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November 4, 2016

Mr. Jim Desmond, Mayor
Ms. Rebecca Jones, Vice Mayor
Mr. Chris Orlando, Council Member
Ms. Kristal Jabara, Council Member
Ms. Sharon Jenkins, Council Member
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Re: San Marcos Highlands Project (P13-0009)
Final Environmental Impact Report

Dear Honorable Mayor, Vice Mayor and Council Members:

This firm represents Endangered Habitats League (“EHL”), a non-profit, public interest corporation devoted to sustainable land use planning in Southern California and to the preservation of its native species and the ecosystems upon which these species depend for their survival. We submit the following comments on the Final Environmental Impact Report (“FEIR”) for the San Marcos Highlands Project on EHL’s behalf.

As more fully detailed below, the FEIR is inadequate as an informational document and its significance and mitigation conclusions are unsupported because: (1) the FEIR’s greenhouse gas analysis and mitigation fail to comply with the City’s Climate Action Plan and significance conclusions are not supported by substantial evidence; (2) the Fire Protection Plan provides no enforcement mechanism for critical fuel modification mitigation, fails to analyze the accurate “worst case” fire scenario, and consistency conclusions are unsupported; (3) cumulative impacts have been analyzed under an erroneous legal standard; (4) significant changes to the draft EIR require recirculation; and (5) significance conclusions and conclusions regarding the adequacy of water supply to serve the Project from Vallecitos Water District are not supported by substantial evidence.

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THE FEIR'S GREENHOUSE GAS ANALYSIS AND MITIGATION FAIL TO COMPLY WITH THE CITY'S CAP AND SIGNIFICANCE CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The City of San Marcos ("City") has adopted a comprehensive Climate Action Plan ("CAP") (attached as Exhibit A) for the reduction of Greenhouse Gases ("GHG"). The CAP is applicable to the Highlands project. However, the Final Environmental Impact Report ("FEIR") and accompanying Global Climate Change Evaluations ("GCC Evaluation") fail to comply with the procedures outlined in the CAP for a consistency determination and mandatory GHG reduction strategies.

1. The FEIR GHG Analysis Fails to Comply with City CAP Procedures

The City's CAP sets forth mandatory procedures applicable to any discretionary project. The Highlands FEIR contains no indication that these procedures have been followed. In order to determine whether a project is consistent with the CAP, its impacts less than significant or whether additional CEQA review is required, a CAP consistency worksheet "should be filled out for each new project, subject to discretionary review." (CAP Appendix E p. E-1). Neither the FEIR Greenhouse Gas chapter nor the original 2014 or revised 2016 GCC Evaluations contain this consistency worksheet or any discussion of it.

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

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

CAP Chapter 3 sets forth Climate Action Measures, implementation actions and performance criteria such as: Energy GHG Reductions (including performance criteria of 15% of homes built between 2005 and 2020 are to be Zero Net Energy) at pp. 3-12-18; Transportation and Land Use Measures at pp. 3-19-28; Water and Wastewater Measures (including use of recycled water and dual plumbing requirements for new development) at p. 3-34; Biodiversity and Habitat Implementation Actions A-4.1 at p. 3-48. Other than the addition of solar panels as mitigation for project GHG impacts,

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there is no discussion of how the project is consistent with the CAP Chapter 3 Climate Action Measures.

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

In the absence of compliance with the CAP procedures, including the consistency worksheet and the possible triggering of the 3 additional required CAP steps, the FEIR fails to proceed in a manner required by the City CAP. It is axiomatic that the City cannot adopt such programs and then fail to require compliance with them. Even if the 2016 revised GCC Evaluation can be considered to satisfy the "further analysis" CAP requirement, the FEIR has not demonstrated that the project's GHG emissions fall below the GHG thresholds or that the project "would not substantially interfere with implementation of the CAP" for reasons identified below.

The City must independently analyze the project's GHG impacts and its consistency with the CAP, including its mandatory measures, and cannot simply rely upon the inadequate GCC Evaluations provided by the project applicant. "The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR." Pub. Res. Code §21082.1(c)(1)-(2); 14 Cal. Code Regs. §115084(e). When certifying a Final EIR, the City must make specific findings, including one that the FEIR reflects its independent judgment. Pub. Res. Code §21082.1(c); *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452-55. Given the GCC and FEIR's failure to comply with the CAP's mandatory requirements and procedures, the City cannot make the necessary findings and has not exercised its independent judgment on the issue of CAP compliance.

