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Via Hand Delivery to Planning Commission Secretary

March 25, 2019

Re: The Preserve at Torrey Highlands
Project No. 442880, SCH No. 2016031026
April 4, 2019, Planning Commission Hearing, OPPOSE

Dear Planning Commission Chair, and Fellow Commissioners,

This letter is sent on behalf of my firm's client, Protect Our Preserves San Diego (POPs). POPs is a community advocacy group dedicated to saving habitat preserves from invasive development. The proposed Preserve at Torrey Highlands is of mounting concern to POPs and the public, especially in light of the recently released Final Environmental Impact Report (FEIR) (March 19, 2019).

POPs will detail below, and in its testimony to the Planning Commission, where the EIR fails as an information disclosure document pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15002. The FEIR also contains significant new information that should have been made available for formal public review and comment and continues to fail to provide fundamental information regarding several critical areas of public controversy, in violation of CEQA. Therefore, pursuant to CEQA Guidelines section 15088.5, the EIR was required to have been recirculated.

This item should be removed from the Planning Commission docket so that the EIR may be corrected, a new notice issued, and the required recirculation and review by an interested public conducted prior to the item proceeding to hearing consistent with PRC section 21092.1.

New Mitigation Measures Added for MHPA Protection Require Public Review

Barriers and Fencing Added

The FEIR added what it characterizes as a "clarification" or "permit condition" relating to Multi-Habitat Preservation Area (MHPA) protection that should have been subject to formal public review. A new Figure 3.17 "Fencing and Barriers" was added to the FEIR, but curiously, not indicated in ~~strikeout~~/underline in the Table of Contents, obscuring it from public view. This new measure added barriers to prevent human access to the sensitive MHPA, but this proposed barrier system was not subject to public review, including review by the wildlife agencies. Nor was explanation made in the FEIR as to why such barriers were not first discussed in the DEIR, especially where fencing and other protective measures, such as an educational panel¹, were part of the prior Our Lady of Mt. Carmel proposal for the property.

Moreover, analysis regarding the efficacy of this new measure to actually achieve protection of the MHPA was not provided. For example, we do not know how tall Barrier 3 (a retaining wall along part of the east side) would be; nor do we know what the specific "specialty barrier system" referenced at Barrier 4 (along southern property line) is because it is not described. Similarly, no explanation is made for how far west Barrier 1 and 4 would extend towards the roadway/sidewalk to ensure no public incursions into the MHPA occur by project employees, visitors, and parking, key issues of concern of the state and federal wildlife agencies according to their comment letters on the DEIR (FEIR, comment letters A1, A5, and A7).

Regarding trails, new Figure A00.53, Enlarged Trail Connection Plan, in new Appendix T, asserts that project and recreational users would not shortcut across MHPA lands to get to the Arroyo Trail and would instead go out of their way to walk up the sidewalk to the trailhead to the north (by the proposed Merge 56 project). (FEIR, RTC I4-4). However, no evidence was provided in the responses to comment (RTCs) (i.e., RTC I4-4 and I4-10) to support these conclusions. It is naive to think that new unauthorized trails would not be created into the MHPA should the project be approved or that such new trails would not degrade the habitat values of the Preserve.

New Figure 3.17 also shows landscaping that extends outside Barriers 3 and 4 and potentially into the covenant of easement (COE) area. How is landscaping consistent with a commitment to protect the MHPA species, including the vernal pool complex, along the southeast property

¹ Unlike what was required for the much less intense prior church proposal, no educational panel describing the vernal pools, the uniqueness of the habitat, its flora and fauna, how vernal pools form, and other such information, is proposed by Cisterra, nor is a habitat management plan for the on-site preserved areas being required of Cisterra despite that being part of the prior church permit requirements. These omissions must be also addressed in a recirculated EIR.

lines?² Also, the FEIR does not discuss what, if any, restoration efforts might be made within the proposed COE area to restore those areas even though the California Department of Fish and Wildlife (CDFW) requested such mitigation in its DEIR comments (FEIR, Comment A1- 8)³.

Many questions are posed by this newly proposed mitigation measure, related to a major area of controversy, and the measure should have been circulated for public review through a recirculated EIR as required by CEQA.

