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

Mark Slovick
County of San Diego
Planning & Development Services
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Re: Lilac Hills Ranch Project Draft Environmental Impact Report

Dear Mr. Slovick:

This firm represents the Cleveland National Forest Foundation (“CNFF”) in connection with the proposed Lilac Hills Ranch project (“Project”). The Project and the County’s draft environmental impact report (“DEIR”) suffer from numerous flaws. Specifically, the DEIR fails to comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. First, the DEIR reaches the outrageous conclusion that the Project would have no significant effects on agricultural resources even though it would convert hundreds of acres of productive farmland to non-agricultural use. Likewise, the DEIR concludes—contrary to common sense and all evidence—that the construction of the proposed suburban community, which is far from any existing urban area and will cause more than 60 million miles of vehicle travel per year, will somehow not have a significant impact on greenhouse gas emissions or climate change.

In addition, the Project conflicts with the County’s General Plan, the Bonsall Community Plan and the Valley Center Community Plan, in violation of State Planning and Zoning Law, Gov’t Code § 65000 et seq. For example, the Project proposes a new “village” in a rural and semi-rural area where no village is currently planned. The General Plan prohibits such a new village unless it complies with strict environmental stewardship standards, which this Project does not. Finally, the Project’s inconsistency with the General Plan precludes its approval under the Subdivision Map Act.

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

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

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

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

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

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

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

The DEIR purports to use the Local Agricultural Resources Assessment (“LARA”) model to reach its conclusion that the Project will not have significant agricultural impacts due to on-site conversion of farmland. Although it may sometimes be appropriate to use this model as a threshold for determining whether a project’s agricultural impacts will be significant, agencies must use the model correctly, and they may not rely exclusively on the model for a finding of insignificant impacts if other substantial evidence in the record demonstrates that the Project may actually cause significant impacts. *Communities for a Better Env’t v. California Resources Agency* (2002) 103 Cal.App.4th 98, 112-13 (thresholds of significance cannot be used as binding standards that foreclose the use of other evidence to demonstrate that a project may have significant effects); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met”). Nor may the County rely on this model as a threshold for determining significance if the model fails to accurately measure the particular environmental effects caused by the Project. *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1109.

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

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

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

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

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

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

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

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

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

The DEIR concludes that the Project will not have a significant impact on on-site agricultural lands because on-site agricultural soils are poor. DEIR at 2.4-9. This is the exclusive reason the DEIR finds that the Project will not have a significant impact on on-site agricultural lands. *Id.* The DEIR bases its finding on the Agricultural Resources Report's LARA modeling, which found that “only” 40 acres of on-site land is classified as having soils designated as Prime Farmland soils or soils of Statewide Importance. Agricultural Resources Report of EIR, p. 47; DEIR at 2.4-10.¹

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

The DEIR's characterization of on-site soils as "poor," and its reliance on this factor to find no significant impacts is not supported by substantial evidence. On the contrary, the DEIR itself acknowledges that the site contains a vibrant and productive variety of farms that grow citrus, row crops, grapes and nursery products. If the soil is allegedly so poor, farmers would not have been able to grow these crops for the past four decades. Indeed, if allegedly poor soil disqualified land from being able to support productive agriculture, San Diego County would not have much agriculture. *Most* agricultural soils in the County are poor, but this has not stopped the County from becoming the 12th largest agricultural county in the nation, with more than 292 organic growers—the highest number of any county in the nation. San Diego County General Plan EIR, p. 2.2-2 - 7 (August, 2011), excerpts attached as Exhibit 2 and available in full at [http://www.sdcounty.ca.gov/dplu/gpupdate/docs/BOS_Aug2011/EIR/FEIR_2.02 - Agriculture_2011.pdf](http://www.sdcounty.ca.gov/dplu/gpupdate/docs/BOS_Aug2011/EIR/FEIR_2.02_-_Agriculture_2011.pdf).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Neighboring farmers often cooperate in production activities, including equipment sharing, land renting, custom work, and irrigation system development. These benefits will disappear when neighboring farms are converted to development. Farmers may no longer be able to benefit from information sharing and formal and informal business relationships among neighboring farms. Urbanization may also cause the “impermanence syndrome” (i.e., a lack of confidence in the stability and long-run profitability of farming), leading to a reduction in investment in new technology or machinery, or idling of farmland (Lopez, Adelaja, and Andrews, 1988).

As urbanization intensifies, agricultural and nonagricultural land use conflicts become more severe. This may lead to an increase in local ordinances designed to force farmers to pay for some of the negative impacts generated by agriculture. As the nearest input suppliers close because of insufficient demand for farm inputs, a farmer may have to pay more for inputs or spend more time to obtain equipment repairs (Lynch and Carpenter, 2003). Competition for labor from nonagricultural sectors may raise farmers’ labor costs. When the total amount of farmland falls below a critical mass, the local agricultural economy may collapse as all agricultural supporting sectors disappear.

