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**Via Electronic Mail Only**

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Re: Lake Jennings Market Place Draft Environmental Impact Report (State Clearinghouse Number: 2014121089 )

Dear Mr. Neufeld:

We submit this letter on behalf of the Cleveland National Forest Foundation (CNFF), a nonprofit organization committed to sustainable regional land use planning in order to stem the tide of urban encroachment into the San Diego backcountry and its wildlands. The purpose of this letter is to provide comments to San Diego County (hereinafter "County") on the November 2015 Draft Environmental Impact Report ("DEIR") for the Proposed Lake Jennings Market Place Project ("shopping center" or "project") and to inform the County that the Project conflicts with the County's General Plan and Development Code, in violation of state Planning and Zoning Law, Govt. Code § 65000 et seq. In addition, the DEIR for the Project violates the minimum standards of adequacy under 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. Given that the public comment period for this DEIR spanned the holiday season, making it difficult to complete review of the document prior to January 4th, we will also be submitting additional comments regarding the Project's traffic impacts under separate cover.

For all the reasons set forth below, it is our opinion that the DEIR does not comply with the requirements of CEQA. As a result of the DEIR's numerous and serious inadequacies, there can be no meaningful public review of the Project. The County must revise and recirculate the DEIR in order to permit an adequate understanding of the environmental issues at stake.

## **I. Introduction**

The Project site is designated Village Residential (VR-15) and zoned Urban Residential (RU-15). This designation and zoning were established in the most recent update of the Lakeside Community Plan. The Project includes applications for a General Plan amendment and rezoning to change the designation and zoning from residential use to commercial use. DEIR at 1-11. The Project proposes to construct more than 100,000 square feet of commercial uses and parking for 389 vehicles. Id. at 1-1.

The applicant came before the County with a proposal to develop the site as a shopping center in 2002. The community voiced strong opposition to that development proposal because the Project was out of scale and out of character with the surrounding community and would have resulted in significant traffic impacts and congestion. The San Diego Planning Commission twice denied the Project and the applicant withdrew the application. Subsequently, the County approved the Lake Jennings Village Project in 2009, which allows construction of 160 residential units. DEIR at 4-6.

Since then, the County undertook a General Plan update, which included updating the Lakeside Community Plan. The County Board of Supervisors certified the Final Program Environmental Impact Report (EIR) for the General Plan Update and adopted the update to the General Plan on August 3, 2011. The County invested a substantial amount of time and resources in the update process to achieve the purpose of the General Plan Update, which was “to establish a blueprint for future land development projects in the unincorporated County that meets community desires and balances the environmental protection goals with the need for housing, agriculture, infrastructure, and economic vitality.” General Plan EIR at S-2.

It is therefore perplexing that the County is again contemplating a twice-rejected regional-scale shopping center, which is clearly incompatible with the General Plan Update’s Village Residential land use designation for the site. This Project will have serious long-term consequences for the residents of the Lakeside Community. Those consequences include significant traffic congestion, loss of open space, loss of habitat for sensitive species, visual impacts, an increased risk of air and water pollution, and a significant increase in greenhouse gas emissions. Yet, this DEIR fails to adequately analyze and mitigate these significant impacts.

In addition, the DEIR is silent as to the need for such a shopping center in the Lake Jennings area. According to area residents, existing shopping centers in the area suffer vacancies (i.e., the Walmart Shopping Center on Los Coches currently has seven vacancies and the available area for a grocery store is vacant.) Moreover, the region has multiple grocery stores/shopping centers to serve the area including Barrons in Alpine, which opened this year, and Walmart, which also sells groceries. Similarly, there are two gas stations in the immediate area. Thus, the DEIR has not established a clear need for the Project.

The job of community leaders in evaluating projects such as this one is to achieve a balance between protection of resources, which represents the long term interest of the entire community, from the short term interest and gain of a few individuals. As discussed throughout this letter, the County determined years ago that the proposed Project site would be designated for housing to serve unmet current and projected future demand for housing in the Lakeside community. As discussed further below, the proposed Project is inconsistent with the County's General Plan and the designated use of the site for housing.

## **II. The EIR Fails to Comply with CEQA.**

Given the proposed change to the site's General Plan land use designation and related zoning, and the community's concerns about this Project, the EIR for this proposal should be of the highest quality, giving both decision-makers and the public a full opportunity to understand and analyze environmental repercussions of the Project. An EIR is "the heart of CEQA." *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376 at 392 ("*Laurel Heights I*"). In particular, the County "should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. "The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' Because the EIR must be certified or rejected by public officials, it is a document of accountability." *Laurel Heights I*, 47 Cal.3d at 392 (citations omitted). Unfortunately, the DEIR fails entirely to live up to this mandate.

The DEIR suffers from several major problems and is insufficient to support a decision on the Project. In some cases, the DEIR fails altogether to provide the necessary analysis. In other cases, the DEIR attempts to cover the document's flaws by deferring needed studies and plans until after Project approval, and by recharacterizing these critical studies as "mitigation measures" in themselves. This is entirely impermissible under CEQA.

The document also substantially understates the severity and extent of a range of environmental impacts, including significant impacts related to visual resources, traffic, and climate change, and thus fails to provide adequate mitigation. Finally, the DEIR presents a faulty analysis of feasible alternatives to the Project that would substantially lessen its environmental impacts. This failure defeats CEQA's purpose of creating a process by which the public and decision-makers can fully appreciate the consequences of Project approval.

Most disturbing, the Project demonstrates a complete disregard for the General Plan's provisions developed to protect the community character. Although the applicant proposes to amend to the General Plan, these amendments would only serve to undermine the integrity of the County's planning efforts. Thus, because the Project conflicts with fundamental General Plan provisions so as to result in significant environmental impacts, and because the County has failed to adequately identify these conflicts in the EIR, approval of the Project would violate not just

CEQA, but also the California Planning and Zoning Law, Gov't Code § 65000 et seq., and the Subdivision Map Act, Gov't Code §§ 66473.5, 66474.

To ensure that the public and the County's decision-makers have adequate information to consider the effects of the proposed Project – as well as to comply with the law – the County must prepare and recirculate a revised DEIR that properly describes the Project, analyzes its impacts, and considers meaningful alternatives and mitigation measures that would help ameliorate those impacts.

**A. The DEIR Fails to Provide an Adequate Description of the Project.**

Under CEQA, the inclusion in the EIR of a clear and comprehensive description of the proposed project is critical to meaningful public review. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (“*Inyo II*”). The court in *Inyo II* explained why a thorough project description is necessary:

“A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.”

Id. at 192-93. Thus, “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830.

