

ATTACHMENT

For Item

#1

Wednesday,
October 16, 2019

PUBLIC COMMUNICATION RECEIVED BY THE
CLERK OF THE BOARD

DISTRIBUTED 10/15/19

From: Cox, Greg
Sent: Monday, October 14, 2019 4:59 PM
To: FGG-DL, LSDOCS
Subject: FW: Item 1, October 16, 2019, San Marcos Highlands Annexation Agreement – Non-opposition
Attachments: EHL-BOS-Item2-SanMarcosHighlands-9.25.19.pdf

From: Dan Silver <dsilverla@me.com>
Sent: Monday, October 14, 2019 4:07 PM
To: Jacob, Dianne <Dianne.Jacob@sdcounty.ca.gov>; Gaspar, Kristin <Kristin.Gaspar@sdcounty.ca.gov>; Fletcher, Nathan (BOS) <Nathan.Fletcher@sdcounty.ca.gov>; Cox, Greg <Greg.Cox@sdcounty.ca.gov>; Desmond, Jim <Jim.Desmond@sdcounty.ca.gov>; Avina, Victor <Victor.Avina@sdcounty.ca.gov>; Wilson, Adam <Adam.Wilson@sdcounty.ca.gov>; Woods, Melanie <Melanie.Woods@sdcounty.ca.gov>; Mills, Benjamin <Benjamin.Mills@sdcounty.ca.gov>; Wier, Emily <Emily.Wier@sdcounty.ca.gov>; FGG-DL, LSDOCS <lstdocs@sdcounty.ca.gov>
Cc: Aghassi, Sarah <Sarah.Aghassi@sdcounty.ca.gov>; Wardlaw, Mark <Mark.Wardlaw@sdcounty.ca.gov>; Talleh, Rami <Rami.Talleh@sdcounty.ca.gov>; Slovick, Mark <Mark.Slovick@sdcounty.ca.gov>; Lardy, Eric <Eric.Lardy@sdcounty.ca.gov>
Subject: Item 1, October 16, 2019, San Marcos Highlands Annexation Agreement – Non-opposition

October 14, 2019

Dianne Jacob, Chair
Board of Supervisors
1600 Pacific Highway
San Diego, CA 92101

RE: Item 1, Sept 25, 2019 (Continued), San Marcos Highlands Annexation Agreement – *Non-opposition*

Dear Chairperson Jacob and Members of the Board:

EHL resubmits this letter on this continued item for your consideration.

Best regards,
Dan Silver

Dan Silver, Executive Director
Endangered Habitats League
8424 Santa Monica Blvd., Suite A 592

Los Angeles, CA 90069-4267

213-804-2750

dsilverla@me.com

www.ehleague.org

ENDANGERED HABITATS LEAGUE

DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE



September 23, 2019

VIA ELECTRONIC MAIL

The Hon. Dianne Jacob, Chair
Board of Supervisors
1600 Pacific Highway
San Diego, CA 92101

**RE: Item 2, September 25, 2019, San Marcos Highlands Annexation Agreement –
*Non-opposition***

Dear Chairperson Jacob and Members of the Board:

Endangered Habitats League (EHL) is *not opposed* to your approval of this multi-party annexation agreement. The annexation agreement is consistent with a settlement agreement reached between EHL and the applicant. We furthermore concur with the County's own analysis (Rincon, August 2019) that the current project complies with Section 6.7.3 of the North County MSCP Planning Agreement between the County and state and federal wildlife agencies. This section ensures that annexations of County land to other jurisdictions will not jeopardize the buildout of the preserve or the coverage of species within the Planning Area, or compromise viable linkage areas within the proposed preserve.

We also wish to commend the County and its Dept of Planning and Development Services for their firm support of the Planning Agreement in comment letters to the City of San Marcos, and to commend the City for respecting the Planning Agreement through a condition of approval. Due to this cooperative approach, the Planning Agreement is working as intended and the North County MSCP can achieve its important goals of regional conservation and development and infrastructure permitting.

Thank you

Yours truly,



Dan Silver
Executive Director

From: Cox, Greg
Sent: Monday, October 14, 2019 5:01 PM
To: FGG-DL, LSDOCS
Subject: FW: San Marcos Highlands - Please reject Annexation

From: Lisa Holley <lisa.k.holley@gmail.com>
Sent: Monday, October 14, 2019 4:11 PM
To: Cox, Greg <Greg.Cox@sdcounty.ca.gov>
Subject: San Marcos Highlands - Please reject Annexation

The Honorable Greg Cox

Sir, I am writing in regards to the proposed annexation of County land to the City of San Marcos for the San Marcos Highlands project. I urge and beg for a **rejection** of this annexation.

I have lived in Southern California for my entire life of 60 + years and have seen nothing but continued urban and suburban sprawl. In most cases there appears to be no real plan to care for the environment in which we all live. No real thought for what the future brings or what good stewardship means. Our quality of life decreases on multiple fronts with no end in sight. When there is a plan, that plan is ignored.

I urge that the County follow its General Plan.

I please urge the County to do the right thing for the environment, the citizens, and the future. The time is NOW to rethink our decisions and actions and do what is sustainable, livable, and right for all. And that is not disregarding the General Plan and once again annexing to support sprawl.

We cannot always take, we need to also preserve and give back. We need to live within our environmental means and consider our quality of life.

Thank-you for your time and consideration.

Sincerely,

Lisa Holley

1903 Esplendido Ave

Vista, CA 92084

760-822-5859

From: Desmond, Jim
Sent: Tuesday, October 15, 2019 9:29 AM
To: clarkemh@aol.com
Cc: FGG-DL, LSDOCS; Mills, Benjamin
Subject: FW: San Marcos Highlands Annexation Agreement, Board of Supervisors Agenda of Oct. 16, 2019, Item #1
Attachments: Highlands, Petition to Court - CEQA litigation 1-13-17.pdf; Highlands, County commt ltr, FEIR.pdf

Dear Mary,

Thank you for your email and letter. I appreciate you sharing your thoughts on this matter. When this item comes before the Board of Supervisors, I will consider your input and all other input before making a decision.

Again, I appreciate you contacting my office. Please feel free to contact me or my Land Use Policy Advisor, Ben Mills, if you have any questions at [\(619\) 531-5555](tel:6195315555).

Sincerely,

Jim Desmond
County of San Diego
Supervisor, 5th District

From: clarkemh@aol.com <clarkemh@aol.com>
Sent: Tuesday, October 15, 2019 8:42 AM
To: Jacob, Dianne <Dianne.Jacob@sdcounty.ca.gov>; Fletcher, Nathan (BOS) <Nathan.Fletcher@sdcounty.ca.gov>; Desmond, Jim <Jim.Desmond@sdcounty.ca.gov>; Gaspar, Kristin <Kristin.Gaspar@sdcounty.ca.gov>; Cox, Greg <Greg.Cox@sdcounty.ca.gov>
Cc: Wilson, Adam <Adam.Wilson@sdcounty.ca.gov>; Wier, Emily <Emily.Wier@sdcounty.ca.gov>
Subject: San Marcos Highlands Annexation Agreement, Board of Supervisors Agenda of Oct. 16, 2019, Item #1

Dear Supervisors Jacob, Fletcher, Desmond, Gaspar, and Cox:

In addition to the letter that I sent to you on Oct. 10, 2019, in opposition to the Annexation Agreement for the San Marcos Highlands project, I feel that it is important to bring to your attention two additional issues regarding Item #1 on your 10-16-19 agenda:

First, the Board of Supervisors is being asked to find that the Final Environmental Impact Report (FEIR) for the San Marcos Highlands project was completed in compliance with the California Environmental Quality Act.

This is problematic because the San Marcos Highlands FEIR was challenged in court due to its CEQA deficiencies. According to the Superior Court, County of San Diego, North County, the court case (#37-2017-00001434-CU-WM-NC) has been "stayed" and will continue to be on the books until the Petitioner, Endangered Habitats League, requests to dismiss the Petition.

I am attaching the Petition to the Court that established the basis for the litigation. Please especially note the section, "First Cause of Action," beginning on page 10 of the Petition.

Second, the Board of Supervisors is being asked to attest to reviewing and considering the information contained in the FEIR before approving the Annexation Agreement. As part of this review, I urge you to consider the letter sent by the

County to the City of San Marcos, dated Sept. 6, 2016, "Comments on the Final EIR ...for the San Marcos Highlands Project..." This letter (attached) raises many issues with the FEIR, in the areas of climate change (GHG), land use, biological resources, and traffic and transportation. I believe that your review and consideration of this letter will preclude you from approving the Annexation Agreement.

Thank you for your consideration of these issues.

Sincerely,

Mary H. Clarke

Co-Chair, North County MSCP Task Force, Sierra Club, San Diego Chapter

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5 Carlsbad, California 92011
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8
9 Attorneys for Petitioner and Plaintiff
10 ENDANGERED HABITATS LEAGUE, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

ENDANGERED HABITATS LEAGUE,
INC.

Petitioner and Plaintiff,

vs.

CITY OF SAN MARCOS; CITY COUNCIL
OF SAN MARCOS; and DOES 1 through 20,
inclusive,

Respondents and Defendants.

FAROUK KUBBA; VISTA SAN MARCOS
LIMITED, a California Limited Partnership;
and DOES 21-50,

Real Parties in Interest.

Case No.

**PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF
[CEQA]**

INTRODUCTION

1. In this action, Petitioner and Plaintiff, Endangered Habitats League, Inc. ("EHL"), challenges: Respondents' and Defendants', City of San Marcos ("City") and City Council of San Marcos ("Council"), approval of the San Marcos Highlands Project (the "Project"), Project No. P13-0009; Certification of a Final Environmental Impact Report ("EIR") for the Project (EIR

1 15-001), State Clearinghouse No. 1999071007; [Adoption of a Mitigation Monitoring and
2 Reporting Program, Findings of Fact]; General Plan Amendment (GPA 15-002); Zoning Change
3 (ROZ 14-001); Specific Plan Amendment (SP 13-001); Tentative Subdivision Map (TSM 13-
4 001); Major Conditional Use Permit (CUP 13-010); Ridgeline Development Permit (ROZ 14-
5 001);and Prezone (PZ-14-001) . Petitioner challenges the Project based on the City's failure to
6 proceed in a manner required by the California Environmental Quality Act ("CEQA"), Pub. Res.
7 Code §21000 *et seq.*, failure to support findings and conclusions with substantial evidence and
8 inconsistency with applicable plans and agency agreements and requirements thereunder.

9 2. The Project site is located at the northern terminus of north Las Posas Road in the
10 northern part of the City and includes 293.3 undeveloped acres. Of this area, 141.14 acres (48
11 percent) are within the City. The remaining 152.16 acres (52 percent) are located within the
12 County of San Diego ("County"). Approximately 262.14 acres of the Project site are within the
13 San Marcos Highlands Specific Plan area; 26.47 contiguous acres would serve as a
14 mitigation area for Project-related biology impacts, and 4.7 off-site acres would be dedicated
15 as a habitat linkage easement.

16 3. The Project proposes development of a community of 189 single family homes, a
17 public park, 2 private mini-parks and 210.8 acres of preserved natural open space.

18 4. The portion of the Project site within the County is currently zoned A-70 with a
19 General Plan Designation of SR-10 Semi-Rural Residential permitting 1 unit per 10 acres. The
20 portion within the City is Zoned SPA [Specific Plan Area] and per the San Marcos Highlands
21 Specific Plan, 230 dwelling units are permitted.

22 5. The Project proposes annexation of 124.69 acres within the County into the City
23 through a separate application to the San Diego Local Agency Formation Commission
24 ("LAFCO"). Land to the north of the Project is zoned A-70 and has a County General Plan
25 Designation of SR-2 Semi-Rural Residential permitting 1 unit per 2 acres. Land to the west is
26 currently zoned A-70 with a County General Plan Designation of SR-10 Semi-Rural Residential.
27 Vacant land to the east of the Project is located within the City and zoned as Agricultural (A-1)
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1 and Open Space (O-S); only the land to the south is developed with the Santa Fe Hills
2 community, zoned as a Specific Plan Area. Southwest of the Project site is the proposed Murai
3 project for an additional 89 homes.

4 6. Agua Hedionda Creek runs through the Project site which includes large areas of
5 biological significance including 77 acres of impacted Coastal Sage Scrub ("CSS") in which the
6 federally threatened California Gnatcatcher has been identified.

7 7. The Project site has high habitat value and biological significance and includes
8 two Natural Community Conservation Planning ("NCCP") areas. The NCCP takes a broad-based
9 ecosystem approach to planning for the protection and perpetuation of biological diversity (Fish
10 & Game Code §2800). The southern portion of the Project site (141 acres) is within the San
11 Diego Association of Governments ("SANDAG") adopted Multiple Habitat Conservation
12 Program ("MHCP") encompassing the cities of Carlsbad, Encinitas, Escondido, Oceanside, San
13 Marcos, Solana Beach and Vista. The northern portion is within the County, part of the North
14 County Multiple Species Conservation Program ("NCMSCP") and is subject to, but not
15 compliant with, recommended development limits of 25% and minimum wildlife corridor widths
16 of 1000 feet.

17 8. In particular, the portion of the Project site located within the County (152.16
18 acres) is designated as Pre-Approved Mitigation Area ("PAMA") in the draft NCMSCP and
19 subject to the adopted NCMSCP Planning Agreement between the County and the United States
20 Fish and Wildlife Service ("USFWS") and California Department of Fish and Wildlife
21 ("CDFW") (collectively "Wildlife Agencies") which requires:

22 In the event land within the County's jurisdiction is annexed to another
23 jurisdiction an agreement shall be reached between the County, annexing
24 jurisdiction, USFWS and CDFW as part of the annexation process to
25 ensure that annexation would only occur when the annexation will not
26 jeopardize the build-out of the preserve or the coverage of species within
27 either of the Planning Areas, or compromise viable habitat linkages within
28 the proposed preserve...

As of the filing of this Petition, no such agreement has been reached and Petitioner is
informed and believes that no concrete steps have been taken among the identified parties to

1 reach such required agreement.

2 9. In addition to the approvals by the City, the Project requires modification of the
3 Vallecitos Water District sewer district boundary; modification of the boundaries of the Vista
4 Irrigation District and Vallecitos Water District boundaries; and modification of the boundaries
5 of the San Marcos Fire District. The Project also requires resource regulatory permits from the
6 US Army Corps of Engineers ("ACOE"), California Regional Water Quality Control Board and
7 CDFW due to the unique environmental aspects of the Project site.

8 10. As the designated "Lead Agency" (Pub. Res. Code § 21067) for the Project, City
9 approved the Project and certified the Final EIR and General Plan Amendment (GP 15-002);
10 Zoning Change (ROZ 14-001); Specific Plan Amendment (SP 13-001); Tentative Subdivision
11 Map (TSM 13-001); Major Conditional Use Permit (CUP 13-010); Ridgeline Development
12 Permit (ROZ 14-001); and Prezone (PZ-14-001) on December 13, 2016. City certified the EIR
13 despite serious concerns expressed by numerous citizens, organizations, including Petitioner, and
14 other responsible and trustee agencies regarding: the EIR's omissions and errors; the EIR's
15 failure to properly and fully analyze the Project's significant environmental impacts; the
16 adequacy of mitigation measures or a reasonable range of alternatives proposed to reduce or
17 mitigate these impacts; the inadequacy of evidence in support of environmental findings and
18 conclusions; and inconsistencies with applicable plans and agreements and requirements
19 thereunder.

20 11. As approved, the Project EIR: fails to provide an adequate Project baseline or
21 environmental setting identification and analysis; fails to provide adequate impact analysis or
22 feasible avoidance or mitigation for significant impacts in the following areas: biological
23 resources, fire safety/hazards and hazardous materials, land use, utilities/availability of water to
24 serve the project, traffic, climate change, growth inducement and cumulative impacts. The
25 Project fails to provide a reasonable range of alternatives. The EIR fails to provide adequate
26 responses to public comments. The City abused its discretion in failing to recirculate the EIR
27 after significant new information was added after the close of public review and comment.
28

12. After circulation of the draft EIR, significant new information was added to the EIR including a new project alternative - Increased Habitat Linkage Alternative (4-2, 4-4 through 4-36, Figure 4.4-3 and Table 4.5-1); a significantly revised technical appendix employing a new significance threshold at Appendix H – Updated Global Climate Change Evaluation; an entirely new Appendix J.4 – Addendum to Preliminary Review of Hydrogeological Conditions; a more recent version of the Biological Resources Report after an older version was included in the draft EIR in error; and on September 1, 2016, a Final Technical Memorandum to the San Marcos Highlands Water and Sewer Study. These changes to the draft EIR required its recirculation for additional public review and comment prior to approval.

