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August 5, 2015

**Via E-Mail**

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Re: Planning Commission Consideration of Lilac Hills Ranch Project

Dear Ms. Fitzpatrick and Planning Commissioners:

This firm represents the Cleveland National Forest Foundation (“CNFF”) in connection with the proposed Lilac Hills Ranch project (“Project”). CNFF offers the following comments regarding the Project, its inconsistency with the County’s General Plan, and the Final Environmental Impact Report’s (“FEIR”) failure to accurately analyze these inconsistencies.<sup>1</sup>

General plans represent a legally enforceable “constitution” that governs land development. They also represent a community’s vision for its future. San Diego County recently spent many years and millions of dollars updating its General Plan and Community Plans. All of this planning, money, and hard work should not be lightly tossed aside to further the interests of one developer. Yet that is what appears to be happening in this case.

First, the Project flatly conflicts with General Plan Policy LU 1.2, which prohibits “leapfrog” development unless that development meets the LEED for Neighborhood Development (LEED ND) or an equivalent standard. The County claims that the Project is consistent with this policy because the Project meets a different, allegedly “equivalent” standard – the National Green Building Standard (“NGBS”). But LEED ND and NGBS

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<sup>1</sup> Because the Project’s inconsistency with the General Plan is so fundamental, this letter focuses primarily on that issue. This firm is still reviewing the FEIR and will submit additional comments on the FEIR’s deficiencies at a later date.

are not equivalent. LEED ND contains 12, mandatory criteria that protect farmland, wetlands, and other resources, and that require projects to be constructed in “smart” locations near existing development and transit. NGBS contains *none* of these mandatory criteria. Rather, the NGBS standard would allow the County to approve new, leapfrog development *in any location at all*, making a mockery of LU 1.2’s careful restriction on leapfrog development.

Attached at the end of this letter is a chart listing the 12, mandatory LEED ND criteria. The chart also demonstrates that the NGBS standard does not contain any equivalent, mandatory standards and that the Project fails to meet the majority of the LEED ND standards.

In reviewing this project, CNFF has collaborated with Tim Frank, Director of the Center for Sustainable Neighborhoods, a group that concerns itself with defining smart growth solutions for urban and rural areas alike. Tim served on the LEED ND Core Committee, which wrote the standard, and concurs that the proposed Project comes nowhere close to meeting the letter or intent of LEED ND, and that the NGBS standard does not provide an equivalent standard.<sup>2</sup>

Second, the Bonsall and Valley Center Community Plans, which are integral parts of the General Plan, describe how these communities wish to remain rural. They both contain numerous policies to protect the communities’ rural, agricultural character. For example, Bonsall Community Plan Policy P LU-1.1.2 states: “Maintain the existing rural lifestyle by continuing the existing pattern of residential, equestrian, and agricultural uses within the Bonsall CPA.” There is no reasonable basis to conclude that this Project, which will place a brand new, 5,000 person town in this rural area, and which the County acknowledges will induce more growth, will maintain the communities’ rural lifestyle or continue the existing pattern of residential uses in the area.

The Project’s Final Environmental Impact Report (FEIR) concludes otherwise, but only by using tortured logic. For example, the FEIR concludes that the Project will maintain the existing rural lifestyle by incorporating design features that will reduce aesthetic effects along the Project’s perimeter. *See generally*, FEIR, Appendix W. The County may not claim consistency with policies to maintain rural character merely by noting that the Project will contain aesthetic buffers. Notably, the Valley Center and Bonsall Community Planning Groups both emphatically rejected the Project due to its

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<sup>2</sup> Mr. Frank’s experience is further described in Exhibit 1.

inconsistency with Community Plans, among other reasons. The FEIR contains no evidence to rebut the Planning Groups' findings.

Last, the FEIR touts the Project as a “sustainable community” that offers the latest and greatest in “new urbanism” and “green” design. It even claims that the Project is a transit-friendly community because it will be located “less than a half-mile from I-15, with access to regional destinations.” FEIR at Global-98. Use of these trendy buzzwords cannot hide the fact that this Project represents a far-flung, sprawl development that will condemn thousands more County residents to hours-long commutes to distant job centers. It also cannot mask the fact that the Project will destroy hundreds of acres of productive farmland, open up this area to further development, and destroy the General Plan's commitment to smart growth.

Moreover, the FEIR's claim that the Project is transit-friendly because it is located a half mile from the I-15 is blatantly misleading.<sup>3</sup> Although portions of the Project boundary may be that close to the I-15 *as the crow flies*, the Project's entrances are 1.6 to 1.8 miles from the I-15 as the car drives, and many homes in the Project's interior would be much further away. FEIR at Global-88. Additionally, there are no existing or planned transit stops along the I-15 near the Project. FEIR at 1-15 (nearest transit stop is 8 miles away), Agencies-17 (SANDAG stating that “there are no planned transit services identified in the adopted 2050 [Regional Transportation Plan] for the proposed project area.”). It is telling that the FEIR must stoop to such misdirection in an attempt to portray the Project as “sustainable.”

The Project is clearly inappropriate and CNFF urges the Planning Commission to uphold the General Plan, recommend denial of this ill-conceived Project, and recommend that the FEIR not be certified. Notably, when the County updated its General Plan in 2011, the Project applicant, Accretive Investments, Inc., submitted comments requesting that the County include a “western village” in Valley Center—the same village that this Project represents. The County emphatically rejected Accretive's proposal, stating that “[t]he County does not necessarily agree that the western village concept is consistent with the guiding principles of the General Plan Update or with the purported benefits of such a project . . . Adding a western village is an increase in density that is *inconsistent*

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<sup>3</sup> The FEIR repeats the misleading assertion that the Project is less than a half mile from the I-15 in numerous places. *See, e.g.*, FEIR at 1-36, 3.1.2-34 (“The project also requires less roadway infrastructure because of . . . its location one quarter mile from a regional transportation corridor, the I-15.”), 3.1.4-12, 3.1.4-23 (the Project will “encourage transit use . . . [because t]he project site is less than a half-mile from the I-15 corridor”).

*with the General Plan Update project objectives, guiding principles, and goals and objectives.” See Exhibit 2 at I1-9. This analysis remains true today. The Project must be rejected.*

### **I. The Project Blatantly Conflicts With General Plan Land Use Policy LU 1.2.**

CNFF is pleased that the County recognizes that the Project must comply with LU 1.2’s requirement to meet LEED ND or an equivalent standard. FEIR, Global-79, 101. However, CNFF vehemently disagrees with the County’s conclusion that the Project can meet this policy by complying with the ICC 700 National Green Building Standard (“NGBS”) program. LEED ND and the NGBS standards are not at all equivalent. Further, there is no basis for the FEIR’s assertion that the Project also meets the “intent” of the LEED ND standard. FEIR, Global-86. If the County believes this to be true, it should ask the U.S. Green Building Council—the authors of the LEED ND standard—to conduct a prerequisite review for smart location and linkages. It is telling that the County has refused to obtain this inexpensive, prerequisite review.

In claiming that the Project meets LU 1.2, the County asserts that it has great deference in interpreting its General Plan. However, courts have described how “there can be no ‘interpretation’ of [an agency’s guiding standard] contrary to its express terms.” *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1172. *See also Southern Cal. Edison Co. v Public Utilities Com.* (2000) 85 Cal.App.4th 1086, 1105 (“an agency’s interpretation of a regulation or statute does not control if an alternative reading is compelled by the plain language of the provision”); *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1062 (agency’s “view of the meaning and scope of its own ordinance” does not enjoy deference when it is “clearly erroneous or unauthorized”).

Additionally, as the California Supreme Court recently emphasized, deference is not unlimited. In the context of deciding whether a city’s land use ordinance was constitutional, the Court noted that “courts recognize that such ordinances are presumed to be constitutional, and come before the court with every intendment in their favor.” *California Building Industry Association v. City of San Jose*, (2015) 61 Cal.4th 435. However, “although land use regulations are generally entitled to deference, judicial deference is not judicial abdication . . . There must be a reasonable basis in fact, not in fancy, to support the legislative determination.” *Id.* (emphasis added).