The DEIR fails to describe aspects of the Project critical to its analysis. The DEIR acknowledges significant impacts to nearby sensitive receptors and wildlife resulting from foreseeable construction noise. DEIR at 2.4-15 and 2.4-17. Therefore, the DEIR must fully describe all procedures relevant to these potential impacts, such as a description of the construction methods to be used and the locations of the loudest noise events. The DEIR fails to provide this crucial information. For example, the DEIR mentions a Construction Noise Blasting Plan, but the plan does not seem to appear anywhere in the document. See DEIR at 2.4-16. Similarly, other plans, including an Hazardous Materials Business Plan, are cited in mitigation measures for potentially significant impacts, yet these plans do not appear in the DEIR. DEIR at 2.3-16. In sum, the DEIR fails to describe the project with sufficient accuracy and specificity to enable either substantive public comment or an informed decision on the Project.

**B. The EIR Fails to Adequately Evaluate the Project's Environmental Impacts.**

The discussion of a proposed project's environmental impacts is at the core of an EIR. See CEQA Guidelines § 15126.2(a) (“[a]n EIR shall identify and focus on the significant environmental effects of the proposed project”) (emphasis added). As explained below, the EIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to “inform the public and responsible officials of the environmental consequences of their decisions before they are made.” *Laurel Heights Improvement Assn. v. Regents of the University of California*, 6 Cal. 4th 1112 at 1123 (1993). To do so, an EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 568 (1990). Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational goal.

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines § 15126.4. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . .” Pub. Res. Code § 21002.

**1. The EIR Fails to Adequately Analyze the Project's Aesthetic Impacts.**

The proposed project is located within a scenic corridor (Interstate 8) along a designated County Scenic Highway that is also eligible for designation as a State Scenic Highway, that extends from the El Cajon city limits to State Route 79. It is located in an area that is predominantly residential and agricultural. If approved, the Lake Jennings Market Place Project would irreparably alter the visual character of the Project site and the surrounding area. Given the Project's proposed change in use, the DEIR should have devoted particular attention to the Project's visual impacts. Instead, the DEIR pays short shrift to this important issue.

**(a) The DEIR Fails to Use Correct Thresholds of Significance for Evaluating the Project's Visual Impacts.**

San Diego County has adopted thresholds of significance for determining impacts to visual resources in the County. See San Diego County, Guidelines for Determining Significance and Report and Content Requirements: Visual Resources, July 30, 2007, attached as Exhibit A. These Guidelines differ entirely from the Guidelines used in the Initial Study or the DEIR. Compare Exhibit A at 13-14 with Initial Study at 7 and DEIR at 3-1 to 3-4. The County must

apply its validly adopted Guidelines. It has no discretion to abandon these Guidelines for the new thresholds of significance that it has apparently adopted for the DEIR.

To the extent that the DEIR attempts to implement new thresholds of significance, this directly violates CEQA. CEQA mandates that an agency's decision "to adopt such thresholds is supported by substantial evidence." CEQA Guidelines § 15064.7(c). Yet, the DEIR contains no substantial evidence to support the County's decision to use alternative guidelines. The DEIR merely ignores the County Guidelines and relies on the scant discussion in the Initial Study. This approach is invalid under CEQA.

**(b) The DEIR's Analysis and Conclusions Regarding Aesthetic Impacts to Interstate Highway 8 and to the Area's Visual Character Are Unsupported.**

The DEIR completely fails to evaluate the Project's impacts on the visual character of the surrounding area and relies on the Initial Study for the Project, which concludes that these impacts would be less than significant. Initial Study at 8. The Initial Study defines the term "visual character" and describes how visual character is typically analyzed. *Id.* Unfortunately, aside from one sentence stating that the Project will change the project site from undeveloped land containing mature coast live oak trees and non-native grassland to a commercial development, the Initial Study fails to actually conduct *any* analysis at all. Instead, the Initial Study concludes, without any evidence, that "the project would not substantially degrade the existing visual character or quality of the site and its surroundings." *Id.*

Similarly, the DEIR dismisses the Project's impacts to a designated scenic corridor. Once again, the DEIR relies on the Initial Study's summary conclusion that impacts to scenic resources would be less than significant. Initial Study at 7. However, rather than analyze the impacts, the Initial Study rests its conclusion on the single, unsupported statement that "the visibility of the project site from I-8 is limited." *Id.*

Replacing thirteen undeveloped acres with a massive shopping center that is out of scale with the surrounding community would indisputably have significant visual impacts. The accepted approach to analyzing visual and aesthetic impacts is as follows:

- i. Describe the criteria for significance thresholds.
- ii. Characterize the existing conditions of the project site and the surrounding area by photograph and description, and select key viewpoints within the area, including scenic corridors and landscapes.
- iii. Use photomontages or visual simulations, to illustrate the change in character of the project site before and after project implementation.

- iv. Identify feasible mitigation measures and alternatives to reduce or eliminate significant impacts.
- v. Where mitigation measures are proposed, use the simulations to illustrate the change in character before and after project mitigation measures are imposed (e.g., landscaping at various stages of growth, setbacks, clustering, reduced scale and height, building color modification).

Tellingly, the DEIR does not provide a single simulation of the Project at full buildout, despite a multitude of public comments submitted on earlier development proposals for this site that emphasized the importance of maintaining the visual character of the community. An analysis consistent with the approach detailed above would allow decision makers and the public to evaluate the aesthetic impacts of the project.

Photomontages or visual simulations would provide a direct experience of the visual impact of a 100,000 square-foot commercial development located at the visual entrance to the community. Such an analysis could assist decision makers in determining whether a smaller, less intrusive development should be permitted on that site. Such an analysis would also demonstrate that the project's aesthetic effects render it incompatible with the General Plan's Land Use Element, which requires that "development be located, scaled, and designed to be compatible with the unique character of the community." County of San Diego General Plan, Land Use Element Policy LU-11.2. Because the Project would develop a 13-acre site with commercial use in place of the designated residential uses for the site, and because the development would be out of scale with the neighborhood commercial development in the surrounding area, the Project would not be compatible with the character of the community and would thus be inconsistent with the General Plan. This inconsistency means that the Project cannot lawfully be approved. Simply asserting that the project will not have an effect on visual character of the area does not represent adherence to the General Plan.

A revised EIR must include a detailed and thorough analysis of the project's likely aesthetic impacts, as outlined above. It must provide an adequate analysis that would permit informed decisions about the project, effective mitigation measures, and alternatives that could have less intensive impacts. The revised EIR must also analyze all project components that could impact views.

