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Via Electronic Mail and FedEx

Mr. John Helmer
Contract Planner
City of Escondido
201 North Broadway
Escondido, CA 92025
E-Mail: jhelmer@escondido.org

Re: Draft Environmental Impact Report for Safari Highlands Ranch and Citywide Sphere Of Influence Update; ENV 15-0009, SUB 15-0019; (SCH #2015091039)

Dear Mr. Helmer:

This firm represents the Endangered Habitats League (“EHL”) in connection with the proposed Safari Highlands project (“Project”). The Project and the City’s draft environmental impact report (“DEIR”) suffer from numerous fatal flaws. The Project conflicts with the City of Escondido’s General Plan and Development Code, in violation of state Planning and Zoning Law, Govt. Code § 65000 et seq. In addition, the DEIR fails to comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq.

The proposed Project is a glaring example of the kind of sprawl development that virtually every state and regional planning effort in California today is seeking to contain. Even more troubling, that sprawl would be placed in one of the most environmentally constrained areas of the County. As a result, the Project would have devastating impacts across the board, and, not surprisingly, is inconsistent with every regional planning document applicable to the Project site. These include regional conservation plans to enable County-wide planning to protect endangered and threatened species; the County’s regional transportation plan and sustainable communities plan, which are designed to meet emission targets by reducing vehicle trips; the anti-sprawl policies of San Diego LAFCO, intended to encourage infill development and protect open space; and even the

City's own General Plan slope policies. And particularly alarming given the state's recent catastrophic wildfires, the Project would bring over a thousand new residents to a site classified by the California State Fire Marshal as a high hazard fire severity zone—without any adequate means of evacuation.

But none of these impacts or inconsistencies of the Project can be discerned from reading the DEIR. With regard to each of CEQA's substantive requirements—a complete and stable project description, a thorough analysis of significant impacts, identification of feasible and enforceable mitigation measures, an analysis of a reasonable range of alternatives—the DEIR falls woefully short. As a result, the DEIR fails to meet CEQA's fundamental purpose of providing disclosure to the public of the Project's environmental effects. The City and the applicant need to start over—beginning with a redesign of the Project to make it consistent with the General Plan—and prepare and recirculate a new, legally adequate DEIR.

This letter is submitted along with the reports prepared by Jared Ikeda, GIS Specialist, attached as Attachment A; Robb Hamilton, Biologist, attached as Attachment B (“Hamilton Report”); Dr. Joseph Zicherman, Berkeley Engineering and Research, attached as Attachment C (“BEAR Report”); Dr. Petra Pless, attached as Attachment D (“Pless Report”); Dr. Jun Onaka of Onaka Planning and Economics, attached as Attachment E; and Dr. Thomas Cova, attached as Attachment R (“Cova Report”). We respectfully refer the City to the aforementioned attached reports, both here and throughout these comments, for further detail and discussion of the DEIR's inadequacies. We request that the City reply to each of the comments in this letter and to each of the comments in the attached reports.

I. Background

The Project site is located within San Diego County's jurisdiction on land designated for low-density, rural residential uses (i.e., General Plan designation of Rural Lands (RL-40) and Zoning of A72—General Agriculture). This designation and zoning were established in the most recent update of the County General Plan undertaken in 2011. The proposed Project includes a modification to the City's sphere of influence, annexation of the Safari Highlands site to the City of Escondido, approval of a Specific Plan for the Project, and rezoning to increase the maximum allowable units on the site from the current maximum of 27 units to the proposed 550 units.

The majority of the site is comprised of very steep slopes, which severely limit opportunities for development. See, Ikeda Report at Attachment A, indicating the site's slopes exceeding 25 percent and 35 percent steepness. The site contains hundreds of acres

of granite rock that will require a substantial amount of blasting and drilling. The site is located in an area subject to the San Diego County Multiple Species Conservation Program (“MSCP”). The project site lies at the northern edge of the South County MSCP Subarea Plan (“SC-MSCP”) and spills over into the planning area for the North County MSCP (“NC-MSCP”). These plan areas have already suffered extensive depletion by past development. Remaining large intact habitat blocks—identified as Pre-Approved Mitigation Areas (“PAMAs”) in the SC-MSCP and draft NC-MSCP—are rare. The project site is also within an area identified by the SC-MSCP as a Biological Resource Core Area (“BRCA”) under the County’s Biological Mitigation Ordinance. The MSCP recognizes BRCA as areas “supporting a high concentration of sensitive biological resources, which, if lost or fragmented, could not be replaced or mitigated elsewhere.” The fragmentation and loss of ecological value of a BRCA or PAMA—as exemplified by this project site—would jeopardize the assembly of a preserve system. There are no intact core areas to spare. As San Diego County has indicated in its comments on this DEIR, these natural constraints, among others, are the reason the County designated this land for low density rural residences.

Perhaps of greatest concern, the site is also located in a highly fire-prone area. Adding hundreds of new residents in a hilly area of the urban-wildland interface—with few escape routes, and a long history of wildfires—is simply bad policy. As we’ve seen in the recent Tubbs fire in Santa Rosa, the Thomas and Lilac in San Diego and Ventura Counties, and countless other fires around the state, implementation of fire breaks and setbacks is not an adequate solution to address the kind of wind driven fires that are becoming ever more prevalent in California. Even if the fuel modification zones surrounding the Project and the building design measures somehow protect the new homes from conflagration—which has not been sufficiently demonstrated in the DEIR—nothing can guarantee the safety of the new residents. And escape from a huge wildfire that can move rapidly across hilly terrain is far from certain when thousands of others are also trying to escape on a limited number of roadways. The DEIR fails to adequately evaluate and mitigate this public safety hazard.

The applicant came before the City in 2003 with a proposal to develop the site similarly with hundreds of homes and recreational facilities on 1,150 acres. 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 fire hazard risk and significant traffic impacts and traffic congestion. The City denied the project, citing concerns about encroachment into steep slope areas, inconsistency with the City’s grading ordinance, impacts to Biological Resource Core Area found on two thirds of the site, and impacts to numerous sensitive

cultural sites—the significance of which represents the best local example of cultural resources found in the area. Staff Report to City of Escondido Planning Commission dated January 14, 2003, at 7 and 8; attached as Attachment F. The applicant subsequently withdrew the application.

Now the City is once again contemplating for the site a 550-unit residential subdivision with amenities, which is clearly incompatible with the established priorities of preserving steep slopes and of conserving this rural, biologically resource-rich area. The Project has some changes from the 2003 proposal, but would similarly result in the significant impacts that City staff correctly cited in recommending denial of the project. *Id.* This Project will have serious long-term consequences, not only for the area residents, but for the region. Those consequences include jeopardizing habitat planning efforts and loss of designated conservation lands, impacts to multiple sensitive species and their habitats, loss of open space, significant public safety impacts associated with wildfire risks, visual impacts, impacts to sensitive cultural sites, increased traffic congestion, and an increased risk of air and water pollution.

Moreover, as explained in detail below, the Project is inconsistent with applicable plans and ordinances, and the DEIR's analysis of these inconsistencies is deeply inadequate. For example, the Project proposes to develop steep slopes over 35 percent when the City's General Plan flatly prohibits such development. *See e.g.*, Community Character Policy 1.12; Biological and Open Space Resources Policy 1.1; Biological and Open Space Resources Policy 1.3; and City of Escondido Zoning Code § 33-1066(g)(1). Finally, as discussed further below, the Project's inconsistency with the City's General Plan and Zoning Code precludes its approval under the Subdivision Map Act.

The DEIR suffers from several major problems and is insufficient to support a decision on the Project. First, the DEIR's presentation of this development as a clustered development misuses the term and results in misleading the public and decision-makers. Clustering describes a site plan that concentrates development at a higher density in one less sensitive area of the site for the purpose of preserving the remainder of the site. Here, the proposed development is not only of higher density than allowed given site conditions, but is also spread throughout the site. This approach represents the *opposite* of clustering. By both increasing density *and* spreading that density across the length of the site, the project would undermine County plans designed to preserve open space and sensitive species, encroach on General Plan designated areas for conservation (i.e., steep slopes), create significant wildfire and evacuation hazards, and open the door for further development in adjacent backcountry lands—the very things that clustered development was designed to avoid.

As discussed in more detail below, the DEIR presents an incomplete project description and also substantially understates the severity and extent of a range of environmental impacts, including potentially devastating effects on biological resources and public safety risks related to wildfire and thus fails to provide adequate mitigation. In addition, in numerous instances, the EIR also fails to adequately analyze the Project's cumulative impacts. These inadequacies require that the DEIR be revised and recirculated so that the public and decision-makers are provided with a proper analysis of the Project's significant environmental impacts and feasible mitigation for those impacts. *See* CEQA Guidelines § 15002(a)(1) (listing as one of the “basic purposes” of CEQA to “[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities”).

To ensure that the public and the City's decision-makers have adequate information to consider the effects of the proposed Project—as well as to comply with the law—the City must require revisions in the Project to make it compliant with the General Plan and then 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.

II. Approval of the Project as Proposed—Which Is Inconsistent with the City's General Plan and Zoning Requirements—Would Violate Planning and Zoning Law.

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

It is an abuse of discretion to approve a project that “frustrate[s] the General Plan's goals and policies.” *Napa Citizens for Honest Gov't v. Napa County* (2001) 91 Cal.App.4th 342, 379. The project need not present an “outright conflict” with a general plan provision to be considered inconsistent; the determining question is instead whether the project “is compatible with and will not frustrate the General Plan's goals and policies.” *Napa Citizens*, 91 Cal.App.4th at 379. Here, the proposed Project does more

than just frustrate the General Plan's goals. As discussed in more detail below, the Project is directly inconsistent with numerous provisions in the General Plan.

A. The Project Is Inconsistent With The City's General Plan

Both the DEIR and the proposed Specific Plan for the Project fail to adequately analyze the Project's consistency with the City's General Plan. The proposed Specific Plan acknowledges that the Project must be consistent with the City's General Plan (*see* SP p. 99), and purports to analyze the Project's consistency with various General Plan policies and goals (pp. 99-139). However, in its analysis, the Specific Plan glosses over numerous, glaring inconsistencies with the General Plan. In addition to misinforming decision-makers and the public about the Project's consistency with the General Plan, this analysis underestimates the actual impacts of the Project and ignores some of the Project's most significant impacts.

The DEIR lists certain General Plan policies relevant to the Project, but never bothers to analyze the Project's consistency with these policies, even though consistency with County land use plans and policies is a threshold of significance for the Project's land use impacts. The DEIR's general claim that the Project does not "[c]onflict with any applicable land use plan, policy, or regulation of any agency with jurisdiction over the project, including the general plan, specific plan, . . . or zoning ordinance" (DEIR p. 2.9-9, 2.9-13) is meaningless given the DEIR's lack of any analysis of specific General Plan policies. At a minimum, the DEIR should have cited to the Specific Plan's General Plan consistency analysis. *See San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 727 ("[W]hatever is required to be considered in an EIR must be in the report itself.") The DEIR and Specific Plan must be revised to provide a comprehensive and accurate analysis of all General Plan inconsistencies, as described below.

1. Slope Protection Policies

Multiple General Plan policies make clear that development should not occur on slopes over 25%, and *never* on those over 35%. These policies include:

- *Community Character Policy 1.12 (General Plan Chapter 2—Land Use and Community Form)*

No development shall be permitted on slopes greater than 35% or in natural 100-year floodways. If approved by the city and other appropriate local, state and federal agencies, an environmental channel may be considered within the

floodway. Adequate landscaping, revegetation, flood control measures and usable open space beyond the embankments of the environmental channel shall be provided as determined by the city. (Amendment to this policy will continue to require voter approval)

- *Valley View Specific Plan Area #4 Guiding Principle (A)(2) (General Plan Chapter 2—Land Use and Community Form)*

Slope density formula for Rural II designation determines maximum theoretical yield (2 acre minimum; 4 acre minimum for 25-35 percent slopes).

No development shall be permitted on slopes greater than 35 percent. Lands in this area shall be preserved as open space.

- *Biological and Open Space Resources Policy 1.1 (General Plan Chapter 7—Resource Conservation)*

Establish and maintain an interconnected system of open space corridors, easements, trails, public/quasi-public land, and natural areas that preserves sensitive lands, permanent bodies of water, floodways, and slopes over 35 percent, and provides for wildlife movement.

- *Biological and Open Space Resources Policy 1.3 (General Plan Chapter 7—Resource Conservation)*

Protect land areas with steep topography (generally over 25 percent) from intensive urban development, regulate development in areas with topographic constraints such as steep slopes, and include these areas within the overall open space system.

Despite the high value the city places on protecting steep slopes—as reflected in its General Plan policies and Zoning Code requirements, including an unambiguous requirement protecting slopes over 35 percent in the Project area (Specific Plan Area #4)—the DEIR never analyzes whether development will occur on slopes 35 percent or greater and never explicitly finds that the Project is consistent with the above provisions. At most, the EIR recognizes that “undisturbed steep slopes (over 35 percent)” “should be protected from effects of development” (DEIR p. 2.1-7 and 8) and the Specific Plan claims that the Project footprint was “designed to promote development in the flattest areas of the site” and that “clustering” is used to “avoid steep topography.” (SP at p. 133). However even while stating that the Project tries to avoid such slopes “to the greatest extent possible,” the DEIR suggests that it did not succeed: “Some encroachment”—

which presumably refers to development on slopes greater than 35 percent—“is necessary to complete the primary access, construct Safari Highlands Ranch Road, and achieve a clustered design.” (SP at 136).

This language in the DEIR does not meet CEQA’s requirements for clear disclosure of a project’s environmental impacts. In fact, the proposed Project would result in severe encroachment onto steep slopes. According to the attached Ikeda Report, the project would construct on almost 70 acres (or 15.81 percent of the graded portion of the site) where slopes are steeper than 35 percent. Ikeda Report at 2. The DEIR fails to disclose either the Project’s extent of encroachment into steep slope areas or the Project’s inconsistency with relevant General Plan policies.

The General Plan specifically prohibits encroachments into steep slope areas. The EIR appears to assume that those limitations can be avoided if the project would have community benefits above and beyond the project’s impacts. But this is not the case. Unlike some of the policies applicable to Specific Plan Area #4, the policy pertaining to slopes greater than 35% does not permit any exceptions. It states: “*No development shall be permitted on slopes greater than 35 percent. Lands in this area shall be preserved as open space.*”

The EIR also appears to take the position that the Zoning Code provides an exception to the General Plan slope policy for road development to access residences. Even if the zoning code could trump general plan policies, the development of the proposed roads would *still* violate City requirements. The exception in Zoning Code Article 55 Section 33-1067(A) and (F) for streets necessary for access applies only “provided no less environmentally damaging alternative exists.” Here, the DEIR has identified one less environmentally damaging alternative that would presumably prevent the need for such roads: the Existing Zoning Alternative, described in Chapter 5 (DEIR at 5.0-22), and others could almost certainly be identified in a proper alternatives analysis (see IV.J below).

Moreover, GIS analysis by Jared Ikeda indicates that a substantial number of the Project’s lots will be sited on steep slopes over 25 percent. *See*, Attachment A. The density of such development greatly exceeds the 4-acre minimum lot size called for by the General Plan. While the General Plan allows limited exceptions to this policy where the impacts are outweighed by community benefits, the proposed Project would not provide benefits that would justify the wholesale gutting of the City’s slope preservation policies.