Here, as described below, the County attempts to interpret its General Plan in a manner that is directly contrary to its express terms and is clearly erroneous. Likewise,

its rationales for how the Project is consistent with the General Plan are fanciful and have no basis in fact. The County does not have unfettered authority to rewrite its General Plan through the guise of creative “interpretation.”

**A. The NGBS Standard Is Not Equivalent to LEED ND Because It Lacks Fundamental Features Required by LEED ND.**

LEED ND requires projects to meet 12, fundamental criteria in order to be certified. These “prerequisite” standards include criteria in three different categories: (1) smart location and linkage (“SLL”), (2) neighborhood pattern and design (“NPD”), and (3) green infrastructure and buildings (“GIB”). No matter how many other “smart growth” or environmentally sensitive features a project has, it cannot obtain LEED ND certification without satisfying these specific prerequisites.

Of particular relevance here, a project must be constructed in a “smart location,” protect wetlands and imperiled species, conserve agricultural land, be a compact development with a connected and open community, and meet certain minimum density and efficiency standards. LEED ND at vii.<sup>4</sup> LEED ND requires that projects meet very specific, detailed criteria in order to satisfy these prerequisites.

In contrast, the FEIR acknowledges that “[t]he NGBS has few mandatory provisions . . . Instead, the NGBS is an expansive point-based system that requires a project to include many different types of green practices.” FEIR at Global-83. In other words, the NGBS system allows a developer to obtain certification for a project in a far-flung location that is distant from transit, requires extensive driving, and destroys valuable agricultural land and wetlands so long as it obtains enough qualifying points by, for example, including community gardens, protecting a certain percentage of open space, or even developing a mission statement that includes the project’s “green” goals.<sup>5</sup>

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<sup>4</sup> The LEED ND standard was attached to CNFF’s August 16, 2013 letter as Exhibit 9 and is available at [http://www.usgbc.org/sites/default/files/LEED%202009%20RS\\_ND\\_07.01.14\\_current%20version.pdf](http://www.usgbc.org/sites/default/files/LEED%202009%20RS_ND_07.01.14_current%20version.pdf)

<sup>5</sup> In fact, a project can obtain 17 points, which is nearly 10 percent of the points needed to obtain the top, 4-star rating, simply by establishing a team that is “knowledgeable” about green development practices and writing down the team’s goals in a mission statement, training on-site supervisors regarding green development, making a checklist of green project features, and requiring purchasers of lots to construct the buildings in conformance with NGBS certification standards. Specific Plan, Appendix H at 1.

See Specific Plan, Appendix H at 1 – 10. The only mandatory provisions in the NGBS program are that the project must: 1) include a checklist of green development practices to be used on the project, and 2) use a natural resources inventory to create a site plan and protect priority natural resources/areas during construction. *Id.* at 1.

Because NGBS lacks the LEED ND, or equivalent, prerequisite standards, it is not an equivalent program to LEED ND. As the County admits, the word “equivalent” means something that is “practically equal in effect in performance or outcome.” FEIR, Global-81. Here, NGBS does not provide a standard that is practically equal in performance or outcome. Rather, it allows development that is constructed far from existing transit and services, fails to meet minimum density requirements, and will impact critical wetlands and farmland, among other things. LEED ND would not allow such a development.

The NGBS standard may be a fine certification program for projects in some locations, but it utterly fails to carry out the General Plan’s prohibition on leapfrog development that is inconsistent with LEED ND or an *equivalent*. Indeed, NGBS does not appear to be particularly useful in California at all, as it offers no apparent benefit beyond what state law already requires in terms of compliance with Title 24 standards and with CEQA’s mandate for environmental analysis and mitigation. Notably, the NGBS standard was adopted in 2008,<sup>6</sup> three years before the County updated its General Plan. Yet the County chose to reference the LEED ND standard in Policy LU 1.2, rather than the NGBS standard.

Critically, even if this particular Project met all or most of the LEED ND prerequisites—which it does not—the County is proposing to approve the NGBS standard as an “equivalent” to LEED ND *for all future developments subject to LU 1.2*. Thus, although this Project allegedly meets NGBS’s highest, “four star” rating, the County is not requiring that future leapfrog development proposals will have to meet this standard. Rather, they could meet NGBS’ much more lenient, “one star” rating and still be deemed equivalent to LEED ND certification. A one star rating only requires that a project obtain 79 points, 17 of which can be met merely by drafting a mission statement, hiring “knowledgeable” consultants and training on-site supervisors in green building techniques. See footnote 3. A project could therefore obtain NGBS one star certification

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<sup>6</sup> See <https://www.nahb.org/en/research/nahb-priorities/green-building-remodeling-and-development/ngbs-green-certification.aspx>.

(or likely a higher certification level as well) *without meeting a single LEED ND prerequisite requirement.*

Although LEED ND also allows different levels of certification based on the number of “points” the development garners, it contains the 12 prerequisite requirements. This ensures that all projects meet certain, basic minimum requirements for location, efficiency, and design. As such, the standard is far more stringent than NGBS. The notion that they are equivalent is entirely without basis.

The County states that other provisions of California law support the notion that it may substitute a corresponding or equal program for LEED ND. FEIR at Global-82. It cites as an example Public Contract Code Section 3400, which disallows public agencies from requiring use of brand name products in public contracting unless they specify that contractors may substitute an equal product in lieu of the specified brand name. This code provision does not assist the County. The provision is intended to “encourage contractors and manufacturers to develop and implement new and ingenious materials, products, and services that ***function as well, in all essential respects***, as materials, products, and services that are required by a contract, but at a lower cost to taxpayers.” Pub. Contract Code § 3400(a). Case law also makes clear that this provision allows contractors to substitute products that have equal quality and functionality, but that merely differ in aesthetics. *Argo Construction Co. v. Los Angeles County.*, 271 Cal.App.2d 54, 59 (1969).

Here, NGBS does not function as well, in all essential respects, as LEED ND. On the contrary, it allows fundamentally different types of development that have far greater impacts related to agricultural land, wetlands, growth-inducement, climate change, traffic, and vehicle travel. These differences are not minor and are not similar to the aesthetic differences at issue in *Argo Construction Company*. No reasonable person, and no reasonable judge, would agree that the NGBS standard is equivalent to LEED ND.

The County also states: “an interpretation that an equivalent program means it must be identical to LEED®-ND would also mean that it was pointless for the Board of Supervisors to have inserted the term ‘equivalent’ when adopting Policy LU-1.2.” FEIR at Global-82. It argues that Policy LU 1.2 should not be interpreted in a manner that renders the word “equivalent” as meaningless. CNFF agrees that the word “equivalent” cannot be ignored, and that this term allows the County to utilize a standard that is not identical to LEED ND in every single respect. However, the County must utilize a standard that is actually equivalent to LEED ND in all *essential* respects. It may not simply choose a standard—such as NGBS—that differs in numerous, fundamental ways

from LEED ND and that allows starkly different types of development, in different locations, and with far greater impacts. It is the County's interpretation of LU 1.2 that renders the word "equivalent" meaningless.

**1. The NGBS Standard Lacks Mandatory "Smart Location" Criteria.**

The FEIR acknowledges that "the NGBS program does not have a specific component identified as a Smart Location Prerequisite." *Id.* Instead, the NGBS has four criteria for "lot selection" that are intended to ensure that a project has a low impact. Specific Plan, Appendix H at 1. Projects can obtain points if they are constructed on an infill, greyfield or brownfield site, or if they are constructed on a parcel with slopes no greater than 15 percent. *Id.* Notably, *the Project does not claim credit for meeting any of these locational criteria. Id.*

LEED ND, in turn, requires that projects meet one of four criteria to qualify for the prerequisite "smart location" criteria. It can be developed on an infill site, a site with high connectivity to adjacent, previously developed land, or a transit corridor that meets minimum requirements for daily transit service. LEED ND at 1-3. Alternatively, a project can meet the criteria by including a residential component where the project boundary is within ¼ mile walk distance of at least five, *existing*, diverse uses, or the project's geographic center is within ½ mile walk distance of at least seven, *existing* diverse uses. *Id.* at 5. As described more fully below, the Project fails to meet any of these criteria.