## **2. The EIR Fails to Adequately Analyze the Project's Inconsistency with County Plans.**

A local government's general plan serves as the "constitution for future development," to which all subordinate land use decisions (e.g., zoning ordinances, subdivision map approvals, and other approvals) must conform. *See DeVita v. County of Napa*, 9 Cal.4th at 772-73 (1995); *Neighborhood Action Group v. County of Calveras*, 156 Cal.App.3d 1176, 1183-84 (1984)

(validity of permit process derives from compliance with hierarchy of planning laws). Approval of a development project is invalid if the project is inconsistent with a “fundamental, mandatory and specific” general plan provision. *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors*, 62 Cal.App.4th 1332, 1342 (1998) (project inconsistent with general plan where it conflicted with land use density policy); *San Bernardino Valley Audubon Soc’y v. County of San Bernardino*, 155 Cal.App.3d 738, 753 (1984) (project inconsistent with general plan where it conflicted with a single policy in conservation element). The project need not present an “outright conflict” with the general plan 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 for Honest Gov’t v. County of Napa*, 91 Cal.App.4th 342, 379 (2001).

The County of San Diego General Plan Update establishes a blueprint for future land development projects in the unincorporated County that meets community desires and balances the environmental protection goals with the need for housing, agriculture, infrastructure, and economic vitality. County General Plan Update EIR at S-2. According to the County, the General Plan “will direct population growth and plan for infrastructure needs, development, and resource protection.” *Id.*

The General Plan EIR identified Lakeside as one of the County Subregions with the highest population. General Plan EIR at 2.12-2. During the General Plan Update in 2011, the County Board of Supervisors increased the allocation of future housing units in Lakeside reflecting the need for additional affordable housing in the Plan Area. General Plan EIR, Volume IV, Appendix C at 2, Table 1. To that end, the County designated the proposed Project site as Village Residential (VR-15) to ensure adequate housing sites in the area. Therefore, the General Plan, the Housing Element of the General Plan, and the EIR for the General Plan, all assume that the Project site is designated for, and will be developed as, multi-family residential uses.

Although the DEIR concludes that the Project is consistent with the County's General Plan (DEIR at 3-119), this is not the case. Among other failings in this regard, the DEIR fails to analyze the effects of the proposed change from residential to commercial uses. Instead, the DEIR asserts that the change in designation is consistent with the General Plan because both the existing designation for the site (Village Residential) and the proposed designation (General Commercial) are included in the Village Regional Category, making the change consistent with the Community Development Model. However, according to the General Plan Land Use Element, “Regional Categories do not specify allowable land uses, but rather the general regional structure, character, scale, and intensity of development.” Land Use Element at 3-6. In other words, residential and commercial uses are not interchangeable simply because both are considered compatible with the Village Regional Category. The proposed Project would result in a development of commercial uses on a site designated for affordable housing. This is an inconsistency with the General Plan that must be disclosed and properly evaluated.

The Project is inconsistent with General Plan Land Use Policy LU-2.2, which states that Community Plans must be consistent with the General Plan goals and policies of which they are a part. The DEIR reasons that because the project site included two commercial land use designations in the past and is adjacent to lands designated as General Commercial, the change in designation would be consistent with the General Plan and Community Plan. DEIR at 3-107. However, this reasoning makes no sense. First, the former General Plan designation for the site is irrelevant. Second, the land use designations for adjacent sites do not provide a basis for changing the designation of the Project site.

Moreover, the Lakeside Plan area already has approximately 300 acres devoted to commercial uses. Lakeside Community Plan at 11. These commercial areas are concentrated in the Lakeside Town Center and other small commercial developments oriented towards local needs. *Id.* “The Lakeside Town Center was developed to ensure that the Town Center remains in the business nucleus of the community.” *Id.* The proposed Project is neither a small, local-serving business nor is it located in the Town Center. Siting a regional-scale shopping center on land not designated for commercial use and located outside the Town Center is inconsistent with the intent and goals of the Lakeside Community Plan.

General Plan Policy LU-11.2 requires that “development be located, scaled, and designed to be compatible with the unique character of the community.” The DEIR asserts that the Site Plan for Project is “consistent with the unique commercial architectural design objectives of the Lakeside Community Design Guidelines.” However, the DEIR provides no evidence to support this assertion.

For the foregoing reasons, the Project is inconsistent with the General Plan and the Lakeside Community Plan. Because of the Project’s inconsistencies with these planning documents, approval of this Project would violate State Planning and Zoning Law.

### **3. The DEIR Fails to Properly Analyze the Project’s Impacts on Water Supply Resources.**

The Project will unquestionably require significant amounts of water in order to serve construction and operational needs. While the DEIR acknowledges this need, it fails to account for the impacts associated with providing this water.

CEQA requires that an EIR present decision makers “with sufficient facts to evaluate the pros and cons of supplying the amount of water that the [project] will need.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 430-31 (2007). This includes identifying and analyzing water supplies that “bear a likelihood of actually proving available; speculative sources and unrealistic allocations (‘paper water’) are insufficient bases for decisionmaking under CEQA.” *Id.* at 432. The fact that an agency has identified a likely source of water for the Project does not end the inquiry.

The ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project. If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.

*Id.* at 434. This analysis is crucial in light of the drought that has gripped this State for the past several years.

The DEIR discloses that construction activities would require 3.02 million gallons of water and operational needs will require an additional 9.98 million gallons annually. DEIR at 3-64. The DEIR claims that the relevant water utility—Padre Dam Municipal Water District (“PDMWD”)—provided a letter indicating “adequate water resources and entitlements.” *Id.* This appears to be the extent of the DEIR’s analysis. Such an approach violates CEQA.

First, it appears that the DEIR’s estimates of water consumption are based on pure speculation. The Project contains a car wash, and according to the DEIR, “the car wash would use . . . 584,000 gallons per year. However, the project architect indicates that the car wash system proposed for the project could use as little as seven gallons of water per wash with the proposed water recycling system [resulting in a demand of] approximately 102,000 gallons per year.” DEIR at 1-4. The DEIR conveniently uses the lower figure (DEIR at Table 1-1) but provides no evidence showing that the lower figure is accurate. Indeed, there is no indication in the DEIR that the recycled system is a mandatory design element. The DEIR must provide substantial evidence supporting this lower number.<sup>1</sup>

The DEIR also fails to examine the impact of providing these water supplies in light of Executive Order B-29-15 which requires immediate reductions of 25 percent in potable water use by commercial properties. The DEIR references the existence of E.O. B-29-15, but provides no analysis of the Project’s consistency with the order. DEIR at 3-61. Furthermore, the DEIR lists several applicable General Plan policies, but declines analyze their application to the Project. For example, LU-13.1 requires new development to “include[] both indoor and outdoor water conservation measures to reduce demand.” DEIR at 3-62. Other policies require

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<sup>1</sup> The DEIR also fails to reveal which estimate of water use was provided to PDMWD before the utility determined that it could serve the Project with existing entitlements. The DEIR should disclose this information, and should release the August 2015 letter from PDMWD in order to verify whether the utility has in fact made such a determination.

conservation design elements including drought-efficient landscaping. DEIR at 3-63 (citing COS-4.1 and 4.2). None of these elements are included in the Project description as enforceable design elements or mitigation measures.

