, as many others, has indicated the need for conserving water used in landscaping irrigation; so, the environmental issues of water are clear.

Fire Evacuation Traffic

On the fire plan, note that the traffic coming out of the proposed project primarily must cross an intersection onto Deer Springs. The tendency of this) is to snarl so that no one will be able to cross. The intersection is right by the freeway. There is nothing like an adequate queue from the intersection to the freeway for emergency situations. Total gridlock and death are inevitable. Of course, while human lives are not counted in the environmental impact; even the more protected plants and animals will not be saved as emergency vehicles will be totally blocked from access. Only helicopters and plane drops will be available – which likely will be inadequate given the steep, rugged fuel-rich terrain. The recent Cocos fire resulted in total gridlock and it had less traffic and better roads despite heroic traffic control efforts.
The secondary emergency route through Salver dumps onto Twin Oaks Valley Road which will also be completely blocked. A few scattered homes as the current zoning allows (about 90 homes) would not be a problem. But 2,135 would.
The local fire department has indicated that fire in this area is inevitable. An analysis of probable deaths should be included.
As the severity of a fire threat is high, it will be a natural arson target from fire perverts, careless or troubled teens and terrorists. The same conditions apply to the San Marcos Highlands region also under consideration.

Blasting And Grading

As to the blasting and grading, Supervisor Horn has made it clear that he wants a 6-lane Twin Oaks Valley Road. The blasting and grading will be horrific. The broadly held belief is that the Board of Supervisors will override the proposed two-lane and use the opportunity to insert an environmentally unsupported 6-lane roadway design at the very end of the project approval despite its need for a separate study. As Mr. Horn has indicated his preference for such and will be voting on the final acceptance, expanded grading should be covered in the EIR studies including traffic growth, grading, GHG production, silica dust pollution, etc.
A non-consideration of this option will be a fatal lapse in the EIR preparation..

Concluding Questions

A few questions on the Red Tape Reduction Ordinance. From what I understood, changes can be made by you in the project as part of a "problem solving" authority granted to you by this ordinance. If I understood you correctly, there are no formal limits on the nature of the nature, scope and timing of these changes as ongoing changes are inevitable and part of the normal project progression. Is that correct? Can significant changes be done even after final project approval? How will the public be informed of these changes?

Also this ordinance establishes the right of County Planning Agencies to develop incentives for Project Managers (in charge of "problem solving") to keep the project moving to meet the developer's schedule. Has such a program been formalized and what are the incentives? Is there a written policy and documentation of the schedule and amount of incentives? Who will pay the incentives to benefit the developer? Taxpayers? How will the objectivity and impartially of the Project Managers be assured? If the incentives become progressively more extreme the Project Managers would become employees of Investors (at taxpayer expense?).

Lastly, at the conclusion of General Plan update, certain projects did not get approval under the General Plan for their projects. For reasons that escape me, the Board of Supervisors approved money to help developers develop plans that would be acceptable. This project was to receive over $800,000 of taxpayer money for that purpose. As this project violates so many guiding principles, the new approach appears it will be allowed under a Community Development Model yet to be written. What work was covered with this money? How much has been actually spent supporting this proposal? How will the project meet unspecified undefined Community Development Model requirements for strict environmental controls? It appears the EIR is premature and must be rejected on its face.

Thank you again for your consideration and your forthrightness.

Best regards,

Michael Hunsaker

Chairman, Property Owner Defense League, Inc.

Member of the TOVPOA

CBOC taxpayer rep for San Marcos Unified and Dehesa School Districts.

Citizen Advocate

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