2. The Climate Change Evaluation Fails to Analyze Project Consistency with the Applicable Regulatory Scheme

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

The regulatory framework is considered part of the environmental setting of a project and an EIR must discuss any inconsistencies between the proposed project and applicable general and regional plans. 14 Cal. Code Regs. § 15125(d). In assessing the significance of greenhouse gas impacts,

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Appendix G of the CEQA Guidelines asks, whether a project conflicts with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

In the GHG arena, there are multiple, applicable policies and regulations adopted for the purpose of avoiding or mitigating the impacts of greenhouse gas emissions. However, in many cases the FEIR and 2016 GCC Evaluation simply recite the regulations applicable to the project without analyzing whether the project is consistent with the applicable regulations. In particular, and as previously noted, other than setting out the CAP's significance threshold, and the questionable conclusion that the project does not exceed it (as indicated below), the 2016 GCC Evaluation fails to comply with CAP procedures designed to determine consistency in the first instance.

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

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

3. Significance Conclusion Inconsistencies Between the 2016 GCC Evaluation and the FEIR Render the FEIR Conclusions Unsupported by Substantial Evidence

The City CAP has adopted a significance threshold of 2.76 MT (metric ton) CO₂e per service population. The FEIR and the 2016 GCC Evaluation use this significance threshold to evaluate the significance of GHG project impacts but curiously reach different significance conclusions. Under CEQA and the CAP, if the project emissions exceed the 2.76 MT CO₂e per service population significance threshold, they must be avoided or mitigated. The 2016 GCC Evaluation indicates at p. 30: "[b]ecause the estimated CO₂e emissions associated with the proposed project would be above the City of San Marcos threshold, the project must implement mitigation measures to reduce GHG emissions." Put differently, the 2016 GCC Evaluation acknowledges that GHG impacts are significant and must be mitigated. However, contrary to the technical report's conclusion, the FEIR at p. 3.6-1 indicates project direct GHG impacts are "less than significant" apparently by considering the addition of solar roof panels for the homes as a design feature as opposed to mitigation.

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

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The FEIR also incorrectly notes that conflicts with AB 32 are less than significant. This may have been true under the 2014 GCC Evaluation wherein mitigation provided a 30.85% reduction consistent with AB 32 goals. However, the new, reworked emission numbers in the 2016 revised GCC Evaluation indicate only a 14% reduction in GHG emissions with mitigation or less than half the overall 28.35% reduction goal of AB 32. There is no discussion of consistency with SB 32/AB 197 requirements, including how or if the project will meet emissions cuts of 40% below 1990 levels by 2030.

These conflicts coupled with the informational and analytical omissions identified at 1. and 2. above render the FEIR's GHG significance conclusions highly questionable and unsupported by substantial evidence.

4. Unexplained Inconsistencies Between CO₂e Analysis As Between 2014 and 2016 GCC Evaluations Render the FEIR Conclusions Unsupported by Substantial Evidence

The 2014 and 2016 versions of the GCC Evaluation inexplicably contain different conclusions regarding total CO₂e emissions under the business as usual ("BAU") scenario and the mitigation scenario. The 2014 report at p. 32 indicates BAU emissions will be 3141 MT CO₂e and, with mitigation, emissions will be 2172 MT CO₂e. In contrast, the 2016 report at p. 30, without any explanation for the change in total calculated emissions, and with no apparent change in project characteristics or density, indicates the proposed project will result in a much lower figure, 1883 MT CO₂e. With mitigation, this figure is reduced to 1617 MT CO₂e.

The FEIR must include some explanation for the disparity between the old and new figures in order to provide adequate information to the public and the decision makers. Was an appropriate and acceptable methodology for calculating emissions used? At present, the public cannot provide meaningful comment for these unexplained changes and the FEIR fails to serve its fundamental informational purpose.

5. The Use of Different Significance Thresholds in the 2014 and 2016 GCC Evaluations Create a Results Oriented, Unsupported Significance Conclusion in Both Reports

In assessing whether impacts have been mitigated to a level of insignificance, the 2014 and 2016 GCC reports use different thresholds of significance and avoid appropriate significance conclusions. The 2014 report uses the AB 32 reduction goals and not the CAP thresholds. In the 2014 report, with mitigation, GHG emissions are reduced by 30.85% consistent with AB 32 goals. The 2014 report admits even with mitigation, the project would generate 4.01 MT CO₂e per service population, yet the 2014 report fails to use the CAP threshold (2.76 MT CO₂e per service population) thereby avoiding a significance determination and the need for additional mitigation or avoidance strategies. Had the 2014 report used the CAP threshold, impacts would still be significant, even with mitigation.