Finally, the DEIR fails to analyze the cumulative impacts associated with providing water for this Project. According to the DEIR, “[i]t is expected that adherence to existing regulations will reduce any potential impacts associated with [the] cumulative projects . . . to a less than significant level. Furthermore, the cumulative projects considered in this analysis would be required to prepare and receive approval from utility providers for each respective project prior to construction.” DEIR at 3-66. This analysis does not discuss the “reasonably foreseeable impacts of supplying water to the project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal.4th at 434 (2007). The DEIR should disclose what effect the development of the cumulative projects will have on PDMWD’s existing entitlements and facilities. Also, there is no reason that prior approval from local utilities will ameliorate any potential impacts. The County must undertake its own analysis of the impacts associated with the Project. The DEIR must be revised to include facts and analysis regarding cumulative water supply impacts. CEQA Guidelines § 15064(b) (significance determinations must reflect “careful judgment . . . based to the extent possible on scientific and factual data.”); *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture*, 136 Cal.App.4th 1, 17 (2005) (“[C]onclusory statements do not fit the CEQA bill.”).

#### **4. The DEIR Fails to Properly Analyze and Mitigate the Project’s Contribution to Climate Change.**

The DEIR’s analysis of greenhouse gas (“GHG”) emissions attributable to the Project is deficient. The document’s conclusion that the Project—which consists of more than 76,000 square feet of commercial development in an undeveloped area—would meet the State’s GHG reduction goals in 2020 is completely lacking in substantial evidence. The document provides no data or information to substantiate that a new development with estimated annual emissions of 3,093.6 metric tons of carbon dioxide (“CO<sub>2</sub>”) equivalent is doing its fair share to meet GHG reduction targets. Moreover, the DEIR relies on an inappropriate way to measure the significance of the Project’s impacts, underestimates the Project’s GHG emissions, ignores that the Project conflicts with various relevant GHG-reduction policies, and uses other flawed analyses. Because the DEIR concludes that the Project would not have a significant climate-related impact in 2020, it fails to adopt feasible mitigation for the development. The DEIR also fails to offer any analysis or mitigation of impacts from GHG emissions after 2020. Because the Project’s impact would 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.**

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 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). The Guidelines also instruct the lead agency to determine “[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.” Guideline § 15064.4(b)(3); *See also* DEIR at 3-37.

Here, while the DEIR quantified the Project’s anticipated GHG emissions, it relied on an impermissibly narrow significance threshold. The DEIR looked to the San Diego County Recommended Approach for Addressing Climate Change (“County GHG Guidance”) to set a significance threshold for GHG emissions. DEIR at 3-37. Pursuant to the County GHG Guidance, the DEIR applies a 900 tonne annual screening threshold. Because the Project emissions exceed this screen, the DEIR performs additional analysis to determine whether the Project “would conform with the GHG reduction targets set forth in the 2011 Final Supplement to the AB 32 Scoping Plan Functional Equivalent Document.” *Id.* According to the DEIR, preexisting state policies would reduce the Project’s emissions by more than 16% below business as usual (“BAU”) thereby reducing the Project’s GHG emissions to an insignificant level. While the DEIR quantifies the Project’s anticipated GHG emissions, the document does not analyze the impact of those emissions as compared to the “existing environmental setting.” Guideline § 15064.4(b)(1).<sup>2</sup>

Moreover, the DEIR identifies applicable policies of the General Plan and then fails to analyze the Project’s consistency with those policies. For example, General Plan policy COS-14.9 “[r]equire projects that generate potentially significant levels of air pollutants and/or GHGs such as quarries, landfill operations, or large land development projects to incorporate renewable energy, and the best available control technologies and practices into the project design.” DEIR at 3-35. At no point does the DEIR explain why this policy should not require the incorporation

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<sup>2</sup> Other agencies have been able to adopt numerical thresholds of significance. For example, the Sacramento Metropolitan Air Quality Management District applies a 1,100 metric ton threshold for construction and operational phases of projects. *See* Exhibit B at 6-10. The operational emissions associated with this Project would be more than twice as large.

of renewable energy and other project design elements given the Project's potentially significant emissions.

Finally, this guidance and threshold are procedurally defective. The guidance was not developed through a public review process or adopted by ordinance, resolution, rule, or regulation, as required by CEQA. Guidelines § 15064.7; Exhibit C [Email from M. Slovic to E. Chalmers (Jul. 31, 2015)]. Moreover, the County's issuance of this guidance and CEQA threshold appears to violate the supplemental writ filed on May 4, 2015 in the *Sierra Club v. County of San Diego* case, Case No. 37-2012-00101054-CU-TT-CTL. See Exhibit D. This writ ordered the County to set aside its November 7, 2013 Guidelines for Determining Significance and Report Format and Content Requirements and not to reissue its Guidelines for Determining Significance for Greenhouse Gas Emissions until it complies with CEQA. *Id.*; see also *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152. Yet the County issued its January 2015 GHG guidance without public review, without conducting appropriate CEQA review, and apparently without filing a return to the writ in the *Sierra Club v. County of San Diego* case. For all of these reasons, the County may not utilize or rely on its January 2015 GHG guidance.

**(b) The DEIR Fails to Provide Substantial Evidence for Its Application of the “Business As Usual” Approach.**

Even if the stand-alone 16% below BAU threshold 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. 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. The Supreme Court has rejected this presumption. *Center for Biological Diversity v. California Dep't of Fish & Wildlife* (2015) 62 Cal.4th 204, 261-63. Indeed, the Scoping Plan is silent as to the obligation of new development to mitigate GHG 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. *Id.* at 262.

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.” Exhibit E at p. 33 (CAPCOA, CEQA & Climate Change).<sup>3</sup> Similarly, as one of its reasons for finding that a proposed 29%

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<sup>3</sup> 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. CAPCOA was

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 F at p. 3. Moreover, the densities in the Project area may be different than statewide density averages, thereby skewing the analysis. *CBD*, 62 Cal.4th at 263.

The Supreme Court has also rejected the idea that statewide reduction targets can be applied mindlessly to individual projects. The *CBD* Court’s summary of that EIR’s failings applies equally to the Lake Jennings Market Place DEIR:

At bottom, the EIR’s deficiency stems from taking a quantitative comparison method developed by the Scoping Plan as a measure of the greenhouse gas emissions reduction effort required by the state as a whole, and attempting to use that method, without consideration of any changes or adjustments, for a purpose very different from its original design: To measure the efficiency and conservation measures incorporated in a specific land use development proposed for a specific location.