13. In approving the Project, City has failed to comply with CEQA, Pub. Res. Code § 21000 *et seq.* Petitioner therefore seeks alternative and peremptory writs of mandate under Code of Civil Procedure §§1085 and 1094.5 directing Respondent City to vacate and set aside its approvals of the Project and certification of the EIR for the Project. These claims are based on the foregoing and following allegations:

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to §§ 1085, 1094.5, and 187 of the California Code of Civil Procedure and §§ 21168 and 21168.5 of the Public Resources Code.

15. Venue for this action properly lies in the Superior Court of California for San Diego County, North County Division, under the local rules of the San Diego Superior Court and because Respondent City of San Marcos and the proposed site of the Project are located in San Diego County and the violations of Petitioner's rights occurred in San Diego County.

THE PARTIES

16. Petitioner and Plaintiff ENDANGERED HABITATS LEAGUE, INC. ("EHL") is a tax exempt, non-profit, public interest corporation, under California law devoted to sustainable land use planning in Southern California and to the preservation of its native species and the ecosystems upon which these species depend for their survival. EHL submitted timely

1 comments to the City regarding the Project and the inadequacies of the EIR. EHL's core
2 organizational purposes, and the interest of its members—many of whom reside in San Diego
3 County—are directly, adversely, and irreparably affected, and will continue to be prejudiced by
4 the Project and its components, as described herein, until and unless this Court provides the relief
5 prayed for in this petition. The maintenance and prosecution of this action will confer a
6 substantial benefit on the public by protecting the public from the environmental and other harms
7 alleged herein. Petitioner submitted timely comments on the Project, including but not limited to,
8 the inadequacy of the EIR and findings thereunder, the City's failure to comply with CEQA, the
9 inadequacy of evidence in support of findings and conclusions and Project inconsistencies with
10 applicable plans and agency agreements and testified at hearings on the Project before the
11 Planning Commission and City Council.

12 17. Respondent CITY OF SAN MARCOS ("City") is a local governmental agency
13 and political subdivision of the State of California charged with the authority to regulate and
14 administer land use activities within its boundaries, subject at all times to the obligations and
15 limitations of all applicable state, federal, and other laws, including CEQA, the CEQA
16 Guidelines and California Planning and Zoning Law. As the CEQA Lead Agency for the
17 Project, City certified the EIR and approved the Project.

18 18. Respondent CITY COUNCIL OF CITY OF SAN MARCOS ("Council") is the
19 legislative body and the highest administrative body of City.

20 19. Real Parties in Interest, FAROUK KUBBA and VISTA SAN MARCOS
21 LIMITED (collectively "Applicant") are, respectively, an individual and a California limited
22 partnership and identified by City as the applicant for the entitlements that constitute the Project.
23 Based on the status of the Applicant as the only identified applicant and owner for the Project,
24 and on Petitioner's information and belief, they adequately represent the interests of any and all
25 other non-joined parties in the Project.

26 20. Petitioners are currently unaware of the true names and capacities of Respondents,
27 Does 1 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1
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1 through 20, inclusive, are agents of City, state, or federal government who are responsible in
2 some manner for the conduct described in this petition, or other persons or entities presently
3 unknown to Petitioner who claims some legal or equitable interest in the Project that is the
4 subject of this action. Petitioner will amend this petition to show the true names and capacities
5 of Does 1 through 20 when such names and capacities become known.

6 21. Petitioner is currently unaware of the true names and capacities of Real Parties in
7 Interest, Does 21 through 50, inclusive. Does 21 through 50, inclusive, are persons or entities
8 presently unknown to Petitioner who claim some legal or equitable interest in the Project that is
9 the subject of this action. Petitioner will amend this petition to show the true names and
10 capacities of Does 21 through 50 when such names and capacities become known.

11 GENERAL ALLEGATIONS AND ADMINISTRATIVE PROCEDURAL HISTORY

12 22. The Project proposes construction of 189 single-family homes and associated
13 infrastructure on 293.3 acres of land which includes: 262 acres within the San Marcos Specific
14 Plan Area (SPA); 26.7 acres of contiguous open space which is outside the SPA; and 4.7 acres of
15 offsite habitat linkage easement. Of the total acreage, the Project proposed annexation of 124.69
16 acres of land within the County through a separate application to LAFCO.

17 23. In 1990, the Applicant proposed and the City approved a Specific Plan, Tentative
18 Subdivision Map, and Environmental Impact Report at the Project site for 275 single-family lots,
19 101 acres of open space and a park. After two (2) requested time extensions, the tentative
20 subdivision map for these approvals expired in 1998.

21 24. In 1998, the Applicant submitted another Specific Plan Amendment and a new
22 map for 230 single-family lots, 138 acres of open space and a park on the Project site. A
23 Mitigated Negative Declaration was prepared but, based on public comment, a Supplemental
24 EIR related to the Environmental Impact Report adopted in 1990 was prepared. In 2002, the
25 City Planning Commission recommended denial of the proposed project to the Council. The
26 Council approved the Specific Plan Amendment, Tentative Subdivision Map and Supplemental
27 EIR.
28

1 25. In 2004, the Applicant submitted a request for a two-year time extension for the
2 approved 230-lot Tentative Map. The Planning Commission denied the extension; on appeal,
3 the Council approved a one-year time extension.

4 26. In 2005, a second time extension was approved by the Planning Commission but
5 denied on appeal to the Council.

6 27. In 2013, the Applicant submitted the Project challenged herein, proposing a
7 Specific Plan Amendment and Tentative Subdivision Map to allow construction of 198 single-
8 family homes within the San Marcos Highlands Specific Plan Area. During the review process
9 the number of residential lots was reduced to 189.

10 28. Environmental analysis of the Project was initially prepared as a Mitigated
11 Negative Declaration circulated for public review in October/ November 2013. However, in
12 response to public comments, a new Environmental Impact Report (EIR 15-001) was prepared,
13 and on June 23, 2015, City issued a Draft EIR for the Project with a public comment period
14 ending August 24, 2015.

15 29. During circulation of the Draft EIR for the Project, agencies and members of the
16 public, including Petitioner, provided comments on the Draft EIR which contained, among other
17 things, objections to the EIR's: Project baseline or environmental setting identification and
18 analysis; failure to provide adequate impact analysis or feasible avoidance or mitigation for
19 significant impacts in the following areas-- biological resources, fire safety, hazards and
20 hazardous materials, growth-inducing impacts, land use, utilities, traffic, climate change, and
21 cumulative impacts; failure to discuss a reasonable range of alternatives; and identifying the need
22 to recirculate the EIR for public comment and review.

23 30. Following circulation of the draft EIR, the City made significant changes to the
24 draft document, including, but not limited to: addition of a new project alternative - Increased
25 Habitat Linkage Alternative; inclusion of a significantly revised technical appendix employing a
26 new significance threshold at Appendix H – Updated Global Climate Change Evaluation;
27 addition of an entirely new Appendix J.4 – Addendum to Preliminary Review of
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1 Hydrogeological Conditions; substitution of a more recent version of the Biological Resources
2 Report after an older version was included in the draft EIR in error; and on September 1, 2016,
3 inclusions of a Final Technical Memorandum to the San Marcos Highlands Water and Sewer
4 Study. Members of the public and the County indicated these changes to the draft EIR after
5 public review and comment required recirculation of the EIR for additional public review and
6 comment prior to approval.

7 31. In or about June 2016, the City released the final EIR without recirculating the
8 document.

9 32. At its meeting of September 6, 2016, the City Planning Commission
10 recommended approval of the Project and certification of the EIR.

11 33. On November 15, 2016, the Council certified the Final EIR, adopted findings of
12 fact, and adopted a Mitigation Monitoring and Reporting Program. The Council also approved
13 the various components of Project approval and implementation including General Plan
14 Amendment (GP 15-002); Zoning Change (ROZ 14-001); Specific Plan Amendment (SP 13-
15 001); Tentative Subdivision Map (TSM 13-001); Major Conditional Use Permit (CUP 13-010);
16 Ridgeline Development Permit (ROZ 14-001); and Prezone (PZ-14-001). At the December 13,
17 2016 Council meeting, after a final reading of the relevant Project ordinances, the Project
18 received final approval. On December 14, 2016, City filed a Notice of Determination for the
19 Project.

20 EXHAUSTION OF ADMINISTRATIVE REMEDIES

21 AND INADEQUATE REMEDIES AT LAW

22 34. As a result of Respondent City's approvals without CEQA compliance, Petitioner
23 will suffer great and irreparable environmental harm as described herein. Petitioner has no
24 adequate remedy at law for this irreparable harm.

25 35. Petitioner has exhausted all administrative remedies by submitting written
26 comments and oral testimony to City prior to Project approval, requesting compliance with
27 CEQA and the completion of full and adequate environmental review and compliance with all
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1 relevant state and local laws. All issues raised in this petition were raised in a timely manner
2 before Respondents by Petitioner, other members of the public, or public agencies.

3 36. Petitioner has complied with Public Resources Code § 21167.5 by prior service of
4 a notice upon City and Council indicating its intent to file this Petition. Proof of Service of this
5 notification, with the notification attached, is attached as Exhibit A.

6 37. This petition is timely filed in accordance with Public Resources Code § 21167
7 and CEQA Guidelines § 15112.

8 38. Respondents have abused their discretion, failed to proceed in the manner
9 required by law, failed to support findings and conclusions with substantial evidence and acted
10 inconsistently with applicable plans and agency agreements and requirements thereunder in the
11 following ways:

12 **FIRST CAUSE OF ACTION**
13 **Violation of CEQA (Public Resources Code § 21000 et seq.)**
14 **(By Petitioner Against Respondents City and Council)**

15 39. Petitioners hereby incorporate by reference each and every allegation set forth
16 above.

17 40. CEQA requires that a Lead Agency prepare a legally adequate EIR prior to
18 approving any discretionary project that may have a significant environmental effect. The EIR
19 must fully disclose and analyze the project's potentially significant environmental effects. The
20 Lead Agency is also required pursuant to CEQA to consider mitigation measures and alternatives
21 that would reduce or avoid the project's significant environmental effects, to adopt all feasible
22 mitigation measures and/or alternatives, and to determine that proposed mitigation measures will
23 or will not be effective in avoiding or substantially lessening the project's significant
24 environmental impacts.

25 41. CEQA requires that an EIR must provide a complete and accurate description of
26 both the project and the project's environmental setting.

27 42. The EIR must provide sufficient environmental analysis such that decision-
28 makers can intelligently consider environmental consequences when acting on proposed projects.

1 Mitigation measures adopted for a project's significant environmental effects must be specific,
2 enforceable and not deferred.

3 43. As Lead Agency, City has a clear, present, and mandatory duty to analyze and
4 adopt all feasible mitigation measures as well as consider a reasonable range of alternatives and
5 adopt any feasible alternative that would substantially lessen the significant environmental
6 effects of the Project.

7 44. In approving the Project and certifying the EIR, CEQA requires that the Lead
8 Agency must find either (1) that the project's significant environmental effects have been
9 mitigated or avoided or (2) that the unmitigated impacts are outweighed by specific overriding
10 economic, legal, social, technological, or other benefits of the project.

11 45. In approving the Project, the City's findings and impact and mitigation
12 conclusions must be supported by substantial evidence.

13 46. City's findings and conclusions are not supported by substantial evidence and
14 City has failed to proceed in a manner required by CEQA in the following respects, among
15 others:

16 **The EIR Fails to Properly Identify the Environmental Setting and Baseline as**
17 **Related to County Zoning and Impacts Resulting from Proposed Plan Zoning**
18 **Versus Current County Zoning.**

19 47. The EIR must accurately describe the existing environmental conditions on the
20 Project site; this is referred to as the project's environmental setting (Guidelines §15125) which
21 is used to establish a baseline for analyzing the project's environmental impacts and alternatives.
22 In order to provide accurate environmental impact assessment, which is the fundamental purpose
23 of an EIR, the EIR "must delineate environmental conditions prevailing absent the project,
24 defining a 'baseline' against which predicted effects can be described and quantified."

25 *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 447.

26 The EIR failed to accurately identify and adequately analyze the existing zoning on the portions
27 of the Project site within unincorporated areas of the County and its baseline for project impacts
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1 fails to comply with CEQA requirements and is inadequate.

2 48. Fifty-two percent of the Project site is within an unincorporated area of the
3 County and currently subject to the County's General Plan. The EIR fails to analyze impacts
4 relative to this on-the-ground, baseline condition and all relevant policies, goals and
5 requirements of the County General Plan and zoning.

6 49. The portion of the Project located on County land is currently zoned, under the
7 County's General Plan, as Rural Residential 10. As part of the County's General Plan Update
8 process, City informed the County of City's Specific Plan as applied to the relevant portion of
9 the Project site which allowed for greater density. The County still adopted the Rural Residential
10 10 category noting that site constraints related to steep slope, wetlands, habitat value and fire
11 hazards supported the Rural Residential 10 designation and further that development at the
12 proposed density would be both inconsistent with the County's General Plan and impact regional
13 conservation planning.

14 50. County zoning differs significantly from the Project for those portions of the
15 Project site within County land. The appropriate baseline for CEQA analysis as to that County
16 land was and is the County General Plan designation. The EIR fails to accurately describe the
17 existing environmental setting and fails to adopt the appropriate existing County Plan
18 designation as the baseline for its analysis of the Project's environmental impacts.

19 **The EIR Fails to Adequately Analyze Significant Biological Impacts and Provide**
20 **Appropriate Mitigation; Significance Conclusions Are Unsupported.**

21 51. The Project site is home to a rich diversity of plant and animal life. It has been
22 identified as containing very high species values in both the MHCP adopted by the San Diego
23 Association of Governments and the County's draft NCMSCP. The MHCP designates the land
24 as Biological Core and Linkage Area ("BCLA"); the NCMSCP designates the land as Pre-
25 Approved Mitigation Area ("PAMA"). Biologists have observed 167 native plant species and 82
26 native animal species on the Project site. The Project area is critical to completion of a
27 functional regional preserve system, regional wildlife movement and contains a key, significant
28

1 wildlife corridor.

2 52. The Project provides an inadequate wildlife corridor inconsistent with 1000 foot
3 minimum corridor widths specified in the NCMSCP and fails to comply with 25% development
4 limits recommended in the NCMSCP. The wildlife corridor proposed on the north, County
5 portion of the Project is only 500 feet wide and has a pinch point that is only 400 feet wide for
6 500 feet. Development of the County, NCMSCP portion of the property exceeds the 25%
7 development/75% preservation ratio; will develop 46% of the County lands and preserve only
8 53% of the County PAMA land; reduces the size of the PAMA; and affects the viability of the
9 NCMSCP and PAMA lands as a functioning preserve.

10 53. The Project fails to provide required agreements between the Wildlife Agencies,
11 the County and the City as specified in the NCMSCP binding Planning Agreement or comply
12 with the terms of the agreement including section 6.7.3 which requires that an “annexation will
13 not jeopardize the buildout of the preserve or coverage of species within either the Planning
14 Area, or compromise viable habitat linkages within the proposed preserve, and that development
15 of the annexed lands proceeds in accordance with the Planning Goals...and the Preliminary
16 Preservation Goals” set out in the agreement.

17 54. As a result of these omissions, the EIR conclusions and City findings regarding
18 mitigation of significant biological impacts are unsupported by substantial evidence.

19 55. The EIR fails to address and fails to provide adequate mitigation for the
20 permanent loss of 77 acres of rare coastal sage scrub and associated impacts to the federally
21 listed threatened California Gnatcatcher; and fails to identify impacts and provide adequate
22 mitigation for loss of a regionally significant wildlife corridor

23 56. The EIR is premised on studies which are incomplete and fail to identify all
24 protected wetlands. The August 4, 2014, “Highlands Site San Marcos Wetland Delineation”, by
25 Everett and Associates is not complete in terms of examining the possible causes of the dry
26 conditions found in the previously delineated “waters of the U.S.” New groundwater wells have
27 been drilled in the area and are proposed as part of the Project that may impact and accelerate
28

1 significant, adverse impacts to wetlands. Existing wells have increased production adversely
2 impacting wetlands. These impacts are not identified and the Project's groundwater and
3 associated wetland impacts are not mitigated in the EIR.

4 57. The Project site has been subject to documented drought conditions during the
5 period of environmental review and EIR preparation yet the EIR fails to employ Army Corps of
6 Engineers ("ACOE") guidelines for performing wetland delineations in drought conditions.

7 58. Petitioner is informed and believes and thereon alleges that the section 7
8 consultation between USFWS and ACOE as required by the federal Endangered Species Act is
9 outdated and/or the permits issued thereunder have expired and are of no force or effect and that
10 such permits do not take into consideration the improved drought conditions in the area. The
11 EIR indicates all permits are in place and relies on these permits for significance and mitigation
12 conclusions. Permits are not a shortcut or substitute for the City's impact assessment under
13 CEQA based on significance criteria and do not furnish substantial evidence in support of impact
14 significance and mitigation conclusions; the EIR's conclusions based thereon are unsupported.