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The 2016 GCC report, coupled with an unexplained change in total MT CO_{2e} figures, determines less than significant project impacts with mitigation using the CAP threshold but incorrectly determines AB 32 consistency and fails entirely to analyze SB 32/AB197 consistency as indicated at 4. above. These informational gaps and analytical inconsistencies must be reconciled. At present, the GHG analysis is fundamentally inadequate and incoherent.

6. The CalEEMod Calculations Contained at Appendix A of the GCC Evaluation Fail to Provide Adequate Information to the Public or the Decision Maker in Order to Correlate the GCC Report Conclusions with the Data Contained in Appendix A

The informational “disconnect” is exacerbated by the data calculations contained in Appendix A of the GCC Evaluations upon which the GHG conclusions are based. Neither the FEIR, the technical report nor the computer modeling provide any foundational explanation regarding information input regarding various project components and resulting GHG emission totals. In addition, the unmitigated operational GHG emissions totals in Appendix A are not consistent with the figures in the 2016 GCC Evaluation. Appendix A shows a total of 1933.2043 MT CO_{2e} unmitigated operational GHG emissions and a total of 1823.8006 MT CO_{2e} mitigated operational GHG emissions. These figures inexplicably differ from those listed in the body of the 2016 GCC Evaluation and FEIR as 1883 MT CO_{2e} for the project and 1617 MT CO_{2e} with mitigation in the form of solar panels.

The 2014 GCC Evaluation suffers from a similar disparity between totals listed in the report versus total CO_{2e} emissions in the computer modeling. At present, there is no way to reconcile or correlate the data in Appendix A with the totals listed in the FEIR and GCC Evaluation. The FEIR and its technical appendix fail to serve their informational purposes and instead present a collection of inconsistent and uncertain conclusions and potentially unmitigated impacts.

7. New Development Must Be More GHG Efficient in Order to Meet Statewide Goals

The 2016 GCC Evaluation was ostensibly prepared to respond to the California Supreme Court decision in *Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204. However, the updated evaluation fails to comply with the court’s admonition at 62 Cal.4th 226:

[A] greater degree of reduction may be needed from new land use projects than from the economy as a whole: Designing 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. The California Attorney General's Office made this point while commenting on an air district's greenhouse gas emissions reduction plan, in a letter one of the plaintiffs brought to DFW's attention in a comment on the EIR: "The [air district] Staff Report seems to assume that if new development

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projects reduce emissions by 29 percent compared to 'business as usual,' the 2020 statewide target of 29 percent below 'business as usual' will also be achieved, but it does not supply evidence of this. Indeed, it seems that new development must be more GHG-efficient than this average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit.

The CAP recognizes the need for new development to be more GHG efficient and provide a greater degree of GHG reductions by requiring multiple mandatory and voluntary GHG reduction measures. As stated by the Supreme Court in *Center for Biological Diversity* at 231: "Local governments thus bear the primary burden of evaluating a land use project's impact on green-house gas emissions." As presently drafted, the FEIR and GCC Evaluations fail to discharge this burden, the project's analysis and mitigation for GHG impacts is insufficient and the City should exercise its independent judgment and land use authority to require CAP compliance and achievement of state GHG reductions.

THE FIRE PROTECTION PLAN PROVIDES NO ENFORCEMENT MECHANISM FOR CRITICAL FUEL MODIFICATION MITIGATION, FAILS TO ANALYZE THE WORST CASE FIRE SCENARIO, AND CONSISTENCY CONCLUSIONS ARE UNSUPPORTED

The FEIR identifies the project site within a Very High Fire Hazard Severity Zone (p. 3.7-8). The FEIR acknowledges that the project site's location in this hazard area represents a potentially significant impact and mitigation is required to reduce potential wildfire hazards. However, the mitigation provided fails to reduce impacts to a level of insignificance.