*Id.*

Accordingly, there is no scientific or factual basis supporting the DEIR’s unsubstantiated opinion that new development that is 16% below a hypothetical BAU baseline 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 CBD*, 62 Cal.4th at 263; *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal. App. 4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill.”). By simply assuming that AB 32 emission reduction targets would be achieved because Project emissions are purportedly 16% below a hypothetical “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).

While it is important to assess the Project’s consistency with the goals of AB 32, to reduce statewide GHG emissions to 1990 levels by 2020 through maximum economically and technologically feasible measures without limiting economic growth (*see* Health & Saf. Code §§ 38501, 38550), the statewide BAU approach is inappropriate for a proposed new development project. *See* CEQA Guidelines § 15064.4(b)(3)). As explained by the Supreme Court, the DEIR must provide an appropriate efficiency goal for new development, backed by substantial evidence. Alternatively, the DEIR should compare the Project’s projected emissions in 2020 with

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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.”

those in the Project area in 1990. If the projected emissions would exceed those in the Project area, this should be considered a significant impact.

**(c) The DEIR's Analysis of Post-2020 GHG Emissions is Deficient.**

The DEIR makes no attempt to analyze the Project's GHG impacts after 2020 despite the fact that the project might not even be built out by 2020 and certainly will continue in operation for many years after 2020. This approach is unacceptable. According to the Supreme Court,

[O]ver time consistency with year 2020 goals will become a less definitive guide, especially for longterm projects that will not begin operations for several years. An EIR taking a goal-consistency approach to CEQA significance may in the near future need to consider the project's effects on meeting longer term emissions reduction targets.

*CBD*, 62 Cal. 4th at 260. [T]he very same GHG guidance relied upon by the DEIR explicitly requires the County to "disclose the project's emissions for 2030 and 2050, in addition to 2020, and should show the progress the project would make towards achieving the GHG reduction goals for these years" as defined by the executive orders. County GHG Guidance at 4. The DEIR makes no attempt to do so.

In addition to properly analyzing consistency with the reduction goals set under AB 32 as described above, the DEIR must analyze the Project's consistency with the following plans and policies for GHG reduction.

**(i) The Regional Transportation Plan/Sustainable Communities Strategy**

SANDAG's RTP/SCS is an applicable plan for GHG reduction, and thus the DEIR must analyze the Project's consistency with this Plan. The RTP/SCS was adopted to comply with the requirements of SB 375 and covers the Project area. SB 375 sets regional reduction targets including per capita emissions reduction targets for light duty trucks and cars by 2020 and 2035, respectively.

The DEIR recognizes the existence of the RTP/SCS and these reduction targets, but, without explanation, fails to analyze the project's consistency with them. *See* DEIR at 3-32. Moreover, in October 2015, SANDAG approved an updated RTP/SCS which incorporates even more ambitious emissions reduction goals from several executive orders, as discussed below. The County must analyze the Project's consistency with this most recent regional plan.

**(ii) Executive Orders S-3-05 and B-30-15**

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. EO B-30-15, signed by the Governor in 2015, establishes a new interim target to reduce GHG emissions by 40 percent below 1990 levels by 2030. The DEIR acknowledges EO S-3-05 and B-30-15, but never analyzes the Project’s consistency with either directive.

Yet, other agencies have been readily able to utilize the Executive Orders as thresholds of significance for long-term projects. For example, likely in response to a Court of Appeal decision on the subject, the San Diego Association of Governments (“SANDAG”) utilized the following threshold of significance in the EIR for its most recent Regional Transportation Plan/Sustainable Communities Strategy: “GHG-4: Be inconsistent with the State’s ability to achieve the Executive Order B-30-15 and S-3-05 goals of reducing California’s GHG emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.” Exhibit G at pp. 4.8-33; *see Cleveland National Forest Foundation v. SANDAG* (November 24, 2014) 180 Cal.Rptr.3d 548 (Review Granted, 343 P.3d 903).<sup>4</sup>

The SANDAG RTP/SCS EIR evaluated the project’s impacts by calculating a 40 percent and 80 percent reduction from the region’s 1990 emissions and utilizing that as a target reference point for the RTP. It then compared the region’s expected GHG emissions in the years 2035 and 2050 to the emissions that would be necessary to meet the EO trajectories. It included charts showing that the Plan will not come close to meeting the EO goals. It concluded: “Because the total emissions in the San Diego region of 25.5 MMT CO<sub>2</sub>e in 2035 would exceed the regional 2035 GHG reduction reference point of 14.5 MMT CO<sub>2</sub>e (which is based on EO-B-30-15 and EO-S-3-05), the proposed Plan’s 2035 GHG emissions would be inconsistent with state’s ability to achieve the Executive Orders’ GHG reduction goals. Therefore, this impact (GHG-4) in the year 2035 is significant.” Exhibit G at pp. 4.8-35. It has a similar conclusion for the year 2050 goal. This analysis is easily adaptable to the proposed Project’s emissions.

The DEIR’s failure to compare the Project’s emissions—which would continue for decades if not in perpetuity—against long-term GHG emission reduction policies such as those in EO S-3-05 and B-30-15 is unlawful. The County has access to state-wide reduction goals, which reflect the levels 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 DEIR should reveal the severity of the impacts of adopting a long-term development plan that contravenes these reduction goals. In other words, the public should understand just how far the Project would set the area off course from state-wide reduction goals.

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<sup>4</sup> The DEIR erroneously claims that “a decision from the court of appeal has yet to be rendered.” DEIR at 3-32. Moreover, there is no reason why the DEIR should ignore these executive orders during the pendency of this litigation.

**(d) The DEIR Underestimates the Project's GHG Emissions.**

Putting aside the DEIR's reliance on an incomplete and misleading threshold of significance, the DEIR appears to miscalculate the Project's anticipated emissions. An accurate emissions inventory would demonstrate that the Project will have significant GHG emissions, even under the County's chosen threshold of significance. The DEIR also obscures some of its calculations, making it difficult to verify whether there might be additional miscalculations and casting further doubt on the DEIR's usefulness as an informational document.

The DEIR overestimates emissions reductions associated with the 33% Renewable Portfolio Standard ("RPS"). The DEIR explains that "using the 33% RPS brings the effective CO<sub>2</sub> reduction to 83.8% of unmitigated levels" or a reduction of 193.8 tonnes per year due to electrical load at the project site. DEIR at 3-41. However, assuming the 83.8% co-efficient is correct, 83.8% of 1020.2 tonnes (the unmitigated emissions from electrical load) is 854.92 tonnes—a reduction of only 165.27 tonnes, not 193.8 tonnes as the DEIR claims. That correction would add back 28.53 tonnes of annual emissions into the project's 2020 emissions profile. As a result, the project's emissions will be mitigated by only 15.68% below BAU, thereby failing to achieve the 16% reduction below BAU required to avoid a significant impact.