The NGBS standard is not "practically equal" in outcome to LEED ND's criteria because it allows developers to construct new developments that are not on infill sites, are not adjacent to previously developed land, are not on a transit corridor, and that are not within easy walking distance of existing commercial uses. Rather than *requiring* that projects be in "smart" locations, it merely provides "points" for projects that meet various locational criteria.

The County asserts that LU 1.2 should not be interpreted to require projects to meet the LEED ND locational criteria because "this would mean that new villages could only be established in very limited areas within the unincorporated County that qualify as urban infill areas under LEED®-ND." FEIR at Global-82. It also claims that most areas that would meet the LEED ND locational criteria are likely already designated as "villages" in the General Plan, and that the County may already approve new village designations in those locations under Policy LU 1.4, which allows expansion of existing



villages. *Id.* In essence, the County argues that an interpretation of LU 1.2 that requires new villages to meet the LEED ND locational criteria would prevent approval of any new villages and render the whole provision superfluous.

The County's argument is unconvincing. First, the County provides no evidence that there are very few areas where new villages could meet the LEED ND locational criteria. The County's speculation on this point also seems to ignore that both LEED ND and Policy LU 1.2 do not only apply to large projects such as this one. Rather, LEED ND can be used for projects as small as two buildings,<sup>7</sup> and LU 1.2 applies to areas where there will be new village *densities*, not just new, large villages. Accordingly, there are likely numerous locations in the unincorporated County where a few, dense, multi-family buildings could be constructed in compliance with the LEED ND "smart location" criteria.

In any event, it would not matter even if there were only a couple areas where the County could approve new village densities that comply with LEED ND. The policy is *intended* to strictly limit where new leapfrog developments occur. Thus, allowing establishment of new village densities only in very limited areas is entirely consistent with the language and intent of this policy.

It is the County's interpretation of LU 1.2 that is unreasonable. This policy is intended to carry out the General Plan's goals for smart growth and protection of agricultural land and wildlife habitat. It is phrased as a *prohibition* on leapfrog development, although with a narrow exception. But under the County's reading of LU 1.2, the County could place new, leapfrog developments *anywhere at all* in the County, so long as the development provided its own public services and contained a handful of features that allowed it to qualify for the most basic NGBS certification standard. This interpretation is flatly contrary to LU 1.2's plain language, would eviscerate the policy's intent, and would render the policy entirely meaningless.

## **2. The NGBS Standard Does Not Require That Projects Protect Wetlands, Agricultural Land or Floodplains.**

LEED ND states that "[d]irect impacts to wetlands and water bodies *are prohibited*, except for minimal-impact structures, such as an elevated boardwalk, that allow access to the water for educational and recreational purposes." LEED ND at 13.

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<sup>7</sup> See A Citizen's Guide to LEED for Neighborhood Development, attached as Exhibit 3 at 2.

NGBS, in turn, merely allows developers to obtain 7 points if “[n]atural water and drainage features are preserved and used.” Specific Plan, Appendix H at 3. It also allows between 2 – 7 points if a project preserves certain percentages of the site as undeveloped. *Id.* at 5.

Likewise, LEED ND requires a project to be located so that it does not disturb prime soils, unique soils, or soils of state significance, or be located on an infill site, transit corridor, or an area designated for development pursuant to a transfer of development right agreement. LEED ND at 15. Alternately, a project can meet the prerequisite criteria if it mitigates for disturbing prime agricultural land by preserving offsite agricultural land at a 2 to 1 ratio. LEED ND at 16. NGBS, in contrast, merely allows a developer to obtain between 2 – 7 points for avoiding environmentally sensitive areas, which includes steep slopes, prime farmland, critical habitats, and wetlands. Specific Plan, Appendix H at 5. Thus, NGBS contains no requirement to protect farmland at all. Further, a developer could even obtain the maximum of 7 points if it destroyed all farmland on a project site but left a certain percentage of other land undeveloped, even if that land consisted of steep slopes, wetlands or other areas that could not lawfully or practically be developed anyway.

LEED ND also prohibits developments in floodplains unless the project is located on an infill or previously developed site where compensatory storage is used in accordance with a FEMA-approved mitigation plan. LEED ND at 19. NGBS, however, contains no requirements whatsoever with regard to building in floodplains. The closest it comes is that it allows developers to garner points if they conduct a hydrological/soil stability study that is used to guide the design of all buildings on the site. Specific Plan, Appendix H at 2.

Clearly, LEED ND and NGBS are not equivalent. NGBS allows development in floodplains, on agricultural land (with no mitigation), and in wetlands. LEED ND does not.

### **3. The NGBS Standard Lacks Mandatory Neighborhood Design Elements and Other Standards.**

LEED ND requires that projects contain a minimum of 7 dwelling units per acre. LEED ND at 42 (*see also id.* at 43, describing this as the “minimum density requirement”). Further, this density must be achieved within five years of the date that the first building of any type is occupied. *Id.* at 43. NGBS merely allows a developer to obtain 5 – 10 points for developments that contain 7 units per acre or greater. Specific

Plan, Appendix H at 9. It does not have a requirement for when these densities must be achieved.

LEED ND also requires that projects achieve numerous, specific criteria to promote walking and provide a comfortable street environment for pedestrians. LEED ND at 41. It regulates building heights on street frontages, requires 90 percent of new building frontages to have a principal entry on the front of the building, requires continuous sidewalks along 90 percent of streets, and limits garages fronting the streets. *Id.* NGBS contains no similar requirement, but merely allows developers to garner 5 points if a project provides an unspecified amount of “[w]alkways, bikeways, street crossings, and entrances designed to promote pedestrian activity.” Specific Plan, Appendix H at 9.

Moreover, LEED ND requires that projects achieve an open and connected community by ensuring that internal project connectivity is at least 140 intersections per square mile and that all streets and sidewalks that are counted toward this requirement must be available for public use and not gated. LEED ND at 44. It also requires that the Project contains connections to adjacent properties every 800 feet, with some exceptions. *Id.* NGBS only contains the option to garner points for providing some walkways and bikeways, and has no limit on gated communities. Specific Plan, Appendix H at 9.

Last, LEED ND requires minimum energy and water efficiency for buildings, and requires all projects to prevent pollution from construction activity. LEED ND at 78-82. Once again, the NGBS standard does not require any of these things, and merely allows developments to garner some points for minimizing pollution and achieving certain water and energy efficiency standards. Specific Plan, Appendix H at 1-10.

In sum, LEED ND and NGBS are not equivalent. NGBS allows projects to be developed that lack sidewalks and do not implement energy and water efficiency measures beyond what is already required by law. Further, it does not contain any minimum density requirement. A project could be certified under NGBS that has 1 unit per acre, has no sidewalks or pedestrian facilities, destroys dozens of acres of wetlands, paves over hundreds of acres of prime agricultural land, and is built miles from any transit stations. This standard is anything but equivalent to LEED ND. No reasonable person, and no reasonable judge, would find the two standards to be equivalent. The Planning Commission must reject the notion that the County can comply with LU 1.2 by certifying leapfrog development proposals under NGBS instead of LEED ND.

**4. The County Is Wrong That Numerous Other Public Agencies Have Determined That NGBS and LEED ND Are Equivalent.**

Home Innovation claims that “the NGBS has been consistently considered as on par, or more stringent, than LEED as a green building rating system for residential projects at the federal, state, and local level.” FEIR at Global Response LU 1.2, Exhibit A at 1; *see also id.* at Exhibit A, Appendix A. This claim is misleading. The federal, state, and local programs cited by Home Innovation explicitly limit their equivalence findings to LEED’s Homes, New Construction, or Operations & Maintenance standards; they *do not* claim that NGBS is equivalent to the LEED for Neighborhood Development. This includes the following programs: HUD’s HOPE VI grant program; USDA’s Rural Development program; Georgia’s Qualified Allocation Plan (QAP); Decatur, Georgia’s Green Building Standards; Hawaii’s QAP; Idaho’s QAP; Louisiana’s QAP; Baltimore County’s High Performance Building Standards; New York’s QAP; North Carolina’s Community Partners Program; Vermont’s QAP; and Washington’s EnergySpark Program.<sup>8</sup>

CNFF takes no position on whether NGBS certification may be equivalent to other LEED rating programs, such as for New Construction or Operations & Maintenance. However, it is emphatically *not* equivalent to the LEED ND standard. Home Innovation’s evidence actually demonstrates that numerous agencies have determined that NGBS is *not* equivalent to LEED ND.