MHPA Adjacency Analysis Added

There is no debate this is a property of significant environmental value and located as an inholding within the Del Mar Mesa Preserve. (See, FEIR, Figure 2-4, Open Space). According to the CDFW, the project is located within the MSCP, City's Subarea Plan Multi-Habitat Planning Area (MHPA or Preserve), and Del Mar Mesa Vernal Pool Unit of the USFWS San Diego National Wildlife Refuge (Refuge). The Department's Del Mar Mesa Ecological Reserve abuts the Refuge to the south. (FEIR, Comment A1-1).

Many people have worked many years to assemble the Preserve and create management criteria and plans to sustain its functionality. Sufficient public review must occur on this industrial (office) development proposal that is attempting to spot and upzone the property. The new MHPA analysis is a critical part of the EIR due to the sensitivity of the Preserve. Such analysis should have been readily available in the text of the DEIR and put out for public review and comment.

Instead, the FEIR simply moved Figure 5.6-4 "MHPA Adjacency" from Appendix F, Biological Resources Technical Report, to the EIR text. (FEIR, PDF page 600). This change was not indicated, however, as a new addition in ~~strikeout~~/underline in the FEIR's Table of Contents. Among other things, this figure indicates a 4-10 foot retaining wall along the east property line and a MHPA buffer zone of unstated, but varying width, with brush management within some of the buffer zones.

² RTC I4-16 states that Figure 3-13, Landscaping Plan, and Appendix F Biological Technical Report were both updated from the DEIR to the FEIR to include no trees or landscaping of any kind would be allowed in the COE. These changes should have been put out for formal public review and comment. Are the Figures in the FEIR internally inconsistent? If so, they should be made consistent to show no landscaping in the COE for clarity.

³ CDFW requested two mitigation measures. However, restoration (vertical mulching) of 200 linear feet of unauthorized trails within the Preserve that abut the project was not discussed in the FEIR. Moreover, there are areas within the proposed COE onsite that also could benefit from restoration to improve biological function and deter access. Patrols/assistance to City park rangers was also requested by CDFW but rejected by the FEIR as unnecessary without required analysis of unauthorized mountain bike uses or analysis of sufficiency of current staffing levels to handle either current or future incursions into the Preserve induced by the proposed project.

March 25, 2019

Concerns of the USFWS Carlsbad office expressed in their DEIR comments about the need for sound and light barriers *during construction* remain unanswered. (FEIR, Comment A5-4). Relative to sound, RTC A5-4, responds that barriers would only be needed if gnatcatchers are found within 500 feet of the work. This is very likely as there are already at least four recorded locations of gnatcatchers on and adjacent to the property. (FEIR, Figure 5.6-1). Yet, the biological efficacy and visual impacts of these barriers is not considered in the FEIR. The RTCs are also silent relative to light barriers *during construction*. There is also no discussion of the potential for bird strikes by introducing high rise structures inside the Preserve.

Concerns about the admitted increase in quantity of storm runoff for a 100 year storm event are also insufficiently addressed in the FEIR. (Comment I4-14). More information also must be provided about the storm drain system that discharges at a single location into an unnamed natural drainage course "just north" of the project site. This is only given brief mention in the FEIR. (FEIR, RTC I4-14).

On this information, it cannot be determined that the proposed measures are consistent with the MHPA Land Use Adjacency Guidelines. Many questions also remain regarding the FEIR's new MHPA adjacency analysis, a major area of controversy, and this analysis must be circulated for public review.

Covenant of Easement Depiction Added

The FEIR added detail to a covenant of easement (COE) on the property as a mitigation measure to protect the vernal pool complex within the Refuge directly adjacent to the project's southern property line. However, neither the easement approach proposed here nor its boundaries have been subject to public review and comment. In fact, the FEIR does not even tell us how the COE boundary was selected and whether the wildlife agencies agree with the new technical studies described below.