It is also possible that the DEIR improperly double counts the some of the emissions reductions resulting from the transition from a 20% RPS to a 33% RPS. According to the DEIR, this shift will correspondingly reduce emissions due to electricity demand at the Project by 16.2%. DEIR at 3-41. However, it appears that this overstates the emissions reductions that should be anticipated from a 13% increase in the State's portfolio of renewable electricity generation. Assuming there are *no emissions whatsoever* associated with the additional 13% of renewable energy (likely an inappropriately optimistic assumption), such an increase would presumably only reduce emissions by 13%. Therefore it would be incorrect to project a corresponding 16.2% reduction in emissions. The DEIR makes it impossible to verify these assumptions, however, because it provides no explanation for how it arrived at its conclusion that the 33% RPS would reduce these emissions by 16.2%. *See* DEIR at 3-41; Appx. K at 21 (claiming without citation or explanation that a new energy conversion factor was "derived by scaling the unmitigated 20% RPS CO<sub>2</sub> intensity factor to account for the State required 33% RPS by the year 2020"). The assumptions and calculations underpinning this analysis must be included in a revised and recirculated version of the DEIR and the Greenhouse Gas Assessment.<sup>5</sup>

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<sup>5</sup> The DEIR also obscures the calculations underpinning the reductions due to compliance with Title 24 and other building efficiency policies. The DEIR credits the Project with reductions due to these policies, but the policies themselves are a mix of mandatory and voluntary elements. *See, e.g.*, DEIR at 3-34, 35 (noting that the California Green Building Standards are a mix of both mandatory and voluntary elements). The DEIR applies emissions reductions without

Finally, the DEIR might be double counting emissions reductions associated with Pavley I, the emissions standards for passenger vehicles and light-duty trucks adopted in 2009. The County GHG Guidance expressly forbids the inclusion of Pavley I standards in the calculations determining the 16% reduction below BAU. County GHG Guidance at 3. Yet the DEIR combines the reductions associated with Pavley II and the Low Carbon Fuel Standard (“LCFS”) and lists them under a heading entitled “Pavley I + LCFS.” DEIR, Appx. K at 20. It is unclear how the DEIR reached the amounts listed in the table, nor is it clear whether the Pavley I reductions were excluded from those amounts.

Correcting those errors will result in higher emissions values, bringing the Project’s emissions above the threshold of significance chosen by the County. The County must revise its GHG analysis to include an accurate and thorough accounting of the Project’s GHG emissions.

**(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 in 2020, the DEIR does not recommend any mitigation measures related to GHG impacts (beyond those already required pursuant to State law). Further, the DEIR ignores the issue of mitigation after 2020. However, if the DEIR had properly utilized and applied GHG thresholds as discussed above, it would demonstrate that the Project’s actual GHG emissions would cause a significant impact throughout the life of the Project. As discussed above, even under the County’s threshold, a proper accounting of the Project’s emissions would have revealed a significant impact. Significant impacts must be mitigated in conjunction with Project approval or a statement of overriding considerations is required. An agency may not defer mitigation except under specific circumstances not present here. Guidelines § 15126.4(a)(1)(B).

The County can and should adopt all feasible mitigation for the Project’s known and significant GHG impacts at the time of Project approval (if the Project is approved). Numerous agencies and organizations have documented other types of mitigation that are appropriate and feasible for commercial development projects. The County should adopt all feasible mitigation to reduce the Project’s true GHG impacts. As just a few examples, the EIR should evaluate the following additional measures for the Project:

- Use low or zero-emission vehicles, including construction vehicles.
- Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.

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disclosing whether those amounts are based on enforceable, mandatory standards or illusory, voluntary measures that might not be incorporated into the Project design.

- 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).
- Provide zero emission shuttle service to public transit and Project buildings/amenities.
- Provide public transit incentives such as free or low-cost monthly transit passes.
- Provide information on energy management services for large energy users.
- Install light emitting diodes (LEDs) for traffic, street and other outdoor lighting.
- Limit the hours of operation of outdoor lighting.
- Provide education on energy efficiency.
- Reduce the use of pavement and impermeable surfaces.
- Require the installation of on-site, distributed generation of low carbon, renewable energy sources such as photovoltaic panels to reduce electricity load.

There are additional guidance documents that provide a full suite of GHG mitigation measures. The County must review and consider all of the measures listed in these documents in a recirculated EIR, and it must adopt all feasible measures in order to reduce the Project’s impacts to a level below significance, or as much as feasible:

- 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](http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf).

These documents, in addition to providing 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 GHG impacts.

Other agencies routinely require mitigation for commercial 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." Excerpts of Travertine Point Specific Plan Conditions of Approval, attached as Exhibit H. If the developer cannot show that the local electricity provider is meeting these standards, than renewable energy must be provided from on-site sources. *Id.*

## **5. The DEIR Fails to Properly Analyze and Mitigate the Project's Air Quality Impacts.**

The San Diego Air Basin suffers from poor air quality; monitoring stations near the Project site have recently recorded ozone and 2.5 micron particulate matter (PM 2.5) in excess of applicable standards. DEIR at 3-6; see also DEIR at 3-17 (noting that the Air Basin is a federal non-attainment area for ozone, and a state non-attainment area for ozone, PM-10 and PM-2.5). Nevertheless, the DEIR concludes that this large commercial development which will involve extensive grading and will generate thousands of daily vehicle trips will cause neither project-specific nor cumulative impacts to the area's air quality. The County's existing air pollution problems make it especially important that the DEIR accurately identify the Project's potential to increase air pollutant emissions and evaluate how these increased emissions affect the public's health. Unfortunately, the DEIR's analysis fails in numerous ways.

**(a) The DEIR's Analysis of Air Pollutant Emissions Is Inadequate.**

**(i) The DEIR Employs a Misleading Baseline for Air Quality Impacts.**

The DEIR utilizes several thresholds of significance for air quality impacts, including whether the Project will conflict with or obstruct the implementation of the San Diego Regional Air Quality Strategy ("RAQS"). DEIR at 3-11. The RAQS is based in part on "land use plans developed by the cities and by the County as part of the development of their general plans." *Id.* However, this Project would involve a "general plan amendment and rezone" from residential to commercial use. *Id.* Given the necessity of the rezone and general plan amendment, it seems likely that the RAQS will be outdated and no longer accurate. Indeed, if the Project is likely to involve a reduction in vehicle miles travelled compared a residential development under the existing zoning, then presumably the RAQS thresholds will be ratcheted down. At no point does the DEIR analyze whether the RAQS remain a valid threshold of significance in light of the contemplated rezoning and amendment.