15 59. The EIR fails to properly analyze and mitigate impacts to California native plants.
16 The survey of land in the County PAMA and City BCLA failed to include, identify, analyze
17 impacts to or mitigate impacts to native grasslands present on the Project site and failed to survey
18 List 2 Ceanothus species documented as present on the Project site as early as 1989.

19 60. On-site avoidance, conservation, management, and minimization of impacts are
20 both facially inadequate and not adequately evaluated. Inadequate migration trails for animals
21 negatively impact native plant migration as well since plants migrate on animals, especially
22 when fire break clearing efforts occurs annually. The presence of Wildlife Agency approved
23 biological monitors and proposed transplanting of sensitive plants are both recognized as
24 ineffective means of protecting native plant species.

25 61. The EIR's mitigation conclusions rely upon the preparation of a Habitat
26 Mitigation and Monitoring Plan ("HMMP"). The HMMP provided in conjunction with the draft
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28

1 EIR and available for public review is outdated and other than removal of a water quality control
2 portion of the HMMP is identical to an earlier, outdated 2005 HMMP.

3 62. The EIR proposes as mitigation for Project impacts a wildlife a corridor along the
4 northern perimeter of the site which is 400 feet wide at its narrowest point, not including fuel
5 modification zones. The minimum, adequate width for wildlife corridors recommended by the
6 Wildlife Agencies and applicable NCCP plans in order to avoid impacts to affected wildlife is
7 1000 feet; the EIR fails to adequately explain, avoid or mitigate for this discrepancy and
8 unmitigated effects.

9 63. The Project consists of two, separate development areas which are located on
10 either side of the extension of Las Posas Road. The road and the Project will bisect and divide
11 the Project site, interrupting previously contiguous habitat, linkages and corridors. The EIR
12 proposes as mitigation for impacts to wildlife a culvert under Street A as it crosses Agua
13 Hedionda creek which traverses the site. The proposed culvert is 10 feet high, 12 feet wide and
14 159 feet long. Petitioner is informed and believes and thereon alleges that the Wildlife Agencies
15 have indicated that the proposed culvert is too small to permit movement of larger mammals and
16 will therefore not mitigate the significant impacts identified by the EIR. No substantial evidence
17 supports the mitigation conclusion that this culvert will mitigate impacts as described.

18 **The EIR Fails to Adequately Address Fire Hazard Issues and Impacts and**
19 **Mitigation for Such Hazards is Impermissibly Deferred.**

20 64. The EIR identifies the Project site within a Very High Fire Hazard Severity Zone.
21 The EIR acknowledges that the Project site's location in this hazard area represents a potentially
22 significant impact and mitigation is required to reduce potential wildfire hazard. The mitigation
23 provided fails to reduce impacts to a level of insignificance.

24 65. The Fire Protection Plan ("FPP") found at Appendix L to the EIR analyzes fire
25 hazards and proposes mitigation measures for those hazards (p. 4). The FPP analyzes the
26 survivability of the Highlands community under a "worst case" scenario of northeast winds with
27 gusts of 60 mph (Santa Ana winds) and "rare event" 30 mph southwest winds during a wildland
28

1 wildfire event (p. 13). However, the FPP acknowledges that the Rice Fire of 2007 in northern
2 San Diego County involved wind gusts of 100 mph (p. 14). The fire behavior modeling fails to
3 include analysis of the documented, actual worst case scenario experienced in the Rice Fire
4 necessary for an accurate analysis of fire hazards and necessary mitigation.

5 66. The FPP acknowledges several times at pp. 24-26 that there may be no first
6 responders in a fire event and relies on hardened homes, fuel modification and survivable space
7 in the probable event of no first responders. An evacuation plan and homeowner education are
8 critical but missing components of an adequate FPP under these circumstances which
9 acknowledge that homeowners may be left to fend for themselves. No community is fire proof
10 and the FPP should, but does not, include an evacuation plan and homeowner education
11 component.

12 67. The FPP concludes that with proposed fuel modification treatments, “firewise”
13 landscaping, and the use of ignition resistive building construction standards, the wildfire threat
14 will be mitigated to less than significant levels. However, in addition to fire behavior modeling
15 failing to use the documented worst case scenario, mitigation measures critical to the EIR’s
16 mitigation conclusions fail to include enforcement mechanisms and the EIR and FPP therefore
17 fail to demonstrate that the measures will effectively mitigate fire dangers.
18

19 68. The FPP bases its mitigation conclusions on “strict adherence” to Fuel
20 Modification requirements (pp. 25-26) but provides no enforcement mechanism for fuel
21 modification measures on individual homeowner lots. In particular, Zone 1 of the fuel
22 modification plan/zones is the first 50 feet surrounding the homes, i.e. the private homeowner
23 yard. The FPP requires this area to be irrigated, to avoid exotic pest plants, and provides very
24 specific limitations and prohibitions relating to permitted and unpermitted landscaping (pp. 31-
25 33). Zone 1 criteria are also applied to manufactured slopes within the project, as well as setback
26 zones, some of which will be lot owner maintained (pp. 33-35). However, the FPP and EIR are
27 devoid of any enforcement mechanism for these components critical to the efficacy of the FPP.
28

1 69. Maintenance of the fuel treatment zones is identified in the FPP as “highly
2 important” and to be “performed year-round” (p. 35). The responsibility for fuel modification
3 maintenance “shall remain with each lot owner” (*Id.*). Only in its “recommendations” section
4 does the FPP indicate homeowners “are personally responsible for all required fuel treatment
5 measures on their lot” and recommends, but does not require, that the HOA have authority for
6 enforcing required fuel treatment measures (p. 38). These “recommendations” should be but are
7 not conditions of project approval.

8 70. The approval documents and mitigation measures relating to fire hazards also
9 lack enforcement mechanisms and provide no assurance of implementation by homeowners (see
10 Tentative Map resolution pp. 14-15; and CEQA Findings p. 18-19). MM Haz-2c recites that
11 homeowners shall be responsible for all required fuel treatment measures on their lot and places
12 responsibility on the HOA to ensure completion of all required fuel modification treatment prior
13 to the annual fire season. However, no specific enforcement mechanisms are provided to assure
14 homeowner compliance such as mandatory CC&R provisions detailing assessment of fines for
15 non-compliance, HOA periodic inspections and articulated procedures for non-compliance and
16 correction.

17 71. If an “EIR puts off analysis or orders a report without either setting standards or
18 **demonstrating how the impact can be mitigated in the manner described in the EIR,**”
19 mitigation will be considered impermissibly deferred. *Preserve Wild Santee v. City of Santee*
20 (2012) 210 Cal.App.4th 260, 280-81 *quoting Clover Valley Foundation v. City of Rocklin* (2011)
21 197 Cal.App.4th 200, 236. If the City cannot demonstrate how the fire hazard impacts can be
22 mitigated in the manner described in the EIR, and a listed mitigation measure fails to remedy the
23 identified environmental problem, impermissible deferral has occurred. *Gray v. County of*
24 *Madera* (2008) 167 Cal.App.4th 1099, 1119.

25 72. The EIR and mitigation thereunder fail to ensure that residents of the Project and
26 surrounding developments will be able to safely evacuate the area in the event of a fire
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1 emergency. The Project will expose people to a significant risk of injury or death involving
2 wildland fires. The Project's wildland fire hazards remain significant and unmitigated and
3 significance and mitigation conclusions are unsupported by substantial evidence.

4 **The EIR Fails to Adequately Analyze the Project's Consistency with the County**
5 **General Plan Regarding Public Safety and Fire Hazards.**

6 73. The EIR acknowledges the Project would expose current and future residents in
7 the area to a significant risk of injury or death involving wildland fires. As proposed and
8 approved, the Project is inconsistent with the Goals, Objectives, and Policies of the County
9 regarding public safety and fire hazards. These plan inconsistencies constitute significant and
10 unavoidable impacts that the EIR has failed to identify, avoid or mitigate. The EIR's consistency
11 conclusions regarding public safety and fire hazards are based on incomplete and inadequate
12 analysis, and not supported by substantial evidence.

13 74. By virtue of the EIR's proposed, increased project density, the Project is
14 inconsistent with the County General Plan Policy LU-6.11 which requires development, to
15 "[a]ssign land uses and densities in a manner that minimizes development in extreme, very high
16 and high fire threat areas or other unmitigable hazardous areas."

17 75. In the absence of an evacuation plan, FPP enforcement mechanisms and adequate
18 analysis and modeling of traffic and transportation during a fire-related emergency, the EIR has
19 not identified the relevant natural hazards and lacks substantial evidence to support its
20 conclusions that fire hazards have been mitigated or that the Project is consistent with County
21 General Plan policies.

22 **The EIR Fails to Accurately Analyze the Project's Consistency with the County**
23 **General Plan and the NCMSCP and Consistency Conclusions Are Unsupported by**
24 **Substantial Evidence.**

25 76. The EIR's consistency analysis of the Project with the Goals, Objectives, and
26 Policies of the County General Plan and NCMSCP regarding land use is incomplete and
27 inadequate. The EIR fails to identify or analyze multiple County General Plan provisions
28

1 relevant to and applicable to the County lands within the Project. Significant impacts due to
2 inconsistencies with applicable land use plans and policies have not been properly analyzed and
3 avoided or mitigated.

4 77. The Project will have a significant impact if it conflicts with applicable land use
5 plans, policies, or regulations of an agency with jurisdiction over the project adopted for the
6 purpose of avoiding or mitigating an environmental effect. The EIR's conclusions of less than
7 significant impacts are not supported by substantial evidence.

8 78. The Project is inconsistent with the County General Plan which states as follows:
9 Land Use Policy 4.5: "Coordinate with LAFCO to oppose annexations by neighboring cities that
10 would result in land uses incompatible with unincorporated lands."

11 79. The Project is inconsistent with the following County goals and policies related
12 to conservation and community character and the EIR fails to include the applicable County
13 policies, including, but not limited to:

14 Goal 2: Maintenance of the County's Rural Character. Conservation and enhancement of the
15 unincorporated County's varied communities, rural setting, and character.

16 Policy: LU-2.3 Development Densities and Lot Sizes. Assign densities and minimum lot sizes in
17 a manner that is compatible with the character of each unincorporated community.

18 Policy: LU-2.6 Development near Neighboring Jurisdictions. Require that development in the
19 proximity of neighboring jurisdictions retain the character of the unincorporated community and
20 use buffers or other techniques where development in the neighboring communities is
21 incompatible.

22 Development – Environmental Balance. A built environment in balance with the natural
23 environment, scarce resources, natural hazards, and the unique local character of individual
24 communities.

25 LU Element Goal 6.2 Reducing Development Pressures. Assign lowest-density or lowest-
26 intensity land use designations to areas with sensitive natural resources.

1 80. The EIR's failure to identify relevant or applicable County General Plan policies
2 and impact analysis of consistency with County standards for development, renders its
3 consistency conclusions unsupported by substantial evidence.

4 81. The Project is inconsistent with Section 6.73 (Annexations) 9n the NCMSCP
5 Planning Agreement which provides as follows: "For species and vegetation community analysis
6 and coverage, it is assumed that all County lands analyzed for PAMA designation will remain as
7 zoned under the General Plan and protected under County RPO [Resource Protection Ordinance]
8 and draft MSCP-N standards."

9 82. Per the NCMSCP, the PAMA is designed to steer development outside the area.
10 A 75 percent target goal of preservation of areas within the PAMA is established, yet according
11 to the EIR the Project preserves only 61 percent of these lands. When just the area within the
12 County NCMSCP PAMA is considered, the Project proposes only a 46% percent conservation
13 ratio.

14 83. Upon annexation, the entire conserved County open space would be moved from
15 an active NCCP jurisdiction (the County) to a non-active NCCP jurisdiction (the City) rendering
16 long term enforceability of habitat protection uncertain.

17 84. These inconsistencies are inadequately addressed, mitigated or avoided and
18 significance, consistency and mitigation conclusions are unsupported by substantial evidence.

19 **The EIR's Conclusions Regarding Adequacy and Availability of Water from**
20 **Vallecitos Water District Are Unsupported by Substantial Evidence.**

21 85. The EIR's conclusion that water supply impacts of the Project are less than
22 significant is based on inadequate information concerning one of the water suppliers for the
23 Project, Vallecitos Water District ("VWD") and, the EIR omits available information from its
24 analysis. The EIR's conclusions are not supported by substantial evidence.

25 86. The Project site is currently undeveloped but will be served by VWD and Vista
26 Irrigation District. After reorganization of the respective water districts' service areas, the
27 portion of the project to be served by VWD would cover 38.48 acres and include 43 homes. The
28

1 EIR indicates the proposed project was not included in the VWD 2008 Master Plan projections
2 and the proposed development would result in a greater, unspecified demand of water than
3 previously identified in the VWD 2008 Master Plan.

4 87. In an attempt to remedy this analytical omission, a post draft EIR study, not
5 subject to public review or comment, Final Technical Memorandum to San Marcos Highlands
6 Water and Sewer Study dated September 1, 2016, compared the water demand calculations
7 under the lower density in the 2008 Master Plan and the higher density of the proposed Project
8 and determined the Project would increase the projected average water demand from the 2008
9 Master Plan by 69,508 gallons per day.

10 88. The EIR proposes the Project may offset the additional demand over the demands
11 projected in the VWD 2008 Master Plan "through the use of groundwater for the establishment
12 and irrigation of the proposed habitat restoration areas". However, the conclusions concerning
13 groundwater availability and impacts are not supported by substantial evidence: Analysis of
14 groundwater impacts has been deferred and the post draft EIR Appendix J.4 – Addendum to
15 Preliminary Review of Hydrogeological Conditions bases its conclusions on assumptions and
16 estimates and no hard data or on site exploration or reconnaissance regarding groundwater
17 availability.

18 89. The EIR acknowledges that supply during multiple dry water years could be
19 insufficient to meet demands and indicates unspecified additional conservation measures would
20 be employed to reduce water demand. The EIR avoids acknowledgment of a significant impact
21 as identified in Appendix G (proposed project has "insufficient water supplies available to serve
22 the project from existing entitlements and resources") and fails to avoid or mitigate the impact
23 by reference to these unspecified conservation measures.

24 90. In addition, VWD in its 2015 Urban Water Management Plan ("UWMP") projects
25 a water supply deficit in its entire service area for normal, dry, and multiple dry year scenarios
26 for the next 20 years. If the district will not have adequate supplies district-wide, conclusions
27 regarding adequacy of supplies for the Project are unsupported.

1 91. VWD currently imports 100 percent of its potable water supply from the San
2 Diego County Water Authority (“SDCWA”). The district’s 2015 UWMP and the SDCWA 2015
3 UWMP contain inconsistent demand and supply projections for VWD resulting in additional
4 demand and supply deficits as between the two UWMPs. According to a recently filed lawsuit
5 against VWD, San Diego Superior Court Case no. 27-2016-00037559-CU-WM-NC, and the
6 SDCWA 2015 Urban Water Management Plan at p. 2-13, for 2020, the SDCWA’s planned water
7 supply to VWD is 15,896 acre feet. However, Petitioner is informed and believes and thereon
8 alleges that VWD projects a 2020 water demand of 32,666 acre feet, which results in a deficit of
9 16,770 acre feet. According to the lawsuit and its supporting exhibits, including the UWMPs,
10 these deficits and disparities continue through 2035.

11 92. These analytical disparities are of critical importance from a cumulative impacts
12 standpoint because other projects are in the planning and approval pipeline to be served by VWD
13 such as the Newland “Sierra” Project, formerly known as Merriam Mountain, which will add
14 approximately 6,063 new residential customers and tenants for a proposed school and 81,000
15 square feet of commercial development. The EIR is inadequate as an informational document in
16 failing to analyze the deficits identified by the VWD UWMP, the disparities between the supply
17 and demand figures in the VWD UWMP and the SDCWA UWMP, and in failing to identify,
18 avoid and/or mitigate the significant water supply and demand impacts of the Project.

19 93. As indicated in *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th
20 260, 283-284, discrepancies between water assessment analyses of water demand and
21 availability which are not explained in an EIR “preclude[] the existence of substantial evidence
22 to conclude sufficient water is likely to be available for the project.”

23 94. The EIR also failed to use the appropriate baseline in assessing water supply
24 impacts. Water availability analysis was conducted on a plan-to-plan basis rather than based on
25 existing conditions at the initiation of environmental review, i.e., no current water use on this
26 undeveloped, vacant land versus water use under the proposed Project.
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28

1 **The EIR's Conclusions Regarding the Adequacy and Availability of Groundwater**
2 **Are Unsupported by Substantial Evidence.**

3
4 95. The Project proposes to use groundwater and/or supplemental potable water,
5 depending on availability, for irrigation of common area slopes, public/private parks and
6 restoration areas, and right-of-way landscaping. Conclusions regarding groundwater availability
7 were unsupported in the September 29, 2014, Preliminary Review of Hydrogeological
8 Conditions found at Appendix J2 of the EIR ("Preliminary Review") because the California
9 Department of Water Resources ("DWR") would not release well records for the area
10 surrounding the site (App. J2 p. 1).