**B. Substantial Evidence Does Not Support the County’s Conclusion that the Project “Correpond[s] In Performance Or Outcome With the LEED-ND Certification Program.”**

The County not only claims that the Project complies with the allegedly “equivalent” NGBS standard, but also asserts that the Project conforms with the intent of LEED ND. FEIR, Appendix W at 137. This effort makes a mockery of the LEED ND standard and principles. The “analysis” is full of misleading statements and significant oversights. Substantial evidence does not support the conclusion that the Project

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<sup>8</sup> It appears that only one of the programs cited by Home Innovations even mentions LEED ND. *Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy*, Docket No. FR-5696-N-01. Available at <https://www.hudexchange.info/resource/2849/allocations-application-waivers-alternative-requirements-cdbg-dr-funds-sandy/>

conforms to the 18 LEED ND principles identified by the County.<sup>9</sup> The County's misleading analysis presents an inaccurate picture of Project impacts, in violation of CEQA. Guidelines § 15125(d). The evidence also fails to support the County's contention that the Project is consistent with the General Plan, as required by law.

Below are a number of the 18 LEED ND principles identified by the County. Although the County claims that the Project is consistent with these principles, the evidence is to the contrary. The numbering below is not sequential because each issue corresponds to the County's equivalent, numbered principle.

### **1. Sustainable Location (Principle 1).**

The FEIR claims that the Project is consistent with LEED ND's fundamental requirement that new developments be constructed in a "smart location." FEIR, Appendix W at 139-40 (citing LEED ND SLL Prerequisite 1). This is a flagrant distortion of the LEED ND principle; the Project blatantly violates the letter and intent of this principle. SLL Prerequisite 1 requires that projects meet one of four criteria.

- First, it can be developed on an infill site. LEED ND at 1. This Project obviously fails to meet that criteria.
- Second, it can be developed on a site with high connectivity to adjacent, previously developed land. *Id.* The Project clearly does not meet this criteria, as it is surrounded by farmland.
- Third, a project can be developed on a transit corridor that meets minimum requirements for daily transit service. *Id.* at 3. The Project also completely fails to meet this requirement, as there is no existing transit service within many miles of the Project site, and no commitment to develop transit service at Project build-out.
- Last, a project may meet the criteria by including a residential component where the project boundary is within ¼ mile walk distance of at least five, *existing*, diverse uses, or the project's geographic center is within ½ mile walk distance of at least seven, *existing* diverse uses. *Id.* at 5. Here, there are no existing, diverse uses (e.g., shops, churches) on or adjacent to the Project site.

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<sup>9</sup> The County interpreted LEED ND to contain 18 "principles," and it analyzed the Project's consistency against these principles rather than analyzing its consistency with LEED ND's 12 prerequisite criteria and numerous other criteria.

The FEIR claims that the Project nevertheless meets the intent of this LEED ND requirement because the Project will eventually include a town center and two neighborhood centers that will contain diverse uses. It claims that all homes in the project will be located within ½ mile of at least seven diverse uses in these town and neighborhood centers. FEIR, Appendix W at 140. Notably, the FEIR does not state that all homes will be located within ½ mile *walk* distance of such uses. Further, eventually providing diverse, commercial uses in the neighborhood and town centers is not at all equivalent to building homes near *existing*, diverse uses. The town center may not be constructed until the second phase of development, and the neighborhood centers may not be constructed until the 3rd and 5th phases of development (if ever). Thus, many residents will *not* have diverse, commercial and public uses within a short walking distance of their homes for many years. This is why LEED ND requires homes to be constructed near existing uses and only allows projects to garner points for compact, mixed-use development if diverse, commercial uses are open for business by the time 20 – 50 percent of homes are constructed. *See* LEED ND at 55.

Additionally, the neighborhood center planned for phase 5 is tiny and will not have at least seven diverse uses. Thus, the senior residents of this gated community will not be located near a variety of walkable, commercial uses. Last, LEED ND requires homes to be constructed within ¼ mile, not ½ mile, of diverse uses in order to garner points for being a mixed-use development. *Id.* The FEIR frankly admits that the Project will not meet this standard.

Notably, the County has refused to obtain a Smart Location & Linkage Prerequisite Review for the Project, which allows project proponents to verify that a project's location meets the requirements of the LEED-ND Smart Location & Linkage prerequisite. *See* Exhibit 4 at p. 8. If the County was serious about demonstrating that the Project is consistent with LEED ND or equivalent standards, it would at least require the developer to obtain this preliminary review. Its failure to do so is a tacit admission that the Project fails to meet this LEED ND principle.

## **2. Compact and Efficient Development Footprint (Principle 2).**

The FEIR claims that the Project is consistent with the LEED ND's principle for compact development. FEIR, Appendix W at 141 (citing NPD Prerequisite 2). However, NPD Prerequisite 2 requires that projects either be sited in a transit corridor—which this Project is not—or build residential components of a project at a minimum density of 7 dwelling units per acre of buildable land. LEED ND at 42. Further, this density must be

achieved within five years of the date that the first building of any type is occupied. *Id.* at 43.

The EIR asserts that this Project will have a density of 6.8 units per acre at full build out. FEIR, p. Global-102 (Project will have 6.82 dwellings per acre). As explained below, the County has calculated the Project's density incorrectly, thus greatly overstating its density. But even using the FEIR's density calculation, the Project does not meet the 7 dwellings per acre minimum standard. Further, the FEIR contains no evidence that this density will be achieved within 5 years of the first building being occupied.

Additionally, the FEIR calculates the Project's density incorrectly pursuant to the LEED ND standard. It states that the LEED ND standard uses a "net" acreage approach that "excludes all non-residential areas such as open space, common areas, parks and roads." FEIR at Global-102. This is incorrect. LEED ND requires agencies to calculate density based on the number of dwelling units per acre of "buildable land available for residential use." LEED ND at 42. LEED ND defines "buildable land" as "the portion of the site where construction can occur, *including land voluntarily set aside and not constructed upon*. When used in density calculations, buildable land excludes public rights-of-way and land excluded from development *by codified law or LEED for Neighborhood Development prerequisites*." *Id.* at 16.

Thus, the FEIR incorrectly excluded common areas and roads from the acreage used to calculate density, and also improperly excluded open space and park lands that are not protected by codified law. The FEIR calculated the Project's 6.8 units per acre density based on the assumption that the Project has only 256 acres of "net usable residential land area." FEIR at Global-102. However, there are far more than 256 acres of "buildable land available for residential use," and therefore the Project density is far less than 6.8 dwelling units per acre. For example, the Project includes more than 15 acres of public and private parks, 10 acres for a religious facility, 12 acres for a school, 5 acres for a stormwater detention basin, and many acres devoted to providing an agricultural buffer around the Project perimeter, among other things. *See, e.g.*, Specific Plan, Part 2 at II-8 – II-9. On the other hand, the Project includes only 104 acres of biological open space preserve that could arguably be excluded from the LEED ND calculation due to the fact that a portion of that land may be excluded from development pursuant to codified law (e.g., the County's Resource Protection Ordinance).

Accordingly, the buildable land available for residential use is likely close to 500 acres out of the total 608 acre Project site (FEIR at 1-1). In any event, it is certainly far

more than 256 acres. The Project density is therefore far less than 6.8 dwelling units per acre. There is no substantial evidence to support the FEIR's conclusion that the Project meets the LEED ND prerequisite standard (or the NGBS's voluntary standard) to achieve a minimum density of 7 dwelling units per acre. Notably, the FEIR admits that the Project's "overall density [is] not more than 2.9 dwelling units per acre (du/ac) over the entire project site." FEIR, Appendix W at 23.