Moreover, the DEIR assumes the Project site is fully developed for residential use. *See* DEIR, Appx. J at 41 (explaining that because the current zoning "gives an aggregate vehicle-miles-traveled (VMT) of 1,611,546 VMT per day, while the proposed capture of the project site would generate 1,602,394 VMT per day" resulting in a "net reduction of 9,152 VMT per day"). This comparison is misleading—in fact the Project site's current vehicular emissions are negligible, and the construction of the Project will dramatically increase VMT and associated emissions. The "net reduction" is purely illusory. Guidelines § 15126.2(a) (EIR should analyze changes to "existing physical conditions in the affected area").

**(ii) The DEIR Miscalculates and Ignores Emissions of Criteria Pollutants.**

Even if the DEIR's significance thresholds were acceptable, its analysis remains deficient. The DEIR does not indicate whether criteria pollutant emissions associated with the roadway upgrades required by this Project are included in the impact analysis. Those upgrades are central to the DEIR's analysis of the Project's traffic impacts, but construction of those upgrades appears to be omitted from the air quality analysis.

The DEIR also appears to leave the volatile organic compound ("VOC") emissions associated with painting out of its calculations. DEIR at Table 3.1-4. When the emissions from the application of "Low-VOC" paint are combined with VOC emissions from other construction activities, the total construction related ROG/VOC emissions rise to 61 pounds per day, just

below the 75 pound threshold. DEIR at Table 3.1-4.<sup>6</sup> Moreover, the DEIR appears to overestimate the amount of emissions reductions associated with using “Low VOC” paints. The DEIR notes that through the application of these paints, “the VOC load can be reduced by a factor of 0.36, thereby resulting in final VOC levels of 25.6 pounds of VOC per day.” DEIR at 3-15. However, reducing those emission by a factor of 0.36 yields final VOC levels of 45.57 pounds per day, not 25.6 pounds per day. When the correct amount is combined with other construction emissions of ROG, the total of 80.97 pounds per day exceeds the significance threshold.

**(iii) The DEIR Fails to Analyze Cumulative Air Quality Impacts.**

The DEIR fails to analyze the Project’s cumulative impact on air quality. The DEIR acknowledges that a project “may still have a cumulatively considerable impact on air quality if the emissions of concern from the proposed project, in combination with the emissions of concern from other proposed projects or reasonably foreseeable future projects within a proximity relevant to the pollutants of concern, are in excess of the guidelines.” DEIR at 3-17. At no point, however, does the DEIR perform this analysis. Instead, the DEIR reasons that the project itself will not exceed applicable screening thresholds and that other nearby projects will be required to implement “dust control measures during construction.” DEIR at 3-20. This analysis completely misses the point. The DEIR does not reveal whether *together* these nearby projects will emit significant amounts of particulate matter. Moreover, the DEIR completely ignores cumulative impacts related to other criteria pollutants such as nitrogen oxides and VOCs, for example, by focusing exclusively on dust. The DEIR must be revised to include an analysis that satisfies the analytical requirements that the County itself has chosen.

**(b) The DEIR Fails to Analyze and Adopt All Feasible Mitigation of the Project’s Air Quality Impacts.**

Finally, because the DEIR fails to adequately analyze the Project’s air quality impacts, it likewise fails to adopt all feasible mitigation of those impacts. In light of the potentially significant impacts from the Project’s construction-related VOC emissions and the Project’s cumulative impacts to air quality in the Air Basin, the DEIR must consider and adopt measures to mitigate those impacts. The DEIR should consider mitigation measures including the following:

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<sup>6</sup> Confusingly, the DEIR elsewhere claims that “VOC emissions from painting are regulated at the state (CARB) level at 250 grams of VOC per liter of paint regardless of application” indicating that “the project would not cause significant VOC emissions” regardless of the overall amount of VOC emissions from paint used at the Project site. DEIR at 3-14. This suggestion is both absurd and undercut by the DEIR’s indication that the SCAPCD employs a 75 pound per day threshold of significance.

- Install Energy Star (or equivalent) cool roofing systems on all buildings;
- Increase wall and attic insulation to 20 percent above Title 24 requirements (residential and commercial);
- Orient buildings to take advantage of solar heating and natural cooling, and use passive solar designs (residential, commercial, and industrial);
- Provide energy-efficient windows (double pane and/or Low-E) and awnings or other shading mechanisms for windows, porches, patios, and walkways;
- Consider passive solar cooling and heating designs, ceiling and whole house fans, and programmable thermostats in the design of heating and cooling systems; and
- Use day lighting systems, such as skylights, light shelves, and interior transom windows.

See Recommended Guidance for Land Use Emission Reductions Version 3.2 (For Operational Emissions), SMAQMD, April 2015, attached as Exhibit I. The EIR must be revised to consider the feasibility of each of these measures.

## **6. The DEIR Defers Analysis and Mitigation of the Project's Significant Noise Impacts.**

An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 151 Cal.App.3d 61 at 79 (1984). The City may not use the inadequacy of its impacts review to avoid mitigation: “The agency should not be allowed to hide behind its own failure to collect data.” *Sundstrom v. County of Mendocino*, 202 Cal.App.3d at 306 (1988). The formulation of mitigation measures may not properly be deferred until after Project approval; rather, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments.” CEQA Guidelines § 15126.4(a). As explained below, the DEIR’s identification and analysis of mitigation measures are legally inadequate.

This DEIR identifies significant noise impacts related to construction and operational noise. DEIR at 2.4-8 through 2.4-12. These impacts include construction noise ranging from 75 dBA to more than 104 dBA sound exposure level during rock blasting, and operational noise from particular Project features. *Id.* Despite the extreme noise impacts associated with the Project, the DEIR fails to adequately analyze or mitigate these significant effects. For example, in the case of noise from rock blasting, the DEIR merely proposes as mitigation that the applicant would submit a Construction Noise Blasting Plan. DEIR at 2.4-16. The DEIR explains

that this plan will identify the location of the blasting, inventory receptors of affected receptors, and calculate the area affected by the blasting. *Id.* This is exactly the analysis that CEQA requires take place now, not after Project approval. *See Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal.App.4th 182, 195 (1996) (agency may not use vague mitigation measures to avoid disclosing impacts).

In other cases, the DEIR identifies specific mitigation measures but fails to evaluate the effectiveness of the measures for both operational and construction noise. Specifically, the DEIR proposes to mitigate significant operational noise impacts associated with the car wash facility, HVAC equipment, and trash compactor by requiring setbacks and noise barriers to comply with the County's Noise Ordinance. DEIR at 2.4-16. However, the DEIR fails to evaluate the amount of noise reduction that will be provided by these measures. Therefore the DEIR fails to provide a basis for the public and decision makers to evaluate the significance of impacts and whether or not the proposed mitigation measures will reduce impacts to a less-than-significant level.