11 96. The Preliminary Review identified a need for up to 60 gallons per minute ("gpm")
12 of groundwater but indicated it was reasonable to "assume" the project site wells would provide
13 less than 10 to 30 gpm, best case, therefore revealing a potentially significant adverse impact.
14 Moreover, as stated in LAFCO's comment letter on the draft EIR, of "much more concern,
15 neither the DEIR section nor the technical appendix indicates whether there is sufficient
16 groundwater to sustain this use for irrigation over the long term without having adverse effects to
17 the groundwater table."

18 97. In an effort to remedy these key informational omissions and deferred impact
19 analysis, critical to assessing availability of groundwater for the identified irrigation purposes
20 and impacts on wells in the surrounding area, a post draft EIR Addendum to Preliminary Review
21 of Hydrogeological Conditions("Addendum") was prepared (found at Appendix J4 of the final
22 EIR). The Addendum examined 105 well records released by the DWR, including those
23 indicating the presence of 69 water supply wells within the noted search area. *Well Completion*
24 *Reports* for the 69 wells showed a wide range of "estimated" yields of between 2 and 510 gpm
25 with average yields of 57 gpm. However, the Addendum notes: "specific usage data for
26 private wells is not available" (p. 2) yet concludes "well records for water supply wells in the
27 area surrounding the Project indicate that more favorable well yields, exceeding 30 gpm, may be
28 anticipated in the area" (p. 3). This conclusion is based not on actual specific data usage but

1 “estimated” yields and indications of what “may be anticipated” and critically is still much lower
2 than the identified needed 60 gpm.

3 98. In addition, although the Addendum discusses proximity of wells on adjacent
4 properties, in the absence of “specific usage data” for the closest wells to the Project, any
5 conclusions regarding the sufficiency of the buffer to avoid impacts to nearby wells is
6 unsupported. Not surprisingly, the Addendum concludes at p. 4 under the heading
7 “Limitations”:

8 The conclusions contained in this evaluation are based upon the
9 **assumption** that the soil and rock conditions on the Project are consistent
10 with conditions identified in literature we obtained and reviewed for this
11 project. If any variations are encountered during later activities, they may
alter our conclusion, and we should be notified so that supplemental
recommendations can be given.

12 **The conclusions contained in this report have not been verified**
13 **through subsurface exploration or project reconnaissance...**

14 Accordingly, **the findings of this report may be invalidated** partially or
15 wholly by changes outside our control.

16 99. Analysis of groundwater impacts continues to be deferred. The Addendum
17 continues to base its conclusions on assumptions and estimates and no hard data or on site
18 exploration or reconnaissance. Its conclusions are unsupported by substantial evidence. Neither
19 the decision maker nor the public can draw any verifiable conclusions regarding whether there is
20 sufficient groundwater to sustain the Project’s groundwater use for irrigation over the long term
without having adverse effects to the groundwater table and adjacent users.

21 100. Accordingly, EIR Project and cumulative significance conclusions concerning
22 Groundwater Supply are unsupported and reliance on groundwater to offset the additional
23 demand over the demands projected in the VWD 2008 Master Plan are unsupported.

24 101. With regard to cumulative impacts, the final EIR fails to proceed as required by
25 law by simply referring to other pending projects identified in Table 2-3 of the document and
26 indicating none of these projects indicate use of a well. This is not the proper analysis under
27 CEQA. The cumulative impacts from several projects are the change in the environment which
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1 results from the incremental impact of the project when added to other closely related **past,**
2 **present, and reasonably foreseeable** future projects. Cumulative impacts can result from
3 individually minor but collectively significant projects taking place over a period of time (CEQA
4 Guidelines, section 15355[b]). The issue of cumulative groundwater impacts should be
5 determined by reference to current usage by nearby existing wells and this information is not
6 provided.

7 102. The availability and sufficiency of water for irrigation in this High Fire Hazard
8 Severity Zone is critical to maintaining a fire safe development. The EIR assumes fuel
9 modification zones will provide adequate buffers to protect homes from wildfire. If those
10 buffers are not adequately irrigated, they simply provide tinder for the next wildfire, serve no
11 preventive purpose and fire hazards have not been mitigated to a level of insignificance.

12 **The EIR Fails to Comply with County Requirements Regarding Traffic Impact**
13 **Fees; Conclusions Regarding Traffic Mitigation Are Unsupported by Substantial**
14 **Evidence.**

15 103. County's Transportation Impact Fee ("TIF") program is a requirement for all
16 projects located on existing unincorporated County lands that will generate any trips on County
17 roads. The EIR indicates the Project is not responsible for paying County TIF because: 1) there
18 are no cumulative or direct impacts identified to Las Posas Road; 2) Future Year (2035) analysis
19 indicates only nominal trips on to County roads; and 3) the proposed annexation of County areas
20 of the Project into the City.

21 104. The majority of the proposed Project dwelling units are within County, and unless
22 annexation occurs, the Project will be responsible for paying County TIF regardless of the
23 number of trips on to Las Posas Road. The EIR fails to sufficiently identify the manner in which
24 the Project will comply with the TIF requirement and consequently fails to provide substantial
25 evidence in support of the conclusion that significant traffic impacts will be mitigated.

26 105. A Las Posas Road connection from Buena Creek Road to State Route 78 is a
27 planned Mobility Element network road on both County's Mobility Element of its General Plan
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1 and within City's Circulation Element. The Project will ultimately impact unincorporated
2 County lands north of the Project but fails to include TIF. The EIR fails to adequately analyze or
3 mitigate the Project's traffic and transportation impacts and significance and mitigation
4 conclusions are unsupported by substantial evidence.

5 **The EIR Fails to Adequately Analyze and Mitigate Greenhouse Gas ("GHG") Emissions,**
6 **Fails to Analyze Consistency with the City's Climate Action Plan and GHG Significance**
7 **and Mitigation Conclusions Are Unsupported by Substantial Evidence.**

8 106. The City's Climate Action Plan ("CAP") sets forth mandatory procedures
9 applicable to any discretionary project. The EIR fails to comply with these mandatory
10 procedures. In order to determine whether a project is consistent with the CAP, its impacts less
11 than significant or whether additional CEQA review is required, a CAP consistency worksheet
12 "should be filled out for each new project, subject to discretionary review." (CAP Appendix E p.
13 E-1). Neither the EIR Greenhouse Gas chapter nor the original 2014 or revised 2016 Global
14 Climate Change ("GCC") Evaluations contain this consistency worksheet or any discussion of it.

15 107. The worksheet contains up to 33 **mandatory** actions which "must be incorporated
16 as binding and enforceable components of the project for it to be found consistent with the
17 CAP." (CAP Appendix E p. E-2). These mandatory actions include incorporation of **all** feasible
18 energy efficiency measures identified in the General Plan, smart meters, programmable
19 thermostats, feasible renewable energy measures, consistency with General Plan land use
20 designations, applicable design guidelines and SANDAG Smart Growth publications, non-
21 motorized connections to and between neighborhoods, activity centers, and transit corridors and
22 many others (*Id.* at pp. E-4-9). The EIR contains no discussion of how the project is consistent
23 with the CAP worksheet mandatory actions.

24 108. "If the project cannot meet one or more of the mandatory actions,
25 substitutions...may be allowed if the applicant can demonstrate how substituted actions would
26 achieve equivalent reductions to the City's satisfaction." (*Id.* at p. E-2). The EIR is devoid of any
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1 discussion or evidence that these CAP procedures and mandatory requirements have been
2 complied with.

3 109. CAP Chapter 3 sets forth Climate Action Measures, implementation actions and
4 performance criteria such as: Energy GHG Reductions (including performance criteria of 15% of
5 homes built in the City between 2005 and 2020 are to be Zero Net Energy) at pp. 3-12-18;
6 Transportation and Land Use Measures at pp. 3-19-28; Water and Wastewater Measures
7 (including use of recycled water and dual plumbing requirements for new development) at p. 3-
8 34; Biodiversity and Habitat Implementation Actions A-4.1 at p. 3-48. Other than the addition of
9 solar panels as mitigation for project GHG impacts, there is no discussion of how the project is
10 consistent with the CAP Chapter 3 Climate Action Measures.

11 110. If after completing the CAP consistency worksheet, it is determined that a
12 proposed project is not consistent with the CAP, three additional steps must be taken: (1) further
13 analysis is required; (2) the applicant must demonstrate that the proposed project's GHG
14 emissions fall below the GHG thresholds of significance set forth in the CAP; and (3) the project
15 must demonstrate "that it would not substantially interfere with implementation of the CAP."
16 (CAP Appendix E p. E-1).

17 111. In the absence of compliance with the CAP procedures, including the consistency
18 worksheet and the possible triggering of the 3 additional required CAP steps, the EIR fails to
19 proceed in a manner required by an applicable plan, the City CAP, and consistency conclusions
20 are unsupported by substantial evidence.

21 112. The City must independently analyze the project's GHG impacts and its
22 consistency with the CAP, including its mandatory measures, and cannot simply rely upon the
23 inadequate GCC Evaluations provided by the project applicant. "The draft EIR which is sent out
24 for public review must reflect the independent judgment of the lead agency. The lead agency is
25 responsible for the adequacy and objectivity of the draft EIR." Pub. Res. Code §21082.1(c)(1)-
26 (2); 14 Cal. Code Regs. §115084(e). When certifying a Final EIR, the City must make specific
27 findings, including one that the FEIR reflects its independent judgment. Pub. Res. Code
28

1 §21082.1(c); *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452-
2 55. Given the GCC and FEIR's failure to comply with the CAP's mandatory requirements and
3 procedures, the City cannot make the necessary findings and has not exercised its independent
4 judgment on the issue of CAP compliance.

5 113. The GCC Evaluation fails to analyze project consistency with the applicable
6 regulatory scheme. The EIR and 2016 GCC Evaluation set forth the applicable state and local
7 regulatory scheme and the GCC Evaluation poses compliance or consistency questions (e.g.
8 Does our region have a sustainable community strategies? If so, how is the project in
9 compliance? (p.13)). However, in multiple instances the documents fail to analyze project
10 consistency with specific elements of the regulatory framework.

11 114. The regulatory framework is considered part of the environmental setting of a
12 project and an EIR must discuss any inconsistencies between the proposed project and applicable
13 general and regional plans. 14 Cal. Code Regs. § 15125(d). In assessing the significance of
14 greenhouse gas impacts, Appendix G of the CEQA Guidelines asks, whether a project conflicts
15 with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of
16 greenhouse gases.

17 115. In the GHG arena, there are multiple, applicable policies and regulations adopted
18 for the purpose of avoiding or mitigating the impacts of greenhouse gas emissions. However, in
19 many cases the EIR and 2016 GCC Evaluation simply recite the regulations applicable to the
20 project without analyzing whether the project is consistent with the applicable regulations. Other
21 than setting out the CAP's significance threshold, and the questionable conclusion that the
22 project does not exceed it, the 2016 GCC Evaluation fails to comply with CAP procedures
23 designed to determine consistency in the first instance.

24 116. The EIR and GCC Evaluations fail to discuss consistency with SANDAG's
25 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS") adopted in 2015,
26 known as San Diego Forward.¹ The RTP/SCS and its GHG reduction and smart growth
27

28 ¹ The RTP/SCS: San Diego Forward – can be found at
http://www.sdfoward.com/pdfs/RP_final/The%20Plan%20-%20combined.pdf.

1 strategies are key implementation features of the City's CAP and establish specific regional
2 GHG reductions of 15% per capita by 2020 and 21% per capita by 2035 from the transportation
3 sector. These reductions will be accomplished through land use policy. San Diego Forward: The
4 Regional Plan at 97 (Oct. 2015). The FEIR's and GCC Evaluations' failure to discuss project
5 consistency with the RTP/SCS is also inconsistent with the City's General Plan which provides
6 at Goal COS-4: "Improve regional air quality and reduce GHG emissions that contribute to
7 climate change"; and Policy COS-4.3: "Participate in regional efforts to reduce GHG emissions".

8 117. The FEIR and GCC Evaluations also fail to discuss consistency with SB 32 and
9 AB 197 requirements, including emissions cuts of 40% below 1990 levels by 2030.

10 118. The 2016 GCC Evaluation and the EIR contain different significance conclusions;
11 these inconsistencies render the EIR conclusions unsupported by substantial evidence. The City
12 CAP has adopted a significance threshold of 2.76 MT (metric ton) CO₂e per service population.
13 The EIR and the 2016 GCC Evaluation use this significance threshold to evaluate the
14 significance of GHG project impacts but reach different significance conclusions. Under CEQA
15 and the CAP, if the project emissions exceed the 2.76 MT CO₂e per service population
16 significance threshold, they must be avoided or mitigated. The 2016 GCC Evaluation indicates
17 at p. 30: "[b]ecause the estimated CO₂e emissions associated with the proposed project would be
18 above the City threshold, the project must implement mitigation measures to reduce GHG
19 emissions." Put differently, the 2016 GCC Evaluation acknowledges that GHG impacts are
20 significant and must be mitigated. Upon reaching this conclusion, an examination of possible
21 mitigation under the mandatory procedures outlined in the CAP was both necessary and
22 appropriate.

23 119. Contrary to the technical report's conclusion, the EIR at p. 3.6-1 indicates project
24 direct GHG impacts are "less than significant" apparently by considering the addition of solar
25 roof panels for the homes as a design feature as opposed to mitigation.

26 120. The final EIR also incorrectly notes that conflicts with AB 32 are less than
27 significant. The emission numbers in the 2016 revised GCC Evaluation indicate only a 14%
28

1 reduction in GHG emissions with mitigation or less than half the overall 28.35% reduction goal
2 of AB 32. There is no discussion of consistency with SB 32/AB 197 requirements, including
3 how or if the project will meet emissions cuts of 40% below 1990 levels by 2030.

4 121. These conflicts coupled with the informational and analytical omissions identified
5 above render the EIR's GHG significance conclusions questionable and unsupported by
6 substantial evidence.

7
8 122. The use of different significance thresholds in the 2014 and 2016 GCC
9 Evaluations create a results oriented, unsupported significance conclusion in both reports. In
10 assessing whether impacts have been mitigated to a level of insignificance, the 2014 and 2016
11 GCC reports use different thresholds of significance and avoid appropriate significance
12 conclusions. The 2014 report uses the AB 32 reduction goals and not the CAP thresholds. In the
13 2014 report, with mitigation, GHG emissions are reduced by 30.85% consistent with AB 32
14 goals. The 2014 report admits even with mitigation, the project would generate 4.01 MT CO₂e
15 per service population, yet the 2014 report fails to use the CAP threshold (2.76 MT CO₂e per
16 service population) or any mandatory CAP procedures thereby avoiding both a significance
17 determination and the need for additional mitigation or avoidance strategies. Had the 2014
18 report used the CAP threshold, impacts would remain significant, even with mitigation.

19 123. The 2016 GCC report, coupled with an unexplained change in total MT CO₂e
20 figures, determines less than significant project impacts with mitigation using the CAP threshold
21 but incorrectly determines AB 32 consistency and fails entirely to analyze SB 32/AB197
22 consistency. At present, the GHG analysis is fundamentally inadequate and incoherent and
23 significance conclusions thereunder unsupported by substantial evidence.

24 124. The CalEEMod calculations contained at Appendix A of the GCC Evaluation fail
25 to provide adequate information to the public or the decision maker in order to correlate the GCC
26 Report Conclusions with the data contained in Appendix A. The informational "disconnect" is
27 exacerbated by the data calculations contained in Appendix A of the GCC Evaluations upon
28

1 which the GHG conclusions are based. Neither the EIR, the technical report nor the computer
2 modeling provide any foundational explanation regarding information input regarding various
3 project components and resulting GHG emission totals. In addition, the unmitigated operational
4 GHG emissions totals in Appendix A are not consistent with the figures in the 2016 GCC
5 Evaluation. Appendix A shows a total of 1933.2043 MT CO₂e unmitigated operational GHG
6 emissions and a total of 1823.8006 MT CO₂e mitigated operational GHG emissions. These
7 figures inexplicably differ from those listed in the body of the 2016 GCC Evaluation and EIR as
8 1883 MT CO₂e for the project and 1617 MT CO₂e with mitigation in the form of solar panels.

9 125. The 2014 GCC Evaluation suffers from a similar disparity between totals listed in
10 the report versus total CO₂e emissions in the computer modeling. At present, there is no way to
11 reconcile or correlate the data in Appendix A with the totals listed in the EIR and GCC
12 Evaluation. The EIR and its technical appendix fail to serve their informational purposes and
13 instead present a collection of inconsistent and uncertain conclusions and potentially unmitigated
14 impacts.