### **3. Mixed-Use Development (Principle 3).**

The FEIR claims that the Project is consistent with the LEED ND's principle to provide mixed use neighborhood centers. FEIR, Appendix W at 141 (citing NPD Credit 3). However, this credit requires that residential development be located within ¼ mile walking distance of at least 4-6 diverse uses (e.g., restaurants, shops, churches) and that such uses will be in place by the time that 20 – 50 percent of the project's total, residential square footage is constructed. LEED ND at 55. In other words, the shops must be built concurrently with the residences and cannot be constructed after all the homes are built. Here, the Project proposes to develop a village center in phase 2 of construction. FEIR at 1-5. Accordingly, there is no assurance that its commercial and neighborhood services will be open before a significant portion of the Project's residences are constructed. Further, as described above, the Project flatly violates LEED ND's requirement to locate residences within ¼ mile of a variety of diverse uses. Rather, the Project is designed merely to locate residences within ½ mile of diverse uses.

### **4. Conservation of Wildlife Habitat (Principle 5).**

The FEIR claims that the Project is consistent with the intent of LEED ND's requirement to preserve and enhance water quality and natural hydrologic systems. FEIR, Appendix W at 145 (citing LEED ND SLL Prerequisite 3). However, this mandatory LEED ND requirement states that "[d]irect impacts to wetlands and water bodies *are prohibited*, except for minimal-impact structures, such as an elevated boardwalk, that allow access to the water for educational and recreational purposes." LEED ND at 13. Here, the Project will directly impact more than 4 acres of wetlands and waters under the U.S. Army Corps' of Engineers' jurisdiction, 6 ½ acres under state jurisdiction, and 2 acres of wetlands under the County's Resource Protection Ordinance. FEIR at 2.5-46. The Project flagrantly violates this mandatory LEED requirement.



**5. Storm Water Management, Natural Filtering and Drainage (Principle 7).**

The FEIR claims that the Project is consistent with LEED ND's principles for managing stormwater and site disturbance. FEIR, Appendix W at 148 (citing LEED ND GIB Credits 7, 8). The FEIR asserts that the Project's drainage plan will meet all relevant laws and will help ensure the high quality of water leaving the project site. *Id.* However, LEED ND Credit 8 requires that 80 – 95 percent of rainfall does not leave the project site at all, but is retained on site through infiltration. LEED ND at 93. Thus, the Project's measures for ensuring that runoff leaving the Project site meets water quality standards does not address this principle at all. Likewise, as further described below, GIB Credit 7 requires minimization of grading, and the Project fails to meet this principle. Rather, it proposes to grade 505 acres and move more than 4 million cubic yards of material. Such massive grading does not meet sound principles of minimizing disturbance and runoff.

**6. Water Efficient and Native Palette Landscaping (Principle 8).**

The FEIR claims that the Project is consistent with LEED ND's principle for minimized site disturbance in design. FEIR, Appendix W at 148 (citing LEED ND GIB Credit 7). But this principle has nothing to do with water efficiency or landscaping. Rather, it requires minimization of grading and retention of existing, native trees and vegetation. LEED ND at 91. The County's description of the Project's water efficiency and landscaping measures therefore fails to demonstrate compliance with the letter or intent of this LEED ND principle.

**7. Pedestrian and Bike Paths Connecting the Community Amenities (Principle 11).**

The FEIR claims that the Project is consistent with LEED ND's principles for compact development that promotes walking and biking, including NPD Credit 9 (access to civic and public space) and NPD Prerequisite 2 (compact development). FEIR, Appendix W at 149. However, NPD Prerequisite 2 requires that projects either be sited in a transit corridor—which this Project is not—or build residential components of a project at a minimum density of 7 dwelling units per acre of buildable land. LEED ND at 42. The EIR admits that this Project has a density of, at most, only 6.8 units per acre. FEIR, p. Global-102 (Project will have 6.82 dwellings per acre).

## **8. Agricultural Land Conservation (Principle 13).**

The FEIR claims that the Project is consistent with LEED ND's principles for preserving agricultural land because it will preserve 43 acres of farmland off-site and retain approximately 42 acres of agricultural land on-site. This does not meet the letter or spirit of LEED ND SLL Prerequisite 4: Agricultural Land Conservation. That prerequisite requires a project to be located so 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, or located on an infill site, transit corridor, or an area designated for development pursuant to a transfer of development right agreement. LEED ND at 15. The Project obviously does not comply with any of these criteria.

Alternately, a project with a residential density of at least 7 units per acre can still meet the criteria if it mitigates for disturbing prime agricultural land by preserving offsite agricultural land at a 2 to 1 ratio. LEED ND at 16. Here, the Project will "mitigate for the 43.8 acres of Prime and Statewide important soils impacted, at a 1:1 ratio, through the purchase of 43.8 mitigation credits." FEIR at 2.4-28. There are two problems with this mitigation. First, the mitigation is at a 1:1 ratio rather than a 2:1 ratio. Second, the Project is only mitigating impacts to prime farmland and farmland of statewide importance. However, to meet the LEED ND standard (or equivalent), the Project must mitigate disturbance of prime soils, unique soils, or soils of state significance. The County ignores the need to mitigate impacts on "unique soils" here, even though the Project will destroy many of the 329 acres of designated unique farmland. FEIR at 2.4-6.

## **9. Building Site Selection (Principle 15).**

The FEIR claims that the Project is consistent with LEED ND's principles for developing buildings in a manner that minimizes site disturbance by preserving existing noninvasive trees and pervious surfaces. FEIR, Appendix W at 151. The LEED ND principle cited by the County—GIB Credit 7—requires either that a project is built on previously developed land or that a specific portion of the previously undeveloped land in the project site is left undisturbed. LEED ND at 92. For projects with a residential density less than 15 units per acre, such as this Project, 20 percent of the undeveloped area must remain undisturbed. Land that is already preserved pursuant to law or a general plan does not count toward that area. Projects also must preserve certain percentages of existing, large trees.

Instead of demonstrating consistency with these specific mandates, the EIR merely states that the Project includes some resource protection plans that will protect some

specific woodland. However, the Project includes grading on 505 acres that would disturb more than 4 million cubic yards of material. FEIR, Appendix D, Air Quality Report at 12. This type of disturbance hardly demonstrates a minimization of site disturbance in design and construction, as required by LEED ND.

#### **10. Sustainable Building (Principle 16).**

The FEIR claims that the Project is consistent with LEED ND's principles of sustainable building because: 1) buildings will be constructed to exceed 2008 Title 24 Energy Standards by 30 percent, 2) the Project will install some photovoltaic panels, 3) buildings would conserve fresh water, and (4) the Project would plant trees to reduce the "heat island" effect. FEIR, Appendix W at 151-52. However, it is impossible to tell if the Project actually meets the LEED ND standards because LEED ND uses different energy efficiency and sustainability criteria than the Project, and the County never explains if those programs are equivalent. For example, LEED ND requires that residential buildings in a project "must achieve a Home Energy Rating System (HERS) index score of at least 75" in order to garner points for sustainable building principles. LEED ND at 85 (GIB Credit 2: Building Energy Efficiency). Likewise, under LEED ND, multi-family and non-residential buildings must demonstrate an average 18% (1 point) or 26% (2 points) improvement over ANSI/ASHRAE/IESNA Standard 90.1-2007 in order to qualify for points. *Id.* In order to demonstrate that the Project is equivalent to LEED ND, the County must compare the HERS and ANSI standards with Title 24's requirements. Without this comparison, the public has no idea whether the programs achieve equivalent energy efficiency.

The Project's commitment to exceed 2008 Title 24 standards by 30 percent is also not impressive. New Title 24 standards were adopted in 2013, and these standards—which are now mandatory—already exceed the 2008 standards by 25 – 30 percent. *See* FEIR at 3.1.2-14. Thus, the Project proposes to do nothing more than comply with the law when it comes to building energy efficiency. Compliance with the law's bare minimum requirements hardly demonstrates that the Project is "sustainable" or deserving of accolades for its energy efficiency.