Figure 3-1 "Site Plan" has been modified from that presented in the DEIR to now show a bolded dashed line indicating the boundaries of a COE to be recorded against the property. (FEIR, PDF page 220). Once again, the revised Figure 3.1 was curiously not indicated as revised in ~~strikeout/underline~~ in the Table of Contents, and in fact is part of a newly added Appendix T, which is also not shown in redline in the Table of Contents, making it difficult to track substantive changes in the project and FEIR from that presented in the DEIR, and frustrating the purpose of the EIR as an information document.⁴

⁴ CDWF had commented that the DEIR should have included Exhibit A so that mitigation measures MM-BIO-1 and MM-BIO-3 are enforceable (FEIR, Comment A1-5). POPs notes that there still is not a clearly marked Appendix A in the FEIR: RTC A1-5 merely states that Exhibit A has been included as (new) Appendix T of the FEIR which illustrates

March 25, 2019

Moreover, the FEIR also appears internally inconsistent regarding the area to be placed in the COE, a critical aspect of the proposed mitigation. For example, compare the COE boundary lines at FEIR revised Figure 3-1 "Site Plan", with the location of barriers shown in new Figure 3.17 "Fencing and Barriers," the barriers shown at new Figure 5.6-4 "MHPA Adjacency", or new Figure A00.53 "Enlarged Trail Connection Plan": They appear to show different areas for protection. This must be clarified in one controlling exhibit.

Neither is there discussion in the FEIR of whether the work limit line is the covenant boundary, or a clear, consistent discussion of MHPA buffers, including brush management⁵. There is no disclosure in the FEIR of whether the seven story parking garage would shade or cool the vernal pool complex. The FEIR also includes a new Appendix U, Vernal Pool Hydrology Analysis, which purports to demonstrate that the drainages to the vernal pools will be unchanged from pre-project to post-project conditions. However, there is no evidence that the wildlife agencies were ever provided an opportunity to review this technical information. Based on the information in the FEIR, the public and decision makers cannot know exactly what is being proposed or whether it will be effective.

The COE, its boundaries, and related Figures are significant new information related to an issue of controversy that were required to have been circulated for public review.

*Substantively Changed Conditions of Project Approval for Road Extension Construction
Require Public Review*

The FEIR changed language regarding the construction of the new road required to serve the proposed project. The DEIR promised that the project would not receive a Certificate of Occupancy for the first commercial office building until after the Camino Del Sur and Carmel Mountain Road improvements *were open to traffic*. The FEIR changed this to state that prior to the issuance of any building permits, the owner/permittee shall submit documentation that the extensions of Camino Del Sur and Carmel Mountain Road *have been assured by permit and bond*. (FEIR, page 1-1).

The FEIR also added requirements relative to two new road segments, information that was not provided in the DEIR. In new language, the FEIR states that: Additionally, the connection of Camino Del Sur between Torrey Santa Fe Road and Dormouse Road and the connection of Carmel Mountain Road between Via Las Lenas and Camino Del Sur shall be completed and open

the project site plan and location of the COE. The FEIR also does not reference the revisions to the project site plan from the DEIR to the FEIR. The FEIR still fails to clearly state whether the new Appendix T is the referenced Exhibit A and whether it is in whole or part the referenced Exhibit A.

⁵ The FEIR also includes a new Appendix V, Brush Management Notes.

March 25, 2019

to traffic . . . prior to the issuance of any occupancy permit. (FEIR, page 1-1). These road extensions are also not shown in FEIR Figure 2-1 "Aerial Map" which portrays future development in the area, including the future Camino Del Sur/Carmel Mountain Road extension or reflected in the cumulative impacts section of the FEIR, even though table 6.1 "Cumulative Projects" was changed from the DEIR to add two more (nonroadway) projects in the FEIR.

How might these new project conditions affect traffic and circulation in the area? The FEIR does not say. When might multimodal transportation linkages and public transit be implemented in this area, so unbuilt-out that it currently does not even have roads? The FEIR does not say. These omissions and changes to project conditions related to the road network to be built to serve the project would be of great interest to the residential communities served by these roads. However, this information was not made available to them, or their community planning boards, prior to the FEIR being released and the matter being set for public hearing.

Because the timing and scope of road improvements and conditions of project approval was substantively changed in the FEIR, it should have been recirculated for public review.

Failure to Provide an Informative Alternatives Analysis Warrants Recirculation

Development Under Existing Plans Alternative Presented in FEIR
Does Not Follow City's Scoping Letters

The two scoping letters from the City of San Diego contained in the FEIR clearly state that the development under existing plans alternative should describe the project that would be developed on the site *in accordance with existing zoning and/or existing land use plans*. (October 30, 2015, letter (FEIR, Appendix A), and March 7, 2016, letter (FEIR, Appendix A)). Both letters also specifically stated that, "It is important to emphasize that the alternatives section of the EIR should constitute a major part of the report."