The Fire Protection Plan ("FPP") found at Appendix L to the FEIR analyzes fire hazards and proposes mitigation measures for those hazards (p. 4). The FPP analyzes the survivability of the Highlands community under a "worst case" scenario of northeast winds with gusts of 60 mph (Santa Ana winds) and "rare event" 30 mph southwest winds during a wildland wildfire event (p. 13). However, the FPP acknowledges that the Rice Fire of 2007 in northern San Diego County involved wind gusts of 100 mph (p. 14). The fire behavior modeling should be analyzed with the documented, actual worst case scenario experienced in the Rice Fire in order to provide an accurate and useful analysis of fire hazards and necessary mitigation.

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

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The FPP concludes that with proposed fuel modification treatments, “firewise” landscaping, and the use of ignition resistive building construction standards, the wildfire threat will be mitigated to less than significant levels. However, in addition to fire behavior modeling failing to use the documented worst case scenario, the mitigation measures relating to individual homeowners have no adequate enforcement mechanism and the FEIR and FPP therefore fail to demonstrate that the measures will effectively mitigate fire dangers.

In this regard, the FPP bases its mitigation conclusions on “strict adherence” to Fuel Modification requirements (pp. 25-26) but provides no enforcement mechanism for fuel modification measures on individual homeowner lots. In particular, Zone 1 of the fuel modification plan/zones is the first 50 feet surrounding the homes, i.e. the private homeowner yard. The FPP requires this area to be irrigated, to avoid exotic pest plants, and provides very specific limitations and prohibitions relating to permitted and unpermitted landscaping (pp. 31-33). Zone 1 criteria are also applied to manufactured slopes within the project, as well as setback zones, some of which will be lot owner maintained (pp. 33-35). However, the FPP and FEIR are devoid of any enforcement mechanism for these components critical to the efficacy of the FPP. What if a homeowner doesn’t wish to incur the expense of irrigating the manufactured slope in his/her backyard, leaving the vegetation to dry out, become vulnerable to flying embers and endangering the Highlands community and adjacent communities? How will planting prohibitions be enforced and non-compliance remedied?

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

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

One option used in other developments is the creation and maintenance of a fire safety fund in the CC&Rs through the imposition of a per month fee to be assessed to each housing unit (“Fire Safety Fund Fee”) commencing upon each unit’s initial occupancy. The Fire Safety Fund Fee is then used for

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fire safety education, informational meetings, external property inspections and evacuation education and practices. The CC&Rs should contain standard and reasonable enforcement rights and the right of the HOA to levy special assessments to exercise these enforcement rights.

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

Finally, the FPP indicates that strobe sensors at traffic lights and traveling at posted speeds would reduce travel time for firefighting personnel consistent with the County General Plan emergency response objective for minimum response time (p. 25). The FPP does not appear to analyze consistency with relevant provisions of the City of San Marcos General Plan. The Public Facilities Element of the County General Plan requires that total travel time for deployment and arrival of the first-in engine company for a fire suppression incident should be within 5 minutes. The FPP acknowledges that the project does not meet this minimum time (p. 25). The project's failure to comply with the minimum 5 minute response time constitutes a significant impact which must be mitigated or avoided under CEQA. However, neither the FPP nor the FEIR provide information or assurance that strobe sensors will be installed as part of the mitigation measures for the project. Accordingly, the FPP's conclusion regarding consistency with County General Plan response time requirements is currently not supported.

CUMULATIVE IMPACTS HAVE BEEN ANALYZED UNDER AN ERRONEOUS LEGAL STANDARD

Responses to Comments – 15-7 evidences a fundamental error concerning analysis of cumulative impacts which may be reflective of similar errors throughout the FEIR. The response to comment incorrectly states: "A cumulative impact must be analyzed in the EIR only if the project's impact is significant and the project's incremental effect is cumulatively considerable" citing 14 Cal.Code Regs. § 15130. While the cited CEQA guideline indicates an "EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable", nowhere do the Guidelines indicate that a cumulative impact analysis is dependent on a project's impact being significant in the first instance. In fact, Guideline section 15355 indicates when defining "cumulative impacts" that:

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

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

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.

Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

As the last sentence clearly indicates, individually minor, i.e., insignificant, projects can when considered collectively with past, present and reasonably foreseeable projects result in cumulative impacts. If the FEIR cumulative impacts analyses for various project impacts has been performed under this erroneous foundational statement contained in RTC 15-7, cumulative impacts have not been adequately or correctly analyzed in the FEIR. These analytical errors must be corrected throughout the document to accurately reflect CEQA and appropriately analyze cumulative impacts.