15 126. New development must be more GHG efficient in order to meet City and
16 statewide GHG reduction goals. The post-draft EIR 2016 GCC Evaluation was prepared to
17 respond to the California Supreme Court decision in *Center for Biological Diversity v. California*
18 *Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204. However, the updated evaluation fails to comply
19 with the court's admonition at 62 Cal.4th 226:

20
21 [A] greater degree of reduction may be needed from new land use projects
22 than from the economy as a whole: Designing new buildings and
23 infrastructure for maximum energy efficiency and renewable energy use is
24 likely to be easier, and is more likely to occur, than achieving the same
25 savings by retrofitting of older structures and systems. The California
26 Attorney General's Office made this point while commenting on an air
27 district's greenhouse gas emissions reduction plan, in a letter one of the
28 plaintiffs brought to DFW's attention in a comment on the EIR: "The [air
district] Staff Report seems to assume that if new development projects
reduce emissions by 29 percent compared to 'business as usual,' the 2020
statewide target of 29 percent below 'business as usual' will also be
achieved, but it does not supply evidence of this. Indeed, it seems that new
development must be more GHG-efficient than this average, given that

1 past and current sources of emissions, which are substantially less efficient
2 than this average, will continue to exist and emit.

3 127. The City CAP recognizes the need for new development to be more GHG
4 efficient and provide a greater degree of GHG reductions by requiring multiple mandatory and
5 voluntary GHG reduction measures. As stated by the Supreme Court in *Center for Biological*
6 *Diversity* at 231: "Local governments thus bear the primary burden of evaluating a land use
7 project's impact on green-house gas emissions." As presently drafted, the EIR and GCC
8 Evaluations fail to discharge this burden, the project's analysis and mitigation for GHG impacts
9 is insufficient and significance and mitigation conclusions are not supported by substantial
10 evidence.

11 **The EIR Fails to Adequately Analyze Growth-Inducing Impacts of the Project.**

12 128. CEQA requires an EIR to include a "detailed statement" setting forth the growth-
13 inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); CEQA Guidelines §
14 15126.2(d); *City of Antioch v. City Council of Pittsburg*, 187 Cal. App. 3d 1325, 1337 (1986).

15 129. The statement must "[d]iscuss the ways in which the proposed project could foster
16 economic or population growth, or the construction of additional housing, either directly or
17 indirectly, in the surrounding environment." CEQA Guidelines § 15126.2(d). This includes the
18 project's ability to "remove obstacles to population growth." CEQA Guidelines § 15126.2(d).
19 The statement must also discuss how projects "may encourage and facilitate other activities that
20 could significantly affect the environment, either individually or cumulatively." *Id.*

21 130. The Project will foster economic and population growth and the construction of
22 additional housing both directly and indirectly by extending Las Posas Road and associated
23 infrastructure into an undeveloped, unserved area.

24 131. The EIR fails to adequately analyze the extent or environmental impacts of such
25 growth-inducing impacts.

26 132. The EIR avoids analysis of the growth inducing impacts of the extension of Las
27 Posas Road and infrastructure on the Project site as directly facilitating growth and development
28 in adjacent, undeveloped areas.

1 133. CEQA requires that the EIR analyze the additional population growth, new
2 residential units, and other development that the Project would facilitate. The EIR should
3 identify the location and intensity of any such new development, and the environmental impacts
4 resulting from that development.

5
6 **The EIR Fails to Provide a Reasonable Range of Alternatives including**
7 **Consideration of a County Conservation Subdivision Alternative.**

8 134. The EIR fails to include a legally sufficient reasonable range of alternatives to the
9 Project. CEQA provides that “public agencies should not approve projects as proposed if there
10 are feasible alternatives . . . which would substantially lessen the significant environmental
11 effects of such projects.” Pub. Res. Code § 21002.

12 135. An EIR must consider a “reasonable range” of alternatives “that will foster
13 informed decision making and public participation.” CEQA Guidelines § 15126.6(a). “An EIR
14 which does not produce adequate information regarding alternatives cannot achieve the dual
15 purpose served by the EIR . . .” *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App.
16 3d 692, 733 (1990).

17 136. The EIR’s analysis of alternatives is inadequate, and necessitates development of
18 additional alternatives for the Project, including alternatives which reduce or eliminate the bulk
19 of the Project’s significant environmental impacts.

20 137. The EIR alternatives should have evaluated a County Conservation Subdivision
21 Alternative. The County Conservation Subdivision is mandatory when subdividing property
22 with a County General Plan residential land use designation of SR-10. The Conservation
23 Subdivision Program is governed by a number of County Subdivision, Zoning and Resource
24 Protection Ordinance sections and in the SR-10 land use designation requires avoidance of 75%
25 of resources. The Conservation Subdivision Program improves the preservation of sensitive
26 environmental resources and community character, preserves local biodiversity, retains existing
27 agriculture/farmland, increases watershed protection and improves fire protection for residential
28 developments. The program employs clustering of homes and focuses development in the least

1 environmentally sensitive areas of the proposed development. See
2 <http://www.sandiegocounty.gov/content/sdc/pds/advance/conservationsubdivision.html> and
3 County ordinances discussed therein.

4 138. The EIR's reasons for rejecting consideration of this alternative are conclusory
5 and are not supported by substantial evidence.

6 **The EIR Fails to Provide Adequate Responses to Public Comments.**

7 139. When a significant environmental issue is raised in public comments that object to
8 a draft EIR's analysis, the agency response must be detailed and must provide a reasoned, good
9 faith analysis.

10 140. The requirement of a detailed written response to comments helps to ensure that
11 the Lead Agency will fully consider the environmental consequences of a decision before it is
12 made, that the decision is well informed and open to public scrutiny, and that the public
13 participation in the environmental review process is meaningful.

14 141. Conclusory statements unsupported by specific references to empirical
15 information, scientific authorities, or explanatory information are insufficient as responses to
16 comments. 14 Cal. Code Regs. § 15088(c).

17 142. The EIR's responses to comments fail to provide the reasoned, good faith analysis
18 required by CEQA, contain conclusory, unsubstantiated statements and fundamentally fail to
19 serve the informational purposes outlined in CEQA guidelines and case law.

20 **The EIR's Responses to Comments Contain Legal Errors**

21 143. Responses to Comments – 15-7 evidences a fundamental error concerning
22 analysis of cumulative impacts The response to comment incorrectly states: "A cumulative
23 impact must be analyzed in the EIR only if the project's impact is significant and the project's
24 incremental effect is cumulatively considerable" citing 14 Cal.Code Regs. § 15130. The cited
25 CEQA guideline indicates an "EIR shall discuss cumulative impacts of a project when the
26 project's incremental effect is cumulatively considerable"; however, nowhere do the Guidelines
27
28

1 indicate that a cumulative impact analysis is dependent on a project's impact being significant in
2 the first instance. Guideline section 15355 indicates when defining "cumulative impacts" that:

3
4 "Cumulative impacts" refer to two or more individual effects which, when
5 considered together, are considerable or which compound or increase
6 other environmental impacts.

7 (a) The individual effects may be changes resulting from a single project
8 or a number of separate projects.

9 (b) The cumulative impact from several projects is the change in the
10 environment which results from the incremental impact of the project
11 when added to other closely related past, present, and reasonably
12 foreseeable probable future projects. Cumulative impacts can result from
13 individually minor but collectively significant projects taking place over a
14 period of time.

15 144. Individually minor, i.e., insignificant, projects can when considered collectively
16 with past, present and reasonably foreseeable projects result in cumulative impacts. Analysis of
17 EIR cumulative impacts under this erroneous foundational statement contained in RTC 15-7
18 constitutes a failure to proceed in a manner required by CEQA and cumulative impacts have not
19 been adequately or correctly analyzed in the EIR.

20 **Recirculation Is Required Due to the Addition of Significant, New Information to**
21 **the Draft EIR After the Close of Public Review and Comment.**

22 145. Recirculation of an EIR is required under CEQA when "significant new
23 information" is added to a Draft EIR. Furthermore, the EIR cannot be changed after circulation
24 of the draft EIR in a way that deprives the public of a meaningful opportunity to comment on an
25 adverse environmental effect of the project or a feasible way to avoid or to mitigate such an
26 effect. 14 Cal. Code Regs. § 15088.5.

27 146. After the draft EIR was circulated, significant changes to the EIR were made
28 including the following changes: the addition of a new project alternative (Increased Habitat
Linkage Alternative); inclusion of a significantly revised technical appendix employing a new
significance threshold regarding climate change (Appendix H – Updated Global Climate Change
Evaluation); the addition of a new appendix J.4 (Addendum to Preliminary Review of
Hydrogeological Conditions); inclusion of a more recent version of the Biological Resources

1 Report after an older version was included in the draft EIR in error; and on September 1, 2016,
2 addition of a Final Technical Memorandum to the San Marcos Highlands Water and Sewer
3 Study.

4 147. The addition of the new alternative requires recirculation. The adequacy of
5 wildlife corridors and linkages in the Project area containing high value habitat and sensitive
6 species have been a subject of serious public and agency concern and controversy. In
7 recognition of the Project's impacts on wildlife movement and continuing viability of preserve
8 lands and wildlife corridors and linkages within the Project and surrounding MHCP and MCSP
9 lands, the final EIR included a new alternative with an expanded habitat linkage and fewer
10 residences.

11 148. The Increased Habitat Linkage Alternative offered several significant benefits
12 through reduction of environmental impacts but the Applicant and the City declined to adopt it.
13 As compared to the Project, the Increased Habitat Linkage Alternative: reduces impacts to the
14 Robinhood Ranches community; reduces lighting impacts; generates fewer project-related trips;
15 reduces potential to impacts to sensitive species, sensitive habitat, and jurisdictional wetlands;
16 reduces operational greenhouse gas emissions; reduces water quality impacts due to decreased
17 amount of earthwork and associated reduced potential for erosion; and reduces public services
18 and utilities impacts, including reductions in water demand, wastewater and solid waste
19 generated.

20 149. This feasible alternative differed considerably from those analyzed in the draft
21 EIR so that recirculation of the EIR is and was required so the public and responsible and trustee
22 agencies may evaluate this new information and the validity of conclusions drawn by City in
23 rejecting the alternative.

24 150. As such, this new post-draft EIR alternative falls within those circumstances
25 requiring recirculation. It is a feasible alternative considerably different from those analyzed in
26 the draft EIR that would lessen environmental impacts and the project proponent declines to
27 adopt it. The revision without recirculation "deprived the public of a meaningful opportunity to
28

comment on an ostensibly feasible way to mitigate a substantial adverse environmental effect.”
See *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91.

151. The addition of a new significance threshold coupled with GHG analytical omissions requires recirculation. The final EIR utilizes a new Global Climate Change Evaluation and significance threshold significantly different than that employed in the draft EIR, including different and unexplained CO₂e emissions calculations. The final EIR analysis is inconsistent with the City CAP and fails on several other grounds identified *supra* as well. The final EIR containing its new 2016 GCC Evaluation should have been recirculated for public review and comment.

152. The addition of a new significance threshold, the unexplained changes in the amount of project emissions and mitigated emissions as between the 2014 and 2016 GCC Evaluations and the gross failure to comply with City CAP procedures for determining consistency with the CAP deprived the public of a meaningful opportunity to comment upon the greenhouse gas impacts of this project and multiple feasible mitigation strategies as outlined in the City’s CAP to avoid GHG impacts. The revision without recirculation “deprived the public of a meaningful opportunity to comment on an ostensibly feasible way to mitigate a substantial adverse environmental effect.” See *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91.

153. The addition of the Hydrogeological Addendum containing unsubstantiated assumptions regarding groundwater availability and extraction impacts and no substantial evidence in support of same requires recirculation. The draft EIR contained notable omissions regarding water availability for the Project. The final EIR attempted unsuccessfully to address these shortcomings with an Addendum (see Appendix J4 of the final EIR). However, the Addendum makes unsupported conclusions regarding water availability and the final EIR defers full analysis of groundwater impacts of the Project.

154. New information is significant if it “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a

1 feasible way to mitigate or avoid such an effect.” Inclusion of the inadequate, unsupported
2 Addendum deprived the public of a meaningful opportunity to comment upon significant,
3 unmitigated groundwater and fire hazard impacts.

4 155. Addition of the revised Biological Resources Report and Final Technical
5 Memorandum to the San Marcos Highlands Water and Sewer Study require recirculation.

6 156. The September 2014 Biological Resources Report erroneously included in the
7 draft EIR is 43 pages long, indicates the Project site contains 251.25 acres of Diegan Coastal
8 Sage Scrub (“DCSS”), habitat for the threatened California Gnatcatcher and indicates 61.65
9 acres of DCSS will be impacted by the Project. The November 2015 Biological Resources
10 Report provided after closure of the public review and comment period is 165 pages long,
11 contains reports on focused protocol surveys, wetland delineation reports and the Habitat
12 Mitigation and Monitoring Program. The November 2015 report indicates more DCSS is present
13 on the Project site (263.19 acres) and more acres (77.36) will be impacted by the Project.

14 157. Recirculation is required when new information shows a substantial increase in
15 the severity of an environmental impact unless adopted mitigation reduces impacts to
16 insignificance.

17 158. The November 2015 Biological Resources Report shows a substantial increase in
18 the severity of Project impacts to DCSS. Conclusions regarding the adequacy of mitigation to
19 reduce such impacts to insignificance are unsupported by substantial evidence.

20 159. A VWD Water and Sewer Study dated April 9, 2015 was included in the draft
21 EIR at Appendix P1. The Study conducted a comparison of water demand by comparing
22 demand for the Project site under the 2008 VWD Master Plan with the proposed Project demand
23 instead of using a comparison of water use in connection with the existing baseline of vacant
24 land versus the proposed Project. That study indicated an additional water demand of 1,089
25 gallons per day when comparing the 2008 Master Plan land use demand to the proposed Project
26 demand.
27
28

1 160. VWD then prepared a revised Water and Sewer Study which was finalized
2 September 1, 2016 and provided in responses to comments on the final EIR. The September 1,
3 2016 Water and Sewer Study showed a substantial increase in the Project estimated water
4 demand and an additional water demand of 69,508 gallons per day when comparing the 2008
5 VWD Master Plan land use demand with the proposed Project demand.

6 161. This post-draft EIR study shows significantly more water will be required for the
7 Project than previously acknowledged. The VWD UMWP acknowledges deficiencies in water
8 supply. The addition of significant, new information of increased water demand for the Project
9 required recirculation.

10 162. The City is required to recirculate an EIR when significant new information is
11 added after circulation of the draft EIR. 14 Cal. Code Regs. §15088.5. New information is
12 significant if it "deprives the public of a meaningful opportunity to comment upon a substantial
13 adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect
14 (including a feasible project alternative) that the project's proponents have declined to
15 implement."

16 163. *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87
17 Cal.App.4th 99, 131 provides: If, subsequent to the period of public and interagency review, the
18 lead agency adds "significant new information" to an EIR, the agency must issue new notice and
19 must "recirculate" the revised EIR, or portions thereof, for additional commentary and
20 consultation. (Pub. Resources Code §21092.1; Guidelines §15088.5(a); *Laurel Heights*
21 *Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1120.) The
22 revised environmental document must be subjected to the same "critical evaluation that occurs in
23 the draft stage," so that the public is not denied an "opportunity to test, assess, and evaluate the
24 data and make an informed judgment as to the validity of the conclusions to be drawn
25 therefrom." (*Sutter Sensible Planning, Inc. v. Board of Supervisors, supra*, 122 Cal. App. 3d
26 813, 822.)

164. When a draft EIR omits information, or discloses information at the last-minute and thereby precludes the public from any opportunity for review and comment, recirculation is required. *See e.g., Save Our Peninsula Comm*, 87 Cal.App.4th at 131. In the case of the post-draft EIR additions, “the public never had a meaningful opportunity to comment on the information because the City omitted the information from the draft EIR” and the revisions “deprived the public of a meaningful opportunity to comment on an ostensibly feasible way to mitigate a substantial adverse environmental effect.” *See Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91.

165. The City's conclusion that recirculation was not required is not supported by substantial evidence.

The EIR's Significance and Mitigation Conclusions and the City's CEQA Findings Are Not Supported By Substantial Evidence.

166. No substantial evidence supports the EIR's significance and mitigation conclusions and City findings adopted pursuant to CEQA, including the findings that the Project's significant impacts have been mitigated to less than significant levels, are unsupported by substantial evidence.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

1. For alternative and peremptory writs of mandate, commanding Respondent City:
 - (A) to vacate and set aside approval of the Project and all related approvals;
 - (B) to vacate and set aside certification of the Final EIR for the Project;
 - (C) to vacate and set aside approval of the General Plan Amendment, Zone Change and Specific Plan for San Marcos Highlands – Project No. P13-0009;
 - (D) to prepare and certify a legally adequate EIR for the Project;
 - (E) to suspend any and all activity pursuant to Respondent's approval of the Project, that will prejudice the consideration or implementation of particular mitigation measures or alternatives, until Respondent has complied with all requirements of the

1 California Environmental Quality Act and all other applicable state and local laws,
2 policies, ordinances, and regulations as are directed by this Court pursuant to Public
3 Resources Code § 21168.9.