Approving development on the steep portions of the site would be a blatant violation of the General Plan and Zoning requirements noted above, including the specific prohibition of development on slopes over 35 percent in the Project area (Specific Plan Area #4) . The DEIR's failure to analyze and clearly disclose the Project's impacts on steep slopes and its inconsistency with General Plan policies and the Zoning Code is inexcusable. These omissions alone require a complete redesign of the project and recirculation of the DEIR.

2. Development on Ridges and Hilltops

The City's General Plan includes policies to protect ridges and hilltops from development. These policies include:

➤ *Visual Resources Policy 3.1 (General Plan Chapter 7—Resource Conservation)*

Preserve significant visual resources that include unique landforms (e.g., skyline ridges, intermediate ridges, hilltops, and rock outcroppings), creeks, lakes, and open space areas in a natural state, to the extent possible.

➤ *Visual Resources Policy 3.2 (General Plan Chapter 7—Resource Conservation)*

Require new development to avoid obstructing views of, and to minimize impacts to, significant visual resources through the following: creative site planning; integration of natural features into the project; appropriate scale, materials, and design to complement the surrounding natural landscape; clustering of development to preserve open space vistas and natural features; minimal disturbance of topography; and creation of contiguous open space networks.

➤ *Visual Resources Policy 3.4 (General Plan Chapter 7—Resource Conservation)*

Prohibit development on skyline ridges and seek to obtain scenic easement dedications for these areas from property owners in conjunction with development on other suitable locations of the property. Require property owners of such scenic easements to retain, maintain, preserve, and protect the public view of these areas in their natural state, without obstruction by structures, and prohibit clearing of brush or planting of vegetation except as necessary to reduce fire hazards.

➤ *Visual Resources Policy 3.5 (General Plan Chapter 7—Resource Conservation)*

Regulate development on intermediate ridges, hilltops, and hillsides to preserve the natural appearance and landform, and minimize impacts on terrain with a slope greater than 15 percent subject to the following requirements:

1. Intermediate Ridges and Hilltops

a) Prepare landscaping plans that minimize the visual impact of the development from adjoining properties and the valley floor;

b) Concentrate development in subordinate or hidden locations, which shall not project above the natural landform;

c) Prepare grading plans that minimize disruption of the natural landform and vegetation; and

d) Allow development on intermediate ridges only in association with the preservation of significant open space, habitat, cultural resources or agricultural uses within the same project.

2. Slopes Greater than 15 Percent

a) Locate development to avoid potentially hazardous areas and environmentally sensitive areas, as well as to avoid dislocation of any unusual rock formations or any other unique or unusual geographic features.

b) Design development to minimize grading requirements by incorporating terracing, padding, and cut-and-fill grading that conforms to the natural contours of the site and protects the visual continuity of the hillsides.

c) Cluster the overall development pattern in accordance with General Plan provisions to preserve the maximum amount of open spaces and natural setting and to reduce grading, erosion, and runoff potential.

d) Landscape the site with existing trees and other natural vegetation, as much as possible, to stabilize slopes, reduce erosion, and enhance the visual appearance of the development.

e) Minimize the visual impact of development on adjoining residential areas to the extent feasible.

The DEIR and Specific Plan claim that the Project has been designed to minimize effects on ridgelines (SP at 135-36) and to minimize visual impacts by siting the Project on eastern slopes (DEIR at 2.1-5, SP at 105, 135-36) and through use of landscaping (SP at 135-36). Yet the DEIR never actually concludes that the Project entirely avoids skyline ridges, as required under Visual Resources Policy 3.4, or that it preserves skyline ridges, intermediate ridges, hilltops, and rock outcroppings in their natural state, as required under Visual Resources Policy 3.1. It also fails to analyze the extent to which the Project would be visible from homes, roads, or other locations to the north, south, and east of the Project site.

Furthermore, while claiming that landscaping will cloak some portions of the Project, it does not disclose how many years it will take for landscaping plants to reach maturity and to provide any degree of cover. Likewise, the DEIR does not analyze, much less conclude whether, under Visual Resources Policy 3.5(2)(a), the Project indeed “[l]ocate[s] development to avoid . . . environmentally sensitive areas.” The Specific Plan’s bare conclusion that “[s]ome encroachment is necessary to complete the primary access, construct Safari Highlands Ranch Road, and achieve a clustered design” is too vague to qualify as a disclosure of impacts. (SP at 136.) Nor can the proposed Project—which spreads maximum density development across the entire length of the site—be credibly described as “clustered design.”

In sum, the DEIR and Specific Plan fail to disclose the Project’s impacts related to encroachment on steep slope areas and fail to provide meaningful analysis of the Project’s inconsistency with General Plan policies protecting ridges and hilltops.

3. Development Density Policies

The City’s General Plan is clear that while the General Plan allows for clustering development and transfer of density from one portion of a site to another, such clustering should not be used to maximize development density in violation of General Plan goals and policies. Relevant policies include:

- *Residential Development Policy 3.3 (General Plan Chapter 2—Land Use and Community Form)*

The residential land use designation indicates MAXIMUM development yields. To meet General Plan Goals and Objectives, including, but not limited to, population goals and environmental considerations, the ACTUAL yield may be considerably less than maximum potentials. Population density can be determined by the San Diego Association of Governments (SANDAG) projection of an

average number of residents per dwelling unit by the build-out target year of 2035 and the maximum units per acre allowed by each land use designation. In lower density categories, the number of residents per unit will often exceed three due to relatively large structures. Conversely, in multi-family areas, smaller unit sizes will result in 1-2 persons per unit being commonplace. Further, population and building intensities are estimated in the General Plan Vision and Purpose. (Amendment to this policy will continue to require voter approval)

➤ *Residential Clustering Policy 5.2 (General Plan Chapter 2—Land Use and Community Form)*

Clustering is not intended to maximize the density or yield, or to circumvent the existing zoning. It shall be utilized as a tool to preserve slopes, ridgelines and sensitive habitat or provide a community benefit. (Amendment to this policy will continue to require voter approval)

➤ *Residential Clustering Policy 5.6 (General Plan Chapter 2—Land Use and Community Form)*

Cluster projects shall avoid sensitive cultural and biological resources and density transfer from such sensitive areas shall be of limited yield to meet the above policies. (Amendment to this policy will continue to require voter approval)

This Project, which seeks to develop a particularly sensitive and physically constrained site, would build 550 residences on a site that is presently zoned by the County for no more than 27 units. The proposed Specific Plan claims that, under the City's General Plan's slope density formula, 284 lots would be allowed on the site. Specific Plan at 6. However, the Plan fails to explain how the figures were derived. (See Specific Plan at Table I-2.) Even if the slope analysis were accurate, which is questionable, the proposed density of 550 units *far* exceeds the 284 units purportedly allowed under the City's clustering policies. Moreover, as discussed above, the Project design in no way qualifies as clustering—it spreads development all across the site, placing development on virtually all of the flatter areas of the property and even on slopes greater than 35%. Only the steepest and most undevelopable parts of the site are avoided. The Project was plainly designed to maximize development yield—precisely what the General Plan prohibits.

The Specific Plan's pronouncements that the Project has been designed in ways that "preserve natural areas," to protect open space, and to "follow existing topographical contours" (Specific Plan at 105; see also DEIR 2.9-12) are also unsupported. As

discussed elsewhere in this letter, the project not only includes substantial development on steep slopes in contravention of General Plan requirements, but would wipe out virtually all of the highest quality habitat on the site, leaving only lower quality habitat on the most undevelopable portions of the site as “mitigation.”

The DEIR must disclose the Project’s clear inconsistency with the above General Plan policies. Namely, it must disclose that clustering has been used to maximize density and yield, in violation of Residential Clustering Policy 5.2 and that the Project would seek a larger number of units despite the site’s serious “environmental considerations,” inconsistent with Residential Development Policy 3.3.

The General Plan also includes policies that limit the circumstances where a Specific Plan would allow for residential densities above and beyond what would normally be permissible under the General Plan, requiring that the exceedance be justified by the benefits the Project brings to the community. For example:

➤ *Development Agreement Policy 15.2 (General Plan Chapter 2—Land Use and Community Form)*

Approve a Development Agreement for increased residential density within Specific Planning Areas (SPA) #2 and #4 in excess of the basic entitlement, provided that community benefits exceed those normally required of comparable development projects. The yield/benefit determination shall be made by the City Council and shall not exceed the maximum stated in the SPA section.

The Specific Plan asserts that the Project’s community benefits justify a density nearly twice what it claims is the permitted theoretical maximum yield for the site. This contention is groundless. Most of the Project’s purported community benefits would in fact principally benefit residents of the new development. These include the new fire station (which the developer would construct, but which the City would have to fund) and new emergency access roads to the site from the North and to the South. (SP at 113-114). And developer-funded improvements to a nearby golf course and the golf course’s clubhouse and restaurant are benefits to a private business. They cannot be considered benefits to the community. These grounds do not come close to justifying a near doubling of the density allowed under the General Plan.

The General Plan also includes a policy cautioning that Specific Plans may not be used in a widespread manner to override General Plan land use requirements:

- *Specific Planning Area Land Use Policy 11.3 (General Plan Chapter 2—Land Use and Community Form)*

Specific Plans shall not be utilized in a wide-spread manner to circumvent or modify the character or intent of ordinances, land use designations and/or city goals and objectives, but rather should be reserved for a limited number of proposals which, by nature, are ideally suited for the comprehensive planning efforts involved in the Specific Planning process. (Amendment to this policy will continue to require voter approval)

The Project's Specific Plan does just what this policy forbids. In an area of high environmental sensitivity, the Specific Plan would allow construction on slopes over 35 percent and permit an extraordinary increase in allowable residences. The increase may be less than the maximum number of units allowed within the entirety of SPA 4 (SP at p. 116), but it drastically modifies the character of the area and is little more than an attempted work-around of City land use goals and objectives, including those intended to protect steep slopes, ridgelines, intermediate ridges, and hilltops from development.

4. Tree Protection Policies

The City's General Plan emphasizes protection of stands of trees:

- *Biological and Open Space Resources Policy 1.9 (General Plan Chapter 7—Resource Conservation)*

Encourage proposed development projects to minimize the removal of significant stands of trees unless needed to protect public safety and to limit tree removal to the minimum amount necessary to assure continuity and functionality of building spaces.

The Project is inconsistent with this policy, and the Specific Plan and DEIR fail to disclose or analyze this inconsistency. The DEIR does reveal that the Project will require cutting down 212 out of 522 Engelmann oaks on site, and that it will negatively impact 93 more. The DEIR claims that Mitigation measures MM BIO-1 and MM BIO-7 would reduce potentially significant impacts to oaks to less than significant under CEQA (DEIR at 2.3-48), but these measures describe efforts to reduce harm to oaks that will not be cut down, or to plant new oaks to replace the hundreds of oaks that will be felled. They do nothing to cure the Project's inconsistency with the General Plan's Biological and Open Space Resources Policy 1.9, which advises projects not to remove "significant stands of trees." Given that DEIR Threshold of Significance 5 for Biological Impacts examines

whether “the project conflict[s] with any local policies or ordinances protecting biological resources such as a tree preservation policy or ordinance,” the DEIR’s failure to even mention—much less examine consistency with—Policy 1.9 is especially glaring.

5. Groundwater Protection Policies

General Plan policies require that development not impair groundwater resources:

- *Water Resources and Quality Policy 6.3 (General Plan Chapter 7—Resource Conservation)*

Protect the sustainability of groundwater resources.

- *Water Resources and Quality Policy 6.4 (General Plan Chapter 7—Resource Conservation)*

Require new development to preserve areas that provide opportunities for groundwater recharge (i.e., areas where substantial surface water infiltrates into the groundwater), stormwater management, and water quality benefits.

In its September 23, 2015 comment letter responding to the City of Escondido’s Notice of Preparation for the EIR, the City of San Diego (“San Diego”) detailed its concerns that the Project could impair San Diego’s groundwater resources. These include how the potential for the Project to lead to increased use of fertilizers and pesticides could impact groundwater and source waters in San Pasqual, impacts to all San Diego drainages such as Rockwood Creek, and the applicability of the Sustainable Groundwater Management Act to the Project area. The Specific Plan (at p. 137) and the DEIR (at p. 2.8-15 and 16) claim that the Project will have no negative impacts on groundwater, but the analysis emphasizes that the City of Escondido does not rely on groundwater for its water supply (EIR at 2.8-15 and 16). The document never analyzes the extent to which the Project will implicate the groundwater of others. The EIR must be revised to address this issue and the concerns raised in San Diego’s letter.

6. Annexation Policies

Finally, the City’s General Plan includes a policy intended to ensure that improvements associated with annexations will not result in financial burdens on the City:

➤ *Annexation Policy 16.4 (General Plan Chapter 2, p. II-114)*

Allow annexations if it can be demonstrated that appropriate improvements as determined by the city will be financed by the property owner(s), and that such expansion of the city will not have unacceptable adverse fiscal or environmental impacts to existing city services or residents. Exceptions to this policy may be considered subject to Policy 16.2.

As discussed throughout this letter and in more detail in the Onaka Report, provided as Attachment E to this letter, the proposed annexation and implementation of the Safari Highlands development will result in a broad array of significant environmental impacts and will potentially result in a substantial financial burden to the City. The DEIR fails to adequately analyze the Project's consistency with this policy as well.

B. The Project Is Inconsistent With The City's Zoning Code.

The Escondido Zoning Code places the Project site in the Specific Plan (S-P) Zone. The code specifies that specific plans shall be consistent with the "property suitability criteria" and the "mandatory specific plan requirements" presented in the "general plan implementation techniques" section of the general plan. City of Escondido Zoning Code § 33-390. The implementation chapter of the General Plan acknowledges that "California law requires Specific Plans and Area Plans to be consistent with their General Plans ensuring the community vision is implemented." Therefore, the proposed Specific Plan and Project must be consistent General Plan policies adopted to implement the community vision. As discussed above, this Specific Plan is not.

The Project is also directly inconsistent with several other applicable provisions of the Zoning Code. The Project is subject the City's Hillside and Ridgeline Overlay ("HRO") District, which is defined as encompassing "parcels with a slope of fifteen (15) percent or greater on any portion of the parcel, and/or located in proximity to an identified intermediate or skyline ridge, and located in an area that has not been developed to its full potential." City of Escondido Zoning Code § 33-1052. The Zoning Code provisions for the hillside and ridgeline overlay district explicitly prohibit grading of undisturbed steep slopes over thirty-five percent. City of Escondido Zoning Code § 33-1066(g)(1). This specific bar to grading on steep slopes means that encroachment into slopes of 35 percent or steeper is not allowed, regardless of the design criteria for a particular Specific Plan.

As shown in Attachment A to this letter, the Project site is largely made up of steep sloped areas, with large areas of the site in excess of 35 percent. The Project proposes severe encroachments into these steep areas. *Id.* Thus the Project would be inconsistent with the HRO provisions. Moreover, the City cannot make the necessary findings to grant the requested approvals. In order to approve a Project in the hillside and ridgeline overlay district, the City must make the following findings:

(a) The bulk, scale, density, and overall character of the proposed development is compatible with the surrounding neighborhood and with the natural, cultural, scenic and open space resources of the area; and

(b) The location and design of the proposed development respects and preserves the natural landform, vegetation, and wildlife of the project site; and

(c) The location and design of the development does not substantially alter the natural appearance and land form of the hillsides and ridges; and

(d) The location and design of the proposed development will protect the safety of current and future residents, and will not create a significant threat to life and property due to slope instability, fire, flood, mud flow, erosion, or other hazards; and

(e) All grading associated with the project has been minimized to the extent possible, preserving the character of the property while utilizing appropriate erosion control practices as determined by the city engineer to avoid erosion, slides, or flooding, in order to have as minimal an effect on said environment as possible. (Ord. No. 2001-21, § 5, 8-22-01) Zoning Code Sec. 33-1067.C.