However, contrary to this specific scoping direction, the EIR presents only one development under existing plans alternative and it is one *that requires a rezone and community plan amendment*. The effect is that the public and decision makers are not presented with an alternative that provides a fair picture of what could be allowed on the site without amendments to zoning or adopted plans, projects with much reduced impacts than the hypothetical religious use analyzed in the FEIR. Nor does the FEIR explain why the scoping letter direction was not followed.

Instead of the other allowed uses in the community plan designation CL: trade schools, storage facilities, nurseries, garden centers, and veterinary clinics, the FEIR assumes an intense, hypothetical religious use facility (FEIR, page 9-5). The FEIR further suggests that the specific

site plan assumed for this religious use, while intensive, is reasonable alluding to the church's prior plan for the property, leading the reader to assume the plan is the same or similar to the prior proposed church use. However, on inspection, the FEIR's alternative does not track the prior church plan according to the attached site plan from the real estate offering for the land sale by the church or the recorded permits for that prior church plan.⁶

Instead, the FEIR selects exaggerated attributes for its hypothetical intensive religious use to make those hypothetical impacts appear more on par with the intense impacts of the proposed industrial project. However, the prior plan did not look like the proposed project at all: the church plan did not have a parking structure (versus the currently proposed seven story garage)⁷, was limited to a 102,983 total square foot church campus (versus the proposed 450,000 square foot industrial campus), did not have a 3,000 seat sanctuary (which would be equivalent to the seating at Civic Theater downtown, but rather was a 1200 seat worship center), and importantly, did not require a rezone or community plan amendment.

A significant consequence of the FEIR's manipulation of this alternative, is that it results in the Reduced Development Alternative (a 204,000 square foot project)⁸ being designated the Environmentally Superior Alternative in the FEIR. (FEIR, page 9-22). Without manipulating this key alternative in this manner, it is very likely that a development under existing plans alternative that followed scoping direction would have been the Environmentally Preferred Alternative.

To comply with the City's own scoping letters and CEQA, the development under existing plans alternative must be rewritten and the EIR recirculated.

Offsite Alternative Improperly Eliminated from Detailed Consideration

Given the highly sensitive location of the property within the MHPA, and the project's admitted significant and unmitigable impacts, a legitimate analysis of offsite alternatives is particularly

⁶ Please see, Attachment 1, Planned Development Permit No. 10965/Site Development Permit No. 4916/Conditional Use Permit No. 4915 for Our Lady of Mt. Carmel. Also, please see Attachment 2, real estate offering which includes proposed Site Development Plan for the prior church plan for comparison.

⁷ To better understand the magnitude of difference in bulk and scale between the prior church campus plan and the currently proposed industrial/office development, the entire square footage of the church campus (102,983 square foot) would have been less than 60% of the size of *just the current proposal's parking garage* (180,000 square foot).

⁸ According to the FEIR, the intent of the Reduced Development Alternative was only to reduce significant transportation/circulation impacts of the project, which failed to bring forward an alternative with reductions in other impact areas (FEIR, page 9-18).

March 25, 2019

warranted here. Instead, the FEIR quickly concluded that this alternative would not be studied in any detail because the property owner does not own other pieces of land in the area. This, however, is not what CEQA Guidelines section 15126.6(f) envisions: nowhere does CEQA require that offsite alternates be in the control or ownership of the project applicant. To require this would mean that few, if any, off site alternatives are ever studied. In fact, the agency *may consider whether the project proponent can reasonably acquire, control, or otherwise obtain access to the offsite location if the proponent does not own the alternative site.*

In fact, other potential parcels already have been identified by the public that could be studied. These include:

- Rose Canyon City Operations Yard (18 acre city owned parking lot/maintenance yard, consider a land swap with applicant to enlarge Preserve and to get the proposed industrial/office use better linked to zoning, community plan, public transit, the trolley, etc., than the project site)⁹
- I-56 Corridor vacant properties (some have approved plans but are unbuilt and others have plans pending in review at the City, would have better linkages to zoning, community plan, and freeway access)