A detailed analysis of the noise barrier effectiveness must be conducted now to determine whether it is feasible to construct noise barriers that would have the potential to afford a reasonable degree of protection to adjacent residences. Without such a study the conclusion that the Project's noise impacts would be less-than-significant is without merit.

In short, the DEIR's analysis of noise impacts dramatically understates the Project's potential to significantly affect area residents. At the same time, the DEIR fails to provide effective, enforceable measures to mitigate such potentially significant impacts. To comply with CEQA, the County must prepare a revised DEIR fully analyzing the Project's potential impacts to these resources and identifying effective mitigation measures. Revisions of the required magnitude will in turn require recirculation of the DEIR. CEQA Guidelines 15088.5(a)(4).

### **C. The EIR's Analysis of Project Alternatives is Inadequate.**

#### **1. The EIR's Failure to Adequately Analyze Project Impacts Results in Inadequate Range of Alternatives.**

Every EIR must describe a range of alternatives to the proposed project and its location that would feasibly attain the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126(d). A proper analysis of alternatives is essential for the City to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. As stated in *Laurel Heights Improvement Association v. Regents of University of California*, 47 Cal.3d 376, 404 (1988) "[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the

public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." The DEIR's discussion of alternatives in the present case fails to live up to these standards.

As a preliminary matter, the DEIR's failure to disclose the extent and severity of the Project's broad-ranging impacts necessarily distorts the document's analysis of Project alternatives. As a result, the alternatives are evaluated against an inaccurate representation of the Project's impacts. Proper identification and analysis of alternatives is impossible until Project impacts are fully disclosed. Moreover, as discussed above, the document's analysis is incomplete and/or inaccurate so that it is simply not possible to conduct a comparative evaluation of the Project's and the alternatives' impacts.

Far from complying with its obligations to suggest and analyze a reasonable range of alternatives to the proposed site, the DEIR offers "straw men" alternatives that are simply meant to bolster the case for the proposed project. For example, the DEIR discusses two "reduced commercial" alternatives: Alternative 1 and Alternative 2, both of which reduce the size of the market building. However, these alternatives still represent a use that is far too intensive for the proposed area and offer limited environmental benefits. Specifically, the two "reduced commercial" alternatives would develop 50,400 square feet and 63,600 square feet of commercial uses respectively. The two alternatives would do little to reduce the most impactful features of the Project (i.e., carwash, HVAC units, trash compactor) and would still result in significant impacts related to traffic, noise, air quality, greenhouse gases, and changes to the site's visual character. Thus, these two "reduced commercial" alternatives are not taken seriously in the RDEIR, and do not satisfy CEQA's mandate that an EIR discuss a reasonable range of alternatives that "offer substantial environmental advantages over the project proposal." *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d at 566 (1990).

Moreover, the DEIR asserts that Reduced Commercial Alternative 1 is the Environmentally Superior Alternative, however, this conclusion is not supported by evidence. Of the alternatives analyzed, the No Project/General Plan Designation Alternative reduces the number of average daily traffic trips ("ADT") by two thirds (1,600 ADT compared to the proposed Project trips of 4,683). By comparison, Reduced Commercial Alternative 1 would result in 3,233 ADT, or more than double the No Project/General Plan Designation Alternative. Despite this clear evidence that the No Project/General Plan Designation Alternative substantially reduces traffic impacts, the DEIR erroneously concludes that traffic impacts from this alternative would be similar to the proposed Project. DEIR at 4-12. As discussed above, a reduction of traffic by two thirds has enormous implications not only for traffic congestion but for noise, air quality, and greenhouse gases. Had the DEIR correctly analyzed this alternative, it would have concluded that the No Project/General Plan Designation Alternative is the Environmentally Superior Alternative. CEQA mandates selection of the environmentally superior alternative if it can feasibly attain most of the project's objectives, "even if it would

impede to some degree the attainment of the project objectives, or would be more costly.” CEQA Guidelines § 15126.6(b); CEQA § 21002.

**D. The DEIR Must Be Revised and Recirculated.**

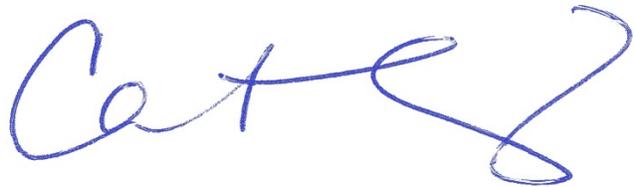
CEQA requires recirculation of an EIR when significant new information is added to the document after notice and opportunity for public review was provided. Pub. Res. Code § 21092.1; CEQA Guidelines § 15088.5. *Laurel Heights II*, 6 Cal. 4th at 1130. As this letter explains, the DEIR clearly requires extensive revision, which will include new information and analysis. This analysis will likely result in the identification of new, substantial environmental impacts or substantial increases in the severity of significant environmental impacts. Consequently, the County must revise and recirculate the EIR for public review and comment.

**III. Conclusion**

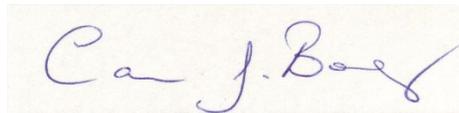
For the reasons set forth above, we respectfully request that the County deny the requested permit applications. Additionally, we request that no further consideration be given to the Project as proposed until an EIR is prepared that fully complies with CEQA.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Catherine C. Engberg  
Benjamin J. Brysacz



Carmen J. Borg, AICP  
Urban Planner

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**List of Exhibits:**

- Exhibit A San Diego County, Guidelines for Determining Significance and Report and Content Requirements: Visual Resources, July 30, 2007.
- Exhibit B Sacramento Metropolitan Air Quality Management District, CEQA Guide: Greenhouse Gas Emissions, June 2015.
- Exhibit C Email from M. Slovick to E. Chalmers (Jul. 31, 2015).
- Exhibit D Supplemental Writ of Mandate, *Sierra Club v. County of San Diego*, Case No. 37-2012-00101054-CU-TT-CTL (May 4, 2015).
- Exhibit E California Air Pollution Control Officers Association (“CAPCOA”), CEQA & Climate Change, Jan. 2008.
- Exhibit F Letter from T. Sullivan (on behalf of the Attorney General) to D. Warner (Nov. 4, 2009).
- Exhibit G San Diego Association of Governments (SANDAG), Regional Plan EIR: Greenhouse Gas Emissions, Oct. 2, 2015.
- Exhibit H Excerpts of Riverside County, Travertine Point Specific Plan, Conditions of Approval.
- Exhibit I Sacramento Metropolitan Air Quality Management District, Recommended Guidance for Land Use Emission Reductions Version 3.2 (For Operational Emissions), April 2015.