Here, the Project's proposed density is out of scale with surrounding rural residential areas and is incompatible with the natural resources found on site; the proposed site design encroaches onto steep slope areas, removes a substantial number of mature trees, and impacts a substantial amount of habitat for sensitive species; the location of the proposed development creates public safety hazards in the likely event of a wildfire; and the Project proposes a staggering amount of grading that would involve 4,625,930 cubic yards of earth moving, a far cry from minimizing grading to the extent possible. Thus, in addition to the General Plan's express prohibition of development on slopes greater than 35 percent in SPA #4, the Zoning Code likewise bars such development.

The City's Zoning Code also requires enhanced CEQA review for projects subject to congestion management program requirements. Zoning Code Sec. 33-926.

Specifically, this section of the Code requires projects resulting in more than 2,400 average daily trips, to analyze the project's impact on the regional transportation system. *Id.* The Code defines the regional transportation system as including the state highway system, regional arterial system, and the regional transportation plan. *Id.* This DEIR does an inadequate job of analyzing Project-related traffic impacts on regional roadways. *See*, letter from N. Liddicoat of Griffin Cove Consulting to E. Delano, dated December 4, 2017, submitted under separate cover.

Because the Project does not meet the Zoning Code standards and requirements, it cannot be lawfully approved. Allowing major grading, earthmoving and development in the steep hillside area of Valley View would make a mockery of the City's slope protection policies, and is would exceed the City's authority under its current Zoning Code and General Plan.

III. The DEIR's Flawed Project Description Does Not Permit Meaningful Public Review 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 I*"). 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. In perhaps the most glaring example, the public has yet to be informed regarding the contents of the Development Agreement, but this Agreement will vest certain specific rights and entitlements with the developer, should the City approve the Project as proposed. Regardless of the specifics, once a development agreement is approved, a public agency "shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement," even if the project requires further discretionary approvals. Gov. Code § 65865.2; see also *Citizens for Responsible Government v. City of*

Albany (1997) 56 Cal.App.4th 1199, 1214-15 (development agreement creates vested rights in the form of an “entitlement for use”). If the agency breaches a development agreement, it may be subject to damages. See *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 443-47, 476 (developer awarded \$30 million for town’s anticipatory breach of development agreement). Given the importance of these documents, the City must release this information to the public and provide additional time for review and comment. Pub. Res. Code § 21092(b)(1). Without an opportunity to review the Development Agreement the public and decision makers are in the dark about what it may contain.

Here, the Development Agreement would substantially increase the allowed density on the site from the maximum 27 units allowed under the County’s General Plan to the proposed 550 units—far in excess of even the purported maximum theoretical yield of 284 units under the City’s General Plan. As discussed throughout this letter, and in letters from other community and environmental groups, this substantial increase in density and in intensity of use will result in significant impacts with regional implications. Therefore, the City should release a draft of the Development Agreement for public review.

Similarly, the DEIR acknowledges that funding for the proposed on-site fire station has not yet been identified. DEIR Appendix 2.14, Fire Protection Plan at 53. The fiscal impact study for the Project makes allowance for only a prorata share of fire protection cost, which will not cover the full cost of constructing the fire station. See Attachment E, Onaka Report, at 3. The annual cost to maintain a fire station can run several millions of dollars a year, such that even when *all* of the City’s expected net revenues from the Project (about \$562,000 a year at buildout) are added to the Project’s fair share contribution (about \$218,000), it would still not come close to what is needed to pay the full cost of equipping, staffing and maintaining the station. *Id.* The Specific Plan and fiscal impact study for the Project suggest that the City could enter into cost-sharing agreements with nearby jurisdictions (City of San Diego, San Pasqual Union School District) to pay for the station, but there is no indication that those jurisdictions are prepared to join such an effort. The DEIR states only that a final funding plan will be included in a Fire Service Agreement between the applicant and the Escondido Fire Department. Given that the fire station is a critical element of the proposed Project, the public and decision-makers should have the ability to review the Fire Service Agreement as part of the environmental review.

In some cases, aspects of the Project critical to its analysis are omitted altogether. For example, the Fire Protection Plan (“FPP”) specifies a list of what it refers to as “important risk-reducing vegetation management guidelines.” *Id.* at 2 and 68. One

element of these guidelines is preparation of a Construction Fire Prevention Plan, detailing construction phase restrictions and fire safety requirements intended to minimize the likelihood of ignitions and to pre-plan the site's fire prevention, protection and response plan. *Id.* This Plan is particularly important because the DEIR discloses that the proposed fire station won't be constructed until issuance of the 275th Certificate of Occupancy for the Project. DEIR at 1.0-1. But the DEIR fails to include the Construction Fire Prevention Plan. Similarly, the DEIR indicates that a Blasting Plan addressing noise and vibration impacts from blasting during construction must be prepared prior to construction, but the plan does not appear anywhere in the document. See DEIR at 2.10-24. (And to the extent the City would treat these plans as mitigation rather than part of the Project, their omission from the DEIR would be an impermissible deferral of mitigation.)

Even where the DEIR does provide a description of Project features, the description is incomplete. For instance, the DEIR fails to provide details about design and construction of the proposed off-site improvements at Hole #14 of the Eagle Crest Golf Course, which include realignment of a roadway. See DEIR 1.0-6; Specific Plan at 11. The proposed improvements would be initiated to allow construction of the Project, yet the DEIR maintains that the improvements are not a part of this proposed Project and the City will process the approvals under a separate permit. DEIR at Appendix 2.14 Fire Protection Plan at 13.

However, the proposed improvements at the golf course are a reasonably foreseeable consequence of the Safari Highlands Project. They are planned by the City to facilitate alignment of the proposed Safari Highlands Ranch Road, the roadway providing primary access to the Project site. DEIR at 1.0-6. The Project proposes to locate hundreds of new residents in this area. The new roadway would exist to serve these residents. The primary users of Safari Highlands Ranch Road would be the Project's future residents and this road has no independent utility. Moreover, without the off-site improvements at the golf course, the road cannot be constructed. Therefore, the planned improvements at the golf course are an integral part of the Project and must be analyzed as such, in this EIR. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713. The DEIR must include a more detailed description of these improvements and a full evaluation of related impacts. Instead, it defers the necessary evaluation to an undetermined date in the future, thereby illegally segmenting the Project.

CEQA prohibits such segmentation of a project. See *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal.App.4th 1214, 1229 (“when one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project” and must be analyzed together); Guidelines § 15378(a)

(“‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”). Breaking the project into smaller sub-projects will lead to inadequate environmental review. *See, e.g., Bozung v. Local Agency Formation Comm’n* (1975) 13 Cal.3d 263, 283-84 (CEQA mandates that “environmental considerations do not become submerged by chopping a large project into many little ones”).

The off-site improvements at the golf course would undoubtedly result in additional potentially significant environmental impacts that the DEIR ignores. These include, but are not limited to, construction emissions, noise, visual, and water quality and hydrological impacts from changes to topography. The DEIR even acknowledges some of these potential impacts and states that landscape features will be incorporated into the off-site improvements to minimize the noise and visual impact of the roadway improvements on neighboring homes along the alignment. DEIR at 1.0-6. However, because the DEIR never even describes the off-site improvements at the golf course or their construction, it also fails to analyze any of these impacts or to consider mitigation measures. CEQA prohibits such omissions. CEQA Guidelines § 15378(a).

In addition, the EIR also fails to include information on the following additional Project components:

- location of the Project construction staging areas (DEIR at 1.0-10);
- location of proposed blasting activities (DEIR at 1.0-11);
- location of rock-crushing facilities (DEIR at 1.0-12);
- description and location of proposed retaining walls (DEIR at 1.0-11).

This information is important to disclose because these features will result in visual, noise and air quality impacts to area residents. Yet, the DEIR omits details of the locations of these activities and project elements.

In sum, the DEIR presents an unstable project description, made further unstable by undisclosed project details that may be contained in the Development Agreement. This approach is not permissible under CEQA. The failure to describe the whole of the Project is a serious and pervasive deficiency, as it renders faulty the EIR’s environmental impact analyses as well as the discussion of potential mitigation measures and alternatives to minimize those impacts. The EIR must provide a sufficient description of off-site improvements associated with the project, information regarding required plans to minimize Project-related construction and operational impacts, details of anticipated

construction activities including rock crushing equipment, and any other Project details. This information is necessary to allow decision makers, the public and responsible agencies to evaluate potential environmental impacts.

IV. The DEIR's Analysis of and Mitigation for the Impacts of the Proposed Project Are Inadequate.

Even if the Project were permissible under state and city law, it would still require thorough, comprehensive environmental review. 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.

An EIR must provide enough analysis and detail about environmental impacts to enable decision-makers to make intelligent judgments in light of the environmental consequences of their decisions. The City, in its role as lead agency, must make a good faith effort to disclose the impacts of the Project, both at the Project level and at the cumulative level. The Project’s large size and its location on a site underlain by complex hydro-geologic conditions and blanketed by sensitive and unique biological values mandate particularly careful analysis and public disclosure of its many significant impacts. Unfortunately, as described in detail in the following sections, the DEIR for the Safari Highlands Project fails to meet even the most basic objectives of CEQA, and utterly deprives the public and decision-makers of any opportunity to understand the environmental repercussions of the Project.

The EIR is “the heart of CEQA.” *Laurel Heights Improvement Ass’n v. Regents of University of California* (1988) 47 Cal. 3d 376, 392 (citations omitted). It is “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. 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.” *Id.* (citations omitted). Where, as here, the environmental review document fails to fully

and accurately inform decision-makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of either statute. *See* Pub. Res. Code § 21061 (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment.”).

The evaluation of a proposed project’s environmental impacts is the core purpose of an EIR. *See* CEQA Guidelines § 15126.2(a) (“An EIR shall identify and focus on the significant environmental effects of the proposed project”). It is well-established that the City cannot defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07.

As explained below, the EIR fails to analyze the Project’s numerous environmental impacts, including those affecting land use, transportation and circulation, air quality, climate change, public health and safety, and hydrology and water quality. In addition, in numerous instances, the EIR also fails to adequately analyze the Project’s cumulative impacts. These inadequacies require that the EIR be revised and recirculated so that the public and decision-makers are provided with a proper analysis of the Project’s significant environmental impacts and feasible mitigation for those impacts. *See* CEQA Guidelines § 15002(a)(1) (listing as one of the “basic purposes” of CEQA to “[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities”).

A. The DEIR’s Failure to Evaluate the Environmental Impacts From the Sphere of Influence Update is an Egregious Flaw.

Among the DEIR’s most notable deficiencies is the lack of a detailed accounting of the environmental impacts that would result from the Sphere of Influence Update. The Project consists of two primary components: (1) the Safari Highlands Ranch (“SHR”) project and (2) the update to the citywide Sphere of Influence (“SOI” Update). DEIR at 1.0-1. The SOI Update includes seven Candidate Study Areas (“CSAs”) being considered for annexation into the City of Escondido limits. *Id.* In addition to the SHR Project site, identified as CSA 1, the other CSA sites comprise a total 780 acres that would be added to the City’s sphere.¹ DEIR at 3.0-1.

¹ CSAs 2 through 6 are proposed for inclusion within the City’s SOI; CSA 7 is proposed for deletion from the City’s SOI. DEIR at 3.0-1; 3.0-9.

The majority of the DEIR addresses the environmental impacts that would result from the development of the SHR Project site. Toward the end of the document, there is a short discussion of impacts from the SOI Update. This discussion explains that because the SOI Update does not authorize any physical development for the remaining CSAs, there would be no physical changes to the environment and consequently, *no impacts* would result. DEIR at 3.0-9-11 (emphasis in original). This approach is flawed at the outset because CEQA requires that an agency take an expansive view of any particular project as it conducts the environmental review for that project. *See McQueen v. Bd. of Directors* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570) (term “project” is interpreted so as to “maximize protection of the environment”). Inasmuch as the SOI Update is the first discretionary approval that will ultimately result in development within the sphere, this EIR must analyze the environmental impacts from this development in as detailed a manner as possible.

Although development within the SOI area may require later approvals by the City, established CEQA case law holds that the analysis of environmental effects must occur at the earliest discretionary approval, even if later approvals will take place. *See, e.g., Laurel Heights*, 47 Cal.3d at 396 (EIR must analyze future action that is a “reasonably foreseeable consequence” of the initial action that would “likely change the scope or nature” of the effects of the initial action); *Citizens for Responsible Gov't v. City of Albany*, (1997) 56 Cal.App.4th 1199, 1221-22; *Koster v. County of San Joaquin*, (1996) 47 Cal.App.4th 29, 34, 39-40; *Christward Ministry v. Super. Ct.*, (1986) 184 Cal.App.3d 180, 194.

As the DEIR acknowledges, the inclusion of an SOI Update in the Project will allow for the eventual development of a minimum of 780 acres within the City’s sphere. *See* DEIR Table 3.1-1 (CSA Summary) at 3.0-3, 4. The DEIR should have evaluated the environmental impacts assuming reasonably foreseeable build-out within each CSA, based on development yields identified in the DEIR. *Id.* The fact that all of the details associated with the development within the sphere may not be known does not excuse the EIR preparers from using their best effort to analyze environmental impacts. Rather, as the CEQA Guidelines explain, “an agency must use its best efforts to find out and disclose all that it reasonably can.” CEQA Guidelines § 15144. As discussed below, the failure to conduct this necessary analysis infects each impact discussion. Consequently, the EIR must be revised to correct this egregious flaw and then recirculated for public review and comment.

B. The DEIR Fails to Adequately Analyze and Mitigate Wildfire Hazards.

The fire hazards caused by and affecting development in the Project area cannot be overstated. As the fires in northern and southern California this year have demonstrated, wildfires dramatically alter the environment in California, pose a tremendous risk of injury and death, and cause billions of dollars of damage to buildings and infrastructure. The Project site, in particular, is located in a Very High Fire Hazard Severity Zone and has burned regularly: the site itself has burned multiple times since the turn of the century. City Zoning Code, Sec. 11-21; Wildland-Urban Interface Fire Severity Zones, Figure 11-21; Fire Protection Plan at 31. In addition, the area immediately surrounding the Project site has suffered from dozens of fires since the turn of the century. *Id.*

The proposed Project would expand residential uses in the wildland urban interface (or “WUI”), contributing to even greater fire risks. BEAR Report at 6-12. The environmental destruction wrought by wildfires is exacerbated by development in the WUI, which unwisely places people and structures directly in the line of fire. *Id.*; see also Voice of San Diego, December 12, 2017, attached as Attachment G. Further, the threat of wildfire is increasing. BEAR Report at 4-5. In the coming decades, climate change will alter temperatures, winds, precipitation, and species, with potentially substantial fire hazard impacts. *Id.*

The DEIR repeatedly states that construction of the subdivision would reduce fire hazards in the area compared to existing conditions because implementation of the Project would reduce existing vegetation that act as fuel and would act as a fire break. DEIR Appendix 2.14, Fire Protection Plan at 31. However, this claim is misleading. Ninety-five percent of California’s fires are caused by humans as opposed to natural causes such as lightning.² A number of studies have shown that adding housing to an area in California with low or no density, as is the case here, dramatically increases the number of fires and the amount of area burned.^{3,4}

² Syphard, A. D., V. C. Radeloff, J. E. Keeley, T. J. Hawbaker, M. K. Clayton, S. I. Stewart, and R. B. Hammer, *Human Influence on California Fire Regimes*. ECOLOGICAL APPLICATION 17:1388–1402 (2007) (included as Attachment H).