Furthermore, it is undisputed that the property has great habitat value (containing vernal pool complex watershed, gnatcatchers present¹⁰, a finger canyon with ephemeral stream channel, and at least five special status plants, surrounded on three sides by MHPA lands)(FEIR, Figure 5.6-1 "Existing Biological and Jurisdiction Resources"). Yet, no Land Swap or Addition to Preserve Alternative was studied - or even mentioned in the FEIR. This, despite ongoing efforts to expand and restore the Del Mar Mesa Preserve and secure another local mitigation bank after the closure through full utilization of the Deer Canyon Mitigation Bank.¹¹ In certain cases, land trade alternatives must be studied in an EIR. *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984)155 Cal.App.3d 738 (EIR that mentioned but did not discuss

⁹ See Attachment 3, Clairemont Community Plan Update Workshop, Board #13, Rose Canyon City Operations Yard, showing potential opportunity areas relative to transit priority areas.

¹⁰ According to the project's California Gnatcatcher Survey Report (Appendix F Biological Resources Technical Report, Appendix C), a family group of gnatcatchers was observed just to the east of the project. However, it is unclear whether this family group is depicted on FEIR Figure 5.6-1 Existing Biological and Jurisdictional Resources as there is no gnatcatcher icon to the east on this graphic. Both onsite areas where gnatcatchers were observed would be within the project footprint and impacted. (Appendix F, page 22).

¹¹ See for example, Attachment 4, Times of San Diego article, "Wetlands Restoration to Begin as Part of Del Mar Mesa Preserve Expansion", August 3, 2018, and FEIR, RTC A1-4.

March 25, 2019

possibility of land trade with U.S. Forest Service that could result in protection of sensitive habitats on the site found inadequate).¹²

Given the facts at issue here, offsite alternative locations were appropriate for study in the EIR. Just as in *San Bernardino*, the FEIR does not discuss whether there actually are other sites within the area which would be suitable for such a project and do not contain the sensitive species habitat. Further, the FEIR does not discuss the location or attributes for a potential land trade or why it would or would not be a feasible alternative.

In short, the FEIR does not produce information sufficient to permit a reasonable choice of alternatives so far as environmental effects are concerned in violation of CEQA. Accordingly, the development under existing plans alternative must be rewritten and off site alternatives including a land trade must be considered followed by recirculation of the EIR.

FEIR Fails to Correctly Analyze Consistency of Project with Adopted Plans

CEQA Guidelines section 15125(d), Environmental Setting, requires an EIR discuss inconsistencies with plans that decision makers should address, such as general, specific, regional, and habitat plans. The FEIR, however, uses pretzel logic to conclude that the proposed project is consistent with adopted plans because after a rezone and plan amendments they would be consistent with the project. The very fact that the proposal requires a community plan amendment and a rezone, demonstrates *the proposal's inconsistency with adopted planning and zoning*. The FEIR therefore falsely asserts the project's consistency with these plans to avoid disclosing a significant effect under land use.

Community experts have put evidence into the record that the proposed project would cause significant and unmitigated impacts to land use.¹³ This substantial evidence, however, is not adequately reflected in the EIR.

Other community members have asserted that the requested plan amendment must be addressed via a vote of the people, since the current plan designations were promulgated by a vote of the people. The FEIR does not adequately discuss the unique planning history for this

¹² The property at issue here has many similarities with that in *San Bernardino*: both zoned agriculture, both posing unavoidable impacts to sensitive species, and both with nearby acquisitions of land south of the properties by federal agencies for biological preservation.

¹³ This includes Friends of Del Mar Mesa (FEIR, Comment Letter 03), Sierra Club San Diego California Native Plant Society San Diego Chapter, Environmental Center of San Diego, Preserve Wild Santee, and The Chaparral Institute (FEIR, Comment Letter 02), Del Mar Mesa Community Planning Board (FEIR, Comment Letter 04), Rancho Penasquitos Planning Board (FEIR, Comment Letter 06), and many informed local residents of the area intimately familiar with the property and its setting.

March 25, 2019

area (which includes Propositions H (1996) and M (1998) (both amended the City's Progress Guide and General Plan to shift lands from Future Urbanizing to Planned Urbanizing and protect open space, rare habitat, and wildlife corridors). The FEIR fails as an information disclosure document as it does not discuss this public controversy of whether the requested rezone and community plan amendment require a vote of the people.