SIGNIFICANT CHANGES TO THE DRAFT EIR REQUIRE RECIRCULATION

After circulation of the draft EIR, significant changes were made to the EIR including the addition of a new project alternative - Increased Habitat Linkage Alternative (4-2, 4-4 through 4-36, Figure 4.4-3 and Table 4.5-1); a significantly revised technical appendix employing a new significance threshold at Appendix H – Updated Global Climate Change Evaluation; and a new Appendix J.4 – Addendum to Preliminary Review of Hydrogeological Conditions. The Final EIR takes the position that none of these changes required recirculation of the document for public review and comment under CEQA. This conclusion is incorrect.

The Fourth District, Division One, recently addressed the recirculation issue in ways directly relevant to these changes to the Highlands DEIR. In *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, the court found revisions to a draft EIR's air quality and greenhouse gas analysis and hydrology and water quality impact analysis required recirculation. In the case of the greenhouse gas analysis, recirculation was required because: "the public never had a meaningful opportunity to comment on the information because the City omitted the information from the draft EIR". In the case of the hydrology and water quality analysis, the revisions "deprived the public of a meaningful opportunity to comment on an ostensibly feasible way to mitigate a substantial adverse environmental effect."

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

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implement." *Id.* Guideline section 15088.5 sets forth four examples of situations in which recirculation is required:

- When the new information shows a new, significant, environmental impact resulting from the project or from a mitigation measure;
- When the new information shows a substantial increase in the severity of an environmental impact (unless adopted mitigation reduces to insignificance);
- When the new information shows a feasible alternative or mitigation measure, considerably different from those analyzed in the DEIR, that would clearly lessen environmental impacts and the project proponent declines to adopt it; or
- When the DEIR was "so fundamentally and basically inadequate and conclusory in nature" that public comment was essentially meaningless.

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

Likewise, when a DEIR omits information, or discloses information at the last-minute and thereby precludes the public from any opportunity for review and comment, recirculation is required. *See e.g., Save Our Peninsula Comm*, 87 Cal.App.4th at 131.

1. Addition of the New Alternative Requires Recirculation

The adequacy of the project wildlife corridors and linkages in this area containing high value habitat and sensitive species has been a subject of serious public and agency concern and controversy. In recognition of the project's impacts on wildlife movement and continuing viability and functioning of project and surrounding MHCP and MCSP lands, the FEIR includes a new alternative with an expanded habitat linkage and fewer residences.

As compared to the Project, the Increased Habitat Linkage Alternative: reduces impacts to the Robinhood Ranches community; reduces lighting impacts; generates fewer project-related trips; reduces potential to impacts to sensitive species, sensitive habitat, and jurisdictional wetlands; reduces

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operational greenhouse gas emissions; reduces water quality impacts due to decreased amount of earthwork and associated reduced potential for erosion; and reduces public services and utilities impacts, including reductions in water demand, wastewater and solid waste generated.

As such, this new post-DEIR alternative falls within those circumstances requiring recirculation. It is a feasible alternative considerably different from those analyzed in the DEIR, that would clearly lessen environmental impacts and the project proponent declines to adopt it.

2. The Addition of a New Significance Threshold Coupled with GHG Analytical Omissions Requires Recirculation

The FEIR includes a new 2016 Global Climate Change ("GCC") Evaluation which employs a different significance threshold than the one employed in the DEIR and contains substantially different information from the DEIR circulated for public review, including different and unexplained CO₂e emissions calculations.

As more fully described above in this letter: (1) the FEIR GHG analysis fails to comply with City Climate Action Plan ("CAP") procedures; (2) the GCC Evaluation fails to analyze project consistency with the applicable regulatory scheme; (3) significance conclusion inconsistencies between the 2016 GCC Evaluation and the FEIR render the FEIR conclusions unsupported by substantial evidence; (4) unexplained inconsistencies between CO₂e analysis as between 2014 and 2016 GCC Evaluations render the FEIR conclusions unsupported by substantial evidence; (5) the use of different significance thresholds in the 2014 and 2016 GCC Evaluations create a results oriented, unsupported significance conclusion in both reports; (6) the CalEEMod calculations contained at Appendix A of the GCC Evaluation fail to provide adequate information to the public or the decision maker in order to correlate the GCC report conclusions with the data contained in Appendix A; and (7) the California Supreme Court and the City's CAP have indicated that new development must be more GHG efficient in order to meet statewide goals and the project fails to comply with these directives.