³ *Id.*; Keeley, J. E. 2005. *Fire history of the San Francisco East Bay region and implications for landscape patterns*. INTERNATIONAL JOURNAL OF WILDLAND FIRE

However, the DEIR minimizes the substantial increased risk of fire due to adding 550 homes to this area and the significant environmental impact such an event would have. The attached letter from fire expert Joseph Zicherman (BEAR Letter, included in Attachment C), further explains the deficiencies of the DEIR's analysis. An agency must use its best efforts to analyze impacts. *Berkeley Keep Jets Over the Bay v. Bd. of Port Commissioners* (2001) 921 Cal. App. 4th 1344, 1370. The DEIR's failure to provide effective fire risk analysis renders the DEIR inadequate.

1. The DEIR's Conclusion that the Project Will Not Increase Fire Hazards Is Unsupported.

The DEIR's analysis of the Project's fire hazards is inadequate. The Project would result in a significant impact if it would expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands. CEQA Guidelines, Appendix G § VIII(h); FPP at 27. The DEIR and FPP conclude that, because the Project would convert ignitable fuels into a developed landscape, the Project would not significantly increase fire hazards. DEIR at 2.14-10; FPP at 27.

This conclusion is not supported by substantial evidence. To the contrary, the Project would expose current and future residents in the area to a significant risk of injury or death involving wildland fires. BEAR Report at 12. The Project would place hundreds of new residences in wildlands that have burned regularly. All residences and appurtenant structures are potential ignition sources, regardless of fire hardening measures. *Id.* at 22-27. Further, allowing development at higher densities exacerbates the risk of fire compared to the County's planned patterns of development for the area. The benefits of fuel modification do not outweigh these added risks. "[W]hen a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users." *Cal. Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377. The DEIR failed to do so.

14:285–296; *See also the National Interagency Fire Center (2001-2011), available at http://www.nifc.gov/fireInfo/fireInfo_stats_lightng.html* (included as Attachment I).

⁴ Syphard AD, Bar Massada A, Butsic V, Keeley JE (2013) *Land Use Planning and Wildfire: Development Policies Influence Future Probability of Housing Loss*. PLoS ONE 8(8): e71708. doi:10.1371/journal.pone.0071708 (included as Attachment J).

2. The DEIR Fails to Adequately Analyze Project Impacts Related to Evacuation.

The DEIR asserts that the Project's impact on emergency response and evacuation is less than significant. DEIR at ES-50 and 2.14-16. It finds that the primary and emergency exit roads, provide sufficient egress for all residents in a fire emergency. DEIR at 2.14-16. This is despite the fact that the DEIR itself presents multiple scenarios that would preclude evacuation of on-site residents via the planned roadways. Appendix 2.14, Fire Protection Plan at 90-92; *see also* BEAR Letter at 3.

The proposed emergency route on the northern portion of the site will go along a steep, winding road requiring cars to travel at slow speeds. It does not take an imagination to envision a scenario where a fast moving fire burns toward the southern portion of the site, blocks the primary egress road, and traps the entire community. In fact, the DEIR describes such a scenario as plausible (DEIR at 2.14-16 and Fire Prevention Plan at 80) and we saw similar scenarios take place with the Thomas Fire. Additionally, the emergency road has a remote-controlled electric gate to only allow for use in case of an emergency. DEIR at 2.14-14. However, most fires quickly take out electrical power, presenting an additional barrier to using this road as a possible exit.

One of the access roads the Project relies on for evacuation is Zoo Road. DEIR at 2.14-14 and FPP at 55. However, Zoo Road is owned by the County and is designated as a "Z" road, which means it is unimproved, unmaintained, and has no public road status. DEIR Appendix 2.0 Notice of Preparation, City of San Diego letter at page 3. As the City of San Diego pointed out in its comments on the Notice of Preparation, zoo employees use the road but "no other access shall be granted." *Id.* In the least, access on this road cannot be relied upon.

There are other complicating factors to evacuation ignored in the DEIR. In the real world, evacuation is much more challenging than presented in the idealized scenarios assumed in most evacuation plans, beginning with lack of warning. In the 2017 deadly Tubbs fire in Santa Rosa, efforts to warn residents of approaching flames were successful only 50% of the time. The entire warning system was fraught multiple levels of malfunction and incompleteness. See Attachment S, *Los Angeles Times*, "Alarming failures left many in path of California wildfires vulnerable and without warning," Dec. 29, 2017 <<http://www.latimes.com/local/lanow/la-me-fire-warnings-failure-20171229-story.html>>. In contrast, the Fire Protection Plan and DEIR assume a fully functioning warning and evacuation system, based upon measures such as "strongly encouraging" sign ups for Reverse 911, and training and informational meetings. By assuming

unrealistic, idealized scenarios, the DEIR underestimates the true risks created by the Project.

The DEIR also drastically overestimates the likely lead time for an emergency evacuation. Even assuming an idealized scenario where none of the complicating factors described above were present to slow evacuation, the 1-3 hour evacuation time projected in the DEIR is insufficient to evacuate the site given the historic wildfire ignition points in the area. The DEIR's fire spread analysis assumes that ignitions will start 13 or more miles away from the Project site. But this assumption is absurd: over the last century, fires have occurred much closer to the site – within five miles – *41 times*. That is once every 2.6 years on average. As described in the attached letter from Professor Thomas Cova, an expert in wildfire evacuation analysis and modeling, a realistic fire spread scenario based on historic fires in the area significantly reduces lead times. Attachment R at 4. Fires starting within 1-5 miles of the site would provide lead times from 120 minutes (under the most favorable conditions) to as little as 15 minutes. *Id.*, Table 1. With a 60 minute lead time, up to 807 vehicles could be trapped assuming the DEIR's own evacuation times; if the lead time is 30 minutes, the number of trapped vehicles would be between 605 and 1008. *Id.* at 6, Table 2.

Moreover, these scenarios are optimistic and do not consider the kind of wind driven fires that have devastated California recently. Even with their faulty assumptions, the DEIR and Fire Prevention Plan provide ample evidence pointing to the likelihood that wind-driven wildfires would result in inadequate evacuation times that would trap residents onsite. And this acknowledgement does not even take into account the wind speeds that were not uncommon this fire season. The Fire Protection Plan models 41 mph winds, yet much higher and more dangerous gusts are immediately foreseeable. According to CalFire Director Ken Pimlott, in describing the 2017 Thomas blaze in Ventura County, "We will never be able to stop these 60-mile-an-hour, wind-driven, intense fires that move the length of a football field in a minute." Attachment T, Los Angeles Times, "Expenses in California's wildfires hit record levels," Dec. 28, 2017 < <http://www.latimes.com/local/lanow/la-me-wildfire-costs-20171228-story.html>>

Yet incredibly, the DEIR ignores its own data and concludes that impacts from wildfire would be less than significant. DEIR at 2.14-12. The DEIR's rationale that the development of the site would make it less susceptible to wildfire defies reason. The BEAR Report further explains the flaws and omissions that lead the DEIR to this unsupported conclusion. BEAR Letter at 2,8-16, 19-28. Since the Safari Highlands Ranch Project introduces development in an undeveloped area adjacent to open space, it greatly increases the probability of fire occurrence. The DEIR essentially proposes nothing to reduce risk of ignitions and nothing to reduce potential consequences to on-

site residents and existing neighboring residents. Therefore, the Project greatly increases overall fire risk to area residents.

3. The DEIR Fails to Propose Feasible Mitigation Measures to Reduce Project-Related Fire Hazards.

An EIR is inadequate if it fails to suggest feasible 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* (1984) 151 Cal.App.3d 61, 79. Of course, 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* (1988) 202 Cal.App.3d 296, 36. Building dense residential development on steep hillside areas with limited ingress/egress is not a trivial issue; CEQA mandates that these impacts be fully evaluated and minimized. *Id.*

Here, as described above, the Project would exacerbate risks from wildfire hazards to existing residents and introduce new hazards in terms of providing inadequate emergency evacuation routes. These increased risks and hazards constitute a significant impact requiring the City to identify feasible mitigation measures and alternatives to minimize them. The DEIR describes project features to protect the proposed development in case of fire. These features include ignition and ember resistant construction materials and methods for roof assemblies, walls, vents, windows, and appendages, as mandated by San Diego County Consolidated Fire and Building Codes. DEIR at 2.14-11. Requiring these methods of hardening structures for the Project may provide some measure of protection for individual structures within the Project, but it provides no mitigation for the increased ignition risks created by the Project, and no protection from the increased risk of wildfire for existing residences to the west and east of the Project. The DEIR must identify feasible mitigation measures for such impacts (e.g., providing hardening for nearby existing structures).

Finally, the Safari Highlands DEIR includes a mitigation measure by which the Project would contribute a share of the cost to construct and equip a new fire station on-site. However, the DEIR indicates that the fire station, water tank for fire suppression, and grading and surface improvements for the northern emergency access road won't be completed until issuance of the 275th Certificate of Occupancy for the project. DEIR at 1.0-11. This measure would be woefully insufficient to protect on-site and area residents for several reasons. First, construction of approximately half of the Project to trigger completion of the fire station could take several years. In the meantime, the project site and surrounding area will be exposed to extreme fire hazards with no mitigation in place.

Moreover, it's plausible that the developer could build the initial phases of the development and encounter delays or opt not to complete the project due to the cost of other factors. In this case, the project would implement no mitigation at all. The BEAR Letter strongly reinforces this point: the City's plans are simply not sufficient to keep current and future residents safe in light of the large increase in fire danger that the Safari Highlands Project would bring.

C. The DEIR Presents an Inadequate Analysis of the Project's Impacts on Biological Resources.

The DEIR's treatment of biological impacts suffers from substantial deficiencies and fails to meet CEQA's well established standards for impacts analysis. The document's analysis both understates the severity of the potential harm to biological resources within and adjacent to the proposed Project site and neglects to identify sufficient mitigation to minimize these impacts. Given that analysis and mitigation of such impacts are at the heart of CEQA, the DEIR will not comply with these laws until these serious deficiencies are remedied. *See Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 311 (1988) ("CEQA places the burden of environmental investigation on government rather than the public.").

As discussed above, the entire proposed Project site is designated for conservation in the County of San Diego's MSCP Subarea Plan and North County and South County MSCPs as important to biodiversity and long-term sustainability of the regional conservation network. Further, the Project site includes sensitive biological communities, including Diegan coastal sage scrub, ragweed mesic meadow, mulefat scrub, oak riparian woodland, and oak woodland that provide habitat for sensitive species, including endangered and threatened species. DEIR at 2.3-3; Hamilton Report at 6. The Project will result in significant direct and indirect impacts to these sensitive communities. *Id.*

Given the importance of the affected biological resources, one would expect the DEIR's analysis to provide careful and thorough evaluation of the Project's potential impacts. Unfortunately, the DEIR's analysis is nowhere close to meeting CEQA's well-established standards for evaluating biological resource impacts. As detailed in the attached Hamilton Report, and summarized below, the DEIR presents a cursory and incomplete evaluation and lacks evidence for its conclusions. Perhaps most egregiously, the DEIR relies on false and unsupported claims that the Project conforms to MSCP requirements to justify impact analyses and mitigation approaches intended to be used only for conforming projects. Hamilton at 3-14.

Under CEQA, decision-makers and the public must be given sufficient information about impacts and mitigation to be able to evaluate the impacts of a proposed project for themselves. *See* Pub. Res. Code 21061. Furthermore, analysis of impacts cannot be deferred to a later date but must be performed prior to project approval. *Sundstrom*, 202 Cal. App. 3d at 307 (“By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.”). Accordingly, a revised DEIR must be prepared to fully analyze and disclose these impacts and to propose and evaluate feasible mitigation measures for each significant impact.

Because the report prepared by Hamilton Biological provides detailed comments on the DEIR’s biological resources analysis, we will not reiterate each of those comments here. *See* Attachment B. Instead, the discussion below highlights the most egregious deficiencies.

1. The Project is Inconsistent with Requirements for Proposed Development Within MSCP Areas.

Because the Project site is located within designated MSCP planning areas, any proposed developed must be consistent with required Findings of Conformity. Hamilton Report at 4. The DEIR’s MSCP consistency analysis (Appendix G to the DEIR) concludes that the proposed project would comply with the Findings of Conformity, but in most cases, compliance is simply asserted rather than demonstrated. Hamilton Report at 5-9. For purposes of MSCP conformity, a proposed project is required to demonstrate conformance with eleven MSCP Findings of Conformity. *See*, Hamilton Report Appendix. The DEIR fails to provide an analysis of the project’s conformance and fails to provide evidence for its conclusion that conformance has been achieved.

To the contrary, the DEIR itself provides ample evidence that the project cannot meet the Findings required. To provide one example, the DEIR implies that the Project will maximize conserved habitat areas including conservation of unique habitats and habitat features. *Id.* and DEIR at 1.0-1. However, in reality, the proposed project design would develop virtually all of the gently sloped portions of the project site, which support hundreds of oak trees and some of the highest-value Diegan coastal sage scrub on the site, which is required habitat for the federally threatened California gnatcatcher. Preserving only the lower-value habitat found on the site’s steepest sloped areas fails to meet MSCP standards and is thus inconsistent with MSCP findings requirements. Hamilton Report at 5 through 14.

The MSCP Findings of Conformity state that “No project shall be approved which will jeopardize the possible or probable assembly of a preserve system within the Subarea Plan.” Hamilton Report at Appendix A. The Project site is located at the northern boundary of the SC-MSCP and in the adjacent NC-MSCP planning area. These northern locations, in contrast to more southerly portions of the MSCP, have a very high level of baseline habitat depletion. Hamilton Report at 7 and 8. Moreover, as discussed above, the site is designated as a Biological Resource Core Area, which are rare. *Id.* For these reasons, the fragmentation and loss of ecological value of a core area would jeopardize the possible or probable assembly of a preserve system, which does not conform with MSCP requirements. *Id.*

In another example, the MSCP Findings of Conformity require projects to reduce edge effects. Hamilton Report at 12. As discussed further below, and in detail in the Hamilton Report, the Project would create approximately 19 miles of development edge that would result in significant edge and fragmentation effects that would remain significant even after mitigation. *Id.* at 15-20. The DEIR fails to analyze and mitigate these impacts. Instead, the DEIR impermissibly defers analysis and mitigation of these effects until future preparation of a Biological Resource Management Plan as required by Mitigation Measure BIO-1. The DEIR cannot defer its assessment of important environmental impacts until after the Project is approved. *See Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296*, at 306-307. To do so wholly undermines the DEIR’s purpose as an informational document.

Moreover, given the Safari Highland Ranch Project’s inconsistency with MSCP findings requirements would have broad ramifications for future projects applying for approval and permits in the MSCP plan areas. Currently, for projects covered by the SC-MSCP, the County reviews and approves permits based on CEQA analysis of potential biological impacts provided in the SC-MSCP EIR. Project applicants benefit by being able to partake of the County’s take permits for listed species through the SC-MSCP, rather than having to pursue individual take permits. This approach streamlines the permit process for projects, allows for incidental takes without liability under the endangered species statutes, and results in tremendous cost and time savings for both applicants and the County. Implementation of the Project would potentially jeopardize San Diego County’s ability to continue to rely on the SC-MSCP when reviewing and approving new projects in the MSCP planning area and could jeopardize approval of the future NC-MSCP.