The land use consistency analysis must be rewritten and the EIR recirculated.

Other Revisions to the FEIR of Consequence Also Support Recirculation

Other revisions/additions were made from the DEIR that are also of potential consequence:

- The greenhouse gas (GHG) significance finding was changed from insignificant in the DEIR to significant in the FEIR due to the project's upzone causing inconsistency with adopted air quality plans including the City's Climate Action Plan (FEIR, page 6-11, RTC 02-40)¹⁴. The project also proposes an astounding 1,781 parking spaces within the Preserve (FEIR, RTC 06-14) and no meaningful, near term public transit
- Direct impacts to nonwetland waters was added in the FEIR as a significant impact and the FEIR incorrectly asserts, without public review, that mitigation measure MM-BIO-4 would reduce the impact to below significance (FEIR, page ES-24)¹⁵
- A new section on Energy Cumulative Effects was added to the FEIR (FEIR, pages 6-14 - 15)
- The Environmentally Sensitive Lands (ESL) section was rewritten from the DEIR to the FEIR (FEIR, page 5.1-7)
- Reference to a Planned Development Permit was added to the FEIR (FEIR, page 9-5)
- The language was changed from the DEIR to the FEIR relative to California Native Plant Society (CNPS) sensitive plants adding reference to native plants (FEIR, pages 5.6-11-12)
- A section was added to mention Carmel Mountain Preserve and the Del Mar Mesa Preserve Resource Management Plan but no meaningful analysis was provided of the project's consistency with those management goals (FEIR, page 5.6-16)
- Reference to the project paying development impact fees that would be used to fund facilities, including planned library expansions, was struck from the FEIR without explanation. (FEIR, page 7-46)

¹⁴ This new finding alone also begs the question of how the FEIR could reasonably conclude that the proposed project is consistent with all plans.

¹⁵ This conclusion appears inconsistent with FEIR section 6.2.4 Cumulative Biological Impacts which states that cumulative projects would also result in impacts to unvegetated non-wetland waters of the United States and would potentially be considered a cumulative effect. (FEIR, page 6-12).

Other Areas Where the FEIR Remains Fundamentally Incomplete

- Areas of Controversy (FEIR, page ES-4) incomplete, with particular concerns about the impacts summarized in Footnote 17, fails to disclose the extent of community opposition/lack of public benefit or demonstrated need for the proposed project
- No Spot Zoning Analysis (project is zoned AR-1-1 (allows for agriculture and residential development requiring 10 acre minimum for residential) and is seeking an upzone to put an intensive industrial park within the Preserve (allows for research and development, office, and residential), bounded by the MHPA on three sides, in what the Subarea Plan refers to as an "isolated location" (FEIR, page 9-5). An upzone in this sensitive location would constitute irrational discrimination (conferring special benefits to a particular parcel) without a demonstration of public benefit¹⁶
- Once upzone granted, property could be sold and project description changed for further intensification to 13 story or higher buildings with no promise that any further environmental documentation or public review actually would occur (just a vague statement that "future CEQA review" would be required (RTC 17-4), which could mean an environmental exemption, negative declaration, etc.)
- The project changed from silver LEED in the DEIR to gold LEED certification in the FEIR, but there is still no explanation of what "or equivalent" could mean (and no mention of the irony of how such an intense project could even claim that status when it is located on such sensitive environmental lands in the first place) (FEIR, page 3-2)
- No SB 18 consultation described in FEIR, despite the need for a community plan amendment, and no consultation section in Appendices for either AB 52 or SB 18 despite mention of Tribal Correspondence at FEIR, page 5.9-2
- No economic modeling to support any asserted benefits or synergy with existing residential communities or future commercial development in area

Required Statement of Overriding Considerations Cannot be Substantiated

¹⁶ Spot zoning in California may be permissible but only if facts in the record support "a substantial public need" for the rezoning. *Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302 (Board of Supervisors action to create new zoning definition for senior residential housing (uses not anticipated at the time of original zoning) and apply to parcel already zoned for residential single-family (and consistent with the surrounding residential single-family zoning district) was permissible due to demonstrated public benefit of providing senior housing but remanded to trial court for issues related to CEQA (no project level or cumulative impacts were identified)). Here, there is no original mistake, change in circumstances, or substantial public need to support the requested upzone and community plan amendment. It is not sufficient for an applicant to show it would be more profitable to make this other use of property.