Further, there is no evidence that planting some trees meets the LEED ND criteria for reducing the "heat island" effect. Once again, LEED ND contains very specific criteria that projects must meet. For example, projects must either use roofing materials that have specific reflective values for 75 percent of the roof area of new project buildings or provide shading for 50 percent of nonroof hardscape areas (e.g., roads, sidewalks, parking lots). LEED ND at 95. In contrast, the County merely notes that the

Project will include tree planting, which will provide some shade. It entirely fails to demonstrate that such shading will cover 50 percent of nonroad hardscape areas or meet any of LEED ND's other specific criteria.

#### **11. Integrated Transportation Planning (Principle 17).**

The FEIR claims that the Project is consistent with LEED ND's Transit Facility principle and Transportation Demand Management principle. FEIR, Appendix W at 153 (citing Neighborhood Pattern and Design Credits 7, 8). Credit 7, in turn, embodies the intent to "encourage transit use and reduce driving by providing safe, convenient, and comfortable transit waiting areas and safe and secure bicycle storage facilities for transit users." LEED ND at 64. The requirements to obtain this credit include that the developer must work with the relevant transit agency to identify transit shelters and other improvements that "will be installed no later than construction of 50% of total project square footage." The developer must install the shelters or provide funding to the agency for installation. In addition, the developer must reserve space for transit shelters within and bordering the project site that will be needed within two years of project completion.

The FEIR claims consistency with these policies because the Project will reserve a space for one transit stop in the village core. FEIR, Appendix W at 152. The County makes no effort to demonstrate that the developer or transit agency will actually construct a shelter at, or even ever utilize, this transit stop, much less that it will do so by the time that half of the Project's square footage is constructed. Nor does it attempt to demonstrate that the developer will install or fund shelters bordering the project site that will be needed within 2 years of Project construction. The Project's mere identification of one possible transit stop comes nowhere close to meeting the letter or intent of LEED ND Neighborhood Pattern and Design Credit 7.

#### **II. By Reinterpreting and Watering Down General Plan Policy LU 1.2, the County is Proposing a De Facto Modification of Its General Plan, Yet Has Not Conducted Environmental Review of That Action.**

The County previously recognized that it must conduct environmental review for aspects of the Project that represent actual or de facto changes to the General Plan. When the Project application was first submitted, County staff noted that "a number of General Plan policies [] may require substantial revision in order to accommodate the project as currently proposed." Project Issue Checklist at pdf. p. 16. It described how "[s]uch changes were not anticipated in the Program Environmental Impact Report (EIR) for the County's General Plan Update. As such, the GPA may necessitate a broader

environmental analysis that utilizes the certified General Plan Update EIR as a basis and evaluates the potential impacts of revising the policies.” Project Issue Checklist at pdf. p. 16.

Now the County is proposing to adopt a new interpretation of General Plan Policy LU 1.2 that will allow large new developments to be plunked down virtually anywhere in the County. As described above, the County’s new interpretation of LU 1.2 will allow leapfrog developments to be approved if they meet NGBS’ most basic certification standards, regardless of whether they destroy wetlands and agricultural land, are located at a great distance from existing communities, and fail to meet all of the other LEED ND prerequisite requirements. This new interpretation of the General Plan will have numerous foreseeable impacts on County land, environmental resources and development patterns. The County may not adopt this new interpretation without first conducting adequate environmental review. *See Paulek v. Western Riverside County Regional Conservation Authority* (2015) 2015 WL 4438949, at \*11 (“the removal of the conservation overlay from the phase 9 property is a ‘project’ under CEQA as the change embodied a fundamental land use decision that has the potential for causing ultimate physical changes in the environment, because land that was protected for conservation purposes will no longer be subject to such protections.”).<sup>10</sup>

When the County updated its General Plan in 2011, it only analyzed the environmental effects of allowing growth in and near *existing* communities. As the County explained in response to a comment from the state Attorney General:

the comment incorrectly suggests that the General Plan Update will create ‘Villages.’ A core tenet of the General Plan Update is not to create new communities but to concentrate future growth around the cores of existing communities . . . The comment again makes reference to “new” Villages which is not a proposal of the General Plan Update.

Exhibit 5 at S1-12 – S1-13. Likewise, the County emphasized that the General Plan update “focuses new growth around Smart Growth Opportunity Areas (SGOA) in accordance with the SANDAG Regional Comprehensive Plan (RCP).” *Id.* at O14-12.

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<sup>10</sup> Just as the removal of the conservation overlay in *Paulek* would permit leapfrog developments in new locations, so too does the County’s adoption of the NGBS standard as “equivalent” to LEED ND allow development in additional, rural locations where it would not previously have been allowed.

*See also id.* (“the proposed General Plan Update focus[es] new growth in and adjacent to urbanized areas.”).

Accordingly, although the County’s General Plan update included LU 1.2, which allows some new, leapfrog developments, the County clarified that any such developments would not be allowed just anywhere. Rather, they would still have to be located near the core of an existing community. This makes perfect sense in light of the LEED ND standard that the County adopted, which requires projects to be constructed in locations where there is already a certain amount of existing development.

The County asserts that it does not make sense to comply with LEED ND’s locational prerequisite because “most areas in the County that would qualify as urban infill under LEED®-ND are likely already designated as a Village Regional Category under the current General Plan.” FEIR at Global-82. It notes that a different policy—LU 1.4—allows expansion of existing villages. *Id.* Thus, the County claims that LU 1.2 is superfluous unless it is interpreted to allow development in far-flung locations distant from existing communities. This interpretation is untenable. By adopting LU 1.2, the County specifically and purposefully limited where new development could go. Whether or not there are only a few locations that meet the criteria of LU 1.2 is entirely irrelevant. The County committed to this policy and must carry it out. In any event, the County cites no substantial evidence to support its speculation that “most areas” that would qualify under LEED ND are “likely” already designated as villages.

The County also complains that the General Plan is supposed to be “dynamic” and “must be periodically updated to respond to changing community needs.” FEIR at Global-83. But if the County wants to change its General Plan, it must do it through an open, public process and must conduct environmental review for that General Plan modification. Here, the County is attempting to modify its General Plan through the back door by “interpreting” the plan’s policies in the context of one particular development approval. And it is doing this without conducting environmental review to analyze the full suite of reasonably foreseeable environmental effects from this policy interpretation.

### **III. The Project Conflicts with the Valley Center Community Plan, Bonsall Community Plan, and General Plan.**

The Project conflicts with numerous, fundamental, mandatory provisions of the Bonsall and Valley Center Community Plans. Although the Project would amend the Community Plans to add a reference to the new, proposed “village,” these modifications do not make the Project consistent with the Plans. Rather, the Plans still contain

numerous fundamental policies with which the Project conflicts. The Project also conflicts with General Plan policies to promote transit and support regional, smart growth planning.

The EIR fails to accurately analyze the consistency of the Project with these policies and fails to contain substantial evidence supporting its determination that the Project is consistent with the Community Plans. *See generally* FEIR, Appendix W. When the Project was first proposed, County staff identified dozens of ways in which the Project was inconsistent with the Community Plans. *See generally* Project Issue Checklist. Incredibly, the County now concludes that the Project *does not conflict with a single policy of the General Plan or either Community Plan*. This incredible conclusion is not supported by common sense or substantial evidence.

The County may not approve the Project due to its inconsistencies with the policies and goals listed below. *Napa Citizens for Honest Government v. Napa County* (2001) 91 Cal.App.4th 342, 379. In order to approve the Project, the County would have to amend these policies, which in turn would require the County to conduct environmental review analyzing the reasonably foreseeable effects of these amendments.

**A. Community Plan Policies Regarding Preservation of Rural Character and Agriculture.**

List of Policies<sup>11</sup>

- Bonsall Community Plan:
  - Policy LU-1.1.1: Require development in the community *to preserve the rural qualities of the area*, minimize traffic congestion, and to not adversely affect the natural environment.
  - Policy P LU-1.1.2 *Maintain the existing rural lifestyle* by continuing the existing pattern of residential, equestrian, and agricultural uses within the Bonsall CPA.
  - Policy LU1.1.3 Require development to be sensitive to the topography, physical context, *and community character* of Bonsall.