2. Analysis of Impacts on Biological Resources Is Unlawfully Deferred or Incomplete and Cursory.

In some instances, the DEIR determines that the Project may have significant impacts, but then fails to determine the extent and severity of those impacts. Merely stating that an impact will occur is insufficient; an EIR must also provide “information about how adverse the adverse impact will be.” *Santiago County Water District v. County of Orange*, 118 Cal. App. 3d 818, 831 (1981). This information, of course, must be accurate and consist of more than mere conclusions or speculation. *Id.* The DEIR’s analysis of impacts to biological resources fails to fulfill this mandate in several instances.

For example, although the DEIR concludes that construction of the Project has the potential to adversely impact a host of sensitive animal species (i.e., coastal California gnatcatcher, coastal cactus wren, orange-throated whiptail, San Diego horned lizard, coastal rosy boa, western spadefoot toad, Cooper’s hawk, rufous-crowned sparrow, loggerhead shrike, western bluebird, mountain lion, and monarch butterfly to name a few), the document fails to explain the actual and specific consequences to these species. *See, e.g.*, DEIR at 2.3-3 and 2.3-31 (“The following species are known to occur on-site, are designated CDFW SCC and/or a County Group 1 species, and would be directly impacted by the project: Cooper’s hawk, turkey vulture, rufous-crowned sparrow, loggerhead shrike, western spadefoot toad, San Diego horned lizard, and red diamond rattlesnake.”) The DEIR provides no information regarding the number of individuals of each species that will be affected or the degree to which the populations will be impacted.

3. The DEIR’s Analysis of Impacts to the Federally Threatened California Gnatcatcher Is Inadequate.

Diegan coastal sage scrub is the required habitat of the federally threatened California gnatcatcher. The DEIR claims that the project is sited in areas that minimize impact to habitat. Hamilton Report at 12. In actuality, the project design calls for building upon virtually all of the Diegan coastal sage scrub growing on the site’s gentler slopes — approximately 236 acres of impact. *Id.* Preserved scrub occurs almost entirely on moderate-to-steep slopes. Hamilton Report at 6,7, 11. As reviewed in detail later in the Hamilton comments, California gnatcatchers preferentially utilize gentle slopes, and avoid nesting in areas with greater than 40 percent slope. *Id.* Therefore, the Project would remove nearly all of the sage scrub habitat of greatest value to the California gnatcatcher in the southern half of the site. Thus, contrary to the DEIR’s assertion, the proposed development clearly has not been designed to minimize impacts to habitat. Hamilton Report at 24 and 25.

The analysis of impacts on California gnatcatcher is further deficient because it relies on outdated surveys. Hamilton report at 23. In order for the DEIR to evaluate current, complete information on the distribution of this federally threatened species on the site, a revised DEIR should include updated surveys, covering all coastal sage scrub habitat on the site. Id.

4. The DEIR Lacks the Evidentiary Basis to Support the Conclusion that Impacts to the Western Spadefoot And Its Habitat Would Be Less than Significant.

As detailed in the Hamilton Report, the DEIR provides a superficial evaluation of impacts to the western spadefoot, a California Species of Special Concern. Hamilton Report at 25 and 26. The DEIR concedes that the species was observed on site. However, rather than conduct the necessary analysis to determine whether suitable breeding habitat is present on site, and the extent and severity of impacts to direct and indirect impacts to individuals of the species occurring on site, the DEIR reaches unsupported conclusions. DEIR at 2.3-27 (in a footnote to Table 2.3-4).

As explained in the Hamilton Report, western spadefoot breed in ephemeral ponds that are likely to be present on the site. Hamilton Report at 26. Moreover, given the relative abundance of western spadefoot toad metamorphs found well into the center of the project site, the site appears to serve as an important upland aestivation area for the toads that breed on or near the site, and dirt roads on the project site may also serve as movement pathways and/or breeding sites for western spadefoots. Id. Because the DEIR fails to adequately evaluate these impacts, it also fails to identify mitigation to avoid and minimize them. A revised DEIR should include a thorough analysis of direct and indirect impacts to this species. Id.

5. The DEIR Fails to Adequately Analyze and Mitigate the Project's Impacts Related to Edge Effects.

As discussed in the Hamilton Report, the Project would result in more than 19 miles of development edge, which can lead to detrimental effects related to habitat fragmentation and biodiversity. Hamilton Report at 15. The DEIR acknowledges the Project's potential to result in edge effects. See, *i.e.*, DEIR at 2.3-17 [acknowledgment of potential significant indirect impacts and edge effects (e.g., elevated noise, artificial lighting, invasive weeds) from the development]; 2.3-19 [acknowledgment of potential indirect effects to sensitive plan species related to invasive species and human intrusion into conserved habitat]; 2.3-32 [acknowledgment of potential significant edge effects to sensitive wildlife]; 3.0-18 [acknowledgment of the Project's potential to contribute to

cumulative edge effects]. However, aside from brief statements noting the potential for these impacts to occur, the DEIR fails to provide any meaningful analysis. *Id.*

Instead, the DEIR relies on two mitigation measures to conclude that edge impacts would be reduced to less than significant levels: Mitigation Measure MM BIO-1 and Mitigation Measure MM BIO-10. Mitigation Measure MM BIO-1 requires future preparation of a Biological Resource Management Plan (“BRMP”) for the undeveloped portion of the site. DEIR at 2.3-33. But the DEIR fails to provide any details about this plan or even any performance standards to ensure the plan will be effective. For example, the DEIR fails to identify an easement holder or an entity that will be responsible for the proposed restoration projects. It fails to provide cost estimates for management of the proposed conservation open space area and neither specifies the level of funding that would be provided to implement the BRMP in perpetuity, nor provides a biological analysis of how the BRMP would reduce various potentially significant impacts related to fragmentation and development edge. As such, there is no way for decision makers and the public to have any idea of what, exactly, implementation of the BRMP can be expected to accomplish once it is prepared. For all of these reasons, MM BIO-1 is a classic example of deferral of mitigation, which is impermissible under CEQA.

Similarly, Mitigation Measure MM BIO-10 calls for future preparation of lighting plan or comparable document to lessen impacts from project light sources. DEIR at 2.3-34. This measure also fails to provide details on the contents of this plan. Courts have rejected agencies’ similar attempts to defer the development of specific mitigation. *Communities for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 93-95 (agency may not approve a vague mitigation measure that contains no performance standards and criteria to guide its later implementation). The City may not lawfully cut the public out of the process of developing mitigation measures by approving a vague measure now that will be fleshed out later, without public scrutiny, by the City and the developer.

A revised DEIR must exam the Project’s potential to result in edge-related impacts. The revised analysis must consider all potential related impacts including the following:

- Introduction/expansion of invasive exotic vegetation carried in from vehicles, people, animals or spread from backyards or fuel modification zones adjacent to wildlands.
- Higher frequency and/or severity of fire as compared to natural fire cycles or intensities.

- Companion animals (pets) that often act as predators of, and/or competitors with, native wildlife.
- Creation and use of undesignated trails that often significantly degrade the reserve ecosystems through such changes as increases in vegetation damage and noise.
- Introduction of or increased use by exotic animals which compete with or prey on native animals.
- Influence on earth systems and ecosystem processes, such as solar radiation, soil richness and erosion, wind damage, hydrologic cycle, and water pollution that can affect the natural environment.

Hamilton Report at 15.

D. The DEIR Fails to Adequately Analyze the Project's Land Use Impacts.

1. City's General Plan and Zoning

As described in Section II of this letter above, the Project conflicts with multiple General Plan and Zoning Code provisions. These conflicts are significant impacts under CEQA. The DEIR concludes that the Project is consistent with the General Plan and Zoning Code (DEIR at 2.9-13). This conclusion is unfounded and not supported by substantial evidence. In fact, the Project's plain inconsistencies represent significant impacts, and the DEIR must be revised to disclose and evaluate these impacts.

The Project would conflict directly with several core provisions of the General Plan and Zoning Code relating to the preservation of steep slopes and open space. For example, the General Plan and the Zoning Code include multiple policies prohibiting development on steep slopes (i.e., Community Character Policy 1.12; Biological and Open Space Resources Policy 1.1; Biological and Open Space Resources Policy 1.3; and Zoning Code § 33-1066(g)(1)). Yet the DEIR fails to evaluate the Project's consistency with these policies.

The General Plan similarly includes policies to protect ridgelines and hilltops (i.e., Visual Resources Policy 3.1; Visual Resources Policy 3.2; Visual Resources Policy 3.4; Visual Resources Policy 3.5). Here too, the DEIR fails to disclose the Project's encroachment onto ridgelines and hilltops and instead presents vague statements that the Project has been designed to minimize effects on ridgelines (SP at 135-36).

The DEIR relies heavily on General Plan policies applicable to SPA#4. DEIR at 2.9-11. However, the site's designation by the City as a Specific Plan area does not absolve the Project from required consistency with the General Plan and Zoning Code. Moreover, as discussed in Section II, the Project is inconsistent even with SPA#4 requirements, including the prohibition on development on slopes greater than 35 percent. The EIR should be revised to analyze each of the Project's inconsistencies with the General Plan.

2. The DEIR Fails to Adequately Evaluate the Project's Inconsistency with Regional Conservation Plans

As discussed throughout this letter, the proposed Project is situated within two regional habitat conservation planning areas: the NC- MSCP and the SC-MSCP. Within the MSCPs study areas, critical core and linkage areas and PAMA have been designated as permanent preserves for biological resources. The Project has the potential to directly and indirectly impact habitat within core and linkage areas and PAMA areas. *See*, Hamilton Report attached as Attachment B.

The DEIR largely foregoes analysis of the Project's significant impacts to both MSCP areas, despite the fact that the Project would disturb and bifurcate much of the designated plan areas that comprise the site. For example, the document inaccurately concludes that the Project has been designed to minimize impacts to biological resources where possible, and is therefore consistent with MSCP policies and guidelines. DEIR at 2.3-49. This superficial conclusion lacks evidentiary support. To the contrary, it would be difficult to imagine a project *less* consistent with MSCP policies. The Project site is part of a core biological resource area, which the MSCP defines as areas having such biological importance that, if lost or fragmented, they "could not be replaced or mitigated elsewhere." The Project both destroys the highest quality habitat on the site and fragments the remainder. Stretching along the entire north-south length of the site, the Project cuts off and isolates the western "preserved" areas from the rest of the PAMA area to the west. The MSCP planning goal is to conserve approximately 75 percent of PAMA, with no more than 25 percent utilized for development. And the development that may occur should comply with all MSCP preserve design guidelines and be limited so as not to conflict with the overall goal of establishing adequate and viable MSCP preserves. Hamilton Report at 9. Here, the Project would impact at least 44 percent of the PAMA (on-site plus off-site), and would also fail to meet MSCP preserve design guidelines. *Id.* Accordingly, the DEIR must look beyond the mitigation measures alluded to in this document.

The DEIR's failure to acknowledge or analyze this inconsistency as a significant impact renders it inadequate under CEQA.

3. The DEIR Fails to Adequately Evaluate the Project's Inconsistency with County LAFCO Policies.

The Safari Highlands project site lies neither within Escondido city limits, nor within the City's sphere of influence ("SOI"). As a result, even if the City certifies the EIR and approves the Project, the Project still cannot be built unless the county's Local Agency Formation Commission ("LAFCO") first approves expansion of the City's SOI to include the Project site, and then allows the City to annex the site, bringing it within city limits. In reviewing these boundary change requests, San Diego LAFCO must consider whether the Project is consistent with San Diego LAFCO policy and with state law regarding annexation of open space. The DEIR fails to analyze the Project's consistency with LAFCO requirements, a gross omission given the Project would develop open space land that the County has relied on for habitat protection.

LAFCOs are county-level independent regulatory commissions that serve as the Legislature's "watchdog" over city or special district boundary changes, known as "changes of organization." *See Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 884; Gov. Code § 56375. When a city wishes to annex unincorporated land, it must first seek approval from its county's LAFCO. And a city may only seek to annex land that lies within the city's sphere of influence. Gov. Code §§ 56014, 56375.5.

In reviewing boundary change requests, LAFCOs are to encourage and provide "planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns." Gov. Code § 56300(a). Indeed, a LAFCO's principal goals include "discouraging urban sprawl" and "preserving open space and prime agricultural land." Gov. Code § 56301; *see also* Gov. Code § 56001 (noting LAFCO role in preserving open space lands). For LAFCO purposes, "open space" is defined as "any parcel or area of land . . . which is substantially unimproved and devoted to an open-space use" and "that is designated on a local, regional, or state open-space plan . . . for the preservation of natural resources, including, but not limited to, areas required for the preservation of plant and animal life." Gov. Code §§ 56059, 65560. The Project site therefore clearly qualifies as open space: it is undeveloped and is designated as a PAMA under the SC-MSCP and the draft NC-MCSP.

The LAFCO in each county must adopt written policies and procedures to evaluate local agency boundary change proposals, including standards and criteria to guide the LAFCO's review (Gov. Code §§ 56300(a), 56375(g)), and may condition approval on applicants' compliance with its written policies (*id.* § 56885.5). State law also enumerates factors a LAFCO must consider when evaluating a city's boundary change request. *See e.g.*, Gov. Code §§ 56377. A LAFCO may "disapprove an annexation if it finds that it violates the detailed criteria which a LAFCO must consider." *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263,284; *see also* Gov. Code § 56375(a)(1).

If a city's requested boundary change would lead to conversion of open-space lands for non-open space uses, state law requires the local LAFCO to encourage "[d]evelopment of existing vacant or nonprime agricultural lands for urban uses within" city limits or within the city's SOI before approving the boundary change. Gov. Code § 65377. The DEIR fails to consider this state law requirement. In particular, the DEIR does not evaluate whether there is developable, non-prime agricultural land within the City's current boundaries or SOI, land that should be the focus of development before the City is allowed to expand to include sensitive open space of the Project site. Yet the City's Housing Element clearly states that "there are [] over 3,000 acres of residential land that is either vacant or re-developable in the City." Escondido 2013-2020 Housing Element, p. IV-85; *see also* Escondido 2012 General Plan Appendix B, at XI-53 (citywide map of vacant and underutilized sites for residential development), attached as Attachment K. The DEIR must analyze how annexation for the purpose of converting open space that is designated as part of a core biological habitat preserve can possibly be consistent with Section 65377 when vacant residential land currently within city limits could accommodate thousands of new residential units.

San Diego LAFCO policy L-101 (Preservation of Open Space and Agricultural Land) is also highly relevant to the Project's impacts on open space. L-101 states that "[i]t is the policy of the San Diego [LAFCO] to [d]iscourage proposals that would convert prime agricultural or open space lands to other uses unless such action would not promote the planned, orderly, efficient development of an area *or* the affected jurisdiction has identified all prime agricultural lands within its sphere of influence and adopted measures that would effectively preserve prime agricultural land for agricultural use." The DEIR acknowledges that this policy is "pertinent" to the Project and San Diego LAFCO's comment letter on the Project's Notice of Preparation states that the EIR should discuss the Project's compliance with the L-101. But the DEIR fails to discuss the policy at all. The DEIR must be revised to address this omission.