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

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

2. Impacts From Pets and Pests.

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

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

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

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

3. Impacts Related to School.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The DEIR Unlawfully Defers Mitigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

County General Plan Policy LU-1.2 states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

planned village. *See* Valley Center Community Plan, p. 9, Figure 3;³ Bonsall Community Plan, p. 24, Figure 3; Lilac Hills Ranch Specific Plan, Figures 7-10.⁴ Nor does the County proposed to change General Plan Policy LU-1.4 as part of the Project. Lilac Hills Ranch Specific Plan, Figures 7-10. The Project is therefore strictly prohibited by the County's General Plan. In addition, the Project DEIR unlawfully fails to discuss the Project's inconsistency with this policy.

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

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

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

³ The version of the Valley Center Community Plan on the County's website for the Project DEIR does not contain Figure 3; rather, that page is blank. The County must correct this error. The full, current Community Plan can be found at www.sdcounty.ca.gov/.../C.2_21_VALLEY_CENTER__08_03_11.pdf and is incorporated in this comment by reference. *See Consolidated Irrigation District v. Superior Ct.* (2012) 205 Cal.App.4th 697 (documents referenced in comment letter with a specific URL link are included in the record).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As recognized by the California Air Pollution Control Officers Association (“CAPCOA”) in its CEQA & Climate Change White Paper, “greater reductions can be achieved at lower cost from new projects than can be achieved from existing sources.” CAPCOA, CEQA & Climate Change at 33, attached as Exhibit 12.⁶ Similarly, as one of

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

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

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

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

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

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

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

The County's Guidelines for Determining the Significance of Climate Change include three suggested methods, or thresholds, for determining whether residential and mixed use projects will have a significant GHG-related impact. Exhibit 14, p. 21. The DEIR relies entirely on one of these thresholds—the BAU, or “performance standard” approach described above—to determine that the Project will not have a significant impact on climate change. DEIR at 3-29. However, even if the County could legitimately use the BAU threshold, and even if it properly applied the threshold—neither of which are true—the County is still required to consider other evidence that the Project may cause a significant GHG-related impact. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met”).

Here, other evidence clearly demonstrates that the Project's GHG emissions will cause a significant impact. As described below, the Project's GHG emissions exceed the County's two other recommended thresholds—a “bright line” and an “efficiency” threshold—by a great margin. The County may not ignore this evidence, which demonstrates that the Project's GHG emissions may have a significant impact on the environment. *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1109.

Under the bright line threshold, a project will have a significant impact if it will result in a net increase of operational GHG emissions greater than 2,500 metric tons of CO₂ equivalent per year. Exhibit 14, p. 28. Here, the DEIR states that Project will result in net operational GHG emissions of 32,317.22 metric tons of CO₂ equivalent per year.

DEIR at 3-32.⁸ This is nearly thirteen times the County's bright line significance threshold. Accordingly, using the County's own significance threshold and the DEIR's own evidence, it is clear that the Project may have a significant impact related to GHG emissions. The DEIR must be revised and recirculated to address this significant impact, and mitigation must be imposed.

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

The average Valley Center household size in 2010 was 2.96 persons per household. DEIR at 1-38. Given that the Project includes development of 1,746 residential units, this equates to a population of 5,168 people. The Project also includes construction of up to 90,000 square feet of commercial, office, and retail. DEIR at 1-2. It does not appear that the DEIR calculates the projected number of employees at the site. However, based on general statistics for employees per square foot in the San Diego region, agencies such as the City of San Diego estimate that each employee needs between 300 square feet (for general retail and office use), to 400 square feet (for industrial parks), to 1000 square feet (for hotels/resorts) per employee. City of San Diego Draft General Plan PEIR, p. 3.18-5, attached as Exhibit 15. Taking the approximate average of these numbers (and taking into account that the Project includes only one, small hotel/inn), the Project's 90,000 square feet of commercial/retail space could result in 180 employees if each employee used 500 square feet of space. Accordingly, the "service population" of the Project would be 5,348.⁹

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

⁹ A 2001 report, which the County's GHG Guidelines cite as a source for determining employees per square foot as part of the service population calculation, have slightly higher numbers, averaging 600 – 1300 square feet per employee for the types of facilities the Project is likely to have. *See* www.mwcog.org/uploads/committee.../b15aX1pa20091008155406.pdf. The Project's GHG impacts would still be significant if the DEIR used these numbers to calculate the service population.