These post draft EIR changes are on all fours with those requiring recirculation in the *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91 case wherein the post draft EIR revisions analyzed project consistency with several general plan air quality policies and implementation measures. Because the FEIR therein contained conflicting information regarding achievement of energy efficiency standards, the court found there was insufficient evidence to support the City's finding of consistency. Accordingly, the new information disclosed a substantial adverse environmental effect. Because of this, coupled with the deprivation of a "meaningful opportunity" for the public to comment on the new information, the court concluded "the revisions to the air quality

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analysis constituted significant new information requiring recirculation under [Public Resources Code] section 21092.1.”

New information is significant if it “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect. The addition of a new significance threshold, the unexplained changes in the amount of project emissions and mitigated emissions as between the 2014 and 2016 GCC Evaluations and the gross failure to comply with City CAP procedures for determining consistency with the CAP deprive the public of a meaningful opportunity to comment upon the Greenhouse Gas impacts of this project and multiple feasible mitigation strategies as outlined in the City’s CAP to avoid GHG impacts. The FEIR and its new 2016 GCC Evaluation should be recirculated for public review and comment.

3. The Addition of Hydrogeological Addendum Containing Assumptions Regarding Groundwater Availability and Extraction Impacts and No Substantial Evidence in Support of Same Require Recirculation

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

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

In an effort to remedy these key informational omissions and deferred impact analysis, critical to assessing availability of groundwater for the identified irrigation purposes and impacts on wells in the surrounding area, a post draft EIR Addendum to Preliminary Review of Hydrogeological Conditions was prepared (found at Appendix J4 of the FEIR). The Addendum examined 105 well records released by the DWR, including those indicating the presence of 69 water supply wells within the noted search area. *Well Completion Reports* for the 69 wells showed a wide range of “estimated” yields of between 2 and 510 gpm with average yields of 57 gpm. However, the Addendum notes: “**specific usage data for private wells is not available**” (p. 2) yet concludes “well records for water supply wells in the area surrounding the Project indicate that more favorable well yields, exceeding 30

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gpm, may be anticipated in the area” (p. 3). This conclusion is based not on actual specific data usage but “estimated” yields and indications of what “may be anticipated” and critically is still much lower than the identified needed 60 gpm.

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

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

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

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

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

In view of the foregoing, FEIR project and cumulative significance conclusions concerning Groundwater Supply are unsupported. With regards to cumulative impacts, the FEIR fails to proceed in accordance with CEQA by simply referring to other pending projects identified in Table 2-3 of the document and indicating none of these projects indicate use of a well. This is not the proper analysis under CEQA. The cumulative impacts from several projects are the change in the environment which results from the incremental impact of the project when added to other closely related **past, present, and reasonably foreseeable** future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time (CEQA Guidelines, section 15355[b]). The issue of cumulative groundwater impacts should be determined by reference to current usage by nearby existing wells and this information is not provided.

The availability and sufficiency of water for irrigation in this High Fire Hazard Severity Zone is critical to maintaining a fire safe development. The EIR assumes fuel modification zones will provide

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adequate buffers to protect homes from wildfire. If those buffers are not adequately irrigated, they simply provide tinder for the next wildfire and serve no preventive purpose.

These analytical omissions should be corrected and the EIR recirculated for public comment on these serious issues.

WATER SUPPLY SIGNIFICANCE CONCLUSIONS AND SUPPLY CONCLUSIONS ARE UNSUPPORTED BY SUBSTANTIAL EVIDENCE

A project's utility impacts are considered significant if the proposed project has "insufficient water supplies available to serve the project from existing entitlements and resources, or require[s] new or expanded entitlements." Appendix G of the CEQA Guidelines. The FEIR concludes that water supply impacts are less than significant (p. 3.15-1) but this conclusion is based on inadequate and omitted information concerning one of the water suppliers for the Project, Vallecitos Water District ("VWD").