The DEIR also fails to analyze the Project's consistency with Government Code section 56375(a)(8)(A). That section limits a LAFCO's ability to approve annexations of

land greater than 10 acres where “a disadvantaged unincorporated community [“DUC”] is contiguous to the area of proposed annexation,” unless the city also seeks to annex that DUC as well. *See also* Gov. Code § 56033.5 (defining “disadvantaged unincorporated community”). The DEIR notes in Table 3.1-2 that most of the SOI Candidate Study Areas contain a DUC, and the City’s June 2017 Municipal Service Review (“Service Review”) (Appendix 2.11 to the DEIR) shows that the Project site falls within the Lake Wohlford DUC. *See* Service Review at 19, 20, 78, 80, 113; *see also* Attachment L (excerpt from Exhibit B to San Diego LAFCO March 4, 2013 staff report re SB 244 (“LAFCO Report”). As specified in the LAFCO Report a city’s annexation of an area adjacent to a DUC must “identify any disadvantaged unincorporated communities located contiguous to the proposal area, and to establish limits to define the extent of the affected area subject to a second annexation proposal.” Attachment M at 8; *see also id.* at 9, 11 (additional DUC parcels will be added to the annexation if the adjacent DUC has less than 12 registered voters).

Despite this requirement, the DEIR and the Service Review fail to identify the portions of the Lake Wohlford DUC that are contiguous to the Project site, and whose annexation would be required along with the Project area. Instead, the City proposes to annex and provide services only to the Project site—which will be developed solely with luxury homes—without offering to extend any services to the adjoining disadvantaged communities. This is exactly what Section 56375(a)(8)(A) was intended to prevent. The DEIR and the Service Review must be revised to identify the location of the additional DUC subject to annexation at the same time as the Project area and to evaluate the environmental impacts of the larger annexation.

4. The Project is Inconsistent with SANDAG’s Regional Transportation Plan/Sustainable Community Strategy

The preeminent goal and performance target of SANDAG’s Regional Transportation Plan/Sustainable Community Strategy (“RTP/SCS”), as mandated by SB 375, is to reduce per-capita CO₂ emissions from cars and light-duty trucks to meet the California Air Resources Board’s 2020 and 2035 reduction targets for the region. DEIR at 2.9-4; 2.12-8; 2.12-9. The DEIR acknowledges that the Project would be inconsistent with the RTP/SCS because the density proposed is greater and the number of dwelling units is higher than what was included in the land use input assumptions from San Diego County. DEIR at 2.6-23. The DEIR concludes that with the adoption of a mitigation measure (applicant would purchase greenhouse gas (“GHG”) emissions compliance offsets), the Project’s impact would be less than significant. *Id.* The DEIR’s approach suffers from two fundamental errors.

First, the DEIR's perfunctory "analysis" of the Project's inconsistency with the RTP/SCS does not comply with CEQA. Rather than study the environmental implications of this inconsistency, the EIR takes the legally impermissible easy route: it simply labels impacts as significant, without offering any information on the nature or scope of the problem. It is not sufficient to simply assert that an impact is significant and then move on. This approach does not allow decision makers and the public to understand the severity and extent of the Project's environmental impacts. *See, e.g., Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1370-71; *Galante Vineyards v. Monterey Peninsula Water management Dist.* (1997) 60 Cal.App.4th 1109, 1123; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 (a lead agency may not simply jump to the conclusion that impacts would be significant without disclosing to the public and decision makers information about how adverse the impacts would be). The fact that SANDAG has not planned for this Project is not a trivial detail, as the DEIR implies. The EIR must actually *analyze* the implications of this unplanned growth on regional and state climate change (and air quality goals).

In particular, the DEIR should have specifically disclosed the magnitude of the difference between the Project's density and number of units compared to the assumptions in the RTP/SCS. Moreover, many of the RTP/SCS's fundamental provisions are directly at odds with the proposed Project. For example, the RTP/SCS did not contemplate this type of sprawling residential development. Rather than growing "out," the RTP/SCS envisioned the development of compact communities.⁵ The RTP/SCS anticipated that about 80 percent of all housing would be developed within the urbanized areas in the western part of the County. Accordingly, the RTP/SCS called for achieving GHG reduction goals in part by reducing vehicle miles travelled ("VMT") throughout the region. *Id.* Yet, the Project's remote location will ensure that the majority of residents will be forced to rely on automobiles for virtually all of their transportation needs. The DEIR confirms this fact: the Project would substantially increase vehicular trip lengths compared to the City's current average (14.19 average trip length compared to 2.67 miles), which will result in an additional 67,332 VMT. *See* Letter from J. Boarman, Linscott, Law & Greenspan to J. Hall, Concordia Homes, October 2, 2017, included as an appendix to the DEIR. The DEIR should have identified SANDAG's VMT (and GHG emissions) assumptions for Escondido to those that would be generated by the proposed Project. The DEIR's failure to conduct this evaluation is a serious flaw.

⁵ *See* San Diego Forward: the Regional Plan Summary; available at: <http://www.sdfoward.com/about-san-diego-forward/how-we-will-grow>; accessed November 20, 2017.

Second, the DEIR cannot simply assume that the purchase of GHG offsets will eliminate the Project's inconsistency with the RTP/SCS. Until the DEIR's provides a comprehensive analysis of the Project's inconsistencies, it is not possible to formulate effective mitigation. Moreover, even if offsets were potentially feasible mitigation, the EIR must demonstrate their effectiveness in reducing the Project's climate change impacts. When a lead agency relies on mitigation measures to find that project impacts will be reduced to a level of insignificance, there must be substantial evidence in the record demonstrating that the measures are feasible and will be effective. *Sacramento Old City Assn. v. City Council of Sacramento*, 229 Cal.App 3d 1011, 1027 (1991); *Kings County*, 221 Cal.App. 3d at 726-29. As discussed further below, we can find no such evidence here.

E. The DEIR's Analysis of Project-Related Air Quality Impacts is Inadequate.

The DEIR's analysis of Project-related air quality impacts contains numerous deficiencies that must be remedied in order for the public and decision-makers to fully understand the Project's impacts. The Pless Report prepared by Petra Pless, provides detailed comments on the shortcomings in the DEIR's air quality impacts analysis. We incorporate the Pless Report into these comments. Some of the DEIR's most troubling errors identified in the Pless Report are described below.

Specifically, the evaluation of the Project's air quality impacts must be revised to address: (1) failure to analyze the project's impacts related to obstructing implementation of the Regional Air Quality Strategy; (2) underestimation of construction emissions; (3) failure to identify all feasible mitigation measures for significant impacts; (4) deficient analysis of project-related public health impacts; and (5) failure to adequately analyze project operation emissions. These issues, and other deficiencies, are discussed in greater detail below and in the attached Pless Report.

1. The DEIR Fails to Adequately Analyze the Project's Air Quality Impacts Relating to Obstructing Implementation of the Regional Air Quality Strategy.

The DEIR provides a superficial analysis of the Project's potential to obstruct implementation of the Regional Air Quality Strategy ("RAQS"). According to the DEIR, the RAQS and the State Implementation Plan (which describes how a nonattainment area will attain national ambient air quality standards) used the 2030 Regional Transportation Plan prepared by the San Diego Association of Governments to project future growth in the air basin. DEIR at 2.2-9 and 2.2-15. As such, projects that propose

development that is consistent with the growth anticipated by the Regional Transportation Plan would be consistent with the RAQS and the SIP. Conversely, projects that propose development that is greater than that anticipated in the growth projections are in conflict with RAQS and the SIP.

Here the DEIR acknowledges that the project “could potentially result in violations or affect air quality attainment status” due to unmitigated, significant construction and operational emissions. DEIR at 2.2-16. However, the DEIR fails to reach a conclusion regarding the Project’s consistency with the RAQS and SIP. Instead, the DEIR identifies standard construction mitigation measures to address a portion of construction emissions and an additional measure limiting the number of wood-burning fireplaces. DEIR at 2.2-17 through 2.2-19. But, as described in the Pless Report (Attachment D), these measures fail to address all of the construction emissions associated with the Project (i.e., site preparation emissions, earthmoving emissions, blasting emissions, rock crushing emissions, and wind erosion emissions) and do nothing to reduce emissions from mobile sources during the operational phase. Pless Report at 35. Moreover, the measures do not excuse the City from analyzing the Project’s consistency with the applicable plans.

The emissions inventory in the San Diego Air Pollution Control District’s (“SDAPCD”) RAQs is based on regional population, housing, and employment projections. Because the Project is not included in the County’s demographic projections, its criteria air pollutant emissions were not included in the RAQs. As a result, the Project, which would develop the site in excess of existing plans, has the potential to cause a delay in the ability of the region to attain the California and federal ambient air quality standards and related cumulative impacts. This constitutes a significant impact under CEQA which the DEIR fails to analyze. The DEIR’s failure to inform the public and decision makers that the Project would set the region off course from achieving the California and national air quality standards is a fatal flaw.

2. The DEIR Underestimates Construction Emissions.

The DEIR’s analysis of construction emissions relies on inappropriate and inaccurate assumptions. Pless Report at 5 through 14. As explained in detail in the Pless Report, the DEIR relies solely on the CalEEMod model for Project emission estimates. Pless Report at 35. But the model fails to take into account several Project elements that will add substantially to projected construction emissions. Specifically, the CalEEMod model does not account for emissions from site preparation, earthmoving, blasting, rock crushing operations, and wind erosion. Pless Report at 5 and 36. As described by Dr. Pless, these activities will result in significant emissions in excess of the SDAPCD’s

threshold of significance. Pless Report at 7-11. A revised analysis must disclose these emissions and identify feasible mitigation to minimize the impacts.

3. The DEIR Fails to Identify Feasible Mitigation for Disclosed Significant Impacts.

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. Resources Code § 21002. Here, the DEIR acknowledges that the Project would result in emissions that far exceed established thresholds by SDAPCD and concludes that, even with the identified mitigation measures, related impacts would remain significant and unavoidable. DEIR at 2.2-16. However, the DEIR makes no attempt to identify and evaluate other feasible measures or alternatives to minimize these impacts. As discussed in the Pless Report, a broad array of feasible measures, including but not limited to, requiring Tier 4 Final for construction equipment, providing electrical hookups for use of hand tools and other equipment, and limiting the amount of cut and fill per day are available and have been implemented by other projects in the surrounding region. See Pless Report at pages 15 - 20. Nor is there evidence that a reduced unit alternative that locates development away from steep slopes to minimize the need for earthmoving and rock blasting is infeasible. A revised DEIR must identify and include additional mitigation measures and alternatives to reduce or avoid the Project's significant air quality impacts.

4. The DEIR Fails to Evaluate Significant Public Health Impacts Related to Valley Fever

The DEIR further in its failure to acknowledge, let alone analyze, the potential for the Project to expose sensitive receptors to Valley Fever, or coccidioidomycosis. As described in the Pless Report, Valley Fever is an infectious disease caused by the fungus *Coccidioides immitis*. Pless Report at 20. It is caused by inhalation of *Coccidioides immitis* spores that have become airborne when dry, dusty soil or dirt is disturbed by wind, construction, farming, or other activities. *Id.* The Valley Fever fungus tends to be found in undisturbed soil and grows down to 12-inch depths. *Id.* The Pless Report identifies a list of factors that the City should have considered when evaluating whether a proposed Project has the potential to result in significant Valley Fever impacts. *Id.* at 21-29. Inasmuch as the proposed Project would involve certain of these factors including but not limited to disturbance of the top soil of undeveloped land, dry, alkaline, sandy soils, and a location within a windy area, the potential exists for significant Valley Fever impacts. The City must conduct this analysis in a revised DEIR.

F. The DEIR Fails to Adequately Analyze and Mitigation Project-Related Greenhouse Gas Emissions.

Analysis of GHG emissions is particularly important with regard to climate change because existing conditions are such that we have already exceeded the capacity of the atmosphere to absorb additional GHG emissions without risking catastrophic and irreversible consequences. Therefore, even seemingly small additions of GHG emissions into the atmosphere must be considered cumulatively considerable. See *Communities for Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“the greater the existing environmental problems are, the lower the threshold for treating a project’s contribution to cumulative impacts as significant.”); see also *Center for Biological Diversity v. National Highway Traffic Safety Admin.* (9th Cir. 2007) 508 F.3d 508, 550 (“we cannot afford to ignore even modest contributions to global warming.”).

This DEIR concludes that the Project would result in significant impacts related to climate change—largely resulting from the Project’s anticipated 5,907 daily car trips—but that those impacts would be reduced to less than significant levels with proposed mitigation measures. DEIR 2.6-28. As detailed below, the DEIR’s analysis is fundamentally flawed. The DEIR underestimates the Project’s GHG emissions because it understates project-related VMT, relies on inaccurate assumptions to model projected emissions, fails to evaluate the effects of sequestration loss due to vegetation removal, and fails to evaluate emissions from construction activities. The DEIR also relies on an inappropriate metric for determining significance. The DEIR’s proposed mitigation—based primarily on a to-be-determined carbon offset program—fails to sufficiently mitigate for GHG emissions resulting from the Project’s rural location. Each of these flaws is discussed below.

1. The DEIR Underestimates the Project’s Greenhouse Gas Emissions

The DEIR fails to accurately calculate all project-related emissions, and therefore, fails to properly describe the extent and severity of impacts related to greenhouse gases. This approach does not comport with CEQA. An agency’s rote acknowledgement that impacts are “significant” does not cure its EIR’s failure to analyze the issue. As the court stated in *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.*, “this acknowledgment is inadequate. ‘An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.’” (1997) 60 Cal.App.4th 1109, 1123 (quoting *Santiago County Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 831); see also *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 365 (an EIR is meant to protect “the right of the public to be

informed in such a way that it can intelligently weigh the environmental consequences of a[] contemplated action.”).

As described in more detail in the report submitted by N. Liddicoat of Griffin Cove Traffic Consultants (submitted by E. Delano under separate cover), the DEIR understates project-related VMT. Specifically, the DEIR’s “VMT Assessment” (at pps. 2.12-43 - 2.12-45) is based on an inaccurate daily trip generation value for the proposed project. Griffin Cove Report at 7. Inasmuch as the GHG emissions are dependent on the transportation analysis assumptions, any underestimation of vehicular trips necessarily results in an underestimation of vehicle-related greenhouse gas emissions. Once the City accurately analyzes the Project’s increase in traffic volumes, it must revise the greenhouse gas impact analysis.

In addition, as described in the Pless Report, the DEIR’s GHG analysis errs because it relies on inaccurate assumptions to model projected emissions. Pless Report at 35 and 36. For example, according to the Pless Report, the DEIR CalEEMod Model assumes that the Safari Highlands Ranch project site is located in an “urban” environment despite the project site being described as rural throughout the DEIR. Id. A “rural” environment results in higher emissions from vehicle combustion exhaust due to longer trips—particularly where, as here, the project includes no commercial component where residents can work or shop close to where they live.

Similarly, the DEIR accepts the CalEEMod default population estimate of 1,573 residents for 550 single family residences but elsewhere anticipates that the SHR project would house approximately 1,815 residents. DEIR at 2.6-22 and Pless Report at 35. This discrepancy is important because more residents result in more vehicle emissions and area emissions; thus, the DEIR underestimates both criteria air pollutant and greenhouse gas emissions for the operational phase of the Project. Conversely, the Draft EIR relies on a service population of 1,815 residents to calculate the greenhouse gas efficiency metric for the project; thus, the calculated efficiency metric is too low and, consequently, the DEIR’s calculations for required mitigation for greenhouse gas emissions impacts are also inaccurate.