March 25, 2019

There is no dispute the proposed project would have significant and unmitigated effects to Transportation/Circulation, Air Quality (consistency with applicable air quality plans), Greenhouse Gases, and Landform Alteration. (FEIR, page ES-5).¹⁷ It therefore would require a statement of overriding considerations to approve regarding these effects. However, the project does not provide sufficient public benefits to support such findings.

There is significant opposition to the proposed upzone and community plan amendment:

City Planning Groups formally opposing include:

- Del Mar Mesa Community Planning Board (August 20, 2018 (unanimous))(Comment Letter D4-2),
- Rancho Penasquitos Planning Board (November 7, 2018 (12-2-2))

Other City community groups formally opposing include:

- Los Penasquitos Preserve Citizens' Advisory Committee (March 21, 2019)

Environmental and community groups formally opposing include:

- Friends of los Penasquitos Canyon Preserve (March 5, 2019)
- San Diego County Democrats for Environmental Action (February 20, 2019)
- Sierra Club San Diego Chapter (March 13, 2019)
- Wild Zone Conservation League (March 25, 2019)

POPs submits that any potential public benefit of the proposal pales in comparison to the property's value in its undeveloped state towards the long term health and viability of the Preserve itself. The proposed office use can be provided in many other locations within the City and County. All of these concerns and questions about the project's purported public benefit must be considered by the decision makers who will be held accountable by the voters.

Hearing Management

With respect to the hearing itself, through a letter sent to the Planning Commission Secretary on March 21, 2019, POPs respectfully requested, to the fullest extent feasible to do so, the advance establishment of a clear, fair, and reasonable speaker slip submittal process and adequate time parameters for POPs and other public speakers at the Commission hearing, so

¹⁷ POPs also believes additional significant, and potentially unmitigated effects would occur, including but not limited to, MHPA Impacts (adjacency/hydrology), Fire Safety (fire services/evacuation), and Land Use (planning history of area/ballot measures/spot zoning) that must be better studied through a recirculated EIR.

March 25, 2019

that necessary public comment may be provided.¹⁸ The City has not responded to this request to date. We reiterate this request, so that a fair and transparent public hearing may be achieved.

Moreover, because the lengthy FEIR¹⁹, and its many substantive changes (some of which did not appear in redline), was only publicly released about a week ago, POPs is by necessity still reviewing the document and the responses to comments. POPs therefore reserves the right to provide additional information up to and including the public hearing itself.

Conclusion

Based on the above analysis and other items in the record, the FEIR fails to meet the fundamental goals of CEQA to avoid or reduce environmental damage and inform the decision makers and an interested public. The issues with the FEIR involve more than mere clarifications, minor modifications, or amplifications, but rather, in several instances, go to the very heart of the CEQA analysis.

POPs therefore respectfully requests that the Planning Commission return the EIR to staff for correction, renoticing, recirculation, and review. There is no legitimate reason to rush this project and shortcut the legal requirements of CEQA, including its provisions for public review of new information. A decision to not recirculate an EIR must be supported by substantial evidence in the record. CEQA Guidelines section 15088.5(e). **In the alternate, POPs requests that the Commission deny the project, proposed rezone, community plan amendment, and EIR.**

Should there be any questions about this letter, please feel free to contact my office at 858-454-8687. Please place my office on the list to receive all notices and findings for the proposed project.

¹⁸ The Permanent Rules of the Planning Commission states that the goal of the Commission is to ensure a balanced dialogue among its members, staff, and the public. (Rules, section 2.5(d)). Public testimony on an item is generally a maximum of three minutes each or as the Chair determines appropriate. (Rules, section 2.5(c)). POPs respectfully requests the opportunity for an organized presentation at the Planning Commission hearing.

¹⁹ The FEIR totals about 3,500 pages.

March 25, 2019

Thank you for your courtesy and cooperation.

Very truly yours,



Courtney Ann Coyle

Attorney at Law

for

Protect Our Preserves San Diego

✓ Attachments 4

cc: (Via Email)
Hon. Barbara Bry, City Council District 1
Hon. Mark Kersey, City Council District 5
Hon. Chris Cate, City Council District 6
City Attorney's Office
William Zounes, Development Project Manager
Client file