4 2. For a stay, temporary restraining order, preliminary injunction, and permanent
5 injunction prohibiting any actions by Respondents or Real Parties in Interest pursuant to
6 Respondents' approval or implementation of the Project and certification and/or adoption of the
7 EIR for the Project until Respondents have fully complied with all requirements of the California
8 Environmental Quality Act, the California Planning and Zoning Law, and all other applicable
9 state and local laws, policies, ordinances, and regulations;

10 3. For a declaration that the Project is inconsistent with the requirements of the
11 California Environmental Quality Act and the California Planning and Zoning Law;]

12 4. For costs of the suit;

13 5. For attorney's fees pursuant to the Code of Civil Procedure § 1021.5; and

14 6. For such other and further relief as the Court deems just and proper.
15

16 DATED: January 13, 2017

17 KEVIN K. JOHNSON AP/C

18 By: 

19 Kevin K. Johnson

Jeanne L. MacKinnon

20 Attorneys for Petitioner and Plaintiff
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am the Executive Director of Endangered Habitats League, Inc., Petitioner/Plaintiff in this action, and am authorized to execute this verification for and on its behalf, and I make this verification for that reason.

I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

Executed on January 12, 2017 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

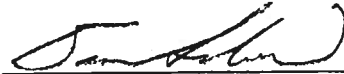

Dan Silver, Executive Director
Endangered Habitats League, Inc.

EXHIBIT A

**WRITTEN NOTICE OF COMMENCEMENT
OF ACTION PER PUB. RES. CODE §21167.5
AND PROOF OF SERVICE OF SAME**

KEVIN K. JOHNSON, APLC

KEVIN K. JOHNSON
JEANNE L. MacKINNON
HEIDI E. BROWN

A PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW
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CARLSBAD, CALIFORNIA 92011

TELEPHONE (619) 696-6211
FAX (619) 696-7516

January 12, 2017

WRITTEN NOTICE OF COMMENCEMENT OF ACTION
PURSUANT TO PUBLIC RESOURCES CODE § 21167.5

SENT VIA U.S. MAIL AND EMAIL

Phil Scollick, City Clerk
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069
pscollick@san-marcos.net

Re: San Marcos Highlands, Project No. P13-0009 – Environmental Impact Report
and related Adoptions and Approvals
Our Client: Endangered Habitats League, Inc.

Dear Mr. Scollick:

Pursuant to California Public Resources Code section 21167.5, this constitutes Written Notice of Commencement of an Action against the City of San Marcos challenging the City's approval of the above-entitled project under the California Environmental Quality Act.

Our client, Endangered Habitat's League, Inc., intends to file a Petition for Writ of Mandate seeking a court order commanding the City of San Marcos to: vacate and set aside approval of the Project and all related approvals; to vacate and set aside adoption and certification of the Final Environmental Impact Report; to vacate and set aside the adoption of the Mitigation Monitoring and Reporting Program for the Project; to vacate and set aside the adoption of Findings and Statement of Overriding Considerations; to prepare and certify a legally adequate EIR for the Project; and to suspend any and all activity pursuant to approval of the Project until the City has complied with all requirements of the California Environmental Quality Act, Pub. Res. Code §21000 et seq.

Very truly yours,
KEVIN K. JOHNSON, APLC


Kevin K. Johnson

cc: City Attorney Helen Peak

3
4 **PROOF OF SERVICE**

5 I, the undersigned, declare under penalty of perjury that I am over the age of eighteen
6 years and not a party to this action; that I served the following document(s):

7 **WRITTEN NOTICE OF COMMENCEMENT OF ACTION PURSUANT TO**
8 **PUBLIC RESOURCES CODE SECTION 21167.5**

9 in the following manner: (check one)

- 10 1) XX By placing a copy in a separate sealed envelope, with postage fully prepaid, for
11 each addressee named below and depositing each in the United States Mail at
12 San Diego, California, on January 12, 2017 following ordinary business
13 practices. I declare that I am readily familiar with the business' practice for
14 collection and processing of correspondence for mailing with the United States
15 Postal Service; and that the correspondence shall be deposited with the United
16 States Postal Service this same day in the ordinary course of business.
- 17 2) XX By transmission via email on January 12, 2017 in the ordinary course of
18 business for each addressee named below.

19 Phil Scollick, City Clerk
20 City of San Marcos
21 1 Civic Center Drive
22 San Marcos, CA 92069
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Helen Holmes Peak, City Attorney
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960 Canterbury Place, Suite 300
Escondido, CA 92025
hhp@LFAP.com

24 I declare under penalty of perjury under the laws of the United States of America and the
25 State of California that the foregoing is true and correct. Executed on January 12, 2017, at
26 Carlsbad, California.

27 
28 Susan Zieg



County of San Diego

MARK WARDLAW
DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
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November 10, 2016

Norm Pedersen, Associate Planner
Development Services Department
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Via E-mail: npedersen@san-marcos.net

COMMENTS ON THE FINAL EIR (EIR 15-001, STATE CLEARINGHOUSE NO. 1999071007) AND THE SAN MARCOS HIGHLANDS PROJECT NO. P13-0009 (SP 13-001, TSM 13-001, CUP 13-010, ROZ 14-001, PZ 14-001, GPA 15-002, & EIR 15-001)

Dear Mr. Pedersen:

The County of San Diego appreciates the opportunity to comment on the San Marcos Highlands project and the Environmental Impact Report. Previous correspondence from September 6, 2016 has been attached for your reference. Subsequent to the submittal of these comments, County staff met with the project applicant to discuss the comment letters and to address concerns.

Section 15092.a of the California Environmental Quality Act states, "after considering the final EIR and in conjunction with making findings under Section 15091, the Lead Agency may decide whether or how to approve or carry out the project." The final EIR incorporates the County's previous comments, including responses to comments. The County is thankful that these comments and responses are part of the public record and will be taken into consideration when determining if the findings required under Section 15091 can be made for the Environmental Impact Report.

Section 6.7.3 of the Planning Agreement for the County's North and East County Multiple Species Conservation Program Plans includes requirements related to future annexations. In order to ensure implementation of the Planning Agreement and the satisfactory resolution of any issues prior to hearings by the San Diego Local Agency Formation Commission, the County requests that the following condition be incorporated into final approval documents, if the City of San Marcos takes action to approve the project.

"Prior to any hearing before the San Diego Local Agency Formation Commission, an agreement between the County, the City of San Marcos, USFWS and CDFW shall be finalized to ensure that the proposed project will not jeopardize the buildout of the preserve or the coverage of species within the planning area, or compromise viable habitat linkages within the proposed preserve."

November 10, 2016
Norm Pedersen
City of San Marcos

The County requests that the City confirm that this requirement will be incorporated into the conditions of approval for this project and that any approval documents be forwarded to the County.

If you have any questions, please contact Noah Alvey, Land Use / Environmental Planning Manager at (858) 694-8846, or via email at noah.alvey@sdcounty.ca.gov.

Sincerely,



Joe Farace, Group Program Manager
Advance Planning Division
Planning & Development Services

Attachment: County's Comment Letter dated September 6, 2016

E-mail cc: Melanie Wilson, Policy Advisor, Board of Supervisors District 5
Vincent Kattoula, CAO Staff Officer, LUEG
Jeff Kashak, Environmental Planner, Department of Public Works
Richard Chin, Associate Transportation Specialist, Department of Public Works
Nick Ortiz, Advanced Planning Manager, Planning & Development Services
Peter Eichar, Land Use/Planning Manager, Planning & Development Services
Marcus Lubich, Park Project Manager, Department of Parks and Recreation
Michael Ott, Executive Officer, LAFCO



County of San Diego

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September 6, 2016

Norm Pedersen, Associate Planner
Development Services Department
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Via E-mail: PlanningDivision@san-marcos.net

**COMMENTS ON THE FINAL EIR (EIR 15-001, STATE CLEARINGHOUSE NO. 1999071007)
FOR THE SAN MARCOS HIGHLANDS PROJECT NO. P13-0009 (SP 13-001, TSM 13-001, CUP
13-010, ROZ 14-001, PZ 14-001, GPA 15-002, & EIR 15-001)**

Dear Mr. Pederson:

The County of San Diego (County) has received your request for comments on the Final EIR for the San Marcos Highlands Project and appreciates the opportunity to provide our comments on the project. The County Departments of Parks and Recreation and Planning & Development Services have reviewed the Final EIR and identified issues that may impact unincorporated County lands.

Many of the comments contained in this letter are similar to those raised in our previous letter submitted to the City on August 24, 2015 relating to the Draft EIR (letter attached). We have included County comments on your responses to our August 24, 2015 in italics. This letter also includes additional comments beyond those raised in our August 24, 2015 letter. Please note that none of these comments should be construed as County support for the proposed project or the associated annexation.

GENERAL COMMENTS

1. The majority of the proposed project area is within the unincorporated County and as currently designed is not consistent with the 2011 General Plan land use designation. The current design presents an intensification of use inconsistent with the County's General Plan land use designation of Semi-rural lands (SR-10). Development of the project at the proposed intensity would be inconsistent with the County's General Plan and overall planning principles.

September 6, 2016
Norm Pederson
City of San Marcos

The City's response to our General comment #1 (response # 6-2 on page 0.3-42 of the Final EIR) is that more detailed comments are provided further in the County's letter but it remains unclear what that reference means and how the City responded to the County's comment. County staff does not agree that this comment has been responded to and retains this comment. Please provide a response to this comment.

2. This property was included as a Property Specific Request (PSR) as part of the General Plan Update process, whereby the Board of Supervisors directed staff (independent of this proposed project) to evaluate the feasibility of changing the southern portion of the project area from Semi-Rural-10 to Semi-Rural-1. The PSR project will require a full environmental analysis and it is premature to speculate on the final Decision by the County's Board of Supervisors that the General Plan designation would be changed through this process. Staff has identified various constraints on this project area as part of the ongoing PSR evaluation process. These constraints are reflected in the comments provided on the proposed project.

The City's response to our General comment #2 (response # 6-2 on page 0.3-42 of the Final EIR) is that more detailed comments are provided further in the County's letter but it remains unclear what that reference means and how the City responded to the County's comment. County staff does not agree that this comment has been responded to and retains this comment. Please provide a response to this comment.

CLIMATE CHANGE/GHG

1. In Section 3.6.4, Cumulative Impact Analysis for Climate Change the DEIR states:

Cumulative projects in the County of San Diego would be subject to the County's June 2012 CAP requirements, which list community and local government measures and actions to reduce GHG emissions and identifies adaptation strategies. Future development within the County would be required to implement applicable measures and actions to ensure GHG emissions reductions consistent with AB32. Therefore, cumulative impacts are less than significant and no mitigation is required.

The County's CAP cannot be relied upon as it was rescinded in April 2015 by Court Order. The conclusion that projects located within the unincorporated County identified for cumulative impact evaluation will be mitigated by implementation of the County's CAP is incorrect. The Draft EIR must re-analyze the cumulative effect of projects identified within the unincorporated County to discern whether or not there would be a cumulatively considerable climate change impact without reliance on the County CAP to determine the significance of the cumulative climate change impact in accordance with the Supreme Court ruling RE: Newhall.

September 6, 2016
Norm Pederson
City of San Marcos

The City's response to the County's Climate Change comment #1 (response # 6-3 on page 0.3-36 of the Final EIR) was to remove the reference to the County's CAP and replace it with the County's Recommended Approach to addressing Climate Change in CEQA Documents guidance. The County's guidance document assists in the determination of impacts; however, it does not provide a program for mitigating impacts. The County believes that cumulative Green House Gas (GHG) impacts remain un-mitigated.

LAND USE

1. Page 3.9-14 of the Draft EIR cites a letter sent to the City of San Marcos dated August 9, 2013, signed by PDS Director Mark Wardlaw. Please note, County files indicate that this letter was dated August 19, 2013. This section of the Draft EIR summarizes the County's concerns expressed in the correspondence with the proposed project. One point that was specifically raised in this previous correspondence, which the Draft EIR fails to discuss, are the steep slopes of the project area and how, or if, the proposed project will significantly alter the existing topography. The Draft EIR has failed to adequately address this concern or explain how the selected significance criteria will aid the analysis of the proposed project and determine if the proposed project will result in immitigable environmental, social and economic impacts.

The City's response to our Land Use comment #1(response # 6-4 on page 0.3-42 of the Final EIR), points to two sections where slopes are discussed. However, there is no clarification of the significance criteria or clarity in the determination of Less Than Significance Impact.

2. Page 3.9-18 discusses the proposed project's consistency with the MHCP and draft NCMSCP with conclusory statements of consistency without providing rationale or logical explanation for such a determination. The Draft EIR needs to analyze the proposed project's consistency with these conservation programs, consistent with the Land Use impact significance criteria. The analysis must present a logical, fact-based rationale for any conclusions of less than significant or significant impact in relation to the significance criteria.

The City provided a response to our Land Use comment #2 (response # 6-5 on pages 0.3-42 to 0.3-43 of the Final EIR. The Final EIR appears to disclose the project's inability to meet the preservation goals of the Draft PAMA. Not meeting this goal is justified by characterizing the preservation goal of the PAMA as not a strict requirement, but merely a goal. The preservation goal represents a functioning preservation system; not meeting those goals compromises the functionality of the PAMA. It is unclear how a determination of consistency with the NCMSCP can be made when the future functionality of the preserve is compromised by the project. This inconsistency may impact the viability of the NCMSCP by compromising the ability to create a functional preserve system, especially at the project location.

September 6, 2016
Norm Pederson
City of San Marcos

3. The current land use designation for the project area within the unincorporated County is Semi-Rural 10 (SR10), translating to one dwelling unit per ten acres. If the entire project area (293 acres) were used to determine allowable density, the site would be allowed up to 29 dwelling units, not the proposed 189. The project proposes annexation of over 69 acres of unincorporated land into the City of San Marcos with approximately 140 dwelling units planned for this portion of the project area. This resulting density of two units per acre is well beyond the allowable density of the County's SR-10 designation. The Draft EIR rationale that the project area is proposed to be annexed (in whole or in part) to the City of San Marcos and thus does not need comply with County land use regulations is flawed because it deprives the public and decision makers of information and analysis to evaluate the proposed project. The current characterization of the future discretionary action by LAFCO as having the effect of relegating the County General Plan as irrelevant does not provide a sound basis. The Draft EIR should evaluate the proposed project under the current land use designations that govern the project area and reach a conclusion based on these facts and logical relationships. There must be a clear distinction between current and future conditions. Once an evaluation of current conditions is completed, an evaluation of a future condition, post-LAFCO action can be accomplished. The Draft EIR needs to address the issue of land use consistency without employing the results of a future discretionary action by LAFCO to analyze the proposed project.

The City provided a response to our Land Use comment #3 (response # 6-6 on page 0.3-43 of the Final EIR). While the Draft EIR provided a description of a "County Zoning Alternative", the County's comment requested that the proposed project be evaluated under applicable county codes (General plan, zoning, etc.) without the filter (assumed annexation) of a future discretionary action by LAFCO. The alternative referenced in the City's response evaluates a 'County compliant' alternative, rather than the proposed project under current County regulations alternative as requested by the County. The requested disclosure of information was not met.

4. Table 3.9-14 fails to analyze the proposed project's consistency with applicable land use *policies* and only addresses the land use *goals*; despite the fact that the Draft EIR does analyze project consistency with City goals and policies. This results in a flawed and incomplete analysis depriving the public and decision makers of meaningful information upon which to make a decision, both for the Lead and Responsible Agencies, under CEQA. As a Responsible Agency under CEQA, the County may not be able to rely on the Draft EIR for discretionary actions associated with the proposed project.

The City provided a response to our Land Use comment #4 (response # 6-7 on page 0.3-43 of the Final EIR) that directs us to their response # 6-6. Please see our Land Use comment # 3.

BIOLOGICAL RESOURCES

1. The proposed project is not consistent with the County's draft NCMSCP. As stated in our comment letter of August 19, 2013 regarding the proposed Tentative Subdivision Map (TSM 408-Revised) and reiterated in the December 12, 2013 Comments on the proposed Mitigated Negative Declaration, the proposed project would compromise the efficacy of the North County's Planned PAMA in this block of habitat. The PAMA includes high quality habitats that will create the ultimate linked preserve system in the North County Plan area; it extends to the northwest in the County's jurisdiction and to the southeast it links to the Northern Focused Planning Area of the City's Draft Natural Community Conservation Plan. The project site also provides important habitat in the Biological Core and Linkage Area (BCLA) of the Multiple Habitat Conservation Program (MHCP). Both regional plans rank the habitat as having very high habitat value. Development within this area would preclude its inclusion within the proposed PAMA, reduce the size of the PAMA, and would affect the viability of the PAMA in this area.