The DEIR’s CalEEMod model for greenhouse gas emissions also fails to account for the effects of sequestration loss from vegetation removal. The DEIR describes extensive vegetation removal, including the removal of hundreds of mature oak trees. DEIR at 2.3-19. The loss of these trees will result in reduced sequestration of carbon. This impact must be evaluated and resulting emissions included in the calculation of project-related impacts.

In addition, as discussed in the Pless Report and above, construction activities involving fuel combustion and explosives blasting also generate GHG emissions. The DEIR fails to evaluate emissions from these activities, further underestimating GHG emissions. Pless Report at IV.E.2.

2. The City Chosen Threshold to Determine Significance of GHG Emissions is Inappropriate.

The City's chosen threshold of significance is improper because it was designed for infill and transit oriented development ("TOD") projects, not greenfield projects like Safari Highlands Ranch. The efficiency metric methodology was developed as a tool to accommodate infill projects that may have large overall GHG emissions due to the size of the project, but low GHG emissions per capita due to high density design and access to alternative methods of transportation.

For example, the Bay Area Air Quality Management District ("BAAQMD") designed a similar "fair share" approach to assess a project's GHG significance. *See* Attachment N (BAAQMD, *Proposed Thresholds of Significance* (2009)). BAAQMD recommended a bright-line numeric threshold to limit large new developments that could max out GHG reduction targets. *Id.* at 18-19, 22. In contrast, the per capita "efficiency" threshold was recommended to encourage highly-efficient infill development. *Id.* at 29. Using the per capita threshold for greenfield projects conflicts with the policy goal the methodology was originally designed to achieve. BAAQMD staff specifically noted that "the efficiency-based thresholds should be applied to individual projects with caution . . . [if] the project's emissions on a mass level will have a cumulatively considerable impact on the region's GHG emissions, the insignificance presumption afforded to a project that meets an efficiency-based GHG threshold would be overcome." *Id.* at 7.

In sum, the per capita threshold was developed to accommodate and promote highly efficient infill development. The proposed Project is not such a development. It is located far from mass transit and would result in a substantial increase in car trips. Therefore, it is inappropriate to use this methodology in the context of greenfield development that generates an excessive amount of vehicle miles traveled.

3. The DEIR's Analysis Fails to Disclose the Project's GHG Emission Impacts Beyond 2025.

The DEIR's analysis identifies efficiency metrics that the Project would have to meet in 2020, 2025 and 2035 to be consistent with California Air Resources Board targets for GHG reductions. DEIR at 2.6.14. The DEIR then concludes that, with the

purchase of offsets, the Project's GHG emissions would be reduced to a level below the efficiency threshold for 2025—2.89 MT/SP/year. DEIR at 2.6-28. The DEIR goes on to state that, by reaching the 2.89 efficiency metric, the Project would be consistent with statewide reduction goals for 2030 and 2050. *Id.* We find no evidence to support this statement. The DEIR fails to disclose emissions beyond 2025 despite the fact that the project will be operational for decades beyond. A revised DEIR must disclose emissions for the life of the project and must provide evidence regarding mitigation of future emissions.

Moreover, the DEIR relies on statewide metrics to determine the amount of emission reductions required for the project, but those metrics have only questionable relevance to the Project or its ability to achieve compliance with statewide reduction targets. The DEIR fails to explain why cumulative targets for the entire state or San Diego region should be presumptively sufficient for individual projects like Safari Highlands Ranch. To be consistent with the GHG reduction targets of the California Global Warming Solutions Act (AB 32, SB 32) and related Executive Orders, any new individual project will likely need to provide significantly greater emission reductions than merely meeting a statewide target. Contrary to the methodology applied by the DEIR, there is no reason to presume without evidence that the Project's reductions equal to the average reductions needed statewide will be anywhere near sufficient to help achieve the statewide target. The Court explained this point in the Newhall Ranch case: new projects may require a greater level of reduction because “[d]esigning new buildings and infrastructure for maximum energy efficiency and renewable energy use is likely to be easier, and is more likely to occur, than achieving the same savings by retrofitting of older structures and systems.” *Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204 at 226.

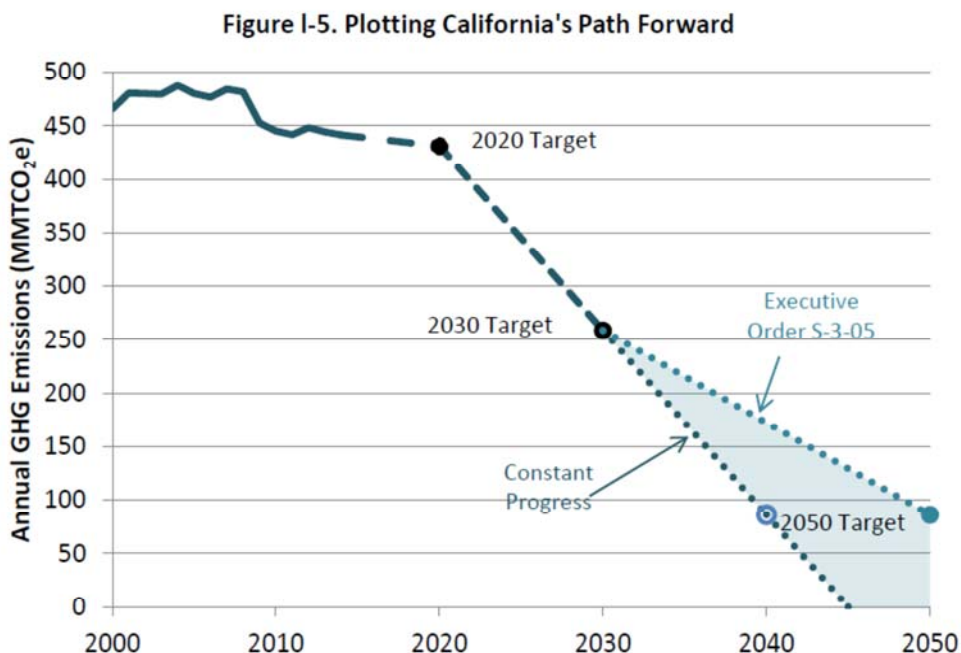
The DEIR ignores this reality and directly imports the statewide standards, assuming the reduction rate for the Project should be the same. The Scoping Plan, on which these methodologies are all based, is silent on the obligation of new developments versus existing development to reduce emissions, but it stands to reason that new developments will need to reduce at a greater rate, as older development will continue to exist and emit at levels higher than the average. As the DEIR blindly assumes the same emissions reductions levels for statewide and project-specific compliance with AB 32, its GHG analysis is not supported by substantial evidence and the EIR is deprived of its “sufficiency as an informative document.” *Id.* at 227 (citing *Laurel Heights*, 47 Cal.3d at 392).

4. The DEIR Fails to Provide Adequate Mitigation for the Projects GHG Emissions.

Because, as discussed above, the DEIR underestimates the Project's GHG emissions, it also fails to adequately mitigate for the related impacts. Moreover, the DEIR relies on insufficient mitigation and fails to consider and adopt all feasible mitigation.

The DEIR proposes carbon offsets as partial mitigation for the Project's significant GHG impacts. DEIR at 2.6-28. Mitigation measure MM GHG-2 would require the applicant to show proof of purchase of offsets to reduce the project's entire GHG emissions level to 2.89 metric tons carbon dioxide equivalent (MT CO₂e) per service population per year from a "accredited registry" prior to obtaining grading permits. But mitigation does not meet CEQA's requirement that it be "fully enforceable." Instead, the DEIR relies on registry programs that do not yet exist and confers complete discretion in City staff to determine whether the purchased offsets are from an "accredited registry," without defining who would provide the accreditation. DEIR at 2.6-27. Courts have found mitigation fees inadequate where the amount to be paid for mitigation was unspecified and not "part of a reasonable, enforceable program." *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1189; see also 00 (2014) 225 Cal.App.4th 173, 198.

Moreover, in practice, even the most sophisticated offset programs have failed. A 2016 report prepared for the EU Directorate General for Climate Action concluded that nearly 75% of the potential certified offset projects had a low likelihood of actually contributing additive GHG reductions, and less than 10% of such projects had a high likelihood of additive reductions. Attachment P (Institute of Applied Ecology, *How additional is the Clean Development Mechanism? Analysis of the application of current*



tools and proposed alternatives, March, 2016) at 11; see also Attachment Q (*Carbon Credits Likely Worthless in Reducing Emissions, Study Says*, Inside Climate News, April 19, 2017.) Partly in recognition of these flaws, offsets are typically permitted to constitute only a very small part of an overall emission reduction program—for example, California’s cap and trade program allows no more than 8 percent reductions come from offsets. There is simply no evidence that the undefined, unenforceable offsets proposed by the DEIR will cause any meaningful reduction to mitigate the permanent increase in GHG caused by the proposed sprawl development.

Even if offsets were efficacious as mitigation, the DEIR fails to show they would reduce the Project’s long-term climate impacts to a less-than-significant level. As explained in the DEIR and the July 2016 GHG guidance, CARB projects that average annual emissions must decline by 5.2 percent *each year* to achieve target reductions for year 2050. DEIR at 2.6-13. The California Air Resources Board recently confirmed these required reductions in its 2017 Climate Change Scoping Plan Update (Jan. 20, 2017). These reductions are portrayed graphically in the Plan’s Figure I-5:

Even using the City’s own flawed approach to GHG mitigation, the Project would need to secure an *additional* 5.2 percent offset each year to the year 2050 to keep up with these reduction targets.

In addition, the mitigation measure actually authorizes staff to *decrease* the amount of carbon offsets required if the Project’s assumed carbon emissions are reduced by future regulatory changes, without any corresponding requirement to *increase* offsets if future events prove the EIR’s emissions assumptions were too low. Pless report at 36 and 37 and DEIR at 2.6-22. This lopsided standard could end up further reducing the already inadequate offsets, even where later changed circumstances result in a net increase in Project emissions.

Moreover, the approval process for this mitigation would be subject only to City oversight, conducted outside of CEQA, with no public review. At a minimum, any change in greenhouse gas emissions that are to be offset must be subject to CEQA review. The mitigation measure should also be broadened to require offsetting increases in future operational greenhouse gas and criteria pollutant emissions, beyond those estimated in the DEIR as increases are equally likely because future emissions depend upon many factors that cannot be currently predicted—including political will, increasing ambient temperatures, and reductions in water supply due to climate change—which could increase greenhouse gas and criteria pollutant emissions beyond those estimated in the EIR. Pless Report at 36 and 37.

Nor does the Project's purported compliance with the City's climate action plan excuse the City from fully disclosing and mitigating significant impacts. An agency cannot avoid compliance with CEQA's disclosure requirements, or refuse to adopt adequate mitigation, just because its actions are consistent with its own General Plan. *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281 at 301-302 (rote reliance on a project's compliance with the general plan, or "the standardized appendix G of the CEQA Guidelines," does not insulate an EIR from challenge where substantial evidence shows a significant impact).

G. The DEIR Fails to Evaluate the Project's Energy Impacts.

CEQA requires agencies to analyze whether their projects will result in the wasteful or inefficient use of energy. Pub. Res. Code § 21100(b)(3); CEQA Guidelines, Appendix F. "Under CEQA, an EIR is 'fatally defective' when it fails 'to include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy.'" *Cal. Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209 (quoting *People v. County of Kern* (1976) 62 Cal.App.3d 761, 774). In order to demonstrate that a project will not result in the wasteful use of energy, agencies must show that the project has decreased per capita energy consumption, decreased reliance on fossil fuel use, and increased reliance on renewable energy sources. *Id.*

The Safari Highlands Specific Plan and its DEIR claim that the Project incorporates sustainable design strategies and implements all measures prescribed in the California Green Building Standards Code, California Code of Regulations, Title 24. See *e.g.*, Safari Highlands Specific Plan at 33; DEIR at 1.0-2. However, these project elements do not excuse the City from conducting the mandated analysis. Moreover, Title 24 does not address many of the considerations required under Appendix F of the CEQA Guidelines, such as whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope. Put simply, the building code does not address the energy impacts of a project intended to transform open space into a new, suburban development. Thus, including the Building Code's measures is not a substitute for the mandatory Appendix F analysis. This omission renders the DEIR deficient and the City's certification of the document would be unlawful.

Moreover, in some cases the Specific Plan and DEIR use outdated Title 24 efficiency standards as a baseline. But the most recently updated standards went into effect as of January 2017, and are expected to be updated again in 2019. Thus, while the EIR touts how the Project's homes will meet or exceed Title 24 standards, it is referring

to obsolete 2013 Title 24 standards. Compliance with current building code standards is not mitigation.

Finally, the DEIR lacks the evidentiary basis that impacts relating to energy consumption from the Project's mobile source emissions would be less than significant. Operation of the proposed Project is estimated to consume approximately 622,447 gallons of fuel per year. DEIR at 4.0-6. The DEIR incorrectly concludes that this increase in fuel consumption would be *minimal* and that the Project would not result in any unusual characteristics that would result in substantial or excessive long-term consumption in the county. *Id.* (emphasis added). The DEIR fails to provide any analytical support for its assertion that 622,447 gallons of fuel per year should not be considered a wasteful use of energy.

Infill residential projects greatly reduce the number and length of vehicle trips and therefore fuel consumption. This Project, however, would not only result in almost 5,000 additional trips each day, the length of these trips would be 14 miles. This is in comparison to the City's average trip length of 2.67 miles. *See* Letter from J. Boarman, Linscott, Law & Greenspan to J. Hall, Corcordia Homes, October 2, 2017 included as Appendix 2.12-2 to the DEIR. The fact that vehicular trips from this Project would be more than four times the City's average trip length demonstrates that this Project would result in a wasteful use of energy. The EIR must be revised to disclose this significant impact.

H. The DEIR's Analysis of the Project's Growth-Inducing Impacts is Incomplete and Flawed.

An environmental impact report must discuss how a proposed project, if implemented, could induce growth. CEQA Guidelines § 15126(d). A proposed project is considered either directly or indirectly growth-inducing if it: (1) fosters economic or population growth or additional housing; (2) removes obstacles to growth; (3) taxes community services or facilities to such an extent that new services or facilities would be necessary; or, (4) encourages or facilitates other activities that cause significant environmental effects. While the growth-inducing impacts of a project need not be labeled as adverse, the secondary impacts of growth (e.g., loss of open space/habitat/agricultural lands, air quality, transportation, etc.) may be significant and adverse. In such cases, the secondary impacts of growth inducement must be disclosed as significant secondary or indirect impacts of the project.

The appropriate components for an adequate analysis include: (1) estimating the amount, location and time frame of growth that may occur as a result of the project (e.g.,

additional housing, infrastructure, and mixed use developments); (2) applying impact assessment methodology to determine the significance of secondary or indirect impacts as a result of growth inducement; and (3) identifying mitigation measures or alternatives to address significant secondary or indirect impacts. The DEIR's growth inducing impacts analysis fails to contain these essential components.

Although the DEIR discusses the Project's influence on growth in the surrounding area, it relies on faulty reasoning to conclude that the Project would not induce growth. As an initial matter, as discussed above and as the DEIR acknowledges, the SOI Update component of the Project would provide a pathway to development in a region that is experiencing housing shortages. DEIR at 3.0-9; 3.0-33. The City has gone so far as to identify the maximum number of dwelling units that are expected to be developed within the sphere. *See* DEIR Table 3.1-1 (CSA Summary) at 3.0-3, 4. Despite these acknowledgments, the DEIR neglects to complete the growth inducing analysis required by CEQA claiming that development within the sphere is not reasonably foreseeable and an analysis of impacts would be speculative. DEIR at 3.0-9. But this argument is legally untenable: courts have repeatedly held that the "speculative" nature of growth-inducing impacts is no excuse for omitting analysis. *See, e.g., Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158 ("[The developer] asserts that an EIR is not necessary because the growth-inducing impacts of the proposed project are too 'remote' and 'speculative.' This argument has been decidedly rejected."); *City of Davis v. Colman* (9th Cir. 1975) 521 F.2d 661, 676 ("That the exact type of development is not known is not an excuse Uncertainty about the pace and direction of development merely suggests the need for explaining in the EIS/EIR alternative scenarios based on these external contingencies.").