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

The Project also exceeds other relevant thresholds of significance, further reinforcing the conclusion that it will have a significant impact related to GHG emissions. For example, the Bay Area Air Quality Management District has developed thresholds of significance for GHG emissions that are similar to San Diego County's bright line and efficiency thresholds. These recommended thresholds recognize that a residential or mixed-use development will normally have a significant GHG-related impact if its emissions exceed 1,100 metric tons of CO₂ equivalent per year or 4.6 metric tons of CO₂ equivalent per year, per service population. *See Exhibit 16.*

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

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

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

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

The DEIR’s failure to compare the Project’s emissions—which will continue for decades if not in perpetuity—against long-term GHG emission reduction policies such as those in EO S-3-05 is unlawful. The GHG reductions in EO S-3-05 embody the reductions that climate scientists have concluded are needed to provide a 50-50 chance of limiting global average temperature rise to 2°C above pre-industrial levels. The AB 32 Scoping Plan incorporates this goal, establishing a “trajectory” for reaching it over time. That trajectory requires continuing and steady annual reductions in both total and per capita emissions. Accordingly, analyzing the impacts of a long-term project such as this¹⁰ against only short-term GHG-reduction plans misleads the public into thinking that the Plan will help achieve the GHG reductions necessary to stabilize our climate. This is inaccurate. In fact, even if the Project helped achieve the 2020 targets embodied in AB 32 (which it does not), the Project is wildly out of compliance with the necessary 80% reductions embodied in EO S-3-05.

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

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

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

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

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

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

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

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

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

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

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

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

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

Transportation and Motor Vehicles

- Use low or zero-emission vehicles, including construction vehicles.
- Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a web site or message board for coordinating rides.
- Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.
- Create local “light vehicle” networks, such as neighborhood electric vehicle (NEV) systems.
- Provide the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles (e.g., electric vehicle charging facilities and conveniently located alternative fueling stations
- Build or fund a transportation center where various public transportation modes intersect.
- Provide shuttle service to public transit.
- Provide public transit incentives such as free or low-cost monthly transit passes.

Energy Efficiency

- Design buildings to be energy efficient. Site buildings to take advantage of shade, prevailing winds, landscaping and sun screens to reduce energy use.
- Install efficient lighting and lighting control systems. Use daylight as an integral part of lighting systems in buildings.

- Install light colored “cool” roofs, cool pavements, and strategically placed shade trees.
- Provide information on energy management services for large energy users.
- Install energy efficient heating and cooling systems, appliances and equipment, and control systems.
- Install light emitting diodes (LEDs) for traffic, street and other outdoor lighting.
- Limit the hours of operation of outdoor lighting.
- Use solar heating, automatic covers, and efficient pumps and motors for pools and spas.
- Provide education on energy efficiency.

Renewable Energy

- Install solar and wind power systems, solar and tankless hot water heaters, and energy-efficient heating ventilation and air conditioning. Educate consumers about existing incentives.
- Install solar panels on carports and over parking areas.
- Use combined heat and power in appropriate applications.

Water Conservation and Efficiency

- Create water-efficient landscapes.
- Install water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls.
- Design buildings to be water-efficient. Install water-efficient fixtures and appliances.
- Restrict watering methods (e.g., prohibit systems that apply water to nonvegetated surfaces) and control runoff.
- Restrict the use of water for cleaning outdoor surfaces and vehicles.
- Implement low-impact development practices that maintain the existing hydrologic character of the site to manage storm water and protect the environment. (Retaining storm

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

Exhibit 13, pp. 14-16.

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

- Governor's Office of Planning and Research. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: <http://www.opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.
- Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

Exhibit 14, p. 36.

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

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

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

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

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

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

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

Conclusion

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

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Erin B. Chalmers

EXHIBIT LIST

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

- Exhibit 2: San Diego County General Plan EIR, Agricultural Impacts Analysis
- Exhibit 3: San Diego County General Plan, Conservation and Open Space Element
- Exhibit 4: Federal report on avocado production in California
- Exhibit 5: Agricultural Analysis of Meadowood Project, Fallbrook Community Planning Area, August, 2010, excerpts
- Exhibit 6: USDA soil survey, excerpts
- Exhibit 7: Land Use Changes: Economic, Social, and Environmental Impacts (2008)
- Exhibit 8: Getting the Drift on Chemical Trespass: Pesticide drift hits homes, schools and other sensitive sites throughout communities
- Exhibit 9: LEED 2009 for Neighborhood Development
- Exhibit 10: Letter from Attorney General to San Joaquin Valley Air Pollution Control District re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA (Nov. 4, 2009)
- Exhibit 11: California Natural Resources Agency: Final Statement of Reasons for Regulatory Action (December 2009)
- Exhibit 12: CAPCOA: CEQA and Climate Change (January 2008)
- Exhibit 13: County of San Diego Draft Interim Guidelines for Determining Significance (2008)
- Exhibit 14: County of San Diego Draft Guidelines for Determining Significance (June 20, 2012)
- Exhibit 15: City of San Diego Draft General Plan PEIR, Theoretical Buildout Analysis
- Exhibit 16: BAAQMD Resolution Adopting Thresholds of Significance under CEQA (June 2010)

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- Exhibit 17: Ruling on Petitions for Writ of Mandate (Dec. 3, 2012); *Cleveland National Forest Foundation v. San Diego Association of Governments*, San Diego County Superior Court Case No. 2011-00101593
- Exhibit 18: Order Invalidating San Diego County Climate Action Plan (April 19, 2013); San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL
- Exhibit 19: Travertine Point Specific Plan Conditions of Approval
- Exhibit 20: “Zero-net-energy homes: More feasible, still rare,” San Francisco Business Times (March 29- April 4, 2013)

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