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<sup>11</sup> All emphases in policies are added. This list is illustrative, not exhaustive.

- Goal 1.2 Continued development that is appropriately designed to match the *rural character of the Bonsall community*.
- Policy 1.2.1 *Require* development that is designed to be consistent with the *rural character of the Bonsall community*.
- Goal LU-5.2 The preservation of groundwater resources, *community character* and protection of sensitive resources in the Bonsall Community Planning Area.
- Goal CM-1.1 A circulation system which *preserves the rural character of the community* . . . .
- Goal COS-1.1 The *preservation* of the unique natural and cultural resources of Bonsall and the San Luis Rey River and associated watershed, with *continued support for its traditional rural and agricultural life-style*.
- Goal COS-1.2 The continuation of agriculture as a prominent use throughout the Bonsall community.
- Description of findings and intent in Bonsall Community Plan:
  - “Developed residential areas throughout Bonsall consist primarily of low density . . . lots, many of which are combined with agricultural and equestrian uses. This type of development, as well as the rolling hill and valley topography of the area, gives Bonsall its rural atmosphere.” BCP at 12.
  - “Agriculture is also important in maintaining the rural character of the community.” BCC at 12.
  - “Community Vision: Bonsall remains a semi rural community and seeks to preserve its relatively unspoiled natural topography and scenic resources. Bonsall is scenic, characterized by its preservation of agriculture . . . steep slopes, ridgelines, and panoramic views. The community of Bonsall provides a safe living and working environment for the residents with adequate law enforcement, fire protection, and emergency services. Residential development is



consistent with the community's rural character and its resources.”  
BCC at 20.

- Valley Center Community Plan
  - Policy 2: Maintain the existing rural character of Valley Center in future developments by prohibiting monotonous tract developments. Require site design that is consistent with the rural community character.
  - Land Use General Goals: A pattern of development that conserves Valley Center's natural beauty and resources, and retains valley center's rural character . . . Development that maintains Valley Center's rural character through appropriate location and suitable site design.<sup>12</sup>
  - Agricultural Goals 1. Support agricultural uses and activities throughout the CPA, by providing appropriately zoned areas in order to ensure the continuation of an important rural lifestyle in Valley Center.
  - 3. Prohibit residential development which would have an adverse impact on existing agricultural uses.
  - Findings for Community Character: “Valley Center is a rural community, and the intent of the Community Plan is to maintain the rural character of the Planning Area . . . Although urbanization has greatly diminished agricultural uses in other areas of the County, Valley Center has managed to maintain its rural identity.” VCCP at 4.
  - Findings for Land Use: “Valley Center residents want to preserve in their community the rural heritage, character and quality of life that is so quickly disappearing from San Diego County . . . Valley Center has been successful in remaining a rural community because of its relative physical isolation from urban areas, and because of the active participation of its residents in the planning process.” VCCP at 8.

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<sup>12</sup> These general goals also describe how Valley Center will have “[t]wo economically viable and socially vibrant villages . . .” As part of the Project approvals, this language would be changed by inserting “three” in the place of “two.” However, this change makes the Community Plan internally inconsistent, as Valley Center cannot support three villages, including this one (which the EIR admits is growth-inducing), while still retaining the area's rural character.

### County's Rationale for Consistency

The FEIR claims that the Project is consistent with all of these goals and policies. In particular, it asserts that the Project is consistent because it will 1) protect 104 acres of open space, 2) be designed to reduce visual effects along the Project perimeter, 3) use wider lots and landscape buffers in areas where there are existing homes, 4) plant an agricultural buffer of 50 feet along the Project boundary, 5) minimize traffic congestion by having mixed uses, 6) allow some on-site community gardens and agriculture, and 7) use architectural guidelines that contain rural-themed concepts. FEIR, Appendix W at 1-3, 19-21.

### Why the Project is Inconsistent

When the Project was first proposed, the County recognized that it would “change the character of this [Valley Center] rural agricultural community.” Project Issue Checklist, pdf. p. 15. Specifically, County staff noted that “[t]he 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.” *Id.* The County offers no new evidence to rebut this finding.

The County cannot “protect” the communities’ rural character by approving a 1,700+ home new town that will induce more growth in the area. It cannot “protect” agricultural land by paving it over and making farming more difficult for the remaining farms in the area. Regardless of any landscaping or buffers planted around portions of the Project’s exterior, the Project plunks down thousands of new residents, plus a hotel and other commercial services, in a large development in the middle of a thoroughly rural area. No reasonable person could find that approving this Project will help “[m]aintain the existing rural lifestyle by continuing the existing pattern of residential, equestrian, and agricultural uses,” as required by the Bonsall Community Plan. *See San Bernardino Valley Audubon Society v. County*, (1984) 155 Cal.App.3d 738, 753; County General Plan at 10-10 (defining “Community Character”).

Nor could any reasonable person find that the Project conforms with the various other, similar policies and goals above, including ones to protect agriculture. Notably, Western Cactus Enterprises, Inc. and the San Diego County Farm Bureau both submitted comments criticizing the EIR’s failure to fully analyze or disclose the many ways in which the Project will impact adjacent and nearby agricultural operations. The notion that the Project will protect agriculture is fanciful at best. As the EIR discloses, the Project will actually destroy 84 out of 90 acres of existing row crops, 6 out of 9 acres of

nursery agriculture, nearly all vineyards, and 276 out of 292 acres of orchards. FEIR at 2.5-45. The County's proposal to retain a few, token acres of orchard crops as a buffer around the outside edge of the Project does not make up for these losses. As the EIR describes, these are not meant to be commercially viable orchard crops. FEIR at Organizations-463.

**B. Community Plan Policies to Protect the Natural and Visual Environment.**

- Bonsall Community Plan
  - Policy LU-5.1.3 Minimize grading to preserve natural landforms, major rock outcroppings and areas of existing mature trees. Integrate hillside development with existing topography and landforms.
  - Policy LU-5.1.6 Minimize cut and fill grading for roads and access ways to the absolute minimum necessary.
  - Policy CM-1.1.4 Prioritize the preservation and protection of sensitive habitats, such as wetlands, over road location, relocation, or realignment. Encourage all mitigation to be on-site and site-specific. Require mitigation within the Bonsall CPA where on-site and site-specific mitigation is not appropriate, whenever feasible.
  - Policy LU-3.1.2 Require mitigation actions to remain within the CPA.
- Valley Center Community Plan
  - A. Environmental Concerns and Issues: 1. Require that discretionary permits preserve environmentally significant and/or sensitive resources such as undisturbed steep slopes, canyons, floodplains, ridge tops and unique scenic views in order to reinforce the rural character of the area . . . .
  - B. Rural Compatibility Issues: 4. Require new residential development to adhere to site design standards which are consistent with the character and scale of a rural community. The following elements are particularly important: • Roads that follow topography and minimize grading; • Built environment that is integrated into the natural setting and topography

- 5. Require new residential development to construct roads that blend into the natural terrain and avoid “urbanizing” improvements such as widening, straightening, [and] flattening

### County’s Rationale for Consistency

The County claims that the Project is consistent with all applicable Community Plan policies. For example, it asserts that the Project will 1) protect 99.7 percent of existing Resource Protection Ordinance steep slopes, 2) use grading guidelines to ensure that natural topography will remain on the rest of the site, 3) leave undisturbed one sixth of the Project site, including the primary wetland drainages, 4) include roads that will follow the natural topography and minimize grading. FEIR, Appendix W at 5-6, 23.

### Why the Project is Inconsistent

The Project includes grading on 505 acres that would disturb more than 4 million cubic yards of material. FEIR, Appendix D, Air Quality Report at 12. This type of disturbance conflicts with the Community Plans’ commitment to minimize grading.