Moreover, the Project would add extensive new infrastructure and therefore remove significant obstacles to population growth in the area. It would add new and widened roads and intersections. It would upgrade the City's water supply system by extending a new pipeline that would connect to the City's public water system, and would construct a new on-site reservoir. It would add new sewer lines and upgrade a sewer lift station. It would also add a new connection to the City's recycled water system via a new dedicated recycled water line. DEIR at 1.0-6 through 1.0-8. The DEIR acknowledges that these infrastructure projects are "traditionally seen as having the potential to encourage development" (at 3.0-35), yet it neglects to complete the analysis required by CEQA. The DEIR asserts that this new infrastructure would not be growth inducing because it would be sized only for the Project and because the area surrounding utility extensions consists of existing or planned development by others. DEIR at 3.0-36. The DEIR lacks any evidentiary support for these assertions. The EIR is remiss in not

evaluating the general form, location, and amount of growth that could result from the Project's development of this extensive infrastructure.

The DEIR also asserts that the Project is not growth inducing; rather it is "growth accommodating" because it would provide additional housing in a region where SANDAG is forecasting an increase in regional population. DEIR at 3.0-34. *But Environmental Planning and Information Council v. County of El Dorado* expressly rejects such reasoning. (1982) 131 Cal.App.3d 350, 354. Whether an agency's existing plan may predict growth is irrelevant to an analysis of growth-inducing impacts: CEQA is not concerned with a project's impacts on a plan, but "with the impacts of the project on the environment, defined as the existing physical conditions in the affected area." *Id.* (emphasis added). Thus, the EIR must analyze the impacts of the Project's likely inducement of growth, regardless of whether SANDAG had already envisioned it. The DEIR fails to meet this requirement.

Finally, the DEIR errs because it does not analyze growth attributable to the Project's precedential nature. In particular, because the Project includes applications for annexation to the City and rezoning to increase the maximum allowable units on the site from the current 27 units to the proposed 550 units, if approved, it would send a message that the City supports such excessive and unplanned growth. Nevertheless, despite CEQA's clear requirement that these effects be analyzed (*see* Guidelines § 15126.2(d)), the DEIR does not even acknowledge them. There is abundant "developable" land in the area. Of particular concern is Rancho Guejito, the 23,000-acre Mexican land grant located just west of the Project site. This property is considered San Diego County's next battleground between development and conservation. *See* "Owners of Rancho Guejito sue San Diego County." *The San Diego Union-Tribune*, September 16, 2011, attached as Attachment O. As the *Union-Tribune* article notes, the Rancho Guejito Corporation had been considering a project of up to 10,000 homes. If approved, the proposed Project would essentially bring development to Rancho Guejito's doorstep, yet the DEIR does not even mention Rancho Guejito let alone analyze how approval of the Project could induce development of that land. The DEIR's failure to analyze the environmental impacts of this potential growth violates CEQA.

I. The DEIR Provides An Inadequate Analysis of the Project's Cumulative Impacts.

An EIR must discuss a Project's significant cumulative impacts. CEQA Guidelines § 15130(a). CEQA defines "cumulative impacts" as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355(a). "[I]ndividual

effects may be changes resulting from a single project or a number of separate projects.” CEQA Guidelines § 15355(a). A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” CEQA Guidelines § 15355(b). Cumulative impacts analysis is necessary because “environmental damage often occurs incrementally from a variety of small sources [that] appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.” *Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 114.

The analysis of cumulative impacts in the DEIR is cursory and superficial. First, the list of reasonably foreseeable future projects considered in the DEIR is under-inclusive, especially in light of the potential geographic scope of certain potentially significant impacts. The DEIR appears to consider only projects in the immediate area, despite the Project’s potential impacts on biology, air quality, wildfire hazards, traffic, water quality, and hydrology that could extend far beyond the area considered. The DEIR should have included all projects that would contribute to cumulative impacts, such as traffic congestion, air and greenhouse gas emissions, and loss of open space and habitat. The City’s planning website includes a list of active projects, many of which were not included in the DEIR’s analysis of cumulative impacts. *See*, <https://www.escondido.org/planning.aspx#z>. These include, but are not limited to, the Daley Ranch Resort Specific Plan, the Del Prado Planned Development, the Gateway Grand Residential Project, the Latitude II Condominium Development, and the Zenner Development. Together these and other cumulative projects would result in the construction of hundreds of housing units and add a substantial number of vehicle trips and vehicle miles travelled. The DEIR does not provide the required “reasonable explanation” for this narrow geographic limitation. CEQA Guidelines § 15130(b)(3). Unless the DEIR is revised to incorporate a more inclusive approach, its analysis of cumulative impacts will remain deficient.

Second, the DEIR fails to analyze adequately a number of potential cumulative impacts, perhaps most critically impacts to biological resources. Because the site supports an array of sensitive species and because, as discussed above, development of the Project would significantly impact many of these species, the DEIR should have carefully analyzed the cumulative impacts of the loss of habitat together with other habitat loss in the region as a whole. The need for such analysis is compelling given the concerns about the changes in native landscapes, habitat fragmentation, disruption of

landscape linkages and wildlife corridors, and biodiversity as a consequence of development and other forms of resource use. Incredibly, the DEIR contains virtually no analysis of the Project's cumulative impact upon biological resources. This omission alone triggers the requirement that the DEIR be revised and recirculated.

Instead of following CEQA's mandate, the DEIR betrays a fundamental misunderstanding of the statute. The DEIR fails to actually analyze the effect of the Project together with effects of related projects on biological resources. The document merely reiterates the Project's impacts and proposed mitigation measures and then concludes that, since the proposed Project is implementing mitigations and other cumulative projects would be required to mitigate for impacts on sensitive riparian habitat, cumulative impacts would be less than significant. DEIR at 3.0-19. Thus, the DEIR assumes that if an impact were less than significant, it could not be cumulatively considerable. This turns cumulative analysis on its head and is a plain violation of CEQA. An EIR may not conclude that a project will not contribute to cumulative impacts simply because it has a less than significant impact on a project level. See *Kings County Farm Bureau v. City of Hanford*, (1990) 221 Cal.App.3d 692, 720-21 ("Perhaps the best example [of a cumulative impact] is air pollution, where thousands of relatively small sources of pollution cause serious a serious environmental health problem.").

The purpose of analyzing cumulative impacts is to determine whether a collection of less than significant impacts may combine to be cumulatively considerable. It is wholly inappropriate to end a cumulative analysis on account of a determination that a project's individual contribution would be less than significant. Rather, this should constitute the beginning of the analysis.

Even assuming Project-related impacts associated with loss of habitats can be partially mitigated by restoration of unidentified habitats elsewhere in the region, the end result is still a net loss of land available for core habitat within the MSCP. Moreover, it is widely known that there has been a substantial loss of biological resources in this area of the County as a result of urbanization. The ecological systems of the North and South County areas of the MSCP survive in the face of myriad threats and stresses from previous development in the area, and additional, incremental adverse impacts from habitat loss and other environmental impacts may very well push it to collapse. The dismissive approach of the DEIR towards the cumulative contribution of the Project stands to condemn the remaining biological resources in this area to the proverbial "death by a thousand cuts."

J. The DEIR Must Evaluate an Alternative that Would Avoid the Project's Significant Impacts.

The DEIR does not comply with the requirements of CEQA because it fails to undertake a legally sufficient study of alternatives to the Project. A proper analysis of alternatives is essential to comply with CEQA's mandate that, where feasible, significant environmental damage be avoided. Pub. Resources Code § 21002 (projects should not be approved if there are feasible alternatives that would substantially lessen environmental impacts); CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(f). The primary purpose of CEQA's alternatives requirement is to explore options that will reduce or avoid adverse impacts on the environment. *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089. Therefore, the discussion of alternatives must focus on project alternatives that are capable of avoiding or substantially lessening the significant effects of the project, even if such alternatives would impede to some degree the attainment of the project objectives or would be more costly. CEQA Guidelines § 15126.6(b); *see also Watsonville Pilots*, 183 Cal.App.4th at 1089 (“[T]he key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts”).

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.

In any case, the DEIR improperly circumscribes its analysis of potential Project alternatives and makes no serious attempt to describe an alternative that avoids or substantially minimizes the impacts of the Project. It identifies only two build alternatives. The first the *maximum* allowable development under the City's applicable slope density requirements, and thus assumes that the alternative would have greater number of units (and thus greater impacts) to sensitive habitat in the southern portion of the site. The other alternative reduces the number of units substantially, but assumes that those units would be spread throughout the entire site and would have reduced capacity to provide mitigation, thus resulting in greater impact than the Project wildfire hazards, for example.

Neither of these alternatives accomplishes what CEQA requires of an alternatives analysis, which is to identify feasible ways to redesign a project to avoid or lessen significant impacts. The DEIR provides no explanation as to why it could not consider an alternative that provides substantially fewer units than the maximum theoretical yield under the City's General Plan, but also require that they be clustered in the least sensitive,

least steep and least remote portions of the site. This would allow the alternative to reduce impacts to sensitive resources while at the same time minimizing ignition and evacuation risk, preserving steep slopes, reducing earthmoving and blasting activities, and otherwise lessening the severity of the Project's impacts. None of the alternatives considered reflects any attempt to consider how a development can be designed to respect and work within the site's many constraints.

To ensure that the public and decision makers have adequate information to consider the effects of the proposed Project, the County must prepare and recirculate a revised EIR that considers additional meaningful alternatives to the Project.

K. The DEIR Must Be Recirculated.

Under California law, the present DEIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a DEIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the DEIR is so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." Guidelines § 15088.5.

Here, both circumstances apply. Decision makers and the public cannot possibly assess the Project's impacts, or even its feasibility, through the present DEIR, which is riddled with errors and omissions. Among other fundamental deficiencies, the DEIR repeatedly understates the Project's significant environmental impacts and assumes that unformulated or clearly useless mitigation measures will effectively reduce these impacts. In order to resolve these issues, the City must prepare a revised EIR that would necessarily include substantial new information.

V. Approval of the Project Would Violate the Subdivision Map Act.

The proposed Project requires approval of a tentative subdivision map. See DEIR at 1.0-14. As a result, the City must comply with the Subdivision Map Act. This statute requires that a tentative map approval be consistent with the local general plan. See Gov. Code §§ 66473.5; 66474; see also *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 998 (Subdivision Map Act expressly requires consistency with general plan). Approval of a project that is inconsistent with the general plan violates the Subdivision Map Act and may be enjoined on that basis. See *Friends of "B" Street*, 106 Cal.App.3d at 998 ("City approval of a proposed subdivision ... may be enjoined for lack of consistency of the subdivision map with the general plan.").

As detailed above and throughout this letter, the Project is inconsistent with various goals and policies set forth in the County's General Plan. *See, e.g.*, Section II, *supra*. Because approval of the Project would violate the general plan consistency requirements of the Subdivision Map Act, the Project application must be denied.

VI. Conclusion

For all of the foregoing reasons, we respectfully submit that the City cannot lawfully approve the Project. The DEIR is deeply flawed and fails to inform the public of the full impacts of the Project. It can support neither the findings required by CEQA nor a determination of General Plan consistency. Before considering this Project further, the City should require a redesign of the Project to make it consistent with the General Plan and Zoning Code, fully analyze the Project's numerous significant impacts, develop adequate, enforceable mitigation measures, and analyze a reasonable range of alternatives that would avoid or substantially lessen impacts. As currently proposed, this ill-advised Project must be denied.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



William J. White
Marlene Dehlinger
Carmen J. Borg, AICP

cc: Dan Silver, Endangered Habitats League
San Pasqual Valley Preservation Alliance
U.S. Fish and Wildlife Service
Calif. Dept. of Fish and Wildlife
County of San Diego
City of San Diego
San Diego Zoological Society

List of Attachments:

Attachment A: Letter from J. Ikeda to D. Silver, November 29, 2017.

Attachment B: Letter from R. Hamilton, Biologist to D. Silver, December 8, 2017.

Attachment C: Report by Dr. J. Zicherman, Ph.D of Berkeley Engineering and Research, December 20, 2017.

Attachment D: Letter from Dr. Petra Pless of Pless Environmental, Inc., November 30, 2017.

Attachment E: Letter from Dr. Jun Onaka of Onaka Planning and Economics, to D. Silver, December 11, 2017.

Attachment F: Staff Report to City of Escondido Planning Commission dated January 14, 2003.

Attachment G: Voice of San Diego: *County Officials Set to Consider Allowing Nearly 6,000 New Homes in High Wildfire Risk Areas*, Posted By Maya Srikrishnan, December 12, 2017 @ 8:00 am <https://www.voiceofsandiego.org>

Attachment H: Syphard, A. D., V. C. Radeloff, J. E. Keeley, T. J. Hawbaker, M. K. Clayton, S. I. Stewart, and R. B. Hammer, Human Influence on California Fire Regimes. *ECOLOGICAL APPLICATIONS* 17:1388–1402 (2007).

Attachment I: Keeley, J. E. 2005. Fire history of the San Francisco East Bay region and implications for landscape patterns. *INTERNATIONAL JOURNAL OF WILDLAND FIRE* 14:285–296; *See also the National Interagency Fire Center (2001-2011)*, available at http://www.nifc.gov/fireInfo/fireInfo_stats_lightng.html.

Attachment J: Syphard AD, Bar Massada A, Butsic V, Keeley JE (2013) Land Use Planning and Wildfire: Development Policies Influence Future Probability of Housing Loss. *PLoS ONE* 8(8): e71708. doi:10.1371/journal.pone.0071708.

Attachment K: Excerpt from Escondido 2012 General Plan, Appendix B.

Attachment L: Excerpt from Exhibit B to San Diego LAFCO March 4, 2013 staff report re SB 244.

Attachment M: San Diego LAFCO March 4, 2013 staff report “Final Report: Implementation of Senate Bill No. 244.”

Attachment N: BAAQMD, Proposed Thresholds of Significance (2009).

Attachment O: The San Diego Union-Tribute, “Owners of Rancho Guejito Sue San Diego County,” September 16, 2011.

Attachment P: Institute of Applied Ecology, “How additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives,” March, 2016.

Attachment Q: Inside Climate News, “Carbon Credits Likely Worthless in Reducing Emissions, Study Says,” April 19, 2017
(<https://insideclimatenews.org/news/19042017/carbon-emissions-credits-paris-climate-agreement>)

Attachment R: Comments of T. Cova, Ph.D., COVA Consulting, December 28, 2017.

Attachment S: *Los Angeles Times*, “Alarming failures left many in path of California wildfires vulnerable and without warning,” Dec. 29, 2017
<<http://www.latimes.com/local/lanow/la-me-fire-warnings-failure-20171229-story.html>>

Attachment T: *Los Angeles Times*, “Expenses in California’s wildfires hit record levels,” Dec. 28, 2017 < <http://www.latimes.com/local/lanow/la-me-wildfire-costs-20171228-story.html>>