The City provided a response to our Biology comment #1 (response # 6-8 on page 0.3-43 of the Final EIR). This response is non-responsive. The County comment relates to the inconsistency of the project with the Draft NCMSCP. The response directs the reader to the City's response # 6-4 of the Final EIR which discusses the steep slopes of the project, not biological resources.

2. Figure 3.3-3, which is described to show the MHCP and NCMSCP designations and boundaries in relation to the proposed project area boundaries, is missing from the online version of the Draft EIR.

The City provided a response to our Biology comment #2 (response # 6-9 on page 0.3-43 of the Final EIR) that the figure was inadvertently omitted from the Draft EIR but is now included in the Final EIR.

3. It is unclear how the preserve corridor is measured. The Biological Resources chapter of the Draft EIR should include a figure demonstrating the appropriate widths for the preserve corridor. No fuel management should occur within the proposed preserve corridor. In the current design, it appears that fuel management would extend into the corridor area, further compromising the integrity of the preserve corridor.

The City provided a response to our Biology comment #3 (response # 6-10 on pages 0.3-43 – 0.3-44 of the Final EIR). The response indicates that consistency with previously issued permits results in a finding of less than significant. Information regarding the referenced permits is unclear. Information such as what the permits were issued for, by what agency and what time period they are valid is not disclosed. Regardless, the significance criteria does not rely on the provision of permits for impact determination; that is, the previous issuance of permits does not obviate the EIR from making a determination of impacts based on factual information that directly addresses the significance criteria. The permit information is anecdotal.

September 6, 2016
Norm Pederson
City of San Marcos

4. The existing habitat acreages discussed in the Draft EIR do not match Appendix D1 – Biological Resources Report. For example, section 3.1.1.1 of the Draft EIR (a numbering error – should be 3.3.1.1) states that DCSS acreage is 263.19 acres, but the Biological Resources Report states 251.25 acres. Further, the habitat acreages identified as potentially impacted in the Draft EIR do not match the Biological Resources Report (e.g. 77.74 acres of CSS versus 61.65). These discrepancies must be rectified as the impacts and mitigation measures identified in Draft EIR cannot be relied upon with such significant differences.

The City provided a response to our Biology comment #4 (response # 6-11 on page 0.3-44 of the Final EIR). The City's response asserts that an older version (September 26, 2014) of the Biological Resources Report was included in the technical appendices for the Draft EIR in error. The older report included different acreages than the EIR however the Draft EIR text contained the correct quantities of habitat onsite, proposed impact quantities, and proposed mitigation. The correct version of the Biology Resources Report has subsequently been made available with the Final EIR.

This appears to deny the public of information that is necessary to make an informed decision and comment given the EIR Biology chapter relies on the Biology Resources Report. How could the public (or County) provide meaningful input if the incorrect information was provided? The 'correct' Biology Resources Report constitutes substantial new information and the EIR Biological Resources Chapter, along with the correct Biology Resources Report should be recirculated for public review and comment.

5. Current proposed project site attributes contribute to the connectivity of coastal California gnatcatcher habitat to the east in the San Marcos Mountains and along the 1-15 corridors. This connection is necessary to maintain a north-south connection between the San Dieguito River near Lake Hodges to the south (within the northern portion of the County's MSCP preserve system), through gnatcatcher habitat within the City of Carlsbad to the northwest, through the "stepping stone" corridor of gnatcatcher habitat patches extending through Oceanside, to core populations of gnatcatchers on Camp Pendleton. Retaining the connectivity of the gnatcatcher habitat within northern San Marcos and County lands located adjacent to the cities of San Marcos, Vista, and Oceanside, is an important feature of the proposed project area. Compared to current conditions, this linkage would be reduced by the proposed project and constrain wildlife movement.

The City provided a response to our Biology comment #5 (response # 6-12 on page 0.3-44 of the Final EIR). The County does not agree with the determination of less than significant impact due to the project resulting in further fragmentation and continuation of 'stepping stone' habitat which may be acceptable to avian species, but not wildlife without the capability of flight.

6. The County's Draft MSCP North County Plan Planning Agreement includes the following language which should be considered for this project.

"In the event land within the County's jurisdiction is proposed to be annexed to another jurisdiction, the County shall request that LAFCO impose a requirement on the annexing jurisdiction that it shall enter into an agreement between the county, the annexing jurisdiction, USFWS and CDFW as part of the annexation process to ensure that annexation would only occur when the annexation will not jeopardize the buildout of the preserve or the coverage of species within either of the planning areas..."

TRAFFIC AND TRANSPORTATION

1. The Draft EIR references San Marcos General Plan Policy M-1.6 which, identifies '*work to improve connectivity...work with new development to provide connectivity and redundancy in the mobility network*'. Both the City of San Marcos and County General Plan identify a connection of Las Posas Road from Buena Creek Road to SR-78. While not currently proposed for connection, no project alternative should preclude a future extension/connection of Las Posas Road. Open Space Lot 3A of the proposed project may compromise the potential for a future Las Posas connection. The Draft EIR needs to analyze an alternative project design that provides a reasonable and feasible connection to meet the intent of Policy M-1.6 for vehicle, bicycle, pedestrian and trail accommodation.

The City provided a response to our Traffic and Transportation comment #1 (response # 6-19 on page 0.3-45 of the Final EIR). The City's response indicates that the proposed Open Space/biological conservation easement could make the Las Posas Road connection/extension more challenging but not preclude the future roadway connection. The City should describe in detail the process that would be required for the Las Posas Road extension because of the Open Space/biological conversation easement.

2. The Draft EIR argues that the proposed project is not responsible for paying the County's TIF because there is no nexus based on: 1) No cumulative or direct impacts identified to Las Posas Road; 2) Future Year (2035) analysis indicates only nominal trips onto County roads and 3) the proposed project annexation into the City of San Marcos. However, the majority of the proposed dwelling units are within the unincorporated County and unless annexed into the City, the project would be responsible for paying the County's TIF regardless of how many trips were identified on Las Posas Road. Therefore, consistent with previous correspondence:

- The Las Posas connection is a planned Mobility Element (ME) network road on both the County's Mobility Element of the General Plan and within the City's Circulation Element.
- The County's Transportation Impact Fee (TIF) program is a requirement for all projects located on existing unincorporated County lands that will generate vehicle trips, regardless of the number of trips. Payment of the TIF does not depend on whether the individual project has a "nominal" cumulative or direct impact to a particular roadway facility.

September 6, 2016
Norm Pederson
City of San Marcos

- A portion of the proposed project is located within unincorporated County lands that were included in the analysis and development of the County's TIF. Therefore, the project should contribute to the County's TIF to adequately mitigate for projected future road deficiencies identified within the County, regardless of whether the project area is annexed.
- The County recommends a mitigation measure be added to the Draft EIR to require payment of the TIF or another agreed upon mitigation between the County and the City of San Marcos. If the City of San Marcos collects the required SANDAG Regional Transportation Congestion Improvement Program (RTCIP) Impact Fee amount of \$2,310 (*figures updated to reflect fee rates good as of 7/1/15*) per dwelling unit, then the County TIF rate would be \$1,886 per unit (North County Metro, Non-Village Rate). Based on the approximately 140 units located within the unincorporated County, the corresponding TIF would be \$264,040 (140 x \$1,886). Link to TIF: <http://www.sdcountry.ca.gov/dpw/land/tif.html>

The City provided a response to our Traffic and Transportation comment #2 (response # 6-20 on page 0.3-45 of the Final EIR). The City should augment Response 6-20 so it explains how the proposed project would address local and regional cumulative traffic impacts in a manner that is equivalent to the County's TIF program.

The County looks forward to receiving future documents and/or notices related to the project and providing additional assistance at your request. If you have any questions regarding these comments, please contact Danny Serrano, Land Use / Environmental Planner at (858) 694- 3680, or via email at daniel.serrano@sdcounty.ca.gov.

Sincerely,



Joe Farace, Group Program Manager
Advance Planning Division
Planning & Development Services

Attachment: City's Responses to County's Comment Letter Dated August 24, 2015

E-mail cc:

Dustin Steiner, Chief of Staff, Board of Supervisors, District 5
Megan Jones, Group Program Manager, LUEG
Jeff Kashak, Environmental Planner, Department of Public Works
Richard Chin, Associate Transportation Specialist, Department of Public Works
Nick Ortiz, Advanced Planning Manager, Planning & Development Services
Peter Eichar, Land Use/Planning Manager, Planning & Development Services
Marcus Lubich, Park Project Manager, Department of Parks and Recreation
Michael Ott, Executive Officer, LAFCO



County of San Diego

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August 24, 2015

City of San Marcos Planning Division
Norm Pedersen, Associate Planner
1 Civic Center Drive
San Marcos, CA 92069

Via E-mail: PlanningDivision@san-marcos.net

COMMENTS ON THE DRAFT EIR FOR SAN MARCOS HIGHLANDS PROJECT

Dear Mr. Pederson

The County of San Diego (County) has reviewed the Draft EIR for the San Marcos Highlands Project and appreciates this opportunity to comment. The County Department of Public Works, Parks and Recreation and Planning & Development Services have reviewed the DEIR and identified issues that may have an effect on unincorporated County lands. Many of these issues have been previously raised in correspondence to the City of San Marcos. Please note that none of these comments should be construed as County support for the proposed project or the associated annexation.

6-1

GENERAL COMMENTS

The majority of the proposed project area is within the unincorporated County and as currently designed is not consistent with the 2011 General Plan land use designation. The current design presents an intensification of use inconsistent with the County's General Plan land use designation of Semi-rural lands (SR-10). Development of the project at the proposed intensity would be inconsistent with the County's General Plan and overall planning principles.

This property was included as a Property Specific Request (PSR) as part of the General Plan Update process, whereby the Board of Supervisors directed staff (independent of this proposed project) to evaluate the feasibility of changing the southern portion of the project area from Semi-Rural-10 to Semi-Rural-1. The PSR project will require a full environmental analysis and there is no guarantee that the General Plan designation would be changed through this process. Staff has identified various constraints on this project area as part of the ongoing PSR evaluation process. These constraints are reflected in the comments provided on the proposed project.

6-2

0.3 Response to Comments

August 24, 2015
Norm Pederson
City of San Marcos

CLIMATE CHANGE/GHG

In Section 3 6.4, Cumulative Impact Analysis for Climate Change the DEIR states:

Cumulative projects in the County of San Diego would be subject to the County's June 2012 CAP requirements, which list community and local government measures and actions to reduce GHG emissions and identifies adaptation strategies. Future development within the County would be required to implement applicable measures and actions to ensure GHG emissions reductions consistent with AB32. Therefore, cumulative impacts are less than significant and no mitigation is required.

6-3

Unfortunately, the County's CAP cannot be relied upon due to its rescission in April 2015 by Court Order. Therefore, the conclusion that projects located within the unincorporated County identified for cumulative impact evaluation will be mitigated by implementation of the County's CAP, is not correct. The Draft EIR will need to re-analyze the cumulative effect of projects identified within the unincorporated County to discern whether or not there would be a cumulatively considerable climate change impact without reliance on the County CAP to determine the significance of the cumulative climate change impact.

LAND USE

Page 39-14 of the Draft EIR cites a letter sent to the City of San Marcos dated August 9, 2013, signed by PDS Director Mark Wardlaw. County files indicate that this letter was dated August 19, 2013. Nevertheless, this section of the Draft EIR summarizes the County's concerns expressed in the correspondence with the proposed project. One point that was specifically raised in this previous correspondence, which the Draft EIR fails to discuss, are the steep slopes of the project area and how, or if, the proposed project will significantly alter the existing topography. The Draft EIR has failed to adequately address this concern or explain how the selected significance criteria will aid the analysis of the proposed project and determine if the proposed project will result in inmitigable environmental, social and economic impacts.

6-4

Page 39-18 discusses the proposed projects consistency with the MHCP and draft NCMSCP with conclusory statements of consistency without providing rational or logical explanation for such a determination. The Draft EIR needs to analyze the proposed projects consistency with these conservation programs, consistent with the Land Use impact significance criteria. The analysis must present a logical, fact-based rationale for any conclusions of less than significant or significant impact in relation to the significance criteria.

6-5

The current land use designation for the project area within the unincorporated County is Semi-Rural 10 (SR10), translating to one dwelling unit per ten acres. If the entire project area (293 acres) were used to determine allowable density, the site would be allowed up to 29 dwelling units, not the proposed 189. The project proposes annexation of over 69 acres of unincorporated land into the City of San Marcos with approximately 140 dwelling units planned

6-6

0.3 Response to Comments

August 24, 2015
Norm Pederson
City of San Marcos

for this portion of the project area. This resulting density of two units per acre is well beyond the allowable density of the County's SR-10 designation. The Draft EIR rationale that the project area is proposed to be annexed (in whole or in part) to the City of San Marcos and thus does not need comply with County land use regulations is flawed because it deprives the public and decision makers of information and analysis to evaluate the proposed project. The current characterization of the future discretionary action by LAFCO as having the effect of relegating the County General Plan as irrelevant is speculative and not helpful. The Draft EIR needs to evaluate the proposed project under the current land use designations that govern the project area and reach a conclusion based on facts and logical rationales. There must be a clear distinction between current and future conditions. Once an evaluation of current conditions is completed, an evaluation of a future condition, post-LAFCO action can be accomplished. The Draft EIR needs to address the issue of land use consistency without employing the results of a future discretionary action by LAFCO to analyze the proposed project.

6-6
Cont.

Table 39-14 fails to analyze the proposed project's consistency with applicable land use policies and only addresses the land use goals, despite the fact that the Draft EIR does analyze project consistency with City goals and policies. This is a flawed and incomplete analysis depriving the public and decision makers of meaningful information upon which to make a decision, both for the Lead and Responsible Agencies, under CEQA. As a Responsible Agency under CEQA, the County may not be able to rely on the Draft EIR for discretionary actions associated with the proposed project.

6-7

BIOLOGICAL RESOURCES

The proposed project is not consistent with the County's draft NCMSCP. As stated in our comment letter of August 19, 2013 regarding the proposed Tentative Subdivision Map (TSM 408-Revised) and reiterated in the December 12, 2013 Comments on the proposed Mitigated Negative Declaration, the proposed project would compromise the efficacy of the North County's Planned PAMA in this block of habitat. The PAMA includes high quality habitats that will create the ultimate linked preserve system in the North County Plan area, it extends to the northwest in the County's jurisdiction and to the southeast it links to the Northern Focused Planning Area of the City's Draft Natural Community Conservation Plan. The project site also provides important habitat in the Biological Core and Linkage Area (BCLA) of the Multiple Habitat Conservation Program (MHCP). Both regional plans rank the habitat as having very high habitat value. Development within this area would preclude its inclusion within the proposed PAMA, reduce the size of the PAMA, and would affect the viability of the PAMA in this area.

6-8

Figure 3.3-3, which purports to show the MHCP and NCMSCP designations and boundaries in relation to the proposed project area boundaries, is missing from the online version of the Draft EIR.

6-9

It is unclear how the preserve corridor is measured. The Biological Resources chapter of the Draft EIR should include a figure demonstrating the appropriate widths for the preserve

6-10

0.3 Response to Comments

August 24, 2015
Norm Pederson
City of San Marcos

corridor. No fuel management should occur within the proposed preserve corridor. In the current design, it appears that fuel management would extend into the corridor area, further compromising the integrity of the preserve corridor.

6-10
Cont.

The existing habitat acreages discussed in the Draft EIR do not match Appendix D1 – Biological Resources Report. For example, section 3.1.1.1 of the Draft EIR (a numbering error – should be 3.3.1.1) states that DCSS acreage is 263.19 acres, but the Biological Resources Report states 251.25 acres. Further, the habitat acreages identified as potentially impacted in the Draft EIR do not match the Biological Resources Report (e.g. 77.74 acres of CSS versus 61.65). These discrepancies must be rectified as the impacts and mitigation measures identified in Draft EIR cannot be relied upon with such significant differences.

6-11

Current proposed project site attributes contribute to the connectivity of coastal California gnatcatcher habitat to the east in the San Marcos Mountains and along the 1-15 corridors. This connection is necessary to maintain a north-south connection between the San Dieguito River near Lake Hodges to the south (within the northern portion of the County's MSCP preserve system), through gnatcatcher habitat within the City of Carlsbad to the northwest, through the "stepping stone" corridor of gnatcatcher habitat patches extending through Oceanside, to core populations of gnatcatchers on Camp Pendleton. Retaining the connectivity of the gnatcatcher habitat within northern San Marcos and County lands located adjacent to the cities of San Marcos, Vista, and Oceanside, is an important feature of the proposed project area. Compared to current conditions, this linkage would be reduced by the proposed project and constrain wildlife movement.