The Project site is currently undeveloped but will be served by VWD and Vista Irrigation District. After reorganization of the respective water districts' service areas, the portion of the project to be served by VWD would cover 38.48 acres and include 43 homes. The FEIR indicates the proposed project was not included in the VWD 2008 Master Plan projections and the proposed development would result in a greater demand of water than previously identified in the VWD 2008 Master Plan (p. 3.15-15). The FEIR proposes the Project may offset the additional demand over the demands projected in the VWD 2008 Master Plan "through the use of groundwater for the establishment and irrigation of the proposed habitat restoration areas" (p. 3.15-16). However, the conclusions concerning groundwater availability and impacts are not supported by substantial evidence as indicated above: Analysis of groundwater impacts continues to be deferred and the Addendum continues to base its conclusions on assumptions and estimates and no hard data or on site exploration or reconnaissance.

The FEIR acknowledges that supply during multiple dry water years could be insufficient to meet demands and indicates unspecified additional conservation measures would be employed to reduce water demand. In essence, the FEIR acknowledges a significant impact as identified in Appendix G (proposed project has "insufficient water supplies available to serve the project from existing entitlements and resources") but then attempts to avoid a significance conclusion and avoidance or mitigation of the impact by reference to these unspecified conservation measures.

Most troubling, however, is that VWD projects a water supply deficit in its entire service area for normal, dry, and multiple dry year scenarios for the next 20 years (See pp. 7-3 through 7-4 VWD 2015 Urban Water Management Plan ("UWMP") attached hereto as Exhibit B). If the district will not have adequate supplies district-wide, conclusions regarding adequacy of supplies for the Project are unsupported.

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Also, VWD currently imports 100 percent of its potable water supply from the San Diego County Water Authority ("SDCWA") (p. 3.15-5). The district's 2015 UWMP and the SDCWA 2015 UWMP contain inconsistent demand and supply projections for the district resulting in additional demand and supply deficits as between the two UWMPs. According to a recently filed lawsuit against VWD, San Diego Superior Court Case no. 27-2016-00037559-CU-WM-NC attached hereto as Exhibit C, for 2020, the SDCWA's planned water supply to VWD is 15,896 acre feet as indicated in the SDCWA 2015 Urban Water Management Plan p. 2-13 attached hereto as Exhibit D. However, according to the lawsuit, the VWD projects a 2020 water demand of 32,666 acre feet, which results in a deficit of 16,770 acre feet. According to the lawsuit and its supporting exhibits, these deficits and disparities continue through 2035.

These analytical disparities are of critical importance from a cumulative impacts standpoint when one considers other projects in the planning and approval pipeline to be served by VWD such as the Newland "Sierra" Project, formerly known as Merriam Mountains, which will add approximately 6,063 new residential customers and tenants for a proposed school and 81,000 square feet of commercial development. The FEIR should analyze the deficits identified by the VWD UWMP, the disparities between the supply and demand figures in the VWD UWMP and the SDCWA UWMP, and acknowledge, avoid and/or mitigate the significant water supply and demand impacts of the Project. At present, the FEIR is inadequate in this regard, should be revised and recirculated for public comment.

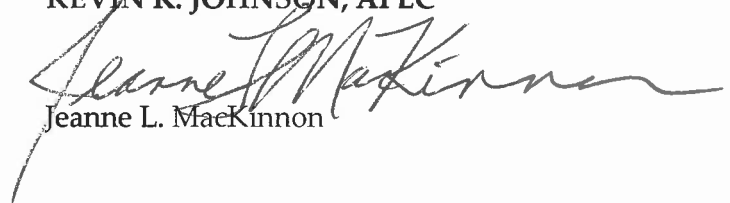
As indicated in *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 283-284, discrepancies between water assessment analyses of water demand and availability which are not explained in an EIR "preclude[] the existence of substantial evidence to conclude sufficient water is likely to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

CONCLUSION

The foregoing errors and analytical omissions must be corrected prior to certification and project approval and the FEIR recirculated for public review and comment. Thank you for your attention to these matters and for this opportunity to comment upon the FEIR.

Very truly yours,

KEVIN K. JOHNSON, APLC



Jeanne L. MacKinnon

November 4, 2016

cc: Norm Pedersen

Attachments: Exhibit A - City of San Marcos Climate Action Plan
Exhibit B – Vallecitos Water District 2015 Urban Water Management Plan
Exhibit C – San Diego Superior Court Case no. 37-2015-00037559-CU-WM-NC
Exhibit D – San Diego County Water Authority 2015 Urban Water Management Plan