Additionally, the EIR offers no rationale for how the Project is consistent with Bonsall Community Plan Policies CM-1.1.4 and LU-3.1.2, which require that mitigation for Project impacts in Bonsall be located within the Bonsall community planning area. Indeed, the Project fails to abide by this policy. For example, the Project applicant is required to purchase agricultural easements but is not required to purchase easements in Bonsall’s community planning area to offset impacts on Bonsall’s agricultural land. FEIR at 2.4-28. Additionally, the FEIR requires mitigation in the form of on-site or off-site preservation or restoration of various habitat types; however, it does not require that off-site mitigation occur within Bonsall. FEIR at 2.5-35.

### **C. Community Plan Policies Related to Transportation and Traffic.**

- Bonsall Community Plan
  - Policy CM-1.1.3 Coordinate with Caltrans to design and construct State Route 76, East Vista Way (S13), and Interstate 15 to efficiently carry traffic through the Bonsall CPA. Design and construct interior roads, such as Camino del Rey, West Lilac, Gopher Canyon, and Olive Hill to carry primarily local traffic and remain rural to the degree consistent with safety requirements.

- Valley Center Community Plan
  - 9. Require that the road system function at a service level no worse than "C" at peak hours as development occurs.

#### County's Rationale for Consistency

The County claims that the Project is consistent with these policies. FEIR, Appendix W at 11, 30. In particular, it notes that the Project will amend the General Plan to add certain segments of roads to the list of roads that are allowed to have failing levels of service. In a contradictory assertion, it also claims that the Project will meet the Valley Center Community Plan's requirement to maintain certain levels of service because the County prepared a Traffic Impact Study that identifies traffic impacts and includes mitigation.

#### Why the Project is Inconsistent

The Project flatly conflicts with these policies. Rather than minimizing traffic congestion, the Project would amend the General Plan to allow greater congestion. It would downgrade a section of Lilac Road to the east of the I-15 and within the Bonsall Planning Area from 2.2-C to 2.2-F, thereby allowing the level of service to fall to "F." Allowing greater traffic congestion is not consistent with policies to reduce traffic volumes, efficiently carry traffic and maintain level of service "C." Nor does the FEIR contain any evidence that West Lilac Road will remain rural or that the Project complies with the Valley Center Community Plan's specific mandate to maintain Level of Service "C" at peak hours.<sup>13</sup>

The County has also failed to coordinate with Caltrans with regard to the I-15, as required by Policy CM-1.1.3. To the contrary, Caltrans has written comments criticizing

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<sup>13</sup> Although the state is moving away from using level of service as a measurement of impacts in urban areas under CEQA (*see* SB 743), it still makes sense for the General Plan to use this standard in rural areas such as the Project area. This is because the County should not be approving projects that will cause lots of new traffic due to long commutes, and that will impede emergency access and egress. Misuse of level of service standards in urban settings can frustrate good, dense development; however, use of level of service standards in rural areas protects the environment by forcing agencies to account for emissions and other impacts related to long vehicle commutes in these areas.

the Project's failure to address traffic impacts on the I-15, and the County has steadfastly refused to work with Caltrans to find acceptable mitigation or other solutions.

**D. General Plan Policies Related to Transit and Smart Growth.**

The County General Plan contains policies to “coordinate with SANDAG” and other transit agencies in order to “maximize opportunities for transit services,” “provide for transit-dependent segments of the population,” “improv[e] regional opportunities for . . . transit,” and “identify alternative methods for inter-regional travel.” General Plan Policies M-8.1, M-8.3, M-8.6, M-8.7. It also contains a stated policy to “[w]ork with SANDAG to implement SB 375 and to achieve regional goals in reducing GHG emissions associated with land use and transportation.” General Plan Implementation Plan, p. 55.<sup>14</sup> Further, it contains policies, such as LU 1.2, to ensure smart growth.

The Project is not consistent with these policies. Rather than coordinating with SANDAG to place new development in designated Smart Growth Opportunity Areas in accordance with the SANDAG Regional Comprehensive Plan, this Project would place thousands of residents far from transit in an area not identified by SANDAG for growth. SANDAG informed the County that the Project site is not listed on the region's smart growth concept map. FEIR at Agencies-17. In fact, the Project does not even meet the general requirements to be on the smart growth concept map, as that map primarily includes rural villages with densities of at least 10.9 dwelling units per acre—far greater than the Project's density. FEIR at Agencies-23.

The Project is also flatly inconsistent with SANDAG's Regional Transportation Plan/Sustainable Communities Strategy (“SCS”) and with SB 375. As the FEIR notes, this SCS sets forth a projected land use development pattern and transportation network that is supposed to help reduce driving and attendant GHG emissions. FEIR at 3.1.2-9 – 10. The SCS is based on the County's 2011 General Plan and the land use projections contained in it. However, as SANDAG described to the County, this Project is not included in the General Plan, and SANDAG did not anticipate growth in this area when it developed its SCS. FEIR at Agencies-17. The FEIR even admits that “the project site was not identified for development in the 2050 RTP/SCS's 2020 and 2035 forecasted development pattern.” FEIR at 3.1.2-34.

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<sup>14</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/Implementation\\_Plan.04.24.13-clean.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/gpupdate/Implementation_Plan.04.24.13-clean.pdf).

These facts and admissions demonstrate unequivocally that the Project is not consistent with the SCS. As the FEIR describes, the SCS's strategy is to "focus housing and job growth in the urbanized areas where there is existing and planned infrastructure, protect sensitive habitat and open space, [and] invest in a network that gives residents and workers transportation options that reduce GHG emissions . . . ." FEIR at 3.1.2-10. Here, the Project does not focus housing in urbanized areas, does not protect open space, and does not provide workers with transportation options that reduce GHG emissions. Rather, it places thousands of residents a dozen miles or more from any urban or job centers in a location with absolutely no transit. FEIR at Agencies-17 (SANDAG describing how "there are no planned transit services identified in the adopted 2050 RTP/SCS for the proposed project area.").

#### **IV. The Specific Plan Contains an Unlawful Precedence Clause.**

The Specific Plan states that, in the case of conflicts or discrepancies between the Accretive Project Specific Plan and the County's General Plan, the Valley Center and Bonsall Community Plans, and County development regulations and zoning standards, the Accretive Specific Plan will prevail. Specific Plan at II-2. The County appears to be attempting to make the Specific Plan take precedence over other General Plan elements or other development standards. This is not allowed. Rather, state law "requires zoning ordinances to be consistent with the county's general plan, and the general plan is required to be consistent within itself." *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 703 (noting that precedence clauses are illegal).

#### **Conclusion**

CNFF urges the Planning Commission to recommend that the Board of Supervisors not certify the FEIR or approve the Project.

Lisa Fitzpatrick  
August 5, 2015  
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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



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Erin B. Chalmers



Tim Frank

Attachments:

Exhibit 1: Tim Frank Bio and Experience

Exhibit 2: 2011 General Plan Update EIR (Accretive comments and County response)

Exhibit 3: A Citizen's Guide to LEED for Neighborhood Development

Exhibit 4: LEED ND FAQs

Exhibit 5: 2011 General Plan Update EIR (Attorney General comments and County response; County response to CNFF comment)

699115.1



<b>LEED ND Mandatory Standards</b>	<b>Does NGBS Contain an Equivalent Requirement?</b>	<b>Does Project Meet the LEED ND Standard?</b>
Smart Location and Linkage Prerequisite 1: Smart Location	No	No.
SLL Prerequisite 2: Imperiled Species and Ecological Communities	No	Uncertain, but possible.
SLL Prerequisite 3: Wetland and Water Body Conservation	No	No.
SLL Prerequisite 4: Agricultural Land Conservation	No	No.
SLL Prerequisite 5: Floodplain Avoidance	No	Yes.
Neighborhood Planning and Design Prerequisite 1: Walkable Streets	No	No.
NPD Prerequisite 2: Compact Development	No	No.
NPD Prerequisite 3: Connected and Open Community	No	No.
Green Infrastructure and Buildings Prerequisite 1: Certified Green Building	No	No.
GIB Prerequisite 2: Minimum Building Energy Efficiency	No	Uncertain, but possible.
GIB Prerequisite 3: Minimum Building Water Efficiency	No	Uncertain, but possible.
GIB Prerequisite 4: Construction Activity Pollution Prevention	No	Uncertain, but possible.