6-12

Restoration of habitat, on or offsite, to address impacts to wildlife species, especially coastal California gnatcatcher should use only native species that occur in Diegan coastal sage scrub dominated by California sagebrush (*Artemisia californica*), which is the type of coastal sage scrub preferred by the federally listed coastal California gnatcatcher.

6-13

PUBLIC TRAILS AND PATHWAYS

The unincorporated community of Twin Oaks Valley (TOV) has an adopted community trails and pathways plan that is incorporated into the Community Trails Master Plan (CTMP), which aids implementation of the County Trails Program. Implementation of the project, as proposed will impact the community's plan.

6-14

One of the major connections for TOV is the "Las Posas Road Pathway". The pathway extends from the intersection at Buena Creek Road along the entire length of "Blue Bird Canyon" to Las Posas Road through the project. Any improvements to this road (on or off-site) need to incorporate the community pathway. Pathways are minimum 10-foot wide with compacted decomposed granite. Figure 2-6. Trail Cross Section, 16-foot Urban Trail is acceptable. See attached County Pathway Design Guidelines for reference.

0.3 Response to Comments

August 24, 2015
Norm Pederson
City of San Marcos

Comments below are related to the proposed projects' trails plan

Trail #37

- The multi-use trail (#37) appears to have no connection to the south on the project site. The trail continues onto two private parcels to west.
- Does the City of San Marcos have trail easements on these two parcels? If not, then provide a trail from Trail #37 to the "Local Trail" on the project site for a continuous trail connection to Las Posas Road.
- Make the "existing Private Trail" in the south west corner a "Local Trail" for the loop back to Las Posas Road (Trail #36)
- Will "Street A" have a pathway (DG trail within public road right of way) from Park "A" (and Trail #37 connection/trail head) to Trail #36/Las Posas Road?

6-15

Trail #36

- Does the trail section along Street A near Park "C" continue along or adjacent to the street north to Trail #36 for a loop trail? If not, a connection should be provided

6-16

Trail #27

- Trail appears to end at southern property boundary. Is there an off-site connection (easement) to the west and east via the adjacent subdivision? If not, provide a trail connection to Trail #36/Las Posas Road and an additional connection to the east to the private trail in open space.
- Does the northerly end of Trail #27 continue along Street "A" (west) to connect with the Trail #36/Las Posas Road? A connection should be provided for a loop

6-17

Private Trails

- The eastern portion of the project shows existing private trails that have no connection on-site. Are there existing off-site trail connections (easements)?
- Why are these trails (blue) private? Is the general public and/or adjacent developments not allowed on these trails? Or are they private only as they relate to the maintenance/ownership such as a Homeowners Association?
- Is there a trail connection from the easterly most lots off Street "F" to the open space trails? Can trail access (easement) share the easement for "access to fuel treatment zones" between Lots #172 and 173?

6-18

TRAFFIC AND TRANSPORTATION

The Draft EIR references San Marcos General Plan Policy M-1.6 which, identifies 'work to improve connectivity .work with new development to provide connectivity and redundancy in the mobility network'. Both the City of San Marcos and County General Plan identify a connection of Las Posas Road from Buena Creek Road to SR-78. While not currently proposed for connection, no project alternative should preclude a future extension/connection of Las Posas Road. Open Space Lot 3A of the proposed project may compromise the potential for a future Las Posas connection. The Draft EIR needs to analyze an alternative project design that provides a reasonable and feasible connection to meet the intent of Policy M-1.6 for vehicle, bicycle, pedestrian and trail accommodation.

6-19

0.3 Response to Comments

August 24, 2015
Norm Pederson
City of San Marcos

The Draft EIR argues that the proposed project is not responsible for paying the County's TIF because there is no nexus based on: 1) No cumulative or direct impacts identified to Las Posas Road, 2) Future Year (2035) analysis indicates only nominal trips onto County roads and 3) the proposed project annexation into the City of San Marcos. However, the majority of the proposed dwelling units are within the unincorporated County and unless annexed into the City, the project would be responsible for paying the County's TIF regardless of how many trips were identified on Las Posas Road. Therefore, consistent with previous correspondence:

- The Las Posas connection is a planned Mobility Element (ME) network road on both the County's Mobility Element of the General Plan and within the City's Circulation Element
- The County's Transportation Impact Fee (TIF) program is a requirement for all projects located on existing unincorporated County lands that will generate vehicle trips, regardless of the number of trips. Payment of the TIF does not depend on whether the individual project has a "nominal" cumulative or direct impact to a particular roadway facility
- A portion of the proposed project is located within unincorporated County lands that were included in the analysis and development of the County's TIF. Therefore, the project should contribute to the County's TIF to adequately mitigate for projected future road deficiencies identified within the County, regardless of whether the project area is annexed.
- The County recommends a mitigation measure be added to the Draft EIR to require payment of the TIF or another agreed upon mitigation between the County and the City of San Marcos
 - If the City of San Marcos collects the required SANDAG Regional Transportation Congestion Improvement Program (RTCIP) Impact Fee amount of \$2,310 (figures updated to reflect fee rates good as of 7/1/15) per dwelling unit, then the County TIF rate would be \$1,886 per unit (North County Metro, Non-Village Rate). Based on the approximately 140 units located within the unincorporated County, the corresponding TIF would be \$264,040 (140 x \$1,886). Link to TIF: <http://www.sdcountry.ca.gov/dpw/land/tif.html>

6-20

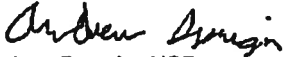
The County appreciates the opportunity to participate in the environmental review process for this project. We look forward to providing additional assistance at your request. If you have any questions regarding these comments, please contact Eric Lardy, Planning Manager, at (858) 694- 3052, or via email at eric.lardy@sdcounty.ca.gov

6-21

0.3 Response to Comments

August 24, 2015
Norm Pederson
City of San Marcos

Sincerely,


Andrew Spurgin, AICP
Chief
Advance Planning Division

e-mail cc.

Chris Livoni, Policy Advisor, Board of Supervisors, District 5
Conor McGee, CAO Staff Officer, LUEG
Jeff Kashak, Environmental Planner, Department of Public Works
Michael Ott, Executive Officer, LAFCO
Richard Chin, Associate Transportation Specialist, Department of Public Works
Nick Ortiz, Advanced Planning Manager, Planning & Development Services

Letter 6
County of San Diego
August 24, 2015

- 6-1. This comment provides opening remarks and does not address the adequacy or accuracy of the information presented in the Draft EIR and therefore no further response is necessary.
- 6-2. This comment notes that the project site has a designation of SR-10 in the County's General Plan. It also states that the project site was included as a Property Specific Request (PSR) as part of the County's General Plan Update process. More detailed comments are provided further in the County's letter.
- 6-3. This comment addresses the cumulative analysis related to climate change, noting the County's Climate Action Plan cannot be used due to its rescission in April 2015 by Court Order. The text on page 3.6-5 of the Final EIR has been revised:

"Cumulative projects in the County of San Diego would be subject to the County's Recommended Approach to Addressing Climate Change in CEQA Documents guidance². If projects in the County exceed the GHG screening threshold of 900 metric tons of carbon dioxide equivalent (MT CO₂e), additional analysis and a reduction of GHG emissions of 16% below business as usual. The County is in the process of preparing a new Climate Action Plan, with a completion date of Fall 2017."

The conclusion regarding cumulative greenhouse gas remains the same and impacts would be less than significant.

- 6-4. This comment notes that an incorrect date was used in the EIR in reference to a letter from Mr. Wardlaw. The reference to the date of Mr. Wardlaw's letter has been updated in the EIR. Please see page 3.9-15 of the Final EIR.

This comment also states that the EIR did not adequately discuss the steep slopes on the project site and how the project would impact the existing topography. Page 2-9 of the Draft EIR discussed the proposed grading for the project site as part of the EIR project description. Page 2-16 of the EIR notes the current elevation range on the project site. The Draft EIR included visual simulations (Figures 3.1-2 through 3.1-7) which show existing topography and the post-project development condition from six key views. Further, the project focuses development on the less topographically diverse portions of the project site.

- 6-5. This comment addresses the discussion in the Draft EIR regarding the project's consistency with the MHCP and the draft NCMSCP. The project's consistency with the goals of the MHCP and draft MCMSPC were addressed on page 3.3-21 of the Draft EIR. Additional information regarding the project's consistency with the Planning Goals and Preliminary Conservation Objectives of the draft NCMSCP Planning Agreement (as amended in September 2014) are included on pages 3.3-12 and 3.3-13 in the Final EIR.

² <http://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/docs/PDS2015GHG%20Guidance%20-1-21-15.pdf>

0.3 Response to Comments

The project is consistent with the Planning Goals (Section 3) of the Planning Agreement by providing for the conservation and management of Covered Species, by preserving aquatic and terrestrial resources through conservation partnerships, by allowing for appropriate and compatible growth and development that are consistent with applicable laws, by providing a basis for necessary permits to lawfully take Covered Species, and by providing a comprehensive means to coordinate and standardize mitigation and compensation requirements.

The project is also consistent with the Preliminary Conservation Objectives (Section 5) of the Planning Agreement by providing for the protection of species, natural communities, and ecosystems on a landscape level, preserving the diversity of plant and animal communities throughout the Planning Areas, minimizing and mitigating the take or loss of Covered Species, identifying and designating biological sensitive habitat areas, and preserving habitat to contribute to the recovery of Covered Species.

- 6-6. This comment addresses the project's consistency with applicable policies in the County's General Plan. The portion of the Specific Plan that is within the County would be annexed into the City and would be subject to the City's requirements. The only area that would remain in the County is a 22.8-acre area that would be biological open space. This area would be subject to the County's General Plan goals and policies. The Draft EIR did analyze the current County designation of SR 10 as a project alternative, reducing the number of residential lots from 189 to 133, a 29 % reduction. The Draft EIR continued with an analysis of the impacts that would result with the "County Zoning Alternative" compared to the project as proposed (Draft EIR, Section 4.3.5, Page 4-19).
- 6-7. This comment states that Table 3.9-14 fails to analyze the proposed project's consistency with applicable County land use policies. Please see response 6-6. This comment also addresses the use of the EIR for County approvals. The only approval that will be required from the County is a boundary adjustment. The project applicant will be responsible for obtaining a grading permit for the emergency road connection if needed.
- 6-8. This comment states the project is not consistent with the County's draft NCMSCP. Please see response 6-4.
- 6-9. This comment notes the omission of Figure 3.3-3, which was inadvertently omitted from the Draft EIR. It is now included in the Final EIR. Please see page 3.3-40 of the Final EIR.
- 6-10. This comment requests a figure demonstrating the widths for the preserve corridor and notes that no fuel management should occur within the proposed corridor. The northern habitat linkage varies in width, ranging from a maximum of 2,265 feet wide to a minimum of 400 feet wide (515 feet wide including the fuel modification zone. There is one pinch point of 400 feet wide for a maximum of 500 linear feet, consistent with the regulatory permits previously issued for the project. Figure 3.3-4 has been added to the Final EIR to show the varying widths along the northern linkage. Please see page 3.3-42 of the Final EIR.

The City recognizes that the wildlife agencies do not include actively managed fuel modification areas as conserved, however, these areas can provide stepping stone areas for avian (and other) species. For example, according to the California Department of Fish and Wildlife: "Fire buffers, green belts, easements and similar areas often serve as

0.3 Response to Comments

both fire breaks and as wildlife habitat or wildlife corridors" (Current Issues Fall 2010 - Wildfire Policy and Procedures)³. Further, Zone 2 is where permanent vegetation is removed and cleared areas hydroseeded with a mix of native annual and perennial grasses. Native grasslands are a valuable biological resource that provide foraging and movement opportunities for wildlife.

6-11. This comment notes discrepancies in the existing habitat acreage amounts in the Draft EIR. The habitat quantities, impacts and mitigation included in the Draft EIR are the correct acreages. An older version (September 26, 2014) of the biological resources report was included in the technical appendices for the Draft EIR in error. The older report included different acreages than the EIR however the Draft EIR text contained the correct quantities of habitat onsite, proposed impact quantities, and proposed mitigation. Since circulation of the Draft EIR, minor changes were made to the biological resources report based upon response to comments. The most recent version of the report (dated November 4, 2015) is included as Appendix D.1 of the Final EIR.

6-12. This comment addresses the proposed connectivity of the site to other offsite areas of gnatcatcher habitat. As detailed on page 3.3-10 of the Draft EIR, the Buena Creek California Gnatcatcher and Coastal Sage Scrub Conservation Bank is located northwest of, but not contiguous to, the project site. This conservation bank offers coastal California gnatcatcher and CSS habitat credits. The nearest large undisturbed area is the Merriam Mountains, more than a mile north of the site. There is no connection or corridor between the project site and the Merriam Mountains area. Thus, the project site is best described as a "stepping stone" between other isolated habitat areas. Volume 3 of the MHCP acknowledges this and specifically designates the project site and surrounding suburban development area as a stepping stone. As a consequence of this designation, the MHCP considers the function and value of the site in a broader context as providing habitat for birds, which can move between stepping stone patches of habitat.

The project will preserve, monitor and manage 185.83 acres of coastal sage scrub on the project site. This will afford the long term protection of habitat for the gnatcatcher. The habitat linkage along the northern project boundary will provide stepping stone areas for the gnatcatchers to move between other large blocks of habitat.

6-13. This comment addresses the proposed restoration of CSS on the project site. Restoration will be done in accordance with the HMMP that was prepared for the project (Appendix D.5 of the EIR). Table 12 of the HMMP notes the specific species that will be obtained for transplant on site and the species of container plants that will be used. *Artemisia californica* (California sage brush) will make up 50 percent of the transplanted species to be obtained on site. The other two species to be obtained on site are *Salvia apiana* (white sage) at 30 percent and *Salvia mellifera* (black sage) at 20 percent. As noted in the HMMP, much of the Diegan coastal sage scrub in the project area is dominated by black sage, which indicates that the project site may not be ideal habitat for the California gnatcatcher. The location where the one California gnatcatcher pair was observed will not be disturbed by the proposed project and Diegan coastal sage scrub mitigation efforts will actually expand habitat in the vicinity of the sighting by converting disturbed areas to Diegan coastal sage scrub habitat while restoring and preserving additional off-site lands (HMMP, Appendix D.5, Section 3.3.1).

³ <http://www.fgc.ca.gov/public/reports/DFGIssues/Wildfire%20Policy%20and%20Procedures.pdf>

0.3 Response to Comments

- 6-14. This comment addresses the proposed pathway along Las Posas Road. Per the County's comments, the proposed 16-foot Urban Trail is acceptable and will be included in the project design. The 16-foot Urban Trail is comprised of 10 feet of decomposed granite surface and 6 feet of sidewalk for a total of 16 feet.
- 6-15. This comment addresses future connections for Trail #37. The proposed improved trail will follow the aqueduct access road across the northwest corner of the project site. The improved trail will end at the south end, because the aqueduct access road then enters the County. The City does not have a trail easement across the two parcels to the south, which are in the County's jurisdiction. The project will provide a local trail connection from Las Posas Road along the southwest side of the development to an existing unimproved trail, which connects to the aqueduct access road. Per the regulatory permits, the unimproved section will need to remain as-is. In addition, the sidewalk along Street A provides pedestrian access from Las Posas Road to Park A which connects to Trail 37.
- 6-16. This comment addresses the connections for Trail #36. The trail section along Street A near Park "C" will continue along the street to the north of Trail #46 to form a loop trail.
- 6-17. This comment addresses the connections for Trail #27. This private trail will connect to the east to existing trail along the north side of the Santa Fe Hills neighborhood and Owens Peak.
- 6-18. This comment addresses future connections to private trails proposed as part of the project. These existing trails will be open to the public. A trail connection is proposed between lots 173 and 174 from the improved trail on Street F to the existing unimproved trails to the east.
- 6-19. This comment states that open space Lot 3A compromises the potential for a future Las Posas Road connection. Page 6-3 of the Draft EIR noted that the proposed biological mitigation for the project, which includes restoration and enhancement along the riparian corridor on the project site and the preservation of large blocks of land in a biological conservation easement, could make the extension of Las Posas Road more challenging as a proposed extension would likely impact sensitive riparian habitat that is being enhanced, restored, and preserved as part of the proposed project. Additionally, there is no identified right-of-way for the further extension of Las Posas. Therefore, while the open space may make the extension more challenging, it does not preclude an extension from occurring at a later date, and any such extension will require regulatory permits from USACE, CDFW, and RWQCB and mitigation for impacts to sensitive habitats.
- 6-20. This comment addresses the payment of the County's Transportation Impact Fee (TIF). All of the proposed development will be annexed into the City. There will not be any residential units within the County's jurisdiction nor does the project directly connect to any County roads. The only portion of the project site remaining within the County will be 22.8 acres of open space that will be subject to a conservation easement that would preclude development of residential units.
- 6-21. This comment provides concluding statements and contact information and does not address the adequacy or accuracy of the information presented in the Draft EIR and therefore no further response is necessary.